

COUNCIL BILL NO. \_\_\_\_\_  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY;  
SETTING SERVICE CHARGES RELATED THERETO; AND PROVIDING FOR THE  
MANAGEMENT THEREOF, INCLUDING USE OF REVENUES, ADMINISTRATION OF  
PROGRAMS, APPEALS, AND ENFORCEMENT

WHEREAS, the City of Arvada (the "City") has identified an ongoing need to fund water quality improvements in streams, creeks, and ditches within the city as well as the need to fund improvements for maintaining and improving water quality and to mitigate and prevent flooding from stormwater runoff into City-owned storm sewers; and

WHEREAS, current and pending Federal and State regulations require the City to take additional affirmative steps in such areas as public education, public improvements, detection of illicit discharge in storm water systems, construction of site runoff control, stormwater management, and pollution prevention programs to address water quality issues and flood control, which additional activities will create additional funding obligations for such mandated services; and

WHEREAS, the City has undertaken a comprehensive review by staff, consultants, and a citizen advisory committee of the need for, management of and funding for a Stormwater Management Utility.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Chapter 33, "Utilities," of the Code of the City of Arvada, Colorado is hereby amended by adding a new Article V, "Arvada Stormwater Management Utility Ordinance," which shall be as follows:

**ARTICLE V. ARVADA STORMWATER MANAGEMENT UTILITY ORDINANCE**

**Sec. 33-251. Short title.**

This article is known and may be cited as the "Arvada Stormwater Management Utility Ordinance."

**Sec. 33-252. Purpose.**

(a) The City of Arvada hereby adopts this article to provide for and fund the construction, operation, improvement and maintenance of stormwater facilities for its own use and the use of the public within and without its boundaries, to provide for the control and improvement of stormwater quality and to provide for the calculation of rates, fees, or charges or any combination thereof, together with the collection thereof, to be paid for the services furnished by, or as a result of usage of, city stormwater facilities.

(b) This article is deemed necessary to promote the health, safety and welfare of the general public by reducing or mitigating the property losses, general inconvenience, and damage that occur or result from stormwater runoff, by improving the quality of stormwater that enters stormwater facilities, and by reducing the incidents of traffic delays caused by street flooding, including impedance of emergency vehicles, in the City of Arvada.

(c) This article shall not serve to create liability on the part of the city or any officer or employee thereof for flood or stormwater damage, or to otherwise state or imply that property subject to the terms, provisions, or charges hereof will be free from stormwater flooding or flood damage.

**Sec. 33-253. Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases in this article shall have the following meanings:

“*City*” means the City of Arvada, Colorado.

“*Code*” means the Code of the City of Arvada, Colorado.

“*Director*” means the director of the utilities department for the City of Arvada, Colorado, or his or her designee.

“*Development*” means any manmade change to real property including, but not limited to, buildings or other structures, streets, parking lots, mining, dredging, filling, grading, paving, or excavating.

“*Impervious surface*” means surfaces or covers on or in real property where the rate of infiltration of stormwater into the earth has been reduced by the works of man. For purposes of this article, buildings, manmade structures, driveways, patio areas, roofs, concrete or asphalt sidewalks, parking lots or storage areas, and other bricked, oiled, macadam or hard-surfaced areas which impede passage of stormwaters into the earth’s surface are deemed to be impervious.

“*Owner*” means the fee owner of real property within the boundaries of the City of Arvada as disclosed in the city’s official records.

“*Person*” means a natural person, corporation, partnership, association or other entity.

“*Project costs*” means those costs of administration, management, planning, engineering, construction, reconstruction, repair, right-of-way acquisition, replacement, contingencies, fiscal, legal, and all operation and maintenance costs of stormwater facilities and stormwater quality programs including those costs required to comply with federal, state, or city laws regulating stormwater facilities or runoff.

“*Runoff*” means that part of snowfall, rainfall or other stormwater which is not absorbed, transpired, evaporated, or left in surface depressions, and which then flows controlled or uncontrolled into a watercourse or body of water.

“*Service charge*” means the stormwater management utility service charge as created by this ordinance.

“*Stormwater facilities*” means any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance or transportation of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage or disposal lines; intercepting sewers; disposal plants; outfall sewers; all pumping, power, and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities. Stormwater facilities expressly excludes any of the foregoing which exist for, or are used exclusively for the purpose of collecting, treating, measuring, supplying, or distributing potable water within or as part of the city water supply and treatment system, or any of the foregoing which exist for or are used exclusively for the purpose of collecting, treating, or measuring effluent within or as part of the city sanitary sewer system.

**Sec. 33-254. Stormwater management utility established.**

There is hereby established a stormwater management utility. The stormwater management utility shall be created as, and deemed to be an enterprise as provided in §37-45.1-101, C.R.S., et. seq., as such may from time to time be amended, and shall operate and be managed in accordance therewith. Through said utility the city shall be entitled to construct, operate and maintain stormwater facilities and pay other project costs with the service charge and other funds available in the stormwater management utility fund, provided the stormwater management utility fund will not have as its purpose the payment of costs not directly associated with water quality project costs or the construction, operation, or maintenance of stormwater facilities.

**Sec. 33-255. Stormwater management utility service charge established.**

(a) There is hereby imposed on the owner of each and every lot or parcel of land within the city containing an impervious surface, except as specifically provided in subsection (b) of this article, a stormwater management utility service charge. This service charge is deemed reasonable and necessary to pay for: (1) the project costs of the existing city stormwater facilities and stormwater quality programs; and (2) project costs of future city stormwater facilities and stormwater quality programs. The proceeds of said charge, upon collection, are made as payment for the use of the city’s stormwater facilities by owners of real property upon which the service charge is imposed.

(b) All public and private highways, roadways, streets and alleys and associated sidewalks and bike paths shall be part of the stormwater facilities and, therefore, shall be exempt from all charges imposed by this article. The exemption provided herein shall not apply to public or private parking lots, driveways, service drives, drive aisles or internal site roadways, beltways, access drives or lanes, and sidewalks.

(c) The charge provided herein shall be based upon the extent to which the city's stormwater facilities are used by persons within the city. Use of stormwater facilities shall be based upon a calculation of runoff from the impervious surfaces of parcels of land located within the city.

(d) The city shall bill, as part of its regular utility bill or as a separate bill in cases where a parcel of real property is not served or serviced by city water or sewer utilities, for the service charge provided in this article. The bill shall be made to the owner of record of the property as set forth in the records of the city, or to such other person as the owner may designate in writing to accept the bill and the recipient of the bill shall pay the bill upon receipt thereof. Nothing in this subsection shall serve to relieve the owner of responsibility for ensuring that payment of the service charge is made if the bill is sent to some other person designated by the owner as recipient.

(e) The service charge as provided in this article shall be \$.00112 per square foot, per month, of impervious surface located on the property. The charge described in this subsection is imposed on each and every improved lot and parcel of land within the city upon which an impervious surface exists. The service charge shall be billed by the city and shall be paid upon receipt thereof.

(f) In the calendar year 2001, to be effective in the calendar year 2002, the director shall determine or cause the determination to be made, of the estimated number of square feet of impervious surface in or on the real property of each owner within the city, using the definition of impervious surface set forth in this article. The director may make such measurement based upon any reasonable means, including, but not by way of limitation, aerial survey and statistical analysis of real property and impervious surfaces located thereon. The service charge for the stormwater management utility shall be calculated by dividing the estimated cost of providing stormwater facilities and project costs by the estimated square footage of impervious surface within the boundaries of the city, which product shall yield the per square footage cost of service. The director may update the measurement of impervious surface area at such times as he or she deems reasonable and necessary to do so, but in any event, not less than once each ten years, with any change to be effective in the next calendar year. If, for any reason, a recalculation of the service charge does not occur, then the most recent rate charged shall continue until the recalculation is made. No failure to make a recalculation of the service charge shall repeal, amend, or suspend operation of this article.

(g) Each development occurring within the city after adoption of this article that results in an increase or decrease in impervious surface area shall be subject to the

provisions of this article. The director shall be entitled to measure an increase or decrease to any impervious surface area resulting from a development, and add the resulting increase to or deduct the resulting decrease from, the service charge to the city utility bill for the property wherein the development occurred. The director shall establish such administrative rules in accordance with section 33-259 of this article for determining when an increase or decrease to impervious surface areas has occurred as may be reasonable and necessary to give effect to this subsection.

(h) The service charge provided in this article shall be subject to additional fees for delinquent payment, uncollectable checks, liens and any other penalties which are the same as those imposed with city water or sewer utility charges as provided in this chapter.

**Sec. 33-256. Use of service charge.**

(a) All fees and charges paid and collected pursuant to this article shall be credited and deposited into a special enterprise fund, designated as the “Stormwater Management Utility Fund”, and shall not be transferred to any other account of the city, except to pay for project costs, including payments for obligation permitted under this section.

(b) The city may pledge all or any portion of the service charge, or any other fees and charges collected pursuant to this article, including those anticipated to be collected, to the payment of principal, interest, premium, if any, and reserves for general obligation bonds, revenue bonds or any other obligation lawfully issued or otherwise contracted for by the city for the payment or other financing of project costs, or for the purpose of refunding any obligations issued or otherwise contracted for such purpose.

(c) Budgeting and accounting for the stormwater management utility fund shall conform with requirements and practices of the city with respect to such matters as may be applicable under this Code, or the laws of the State of Colorado.

(d) Any obligations issued or contracted for by the city pursuant to this article, or any other applicable provision of law, may be issued without the necessity of an election, unless such obligation shall be a general obligation of the city; in which event such obligation shall be issued only upon compliance with the terms and provisions of this Code, as may be applicable. All obligations shall be issuable in such form, shall mature at such time or times and in such amounts, shall be payable at such place, either within or without the State of Colorado, shall be subject to such terms of redemption and shall be secured in such manner as the city council of the city shall determine. Such obligations may be sold at public or private sale under such terms and conditions as the city council of the city shall determine. All other terms, provisions and other matters relating to such obligations shall be such as are approved by the city council of the city.

**Sec. 33-257. Administrative and judicial review.**

(a) Any owner who disputes the calculation of square footage of impervious surface upon which a service charge is based, or who disputes ownership of the subject property may petition the director for a hearing on a revision, adjustment or modification of such charge or determination of ownership no later than thirty (30 ) days after having been first billed for such charge. The director may hold such hearing him or herself, or designate another as a hearing officer with authority to hold such hearing or hearings. The filing of a petition shall not stay any owner's obligation to make payment of the charge during pendency of the hearing.

(b) Any petition filed pursuant to this article shall be in writing, and the facts and figures submitted shall be likewise submitted in writing as sworn statements, in form generally acceptable in similar proceedings. Any hearing shall take place within the City of Arvada at a date and time set by the director, but not earlier than fourteen (14) days nor later than sixty (60) days from the date of receipt of the petition by the director, unless a different time and date is agreed to by the petitioner and the director. Hearings held pursuant to this article shall be held in accordance with the procedures set forth in Chapter 2, Article VIII of this Code.

(c) The director shall make a final determination and may confirm or modify the charge, or make a finding with respect to ownership of the subject property in accordance with facts submitted. The director's decision shall be in writing and shall be mailed to or served upon petitioner within ten (10) business days of the conclusion of the hearing. The director may issue an order providing for refund of any portion of the service charge previously paid by an owner which charge is subsequently found to be in excess of any modified charge following conclusion of an owner's appeal. Service by certified mail, return receipt requested, shall be conclusive evidence of notice for the purpose of this article. Such action shall be considered a final order of the director, and any review thereof shall be by the district court pursuant to rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**Sec. 33-258. Violation and Penalties**

(a) In the event any owner or owners of any lot, parcel of land, or any real property within the legal boundaries of the city shall neglect, fail, or refuse to pay the charges or fees fixed by this article, the city may pursue any remedy available at law or equity to enforce and collect the service charge. The city may also recover, in addition to service charges due, all court costs, attorneys' fees and interest on the amount owing.

(b) In addition to other civil collection procedures, all fees and charges, together with all interest and penalties for default in payment, and all costs in collecting the same, until paid, shall constitute a perpetual lien on the property, on a parity with the tax lien of general, state, county, city, town or school taxes, and no sale of such property to enforce

any general, state, county, city, town or school tax or other liens shall extinguish the perpetual lien for such fees, charges, interest, penalties and costs.

(c) Delinquent charges and fees may be collected as any other debt owed to the city at the option of the city.

(d) Enforcement of this subsection shall be in a court of competent jurisdiction in the District Courts of Jefferson County or Adams County as may be the case based on physical location of the property. No remedy provided herein shall be exclusive, but the same shall be cumulative.

**Sec. 33-259. Rule making.**

The director shall be authorized to evaluate and analyze those situations, facts or circumstance which occur with respect to application of this article to individual owners or property that are unusual or not addressed by the procedures and criteria of this ordinance. Decisions and determinations with respect to procedures necessary to give effect to this ordinance that are of general applicability to the public, and not otherwise addressed under this ordinance, shall be subject to the provisions of Chapter 2, Article VII of this Code concerning administrative rule making. The director shall be authorized to promulgate such administrative rules pursuant thereto.

**Sec. 33-260. Severability.**

In the event that any section, subsection subdivision, paragraph, sentence, clause, or phrase of this article, or the application thereof, if for any reason is held or decided to be unconstitutional or unlawful, such decision shall not affect the validity of the remaining portions or application of this article, chapter, or Code.

**Secs. 33-261 – 33-280. Reserved.**

Section 2. This ordinance shall take effect five (5) days after publication following final passage. Notwithstanding the effective date of this ordinance, the charges and fees provided for herein shall be due and collectable from and after the first day of January, 2002.

INTRODUCED, READ, AND ORDERED PUBLISHED this 4<sup>th</sup> day of June, 2001

PASSED, ADOPTED, AND APPROVED THIS 18<sup>th</sup> day June, 2001.

\_\_\_\_\_  
Ken Fellman, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

Publication Dates: \_\_\_\_\_  
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