

STORMWATER UTILITY ORDINANCE

ORDINANCE NO. 63

ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF MONTEZUMA, IOWA, BY ADDING CHAPTER 91, “STORMWATER MANAGEMENT AND DRAINAGE SYSTEMS UTILITY”

Section 1. THE CODE OF ORDINANCES, CITY OF MONTEZUMA, IOWA, is hereby amended to add CHAPTER 91 “STORMWATER MANAGEMENT AND DRAINAGE SYSTEMS UTILITY,” in the form attached hereto.

Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall become effective on October 1, 2017, after the final passage, approval and publication as provided by law.

PASSED AND APPROVED this 7th day of August, 2017.

Mayor

ATTEST:

City Clerk

First Reading: __/__/__
Second Reading: WAIVED
Third Reading: WAIVED

I, Christy McCaslen, City Clerk of the City of Montezuma, do hereby certify that the foregoing ORDINANCE was passed and approved by the City Council of the City of Montezuma, Iowa, on the 7th day of August, 2017, and was published in the Montezuma Record, a newspaper of general circulation in the said City of Montezuma, on the ____day of August, 2017.

Dated this _____ day of August, 2017.

City Clerk

Chapter 91
STORMWATER UTILITY

Sections:

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- 1.2** Creation of a stormwater management and drainage systems utility.
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1.1 Purpose and Objective.

(a) The purpose of this Article is to establish a policy and procedure for managing and controlling the quantity and quality of stormwater runoff, within the city limits of Montezuma, Iowa. The management shall include the establishment of a stormwater utility to provide revenues for whatever aspects of this requirement are deemed appropriate by the City.

(b) The city finds, determines and declares that the stormwater drainage system provides benefits and services to all property within the city limits. Such benefits include, but are not limited to: the provision of adequate systems for collection, conveyance, detention, treatment and release of stormwater for quality and quantity management that minimize impacts on receiving waters.

(c) In order to manage additions and improvements to the city stormwater systems, the City must have adequate and stable funding for its stormwater management program operating and capital investment needs.

1.2 Creation of a Stormwater Management and Drainage Systems Utility.

(a) The function of the Stormwater Management and Drainage Systems Utility [hereinafter referred to as “stormwater utility or SWU”] within the Public Works Department is to provide for the safe and efficient capture of stormwater runoff, mitigate the damaging effects of stormwater runoff, correction of stormwater problems, to fund activities of stormwater management, and include design, planning, regulations, education, coordination, construction, operations, maintenance, inspection and enforcement activities.

(b) There is hereby established a stormwater utility within the City of Montezuma, Iowa which shall be responsible for creating revenue for stormwater management throughout the City’s corporate limits, and shall provide for the management, protection, control, regulation, use, and enhancement of stormwater systems and facilities. The corporate limits of the City, as increased from time to time, shall constitute the boundaries of the stormwater utility district.

(c) The City shall establish a Stormwater Utility Fund in the City budget and accounting system, separate and apart from its General Fund, for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the utility.

1.3 Definitions.

“City” City of Montezuma

“Adjustment” means a modification in a nonresidential customer’s stormwater service fee for certain activities that impact stormwater runoff or impact the City’s costs of providing stormwater management.

“Director” means the director of the Stormwater Utility.

“Detached Dwelling Unit” shall mean developed land containing one structure which is not attached to another dwelling and which contains one or more bedrooms, with a bathroom and kitchen facilities, designed for occupancy by one family. Detached dwelling units may include houses, manufactured homes, and mobile homes located on one or more individual lots or parcels of land.

“Equivalent Residential Unit” (ERU) shall mean the average impervious area of a detached dwelling unit property within the City, and shall be used as the basis for determining stormwater service charges to detached dwelling unit properties.

“ERU Rate” The dollar value periodically determined and assigned to each ERU as a charge for stormwater management services, expressed as two dollars per ERU.

“Impervious Area” The number of square feet of hard-surfaced areas which either prevent or resist the entry of water into soil surface, as it entered under natural conditions as undeveloped property, and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undeveloped property. This includes but is not limited to roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and semi-impervious surfaces such as gravel which are used as driveways or parking lots.

“Occupant” shall mean the person residing or doing business on the property. In a family or household situation, the person responsible for the obligation imposed shall be the adult head of the household. In a shared dwelling or office situation, the adult legally responsible for the management or condition of the property shall be responsible.

“Owner” shall mean the legal owner(s) of record as shown on the tax rolls of Montezuma, except where there is a recorded land sale contract, the purchaser thereunder shall be deemed the owner.

“Stormwater” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

“Storm Sewer” means a sewer, which carries stormwater, surface runoff, street wash waters, and drainage, but which excludes sanitary sewage and industrial wastes, other than permitted discharges.

“Service Charges” shall mean the periodic rate, fee or charge applicable to a parcel of developed land, which charge shall be reflective of the service provided by the Montezuma stormwater utility. Service charges are based on measurable parameters which influence the stormwater utility’s cost of providing services and facilities, with the most important factor being the amount of impervious area on each parcel of developed land.

“Stormwater Drainage System” means all man-made facilities, structures, and natural watercourses owned by the city of Montezuma, used for collection and conducting stormwater to, through, and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: conduits and appurtenant features, canals, creeks, catch basins, ditches, streams, gullies, ravines, flumes, culverts, siphons, streets, curbs, gutters, dams, floodwalls, levees, and pumping stations.

“Stormwater Management” means the tasks required to control stormwater runoff using stormwater management systems, to protect the health, safety, and welfare of the public, and comply with relevant state and federal regulations.

“Stormwater Management Systems” address the issues of drainage management (flooding) and environmental quality (pollution, erosion, and sedimentation) of receiving rivers, streams, creeks, lakes, ponds, and reservoirs through improvements, maintenance, regulation and funding of plants, works, instrumentalities and properties used or useful in the collection, retention, detention, and treatment of stormwater or surface water drainage.

“Stormwater Utility” means the utility established under this Section for the purpose of managing stormwater and imposing charges for the recovery of costs connected with such stormwater management.

“Surface Water” means water bodies and any water temporarily residing on the surface of the ground including lakes, reservoirs, rivers, ponds, streams, puddles, channelized flow and runoff.

“Undeveloped Property” describes 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 minimal concrete pavement, asphalt, or compacted gravel surfaces or structures which create an impervious surface.

“Water Course” A natural overland route through which water passes, including drainage courses, streams, creeks, and rivers.

Additional Definitions

“Developed Agricultural Properties” means a lot or parcel of real estate used as a “farm,” which may contain one or greater dwelling units and/or other building structures but does not include undeveloped properties.

“Developed Property” means property altered from its natural state by the construction or installation of a structure or more than three thousand two hundred fifty (3,250) feet of impervious surface thus increasing the amount of rainwater or surface water runoff.

“Exempt Property” includes public streets, alleys and sidewalks; City Hall, City utility buildings, parking lots and substation; all undeveloped properties.

“Ground Water” means sub-surface water or water stored in pores, cracks, and crevices in the ground below the water table.

“Nonresidential properties” means all properties not encompassed by the definition of residential shall be defined as nonresidential. Nonresidential properties shall include: apartment building properties; condominiums properties; mobile home parks; commercial property; industrial property; institutional property; governmental property; churches; hospitals; schools; transient rentals; parking lots; federal, state and local properties; and any other property not mentioned in the lists of properties.

“Residential Property” means all single-family and duplex properties within the city of Montezuma.

“Stormwater Facilities” means various stormwater and drainage works that may include inlets, pipes, pumping stations, conduits, manholes, energy dissipation structures, stream channels, outlets, retention/detention basins, infiltration practices and other structural components.

“User” means the owner and/or occupant of any developed property within the limits of Montezuma, and shall mean any person who uses property which maintains connection to, discharges to, or otherwise receives services from the City for stormwater management. The occupant of any habitable property is deemed the user. If the property is not occupied, then the owner shall be deemed the user.

1.4 Stormwater Utility Fund.

(a) Funding for the stormwater utility's activities may include, but are not limited to: stormwater service charges; stormwater permits and inspection fees; other funds or income obtained from federal, state, local, and private grants, or loans.

(b) All service charges and all sources of revenue generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility fund and used exclusively for management of the stormwater utility.

1.5 Stormwater Utility Budget.

The City shall adopt an operating and capital budget for the stormwater utility each fiscal year. The budget shall set forth revenues for such fiscal year and estimated expenditures for operations, maintenance, improvements, replacement and debt service.

1.6 Rate Structure and Stormwater Service Charge.

Any property, lot, parcel of land, building or premises that is tributary directly or indirectly to the stormwater system of the city, shall be subject to a fee. This charge is not related to the water and/or sanitary sewer service and does not rely on occupancy of the premises to be in effect. The SWU fee shall be expressed as a number of Equivalent Residential Units (ERU) and be billed at a **rate of two dollars per ERU**.

The SWU shall utilize a three-tier rate fee structure described below; all properties, lots, parcels and buildings shall be designated as one of three classifications – Class A, B or C.

(a) "Class A" Uses. Improved properties that qualify under this section as Class A uses shall be charged at the monthly rate of one ERU (\$2.00) per dwelling unit. The following uses shall be defined as "Class A" uses:

1. Single-Family Residence. A residential structure not attached to another residential structure on one or more parcels of land, providing there are not more than two residential structures on one parcel. This definition also includes trailers, mobile homes, and manufactured homes, if on separate parcels. Two separate dwelling units on a single parcel shall be charged one ERU per dwelling unit. Three or more residential dwelling units on one parcel, whether attached or unattached, shall be considered a multiple-family residential use.
2. Duplex. Two dwelling units joined to each other with a common wall, or one above the other, on one or two parcels. The units may be under one ownership, or owned separately. Each dwelling unit of the duplex shall be charged one ERU per month.
3. Multi-Family Residential Use. Three or more dwelling units joined to each other horizontally or vertically, on one or more parcels. The units may be under one ownership or more. Each dwelling unit shall be charged one ERU. The owner of the taxed land parcel shall be deemed the user; except where multi-family dwelling units are individually metered the occupant of each unit is deemed the user and shall be charged one ERU per month.

4. Condominiums. Each living unit of a condominium shall be charged one ERU per month. Unit is defined as living units and do not include supporting uses, such as garages, even though they may be on separate parcels.

5. Mobile Home Parks. Includes mobile homes on a single tax lot (even if there are more than two per tax lot) under one ownership, where spaces are leased or rented for a mobile home or trailer to be placed. Other impervious areas contained within the boundaries of the mobile home park shall not be measured. The owner of the taxed land parcel shall be deemed the user; except where mobile homes are individually metered the occupant of each unit is deemed the user and shall be charged one ERU per month.

(b) “Class B & C” Uses. Commercial, Industrial, Institutional. For such uses, the impervious surfaces of the property, as defined by rule, shall be measured. The area shall be estimated using one or more of the following: aerial photographs, assessment records, building permits, construction plans, site visits, ad valorem property tax records, storm and surface water system connection permits, field surveys or other sources deemed reliable by the city connection permits, field surveys or other sources deemed reliable by the city.

These categories include the entire range of office, manufacturing service, sales, restaurant, daycare, nursery, warehouse, churches, schools, utilities, public service buildings, parks, hospital, nursing home, rest home, retirement home, utility buildings and other areas, community building, parking lots, and other similar uses. This category includes land with an impervious surface with no building improvements. These properties shall be placed into one of the following classes based on their measured impervious surfaces:

1. “Class B” Uses. Commercial, Industrial or Institutional properties with impervious surface areas under 35,000 square feet shall be charged a SWU fee of three ERUs (\$6.00).

2. “Class C” Uses. Commercial, Industrial or Institutional properties with impervious surface areas over 35,000 square feet shall be charged a SWU fee of six ERUs (\$12.00).

(c) General Policies.

1. Minimum Charge. The minimum charge for any parcel with impervious areas subject to the SWU charge shall be one ERU.

2. Community Facilities. The flat rate category includes typical residential uses within a parcel or single ownership, as defined above. If a community or neighborhood recreation center or similar facility exists within a subdivision, even if associated with the single-family or duplex properties, that property shall be measured and charged separately to the user of that property.

3. Seasonal Impervious Area. Properties which have areas that are impervious for only a portion of the year shall constitute seasonal impervious area. If an impervious area is in place for more than three months per year, it shall be subject to the SWU charge.

4. Miscellaneous.

- i. No credits, exemptions, or reductions shall be given for impervious surfaces that are submerged for a portion of the year.
- ii. If impervious areas are so small they cannot be detected on aerial maps at a scale of one inch to fifty feet, then they shall not be included in the total impervious area.
- iii. A residence of any kind and a garage for that residence shall be charged one ERU, even if on two adjacent parcels.
- iv. In-ground swimming pools are exempted from SWU fees providing the filter drains are connected to the sanitary sewer system. Above ground swimming pools are exempt from SWU fees.
- v. Impervious areas are subject to the SWU fee regardless of the percentage of the entire property occupied by the impervious area.

(d) Roads. Public roads and private roads in residentially zoned areas of the city shall not be included in the measurement of impervious surface areas.

(e) Parking and Storage Areas. All parking and vehicle storage areas that are gravel or paved on a measured use parcel shall be considered impervious and subject to the SWU fee.

(f) Railroad Facilities. Railroad facilities shall be included in the measurement of impervious area, but the rail grade itself shall be excluded as being pervious.

(g) Landscaping Exempted. Gravel areas that are used for landscaping or foot traffic and are not considered highly compacted shall not be considered impervious for purposes of determining the SWU fee.

(h) Exemption from SWU Service Charges.

1. Users of properties for which all stormwater is disposed of on-site, as defined by city standards, may request an exemption from SWU service charges. No partial exemptions for disposal of only a portion of the storm and surface waters on-site shall be allowed. In order to qualify for service charge exemption, the user must design, construct and maintain an on-site facility that keeps all storm and surface water for the full range of storms during the year. For the purpose of this section, the term "property" means a parcel of land, or a group of adjacent parcels working in cooperation. The term "on-site disposal" means on the parcel, or on another parcel in the near vicinity of the parcel requesting the exemption.

In order to qualify for the exemption, the on-site system must encompass the entire property (except for incidental impervious areas as defined below), must be completely separated from the public system, and must provide adequate on-site disposal. Incidental area such as sidewalks, decks, and driveway aprons, shall not exceed ten percent of the total impervious area.

On-site disposal facilities that may qualify are dry wells, injection wells, retention basins with percolation/evaporation capacity, and retention basins with capacity large enough to accommodate the total of all storms through the year. Many of these may have a possible adverse effect on ground water, and some techniques may require approval of state, federal and local agencies.

2. To qualify, an applicant must submit a request to the city for a waiver of monthly service charges relating to the property. This request shall include a certification from an engineer, or other evidence acceptable to the city, that shows the system is separate and will dispose of the full range and volume of stormwater through the year on-site. The applicant shall also submit a maintenance plan for assuring the system will function as designed. The application must be signed by the property owner.

A decision denying an exemption may be appealed. If approved, the waiver will be effective for the next billing cycle.

3. The city retains the right to inspect the on-site measures to assure they are functioning as designed. If at any time the measures are found to not be effective, the exemption shall cease.

4. "Conservation design credit" to recognize the reduction in stormwater runoff related to certain conservation design practices, the impervious area of facilities that are in accordance with approved conservation design practices will be reduced by a percentage of the total impervious area of that facility. The reduction is based on the impervious area subject to the conservation design practice and does not include a reduction of the total site impervious area or the impervious area of facilities that do not include conservation design practices. The maximum credit provided for any impervious area is the largest credit of applicable individual conservation design practices and a cumulative reduction is not allowed.

The reduction of the impervious area of facilities subject to conservation design practices is:

| | |
|---|----------------|
| 1. Green roof design | 65% reduction |
| 2. Porous pavement | 50% reduction* |
| 3. Rain gardens, bioswales and similar facilities | 50% reduction |

* The reduction for porous pavement shall be valid for a period of five years. The city will inspect the porous pavement every five years and determine if the porous pavement continues to maintain the high porosity associated with porous pavement design. If the high porosity continues, the credit will be renewed for a period of five years. If the porosity has been decreased due to plugging or fouling, the credit will not be renewed.

The estimated stormwater utility system actual costs may include funds that are budgeted for accumulation for future capital improvement projects even though said funds may not be expended during the fiscal year in which the revenue is budgeted for collection.

(j) Records. All ERU records for all properties within the city of Montezuma shall be kept on file in the city clerk's office and shall be available during normal office hours for examination.

(k) Deposit. All users of the stormwater utility may be subject to the provisions for utility deposit if established by rule of council.

1.7 Powers of Staff of the Stormwater Utility.

Stormwater service charges incurred pursuant to this ordinance may be collected by the stormwater utility staff or designee who is also responsible for the regulation, collection, rebating and refunding of such stormwater charges.

1.8 Powers and Duties of the City.

The City shall have the following powers, duties, and responsibilities with respect to the stormwater utility:

(a) Administer the design, construction, maintenance and operation of the utility system, including capital improvements designated in the comprehensive drainage plan.

(b) Acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage, and finance such facilities, operations, and activities, as are deemed by the City to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, but are not limited to, surface and underground drainage facilities, storm sewers, watercourses, ponds, ditches, and such other facilities relating to collection, runoff, treatment and retention as will support a stormwater management system.

(c) The City shall separately account for the stormwater utility finances. The stormwater utility shall prepare an annual budget, which is to include all operation and maintenance costs and costs of borrowing. The budget is subject to approval by the City Council. Any excess of revenues over expenditures in a year shall be retained in a segregated fund, which shall be used for stormwater utility expenses in subsequent years. Stormwater utility fees collected shall be deposited in the stormwater utility fund and shall be used for no other purpose. The City shall provide adequate liability insurance for ponds, reservoirs, drainage wage channels and other storm water utility infrastructure.

1.9 Responsibility for the Stormwater Management and Drainage System.

(a) The City stormwater management and drainage system consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural or man-made, within the political boundaries of the City of Montezuma which control and/or convey stormwater through which the City intentionally diverts surface waters from its public streets and properties. The City owns or has legal access and easement for purposes of operation, maintenance and improvements to those segments of this system which

- (1) are located within public streets, rights-of-way, and easements;
- (2) are subject to easements of rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, and/or improvement of systems and facilities; or
- (3) are located on public lands to which the City has adequate access for operation, maintenance, and/or improvement of systems and facilities. Operation and maintenance of stormwater systems and facilities which are located on private property or public property not owned by the City of Montezuma and for which there has been no public dedication of such systems and facilities for operation, maintenance, and/or improvement of the systems and facilities shall be and remain the legal responsibility of the property owner.

(b) It is the intent of this section to protect the public health, safety and general welfare of all properties and persons in general, but not to create any special duty or relationship with an individual person or to any specified property within or without the boundaries of the City of Montezuma. The City of Montezuma expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the City, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.

1.10 Requirements for On-site Stormwater Systems, Enforcement and Inspections.

(a) All property owners and developers of developed real property within the City of Montezuma shall provide, manage, maintain, and operate on-site stormwater systems sufficient to collect, convey, detain, and discharge stormwater in a safe manner consistent with all City, State, and Federal laws and regulations.

(b) Pursuant Iowa Code Section 364.12(3) or successor section of the State Code, any failure to meet this obligation may constitute a nuisance and may be subject to an abatement action filed by the City. In the event a nuisance is found to exist, which the owner fails to properly abate within such reasonable time as allowed by the City, the City may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof assessed against the owner in the same manner as a tax levied against the property. The City shall have the right, pursuant to the authority of this section, for its designated officers and employees to enter upon private and public property owned by entities other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance.

1.11 Right to Appeal.

Any customer who believes the provisions of this chapter have been applied in error may appeal in the following manner:

- (a) An appeal must be filed in writing with the City of Montezuma City Clerk. In the case of service charge appeals, the appeal shall include a survey prepared by a registered Iowa land surveyor or professional engineer containing information on the total property area, the impervious surface area and any other features or conditions which influence the hydrologic response of the property to rainfall events.

- (b) Using the information provided by the appellant, the City's designated engineer shall conduct a technical review of the conditions on the property and respond to the appeal in writing within thirty (30) days.
- (c) In response to an appeal, the City Clerk may adjust the stormwater service charge applicable to a property in conformance with the general purpose and intent of this chapter.
- (d) A decision of the City Clerk which is adverse to an appellant may be further appealed to the City Council within thirty (30) days of receipt of notice of the adverse decision. Notice of the appeal shall be served on the City Council by the appellant, stating the grounds for the appeal. The City Council shall schedule a public hearing within thirty (30) days. All decisions of the City Council shall be served on the appellant by registered mail, sent to the billing address of the appellant.
- (e) All decisions of the City Council shall be final.

1.12 Billing and Collection.

- (a) A storm water service charge bill may be sent through the United States mail or by alternative means, notifying the customer of the amount of the bill, the date the payment is due, and the date when past due. Failure to receive a bill is not justification for non-payment. Regardless of the party to whom the bill is initially directed, liability for payment of the stormwater management charge attributable to that property shall be joint and several as to the owner and occupant.
- (b) A penalty of one and a half percent shall be added to a comprehensive stormwater service charge when the charge is not paid in said thirty days.
- (c) Certification. The director shall certify to the Director of Finance any comprehensive stormwater service charge, which is owed after a ninety-day payment period. All certified service charges constitute a lien upon the premises served by the stormwater system for which the service charges were made and shall be collected in the same manner as property taxes. Failure to send or receive a bill for comprehensive stormwater service charge is not a defense to the collection of the service charges.
- (d) Suits for collection shall be commenced by the City in the Iowa District Court for Poweshiek County. No lien shall be imposed for delinquent collections unless a judgment is first obtained from a court of competent jurisdiction. The City may employ any lawful means to collect funds owed, and is not restricted to filing a lawsuit.
- (e) The stormwater utility service charge may be billed on a common statement and collected along with other city utility services, usually on a quarterly basis.

1.13 Adjustments to Stormwater Service Charges.

Increase adjustments (debit) can be made to nonresidential service charges by property owners adding additional impervious area such as rooftops, parking lots, driveways and walkways.

1.14 Exemptions and Credits Applicable to Stormwater Service Charges.

All public or private property shall be subject to stormwater utility service charges except as provided in

this Ordinance below. A stormwater utility service charge formula is available in the office of the stormwater utility. The following areas are exempt from stormwater utility service charges:

1. Undeveloped property as defined in this Ordinance.
2. Streets, alley ways, and highways in the public and private domain are exempt from utility service charges or connection fees.
3. Railroad rights-of-way (tracks) shall be exempt from stormwater service charges. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from storm water service charges.
4. City property, City parking lots, community building and City utility facilities.