

**City of Northampton
MASSACHUSETTS**

In the Year Two Thousand Fourteen

Upon the Recommendation of the Board of Public Works

ORDINANCE

An Ordinance of the City of Northampton, Massachusetts, providing that the Code of Ordinances, City of Northampton, Massachusetts, be amended by revising section **§280-1 through §280-13** of said code; providing that *Adding Stormwater and Flood Control Utility Ordinance*

Be it ordained by the City Council of the City of Northampton, in City Council assembled, as follows: That section **§280-1 through §280-13** of the Code of Ordinances of the City of Northampton, Massachusetts, be amended so that such section shall read as follows:

That Chapter 280 of the Code of Ordinances be and is hereby amended by adding Stormwater and Flood Control Utility Ordinance, Sections 280-1, through 280-13

Section 280-1. Established.

There is hereby established within the Department of Public Works, a utility known as the stormwater and flood control utility under the day-to-day supervision of the Director of Public Works and the general supervision of the Board of Public Works.

Section 280-2. Purpose.

The stormwater and flood control utility shall administer the stormwater management and flood control programs of the city. It shall be funded by revenue collected through the stormwater and flood control utility fee and such other funds as may, from time to time, be appropriated or obtained through grants and low interest loans. The stormwater management program is designed to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff, and to protect and manage water quality by controlling the level of pollutants in stormwater runoff and the flow of water as conveyed by manmade and by natural stormwater management systems and facilities whether publicly or privately owned. The flood control program is designed to maintain, operate, modify, construct or replace flood control systems in the City that protect the City from flooding from the Mill River and Connecticut River systems.

Section 280-3. Authority.

This ordinance is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Amendment Article 2 of the Massachusetts Constitution, Chapter 328 of the Acts of 2002, Sections one through twenty-four of Chapter 83 of the General Laws of the Commonwealth of Massachusetts and such other powers as granted to cities in the said General Laws.

Section 280-4. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Credit means a reduction in the amount of a Stormwater and Flood Control Utility Fee charge to a particular property.

Direct Costs shall mean the costs incurred in the operation and maintenance of the stormwater and flood control system as reflected in the Stormwater and Flood Control Enterprise Fund budget.

Drainage system shall mean natural and manmade channels, swales, ditches, swamps, rivers, streams, brooks, creeks, wetlands, branches, reservoirs, ponds, drainage ways, drainage structures, conveyances, storm drains, catch basins, inlets, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that collect, transport, transfer, control, pump, treat, convey, dispose of, or otherwise influence the movement of stormwater runoff.

Dwelling unit means the individual, private premises contained in any building intended, whether occupied or not, as the residence for one household, regardless of the number of individuals in the household. A building may contain more than one dwelling unit.

Flood Control system shall mean manmade levees, flood walls, pump stations, stop-log structures, and other flood protection improvements.

General Laws means the General Laws of the Commonwealth of Massachusetts.

Hydraulic Acreage is the sum of the impervious and pervious areas as modified by runoff coefficients.

Impervious surface means those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, decks, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Indirect Costs shall mean the costs incurred in the operation and maintenance of the stormwater and flood control system appropriated as part of the General Fund operating budget and allocated to the Stormwater and Flood Control Enterprise Fund budget. An example of an indirect cost would be the value of time spent by General Fund employees in the Collector's office processing enterprise fund user payments.

Large residential property means improved property containing apartments, or condominiums with four or more dwelling units and rooming and boarding houses. Large residential properties shall not include improved property containing structures used primarily for nonresidential purposes (i.e. hotels, motels, retirement centers, nursing homes or assisted living homes or properties designated as "mixed use" properties by the Board of Assessors).

Non-residential property means property that is not residential property as defined herein including, but not limited to such property as commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas, parking lots, roadways, driveways, parks, recreation properties, tennis courts, swimming pools, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, airports, agricultural uses, water and wastewater treatment plants, hotels, motels, retirement centers, nursing homes or assisted living homes, properties designated as "mixed use" properties by the Board of Assessors, and any other form of use not otherwise mentioned which is not a residential property.

Pervious surface means those areas that allow the unimpeded infiltration of stormwater into the soil. Common pervious surfaces include, but are not limited to, lawn area, forest land, agricultural lands, meadows and other undeveloped land. In determining utility fee calculations, all land on a parcel of property not defined as impervious land will be considered to be pervious.

Runoff Coefficient means a factor that is used to estimate the percentage of precipitation that results in surface water runoff. Runoff coefficients are values between 0 and 1 commonly used in stormwater runoff calculations as part of standard engineering methodologies and practices. Runoff coefficients are used as a means to approximate a property's impact on the City's stormwater and flood control systems.

Small residential property means improved property containing one, two or three dwelling units. Small residential properties shall not include improved property containing structures used primarily for nonresidential purposes (i.e. hotels, motels, retirement centers, nursing homes or assisted living homes or properties designated as “mixed use” properties by the Board of Assessors).

Stormwater shall mean the surface water runoff from precipitation.

Stormwater management and flood control services mean all services provided by the City which relate to the:

- (a) Transfer, control, conveyance, treatment or movement of stormwater runoff through the City;
- (b) Maintenance, repair and replacement of existing stormwater management and flood control systems and facilities;
- (c) Planning, development, design and construction of additional stormwater management and flood control systems and facilities to meet current and anticipated needs;
- (d) Regulation of the use of stormwater management services, systems and facilities; and
- (e) Compliance with applicable local, State and Federal stormwater management and flood control regulations, permit requirements, and mandates. Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.

Stormwater management systems and facilities shall mean those natural and manmade channels, swales, ditches, rivers, streams, brooks, creeks, wetlands, branches, reservoirs, ponds, drainage ways, drainage structures, conveyances, storm drains, catch basins, inlets, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that collect, transport, transfer, control, pump, treat, convey, detain, retain, dispose of, or otherwise influence the movement of stormwater runoff.

Stormwater and Flood Control Utility Fee means the periodic user fee imposed pursuant to this ordinance by the City of Northampton for providing stormwater management and flood control services.

Undeveloped land shall mean all land that is not altered from its natural state.

Section 280-5. Stormwater and Flood Control Utility Fee Established; Quarterly Billing; Deposit To Special Revenue Account.

- (a) Pursuant to section 16 of Chapter 83 of the General Laws, the city hereby establishes a charge for the use of the stormwater management and flood control services of the city to be known as the stormwater and flood control utility fee.

- (b) The stormwater and flood control utility fee is imposed on each parcel of residential property and each parcel of nonresidential property, whether occupied or not. The fee shall be billed in advance on a quarterly basis to the record title owner of the property. The quarterly billing shall be consolidated in the same bill as is sent to the said property owner for other services provided by the city supported by fees, including water service and sanitary sewer use. If the property does not receive a water/sewer bill from the city, a bill for only the stormwater and flood control fee will be sent.
- (c) Receipts generated from the stormwater and flood control utility fee shall be deposited to a special revenue account to be known as the stormwater management and flood control account set up in accordance with the authority granted by Section 53F ½ of Chapter 44 of the General Laws. The funds deposited to this account shall be used to fund the stormwater management and flood control program of the city.

Section 280-6. Rates.

- (a) The Board of Public Works shall recommend an annual budget for stormwater management and flood control services to the Mayor. The Mayor shall include a proposed annual budget for the stormwater management and flood control services in the proposed operating budget submitted to the City Council in accordance with Section 7-3 of the Charter of the City of Northampton. The budget submitted by the Mayor and approved by the City Council shall set the annual budget at an amount that will be sufficient to provide for a balanced operating and capital improvement budget for the stormwater management and flood control services.
- (b) For the first 5 fiscal years of the utility operation, the Board of Public Works shall recommend a budget for each year with revenue raised by the utility that shall not exceed two million dollars per year unless the Board shall state with specificity the reasons for its recommendation of a budget with revenue in excess of two million dollars.
- (c) Beginning in the 6th year, the Board of Public Works shall recommend a budget for each year with revenue raised by the utility that shall not exceed two million dollars per year plus the cost of inflation as determined by the Federal Bureau of Labor Statistics Consumer Price Index unless the Board shall state with specificity the reasons for its recommendation of a budget with revenue in excess of the limitation set forth in this subsection.
- (d) The rate model for billing shall be based on:
 - a. The impervious surface area on a parcel multiplied by a runoff coefficient of 0.95
 - b. The pervious area on a parcel multiplied by a runoff coefficient of 0.1. The maximum billable pervious area for any one property shall be one acre.
 - c. The sum of the impervious and pervious areas as modified by the runoff coefficients described above is the hydraulic acreage for each parcel.

- (e) A billing rate per square foot of hydraulic acreage will be calculated by the Department of Public Works and approved by the Board of Public Works each year by dividing the approved annual budget as described above by the total hydraulic acreage to be billed in the City of Northampton. The rate shall be on file in the office of the Department of Public Works of the City of Northampton.
- (f) Small residential properties shall be divided in approximately equal numbers into four groups based on ascending amounts of impervious area. The Board of Public Works shall determine the range of impervious area used for defining each group. All properties within each group shall receive the same bill. The bill for each group shall be calculated based on the average impervious and pervious areas of properties that fall within each group.
- (g) Bills for large residential property and non-residential property shall be determined based on the estimated areas of impervious and pervious surface on the property. Property owners who own multiple undeveloped parcels with protected status (protected for open space by fee or less-than-fee ownership by methods including but not limited to Mass. Constitution 97th Article of Amendment, MGL c.8C, MGL c.44B, MGL c.45, MGL c.61, MGL c.61A, MGL c.61B, MGL c.184, or held by a non-profit land trust) shall be assessed as if their multiple parcels were all part of a single larger parcel.
- (h) After calculating the billing rate per square foot of hydraulic acreage in subsection (d), the Board of Public Works will establish a standardized fee for each of the four classes of small residential properties in accord with subsection (c).
- (i) Any impervious areas within the federal, state, county, and city-owned right-of-way used by the traveling public will not be attributed to the parcel and will not be considered as part of the total impervious area of the parcel.

Section 280-7. Scope of Responsibility for Stormwater Management and Flood Control Systems and Facilities.

- (a) The City shall be responsible for all costs to operate, maintain, improve and access those stormwater management and flood control systems and facilities which are located:
 - (1) Within public road rights-of-way;
 - (2) On private property but within easements granted to, and accepted by, the City of Northampton, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;

- (3) On public land which is owned by the City and/or land of another governmental entity upon which the City has agreements providing for the operation, maintenance, improvement and access to the stormwater management and flood control systems and facilities located thereon.
- (b) Operation, maintenance and/or improvement of stormwater management and flood control systems and facilities which are located on private or public property not owned by the City, and for which the City lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

Section 280-8. Purposes of the Fund.

The Stormwater and Flood Control Utility fee shall only be used for the Direct and Indirect costs of the utility to provide stormwater management and flood control services as defined in Section 280-4 and also includes the following:

- (a) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater management and flood control systems and facilities.
- (b) All costs of administration and implementation of the stormwater management and flood control programs, including the cost of labor attributable to the stormwater management and flood control programs and the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management and flood control requirements.
- (c) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities.
- (d) Operation and maintenance of the stormwater and flood control systems.
- (e) Capital projects for stormwater management and flood control. The Department of Public Works shall be strongly encouraged to bear witness to the needs of bicyclists, pedestrians, and people using mobility devices, and shall further be encouraged to consider their needs on an equitable basis in conjunction with the needs of motorists, business owners, and others – both during the construction of any projects funded in whole or in part by the Stormwater and Flood Control Utility, and in regard to the design of the finished product.
- (f) Illicit discharge detection and elimination.
- (g) Monitoring, surveillance, and inspection of stormwater control devices.

- (h) Water quality monitoring and water quality programs.
- (i) Retrofitting developed areas for pollution control.
- (j) Inspection and enforcement activities.
- (k) Billing and related administrative costs.
- (l) Other activities which are reasonably necessary including costs related to regulatory compliance.

Section 280-9. Stormwater and flood control utility fee Exemptions.

- (a) The City finds that all real property in the City contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no public property, including public property funded by taxpayers of the City of Northampton, or private property located in the City of Northampton shall be exempt from the stormwater and flood control utility fee charges.
- (b) Notwithstanding the foregoing, the city establishes exemptions to the stormwater and flood control utility fee as follows:
 - (1) Public streets, highways and rights-of-way. However, maintenance buildings and/or other improved property used for road maintenance purposes shall not be exempt from Stormwater and flood control utility fee charges. All other State, Federal, and County properties are subject to the user fee charges on the same basis as private properties.

Section 280-10. Stormwater and flood control utility fee Credits.

- (a) The Board of Public Works shall annually develop a proposed Stormwater Management and Flood Control Utility Credit Policy (“Credit Policy”). The Board shall submit the proposed Credit Policy to the Mayor, who may approve, modify and approve, or disapprove the Credit Policy. The Credit Policy as approved by the Mayor shall be submitted by the Mayor to the City Council for approval. The City Council may approve or disapprove the Credit Policy as submitted. The Stormwater Management and Flood Control Utility Credit Policy will define potential credits or adjustments such as: for stormwater improvements, undeveloped land with protected status, multiple undeveloped parcels under single ownership, seniors, low income, educational programs, and others. The Stormwater Management and Flood Control Utility Credit Policy shall be available for inspection by the public at the Department of Public Works and on the City website.

- (b) The Department of Public Works is hereby authorized to grant credits to property owners to be applied against the stormwater and flood control utility fee based on the technical and procedural criteria set forth in the Stormwater Management and Flood Control Utility Credit Policy.
- (c) Any credit allowed against the stormwater and flood control utility fee charge shall be conditioned on continuing compliance with the City's design and performance standards as stated in the Stormwater Management and Flood Control Utility Credit Policy and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Department of Public Works may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Stormwater Management and Flood Control Utility Credit Policy or this article.
- (d) In order to obtain a credit, the property owner must make application to the City on forms provided by the Department of Public Works for such purpose, the application to be fully completed in accordance with the procedures outlined in the Stormwater Management and Flood Control Utility Credit Policy.
- (e) When an application for a credit is deemed complete by the Department of Public Works, the Director of Public Works shall have thirty (30) days from the date the complete application is accepted to either grant the credit in whole, grant the credit in part, or deny the credit. Credits applied for by the property owner and granted in whole or in part, shall apply to all stormwater and flood control utility fee charges in accordance with the terms defined in the Stormwater Management and Flood Control Utility Credit Policy.

Section 280-11. Stormwater and Flood Control Utility Fee Billing, Delinquencies, Collections, Abatements

- (a) Failure of the city to send a bill for stormwater and flood control utility shall not relieve the property owner of record from the obligation to pay for such utility. If a property is unbilled, or if no bill is sent for a particular parcel of land, the city may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- (b) Stormwater and flood control utility bills shall be managed by the Department of Public Works for collection. The Northampton Tax Collector shall keep records of all paid and unpaid stormwater utility bills and maintain financial records for the utility.
- (c) If a bill for stormwater and flood control utility bill is not paid in full by the 30th day from the date the bill is mailed, interest at the rate of 14% per annum shall accrue on any unpaid balance. Interest shall accrue from the date of mailing of the bill.

- (d) At any time after interest begins to accrue on an unpaid account, the Northampton Tax Collector may serve on the party assessed a statement of the amount due, including interest, with a demand for payment. A charge as set forth in Chapter 174, Fees, shall be made for such demand. If the amount due remains unpaid 14 days after mailing of said demand, the Northampton Tax Collector shall commit the amount to the Board of Assessors for inclusion on the next annual property tax bill. Upon inclusion of the unpaid amount on an annual property tax bill, the amount due shall be a lien on the property, which shall have priority over all other liens except municipal liens and mortgages of record prior to the recording of a notice of lien.

- (e) In the event that a property owner believes the stormwater and flood control utility fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the stormwater and flood control utility bill, and after payment of the bill in full, apply to the Department of Public Works for an abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than not that the billing is in error. The Department of Public Works shall have sixty (60) days to consider the request for abatement and render a written decision which may deny the abatement, grant the abatement in full or grant the abatement in part.

Section 280-12. Appeals, Hearings.

- (a) In the event that a property owner is aggrieved by a written decision from the Department of Public Works denying an application for abatement in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have thirty (30) days from the date of the written decision to file an appeal to the Board of Public Works. The appeal shall be in writing and shall specify the grounds thereof. Upon the filing of the notice of appeal with the Department of Public Works, the department shall forthwith transmit to the Board of Public Works all documents constituting the record upon which the particular decision was made. The Board of Public Works shall set a date for hearing which shall be within ninety (90) days of the date of the filing of the appeal and notice thereof setting forth the place, date and time of hearing shall be sent to the property owner no less than ten (10) days prior to the hearing date. The Board of Public Works shall render a written decision within ten (10) days of the conclusion of the hearing affirming the action of the department or reversing the action. If reversing the denial of an abatement, the decision shall specify the sum to be abated, which shall not exceed the amounts paid. If reversing the denial of a credit, the decision shall specify the credit to be applied prospectively against future charges unless the property owner has paid the full amount of the stormwater and flood control utility fee as charged and has also requested an abatement.

(b) In the event that a property owner fails to pay the stormwater and flood control utility fee as charged and the city utilizes the process set forth in sections 16A through 16F of Chapter 83 of the General Laws to collect the unpaid charges, the property owner shall have the right to seek an abatement by filing an application for abatement with the Board of Public Works in accordance with the remedy specified in Section 16E of Chapter 83 of the said General Laws with a copy delivered to the Board of Assessors. The application for abatement shall conform to the requirements for a notice of appeal as set forth in subsection (a), above, and the process for a hearing before the Board of Public Works, including the applicable time limits, shall be as set forth therein. In the event that the Board of Public Works denies the abatement, in whole or in part, it shall, in its written decision, include a statement notifying the property owner of the right to seek a review of the decision by the filing of an appeal with the appellate tax board of the Commonwealth of Massachusetts within three months of the date of the decision of the Board of Public Works. As the right to appellate tax board review under this subsection "b" is derived from applicable sections of the General Laws as contained in Chapters 59 and 83 thereof, to the extent that the terms of this ordinance conflict with the terms specified therein, the terms specified in the General Laws control.

Section 280-13. Public Reports.

The Board of Public Works will make an annual presentation to the City Council providing information relating to the work and projects financed by the Stormwater and Flood Control Utility in the previous year, including, to the extent practicable, an account of expenditures from the stormwater management and flood control account and projected future expenditures. The Board will also present this information in a written report accessible on the City website.

In City Council, March 6, 2014
Passed First Reading, on a Roll Call Vote of 9 Yes, 0 No

Attest: May L. Medina, Clerk of Council

In City Council, March 20, 2014
Passed Second Reading, on Roll Call Vote of 9 Yes, 0 No

Attest: May L. Medina, Clerk of Council

Approved: David J. Narkewicz, Mayor
Rules suspended, passed two readings, ordained and enrolled.
I hereby certify that the above Ordinance passed the Northampton City Council on March 20, 2014.

David J. Narkewicz, Mayor, approved the ordinance on March 21, 2014.

Attest: May L. Medina, Clerk of Council