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050324
SUBSTITUTE 1

THE CHAIR

A substitute ordinance establishing a storm water management charge.

309-54 rc

This ordinance repeals and recreates the code section that sets forth the authority and procedures for collection of the local sewerage charge to include and establish authority and procedures for a second sewer-related fee, the storm water management charge. This charge will be imposed on every developed property and vacant, improved property in the city. The purpose of the charge is to provide funding for the operations and maintenance, extension and replacement, and debt service of the city's storm water management system. The charge for each dwelling (building containing one to 4 dwelling units, including condominiums) shall be a uniform amount based on the citywide average impervious area per residential developed property. For all other properties, the amount of the charge shall vary based on the amount of impervious surface area on each property. The common council shall adopt, on an annual basis, a resolution establishing the "equivalent residential unit" rate used to calculate the storm water management charge. The charge will be billed and collected as part of the city services user bill. All revenues from the storm water management charge, along with

revenues from the existing local sewerage charge, shall be placed in the sewer maintenance fund unless otherwise provided by law.

This ordinance also provides a procedure for adjustment of the storm water management charge by the commissioner of public works in accordance with a storm water management charge adjustment policy adopted by resolution of the common council. Any decision of the commissioner regarding an adjustment request may be appealed to the administrative review appeals board. Owners of dwellings containing one to 4 units shall not be eligible to apply for storm water management charge adjustments, since the charge for such dwellings is uniform citywide.

This ordinance shall be effective January 1, 2006.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 309-54 of the code is repealed and recreated to read:

309-54. Sewer-Related Charges. 1. PURPOSE AND FINDINGS. a. Sewerage System Generally. The wastewater and storm water of the city of Milwaukee is collected and conveyed in a sewerage system owned, operated and maintained by the city. Therefore, the common council finds that one purpose of this section is to permit the city, as authorized under s. 66.0821, Wis. Stats., and s. 12-27 of the city charter, to provide for recovery of "operating costs" (as defined in s. 66.0821(4)(a), Wis. Stats.) of the sewerage system and to undertake operation and maintenance of said system out of revenue derived from a local sewerage charge.

b. Storm Water Management System. The common council finds that management of storm water and other surface water discharge within the city of Milwaukee is a matter that affects the health, safety and welfare of the city, its citizens and businesses. Failure to effectively manage storm water may create, among other things, erosion of lands, damage to homes and businesses, and sedimentation and environmental damage to waterways within the city. In order to protect the health, safety and welfare of the public, the common council establishes a storm water management charge to support operation and maintenance of the storm water management components of the city sewerage system. The city may use storm water management charge revenues to, without limitation by reason of enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities as are deemed to be proper and reasonably necessary for management of storm water and other surface water discharge within the city. The common council further finds that those elements of the storm water management system that provide for the collection and disposal of storm water are of benefit to all real property within the city of Milwaukee, including property not presently served by that system. The costs of operating and maintaining the storm water management system and financing necessary repairs, replacement, improvements and extensions of the system should, to the maximum extent possible, be allocated in direct relationship to contributions of storm water to the system.

2. DEFINITIONS. In this section:

a. "City sewerage system" means a sewer system owned, operated and maintained by the city of Milwaukee, consisting of sanitary, combined and storm sewers.

b. "Developed property" means real property other than:

b-1. Vacant property which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils of the

property; or

b-2. Vacant property that is not, or could not reasonably, be served by any subdivision improvements that allow egress.

c. “Dwelling” means any building which contains one or more dwelling units and no other principal use, as defined in s. 295-201-465.

d. “Dwelling unit” means a singular unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

e. “Equivalent residential unit” or “ERU” means the average impervious area of residential developed properties located within the city, as calculated by the department of public works and established by common council resolution.

f. “ERU rate” means a fee which is charged on each ERU and which is established by common council resolution.

g. “Impervious area” means the number of square feet of hard-surfaced areas which either:

g-1. Prevent or retard the entry of water into soil mantle, as it entered under normal conditions as undisturbed property; or

g-2. Cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, athletic courts and other paved surfaces.

h. “Local sewerage charge” means the sewerage charge as provided in sub. 3 imposed on each user who discharges waste water, directly or indirectly, into the city sewerage system.

i. “Nonresidential developed property” means any developed property other than residential developed property.

j. “Operating costs” means all costs of the city sewerage system within the scope of costs described under s. 66.0821(4)(a), Wis. Stats.

k. “Residential developed property” means developed property that contains one or more dwellings each containing one to 4 dwelling units. This term does not include a mobile home park as defined in s. 295-201-381.

l. “Sewer maintenance fund” means the fund created pursuant to sub. 8.

m. “Storm water management charge” means the charge provided in sub. 5 to pay for operations, maintenance, extension, replacement and debt service for the city’s storm water management system.

n “Vacant improved property” means vacant property that is, or could reasonably be, served by any subdivision improvements that allow egress.

o. "Water consumption data" means data respecting water consumption as collected by the Milwaukee water works.

3. LOCAL SEWERAGE CHARGE. a. There is imposed a local sewerage charge on each user who discharges wastewater directly or indirectly into the city sewerage system. This charge shall recover the operating costs of the city sewerage system. In recovering these costs, the charge will be based upon water consumption, adjusted for the volume and character of water returned to the sewer system as provided for in pars. b to e.

b. Water consumption of users shall be determined using the water consumption data.

c. Non-certified Non-residential Users. Water consumption shall be the annual water consumption data.

d. Certified Non-residential Users. Water consumption shall be the adjusted water consumption data identified through the certification process of the Milwaukee metropolitan sewerage district with respect to the computation of sewer user charges under s. 200.59, Wis. Stats.

e. Residential Users. Residential water consumption shall be based as described in s. 309-53-6-a.

f. Identifiable items of operating costs specifically attributable to one or more particular non-residential users shall be charged back to those non-residential users as part of their local sewerage charge.

g. The common council shall adopt a resolution on an annual basis establishing the local sewerage charge imposed in accordance with this section.

4. LOCAL SEWERAGE CHARGE FOR WATER DISCHARGED INTO THE CITY SEWERS BUT NOT PURCHASED FROM THE MILWAUKEE WATER WORKS. For any property supplied with water, either in whole or in part, from any well or source other than the Milwaukee water works and discharging all or portions of such water into the city sewerage system, there shall be a local sewerage charge, separate from and in addition to any sewer service charge based on the consumption of water from the Milwaukee water works. All such wells or other sources of supply shall be identified and registered with the superintendent of the Milwaukee water works in accordance with s. 309-51-2-a-3-d. The local sewerage charge shall be imposed upon such properties in accordance with:

a. The volumetric water usage determined pursuant to s. 309-51-2-a-3; and

b. The resolution adopted by the common council pursuant to sub. 3-g establishing the local sewerage charge.

5. STORM WATER MANAGEMENT CHARGE. a. There is imposed a storm water management charge on each and every developed property or vacant improved property, other than public rights-of-way, public streets, public alleys and public sidewalks, within the city.

b. The storm water management charge for each dwelling on a residential developed property shall be the ERU rate. For any nonresidential developed property or vacant improved property, the storm water management charge shall be computed based on the total impervious area of the property divided by the ERU multiplied by the ERU rate.

c. The common council shall adopt a resolution on an annual basis establishing the ERU and ERU rate. The ERU rate may, subject to common council approval, be adjusted not more than one additional time per year on the basis of cost recovery experience.

6. OVERALL RESPONSIBILITY FOR ADMINISTERING SEWER-RELATED CHARGES. The commissioner of public works shall administer the local sewerage charge and the storm water management charge. He or she may formulate and promulgate rules which shall be applicable with respect to the administration and collection of each charge, and may make amendments thereto, subject to approval by the appropriate common council committee, as may be required from time to time for proper application of these charges. The commissioner shall also be responsible for reviewing and granting requests for adjustments of the storm water management charge for individual properties.

7. RESPONSIBILITY OF CITY OFFICERS AND DEPARTMENTS ADMINISTERING SEWER-RELATED CHARGES. a. **Superintendent of Water Works.** The superintendent of water works shall be responsible, under the commissioner of public works, for the administration of the local sewerage charge and the storm water management charge. The superintendent shall collect the charges and transmit the revenues therefrom to the city treasurer, together with water, solid waste and snow and ice removal revenues received.

b. **City Treasurer.** The city treasurer shall receive revenues from the local sewerage charge and the storm water management charge, and shall also collect delinquent accounts when such delinquent accounts have been placed on the tax roll as provided for in this section. All revenues, including interest, from the local sewerage charge and the storm water management charge shall be placed in the sewer maintenance fund unless otherwise provided by law.

c. **City Comptroller.** The city comptroller shall certify to the commissioner of assessments delinquent accounts to be placed on the tax roll, which shall be collected in the same manner as special charges under s. 66.0627, Wis. Stats. The comptroller shall keep separate accounts of all the funds, receipts and payments on account of the local sewerage charge and the storm water management charge within the sewer maintenance fund.

8. SEWER MAINTENANCE FUND. There is created for the city of Milwaukee a separate fund, to be called the sewer maintenance fund.

a. All revenue, including interest, derived from the local sewerage charge and the storm water management charge shall be placed in the sewer maintenance fund, unless otherwise provided by law, and shall be used to defray operating costs related to the city sewerage system and to pay costs of operation, maintenance, extension, replacement and debt service for the city's storm water management system.

b. The sewer maintenance fund shall be kept in the city treasury in the custody of the city treasurer, and shall be disbursed by him or her on vouchers drawn for the same in the manner provided in this section.

9. BILLING AND COLLECTING. a. **Local Sewerage Charge.** The local sewerage charge shall be levied against water accounts and all other sewer users and shall be calculated by the water works. The charge shall be added to the water bill and shall be due and payable in the same manner as the water bill.

b. Storm Water Management Charge. The storm water management charge shall be levied against the water account of each property to which it applies and shall be calculated by the water works. The charge shall be added to the city services user bill and shall be due and payable in the same manner as the water bill. The storm water management charge shall be a quarterly service charge determined by the provisions of this section and the ERU and ERU rate which are established and changed from time to time by resolution of the common council.

c. Past-Due Accounts. An interest penalty and late charge of 3% on outstanding balances will be charged on all past due accounts each quarter. This fee may be waived by the water works where deemed warranted by special circumstances. Charges that remain unpaid for 2 full quarters on October 1 shall be deemed delinquent. Such delinquent user charges and 10% penalty shall be reported to the city comptroller for placement on the tax roll.

d. Partial Payments. When partial payments of the combined city services user bill are made, the property owner may direct in writing how the partial payment is to be applied to the combined bill. If there is no written direction, the partial payment is to be applied to the water bill first. Any portion of the partial payment remaining after the water bill is paid for shall be applied to the local sewerage charge, the storm water management charge, the solid waste charge and the snow and ice removal cost recovery charge, in that order. Any overpayment of the combined bill shall be applied to the local sewerage charge on the account for such property.

10. ADJUSTMENT OF STORM WATER MANAGEMENT CHARGE. The commissioner of public works may grant an adjustment to a storm water management charge for a particular property in accordance with the provisions of this subsection and the storm water management charge adjustment policy adopted by resolution of the common council.

a. Eligibility. The commissioner may grant an adjustment of the storm water management charge to any property owner except the owner of a dwelling containing one to 4 units.

b. Application. An application for adjustment of the storm water management charge shall be made in writing on a form prescribed by the commissioner and filed with the department of public works. The application shall set forth, in detail, the grounds upon which the adjustment is sought; it shall be the burden of the applicant to demonstrate by a preponderance of evidence that an adjustment of the charge is warranted. In addition, the applicant may be required to provide, at his or her own expense, supplemental information requested by the commissioner, including, but not limited to, survey data approved by a registered professional land surveyor and engineering reports approved by a professional engineer. Failure to provide required information shall be grounds for denial of the adjustment request.

c. Action by Commissioner. The commissioner shall issue a written decision as to whether the request for adjustment has been granted, denied, or granted in part and modified in part within 20 business days of receipt of the application. The written decision shall set forth the reason or reasons for such decision.

d. Appeal. Any person aggrieved by the decision of the commissioner with respect to an application for storm water management charge adjustment may appeal such decision to the administrative review appeals board within 30 days of notice of such decision. The board shall act on the appeal in accordance with s. 320-11 and applicable state law.

11. SAVING CLAUSE. It is the intent of the common council that the provisions of this section relating to a sewer maintenance fund, local sewerage charge, storm water management charge and the application of revenues from these charges are separable. If any provision or part of this section be held unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other provisions or part of the section, which other provisions and parts shall remain in full force and effect.

12. APPEAL PROCEDURE. a. Filing of Complaint. Whenever any local sewerage charge or storm water management charge is imposed in accordance with this section, and the person required to pay such charge feels aggrieved as a result of the imposition or collection of such charge, such person shall pay the charge when it becomes due, but shall pay it "under protest." Within 20 days following such payment, such person may file with the commissioner of public works a complaint to the effect that such person is aggrieved by the imposition and collection of the local sewerage charge or the storm water management charge, his or her specific reasons for objection and the amount of the overcharge complained of.

b. Determination by Commissioner. If, upon review by the commissioner of public works, it is determined that all or any part of any local sewerage charge or storm water management charge paid under protest is not just or reasonable, the commissioner shall institute necessary procedures to refund the amount of the overcharge. In the event that any person feels aggrieved by the determination of the commissioner, such person may, within 10 days, appeal to the common council. The common council shall make such determination as is just and reasonable.

c. Alternative Appeal Procedure. Notwithstanding the appeal procedure provided in pars. a and b, and as an alternative right of appeal, any person required to pay the local sewerage charge or the storm water management charge shall have the unconditional right to file a complaint with the public service commission as provided in s. 66.0821(5)(a), Wis. Stats.

Part 2. This ordinance shall be effective January 1, 2006.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Department of Administration

LRB05296-1

JDO

09/01/2005