

ORDINANCE NO. 4549

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON relating to stormwater services, rates, fees, and charges; adding a new chapter 9.100 to Title 9 of the Ellensburg Municipal Code entitled "Storm Drainage and Surface Water Management Utility"; adding a new chapter 9.00 entitled "Preliminary Article" and amending sections 9.05.010, 9.25.010 and 9.30.010.

WHEREAS, The Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the City of Ellensburg (the City), to implement stormwater management programs within prescribed time frames, and the Environmental Protection Agency (EPA), pursuant of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., has promulgated a Phase II rule that extends coverage under the National Pollutant Discharge Elimination System (NPDES) to certain small municipal separate stormwater sewage systems (MS4s), such as the City, that apply for coverage under a NPDES Phase II municipal stormwater general permit;

WHEREAS, the City applied for coverage under the NPDES Phase II municipal stormwater general permit on February 9, 2006, and received notice of coverage on January 17, 2007;

WHEREAS, the NPDES Phase II municipal stormwater general permit program requires the City to regulate activities that impact stormwater quality; to operate and maintain a stormwater system; to monitor surface water quality; to educate and involve the public in stormwater matters; and to provide for the planning, design and construction of necessary capital facilities;

WHEREAS, in Washington State, the EPA has delegated primacy for the Federal Clean Water Act to the Washington State Department of Ecology;

WHEREAS, chapter 90.48 of the Revised Code of Washington (RCW) – the Water Pollution Control Act of Washington – establishes that it is the public policy of the state of Washington to maintain the highest possible standards to ensure the

purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end requires the use of all known available and reasonable methods to prevent and control the pollution of the surface waters and groundwaters of the state of Washington from discharges including those arising from stormwater runoff;

WHEREAS, the City is required to comply with these applicable stormwater and surface water regulations under federal and state laws, and implementation by the City of the stormwater pollution prevention programs required by these regulations is a necessary part of providing stormwater services and operating storm sewer systems and facilities;

WHEREAS, the development of property adversely affects stormwater quality, generates stormwater runoff, and otherwise necessitates stormwater regulation and management and burdens the stormwater system;

WHEREAS, owners of developed property benefit from the provision of stormwater management services and from the operation of the system;

WHEREAS, The City desires to form a Storm Drainage and Surface Water Management Utility to regulate public and private activities that impact stormwater discharges, and to provide related facilities and services, in order to promote and protect the public health, safety and welfare; minimize water quality degradation; protect aquifers; ensure the safety of City roads and right-of-ways; assure compliance with federal and state storm drainage, surface water management, and water quality regulations; and encourage the preservation of natural drainage systems;

WHEREAS, the City is authorized to own and operate a Storm Drainage and Surface Water Management Utility, and to impose charges therefore, pursuant to RCW 35.67.010 - .020 and RCW 35.92.020; and

WHEREAS, the revenues to be generated by the charges set forth in this ordinance will be used solely for purposes of storm drainage and surface water management.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELLENSBURG,
WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Title 9 “Utilities” of the Ellensburg Municipal Code, as last amended by Ordinance No. 4508, is hereby amended by the addition of a new Chapter 9.00 entitled “Preliminary Article” to read as follows:

Chapter 9.00 PRELIMINARY ARTICLE

Sections:

9.00.010 Preliminary article.

9.00.010 Preliminary article.

A. This title shall be known and may be cited as the “Ellensburg utility code.”

B. Unless otherwise indicated, the provisions of chapters 9.05 through 9.92 apply to the city’s electric, gas, sewer and water utilities only.

C. The provisions of chapter 9.100 apply to the city’s Storm Drainage and Surface Water Management Utility.

Section 2. Section 9.05.010 and Ordinance No. 4503 is hereby amended to read as follows:

9.05.010 Purpose.

This chapter identifies other governing documents to be used in conjunction with ~~this code~~ chapters 9.05 through 9.92.

[Ord. 4503 § 2, 2007.]

Section 3. Section 9.25.010 and Ordinance No. 4503 is hereby amended to read as follows:

9.25.010 Purpose.

This chapter establishes the terms and conditions associated with the receipt of city electric, gas, sewer and water utility services.

[Ord. 4503 § 2, 2007.]

Section 4. Section 9.30.010 and Ordinance No. 4503 is hereby amended to read as follows:

9.30.010 Purpose.

This chapter establishes the basis for setting utility rates, fees and credits for the city's electric, gas, sewer and water utilities and the criteria for determining customer eligibility to receive such utility service under a particular rate schedule.

[Ord. 4503 § 2, 2007.]

Section 5. A new Chapter 9.100 entitled "Storm Drainage and Surface Water Management Utility" is hereby added to read as follows:

**Chapter 9.100 STORM DRAINAGE AND SURFACE WATER
MANAGEMENT UTILITY**

Sections:

9.100.010	Legislative Findings and Policy
9.100.020	Creation of Storm Drainage and Surface Water Management Utility
9.100.030	Definitions
9.100.040	Funding of Storm Drainage and Surface Water Management Utility
9.100.050	Stormwater Funds
9.100.060	Operating Budget
9.100.070	Reserve Account
9.100.080	Stormwater User's Fees Established
9.100.090	Equivalent Residential Unit (ERU)
9.100.100	Property Classifications for Stormwater User's Fee
9.100.110	Base Rate & Non-Residential Rate Calculation
9.100.120	Adjustment to Stormwater User's Fees
9.100.130	Billing Procedures and Penalties for Late Payment
9.100.140	Appeals of Fees

9.100.010 Legislative Findings and Policy.

The city council finds, determines and declares that the streams, rivers, lakes, waterways, groundwater, and functionally related natural and manmade stormwater control facilities constitute a stormwater control facility.

The city council finds, determines and declares that the public stormwater control facility including its administration, which provides for the collection, treatment, storage and disposal of stormwater, provides benefits and services to all developed property within the incorporated city limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvements in general health and welfare through reduction of undesirable stormwater conditions; and improvements to the water quality of the stormwater and its receiving waters. State and federal laws mandate that operation of such systems requires the city to implement regional water quality protection activities and programs to reduce and control the potential to pollute surface waters and groundwaters by storm drainage originating on both public and private properties.

The city council finds, determines and declares that development of lands alter both the amount of stormwater runoff and the amount of pollution contained in such runoff and that the variation in these two factors constitutes a fair way to determine the burdens imposed upon the system and the benefits of the services received by the customer from the pollution management and regulatory services and facilities provided by a utility for storm drainage and surface water management, and the customer's charges for management of such burdens and provision of such services and facilities.

The city council finds, determines and declares that the amount of impervious surface, land use, and rainfall will determine the volume of runoff and the general level of pollution from a property, which has been well established in both engineering practice and water quality studies by the Environmental Protection Agency, the Department of Ecology, the United States Geological Survey, the Soil Conservation Service, and others. While the relationships established by the above studies are adequate to assign charges, the City Storm Drainage and Surface Water Management Utility shall perform local studies and based upon the results of these, may adjust rates and charges in the future to more accurately reflect the burdens imposed by customer classes within the city.

The city council finds, determines and declares that to fund the costs of storm drainage and surface water management in the city, it is necessary to adopt service charges for stormwater users, with rates varying according to the services furnished, the burdens imposed or benefits received; and the character, use and stormwater runoff characteristics of the land.

9.100.020 Creation of Storm Drainage and Surface Water Management Utility.

A. Pursuant to RCW 35.67.010 - .020 and RCW 35.92.020, there is hereby created a City Storm Drainage and Surface Water Management Utility.

The Storm Drainage and Surface Water Management Utility, under the legislative policy, supervision and control of the governing body of the city, shall perform the following activities within the city:

1. Administer the acquisition, design, construction, maintenance and operation of the public stormwater and surface water system, including stormwater capital improvements designated in the capital improvement program;

2. Administer and enforce this ordinance and all regulations and procedures adopted thereto relating to the design, construction, maintenance, operation and alteration of the stormwater and surface water system, including, but not limited to, the quantity, quality and/or velocity of the stormwater conveyed thereby;

3. Advise the city council and other city departments on matters relating to the utility;

4. Prepare and periodically revise, as determined by state and federal law, comprehensive stormwater management and drainage plans for adoption by the city council;

5. Develop standards and ordinances relating to stormwater drainage and treatment to apply to new development and redevelopment;

6. Enforce regulations to protect and maintain water quality and quantity within the stormwater and surface water system in compliance with water quality standards established by state, regional and/or federal agencies as now adopted or hereafter amended;

7. Annually analyze the cost of services and benefits provided to and burdens imposed by different classes of customers, and the system and structure of fees, charges, civil penalties and other revenues of the utility, and prepare budgets for adoption by the city council; and

8. Perform all other activities allowable by law and required to ensure compliance with state and federal stormwater and surface water quality laws.

9.100.030 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

A. "Base Rate" means the stormwater user's fee for an equivalent residential unit (ERU).

- B. "City" means the city of Ellensburg, Washington, a municipal corporation created and existing under the laws of the state of Washington.
- C. "Credit" means the extent to which utility customers meeting specified criteria are billed at a reduced fee, such reduction representing a fee credit. The fee credit is provided in recognition that those utility customers who meet the specified criteria provide an in-kind service or contribution that offsets a portion of the burdens on the stormwater system imposed by the credited parcel.
- D. "Developed Property" means real property that has been altered from its natural state by the creation or addition of impervious surface areas, such as buildings, structures, pavement or other improvements.
- E. "Dwelling Unit" means a single unit providing complete, independent living facilities for one (1) family including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- F. "Engineer" means the duly appointed city engineer for the city or his or her designee.
- G. "Equivalent Residential Unit" or "ERU" means, and is equal to, 3,900 square feet of impervious groundcover, which approximates the average impervious surface area contained on single-family residential parcels within the city as determined from measurements of a representative sampling of single family residential properties in the City of Ellensburg. An ERU is the unit of impervious groundcover to be used by the utility in calculating service charges for each parcel of property.
- H. "Fee" or "Stormwater Fee" means the charge established under this ordinance for parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the city.
- I. "Impervious Surface" means a surface which is covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.
- J. "Impervious Surface Area" means the number of square feet of horizontal surface covered by buildings and other impervious surfaces.

- K. "Multiple Family Dwelling Unit" means a building or portion thereof, designed for, or occupied by two (2) or more families living independently in separate dwelling units.
- L. "National Pollutant Discharge Elimination System" or "NPDES" refers to the federal permit system under the Clean Water Act for discharges of pollutants to surface waters of the United States. Congress amended the Clean Water Act in 1987 to regulate stormwater. Under the revisions, NPDES Phase II permits are required for municipal stormwater discharges to surface waters.
- M. "Nonresidential Parcel" means a parcel which has been developed for any purpose other than a single-family residence, duplex, tri-plex, or four-plex and includes, but is not limited to, commercial parcels, industrial parcels, parking lots, hospitals, schools, hotels, offices, churches, governmental parcels and multiple family dwelling units.
- N. "Public Works Director" means the duly appointed director of the city of Ellensburg Department of Public Works or his or her designee.
- O. "Residential Parcel" means a parcel which has been developed as a single-family residence, a mobile home on a separate parcel, and other parcels where the primary use is residential.
- P. "Single-Family Residence" means a parcel which has been developed with a residential structure designated for occupancy by one (1) family or household unit, including mobile homes.
- Q. "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface waterbody, or a constructed infiltration facility.
- R. "Stormwater Control Facility" means the streams, rivers, ponds, lakes, waterways, groundwater, and functionally related natural and manmade stormwater control facilities that combined constitute the city stormwater control facility.
- S. "Stormwater Management Fund" or "Fund" means the fund created by this ordinance to operate, maintain, and improve the city's stormwater system.
- T. "Storm Drainage and Surface Water Management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to stormwater.

U. "Stormwater and Surface Water System" or "Stormwater System" means all properties, interest, physical and intangible rights of every kind or nature owned, held or operated by the city, however acquired, insofar as they contribute to the management of storm or surface water. It shall further include without limitation, all such properties, interests and rights acquired by adverse possession or by prescription, directly or through another; in and to the drainage or storage, or both of storm or surface waters, or both; and through, under, or over lands, landforms, watercourses, sloughs, streams, ponds, lakes and swamps. In each case or instance, their inclusion begins at a point where storm or surface waters first enter the stormwater control facility of the city within the city limits, and ends where storm or surface waters exit from the stormwater control facility of the city, and in width to the full extent of inundation caused by the largest storm or flood condition.

V. "Storm Drainage and Surface Water Management Utility" or "Stormwater Utility" or "Utility" means the Storm Drainage and Surface Water Management Utility created by this ordinance as it may be amended from time to time.

W. "Waiver" means that determination by the engineer that a utility customer's property has met the criteria specified in EMC 9.100.120 of this chapter to receive a waiver from paying stormwater fees. Any waiver will require a showing that parcels that meet the specified criteria provide an in-kind service or contribution that offsets the burdens on the stormwater system imposed by the parcels subject to the waiver.

9.100.040 Funding of Storm Drainage and Surface Water Management Utility.

Funding for the Storm Drainage and Surface Water Management Utility's services and facilities may include, but not be limited to, the following:

- A. Stormwater user's fees;
- B. Civil penalties and damage assessments imposed for or arising from the violation of this ordinance;
- C. Stormwater permit and inspection fees;
- D. Revenue bonds and/or general obligation bonds; and
- E. Other funds or income obtained from federal, state, local or private grants and/or loans.

9.100.050 Stormwater Funds.

All revenues generated by, or on behalf of the stormwater utility shall be deposited in the following stormwater utility funds and used in accordance with state law:

- A. Fund 431 (for operating funds); or
- B. Fund 435 (for capital funds).

The revenue deposited into these funds shall be used only for the purposes of constructing, acquiring, adding to, maintaining, conducting, operating, managing, regulating, and controlling the stormwater system, or to secure the payment of all or any portion of any issue of general obligation bond or revenue bond issued for such purposes, or for other legal purposes consistent with this ordinance.

9.100.060 Operating Budget.

The city council shall adopt an operating budget for the stormwater utility each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the established costs for operations and maintenance, capital improvement projects, and debt service.

9.100.070 Reserve Account.

An operating and emergency reserve account shall be maintained with the designated funds to provide for cash flow, emergencies and capital improvement project needs in accordance with the City's reserve policy.

9.100.080 Stormwater User's Fees Established.

Except with respect to those parcels that are waived from paying fees as described in EMC 9.100.120 of this chapter, the city shall charge and collect from the owner, or tenant of each and every developed property in the city a stormwater user's fee, which shall be set in the manner and amount prescribed by this ordinance. The purpose of this fee is to fund the Storm Drainage and Surface Water Management Utility.

Prior to establishing or amending user's fees, the city shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the city. The publication date of such advertisement shall meet public notice requirements of local and state laws.

9.100.090 Equivalent Residential Unit.

A. Establishment. The equivalent residential unit (ERU) is hereby established for purposes of calculating the stormwater user's fee.

The ERU is the approximate average square footage of impervious surface area on a single-family residential parcel.

B. Setting the ERU. The ERU shall be set by the city council from time to time by ordinance or resolution. The ERU is presently set as 3,900 square feet and was determined through the measurement of the average impervious surface on single family residential parcels in Ellensburg.

C. Source of ERU. The city council shall have the discretion to determine the impervious surface area of developed property through property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information.

9.100.100 Property Classification for Stormwater User's Fee.

As authorized by RCW Chapters 35.67 and 35.92, the city council finds that variations in land use and impervious surface results in differences in the burdens imposed upon the stormwater system and the costs to serve such parcels. City parcels shall be differentiated from one another based upon the stormwater burdens imposed and the costs of city stormwater services.

A. Customer Classification. For purposes of determining the stormwater user's fees, owners of all developed parcels in the city are classified into one of the following general classes:

1. Residential;
2. Multi-family residential;
3. Non-residential.

To reflect the burdens imposed upon the city stormwater system, parcels with facilities deemed to be more industrial or commercial in nature will have fees determined in the same manner as the non-residential class regardless of the land use codes assigned by the county assessor or city and/or county zoning.

B. Residential fee. The stormwater fee for residential parcels shall equal the base rate. Condominiums, mobile home parks, and multi-family units shall be assigned one ERU per residential dwelling unit.

C. Non-residential fee. Owners of developed non-residential parcels shall pay a stormwater fee equal to the base rate multiplied by the numerical factor obtained by dividing the estimated total impervious surface area of the parcel by one ERU up to a maximum of 16,000 square feet of impervious

surface area. The minimum stormwater fee for developed non-residential parcels shall equal the base rate for residential parcels.

D. Non-residential fees associated with the Storm Drainage and Surface Water Management Utility are based upon measurements taken from scaled aerial maps.

The owner of a parcel subject to this chapter, or other responsible party, who believes the stormwater user's fee is not correct based on an alleged error in billing resulting from incorrect specification of parcel data, including but not limited to total acreage, estimated impervious surface coverage and land use classification may appeal the correctness of the fee to the engineer consistent with EMC 9.100.150.

9.100.110 Base Rate & Non-Residential Rate Calculation.

The base rate shall be calculated to provide adequate revenues to cover all costs allowable under applicable law that are incurred by the utility. The city council adopts the annual base rate for 2010 as shown which shall be applied equally to residential units of all residential rate classes:

Year	Base Rate \$/month	Base Rate \$/day
2010	\$5.00	\$0.1667

Non-Residential Rate Calculation (Based upon the 2010 base rate):

Customer ISA	Fee	2010 Monthly Rate
0 to 16,000 sf	$(ISA \div 3900) \times (\$5.00)$	\$20.51
16,001 to 100,000 sf	$\$20.51 + [((ISA - 16,000) \div 84,000) \times \$18.00]$	\$38.51
100,001 sf and above	$\$38.51 + [((ISA - 100,000) \div 100,000) \times \$20.00]$	as calculated

In 2010, the ongoing revenue requirements for the stormwater utility shall be reviewed and the annual base rates shall be adjusted or maintained as needed. The frequency of adjustments to base rates thereafter shall be as required to ensure fair and full funding of the program.

9.100.120 Adjustments to Stormwater User's Fees.

Credits allowed under this section shall not be cumulative. Credits or waivers granted by the Finance Department will become effective the billing month or cycle following the approval of the credit or waiver. Credits or waivers are not retroactive to current or prior billings and are only in effect for the next billing cycle. Credits or waivers may be in effect for multiple future billing cycles provided that ongoing qualifying criteria are met. The engineer will take such time as necessary to process requests for credits or waivers in an orderly fashion, and provide adjustment information to the Finance Department. As low-income senior and low-income disabled households are recognized by the assessor's office, they will receive a credit. To receive a credit for the next billing month or cycle, the county assessor records must indicate eligibility for low-income senior or low-income disabled household tax relief.

A.Credit for Rainwater Harvesting Systems. Upon review and approval by the engineer, owners of new, or retrofitted commercial/industrial/institutional class buildings that utilize a properly constructed and maintained permissive rainwater harvesting system shall be eligible for a 10% credit applied toward that portion of their stormwater charge arising from the building upon which the system is used. Customers desiring this credit shall apply to the engineer and shall submit engineering design and operational information as deemed necessary by the engineer to make their evaluation and decision. Rainwater harvesting and beneficial reuse of the runoff is found by the city council to both reduce the burden imposed upon the system by the building by reducing runoff and to also have other beneficial water quality effects such as reduced consumption of potable water.

B.Credits for Low-Income Senior and Low-Income Disabled Households. Upon submittal of the necessary verification documentation to the engineer, low-income senior and disabled households receiving relief under RCW 84.36.381(5)(a), RCW 84.36.381(5)(b)(i), or RCW 84.36.381(5)(ii) shall receive a 20% credit from the annual fee charged under EMC 9.100.110 as currently enacted or hereafter amended. Credits shall not be retroactive to the current or preceding billing cycle.

C.Credits or Waivers for Schools Participating in Stormwater and Surface Water Education. The city council finds that many of the concerns about stormwater quality are created by a general lack of knowledge about the relationship between human activities and the health of the environment. The city council also finds that public and private schools can provide regional benefits to the city's Stormwater and Surface Water Management Program by carrying out certain types of educational and community activities related to protection and enhancement of surface water, groundwater, and stormwater quality. Kindergarten through grade 12 schools that are in compliance with all requirements for their own stormwater facilities, and that are carrying out surface water, groundwater, and stormwater quality educational and community activities in cooperation with the city may

apply to the engineer for a credit towards, or waiver from, their stormwater fees. The amount of an approved credit, or the issuance of a waiver, shall depend upon the nature and extent of the programs and activities being performed. Schools shall pay the full charge under EMC 9.100.110 as currently enacted or hereafter amended until such time as a discount or waiver is granted by the engineer.

D. Waiver of Utility Fees for Certain Property. The engineer shall waive stormwater and surface water utility fees for a parcel falling within the following special categories of property upon a showing that the parcel meets the following applicable criteria for so long as the criteria are met:

1. Fees shall be waived for city streets and street rights-of-way provided the city road fund shall continue to contribute to the proper operation, maintenance, repair, improvement, and construction of the road drainage system, and shall reimburse the utility for services performed on their behalf.

2. Fees shall be waived for State of Washington highway rights-of-way, provided the State of Washington cooperates with the utility in the provision of services and maintains, constructs and improves all drainage facilities contained within such rights-of-way as required by the utility in conformance with all utility standards for maintenance, construction and improvement hereafter established by the utility and so far as such maintenance, construction and improvements shall be achieved at no cost to the utility or to the city.

3. Fees shall be waived for municipal, county, and state and federal parks, fishing areas, wildlife reserves, public trails and bike paths so long as their owners cooperate with the utility in the provisions of educational services and water quality control efforts. Fees shall be waived to the degree that such property owners offset the costs of the utility to manage the burdens imposed by such parcels. Parks, trails and bike paths have minimal intensity of impervious development and provide opportunities for natural resource education and development of an appreciation for water quality.

4. Fees shall be waived for all vacant, unimproved parcels. The city council finds that such parcels have no improvements built on them, generate little to no traffic, utilize no chemicals, and are in a natural state, thereby imposing no burden upon the system and receiving no benefit from the utility's services and facilities. Information that a property categorized as vacant or undeveloped is being used otherwise may result in a loss of this waiver.

9.100.130 Billing Procedures and Penalties for Late Payment.

The charges as herein provided for shall be billed monthly and shall be due and payable within fifteen (15) days following the date of mailing of the utility bill. If not paid by the due date, the entire combined utility account shall be deemed

delinquent. The owner of contiguous parcels having a single land use within the categories designated in EMC 9.100.100 may receive a single billing for such parcels.

Collection of delinquencies shall be in accordance with Chapter 2.12 of the Ellensburg City Code.

9.100.140 Appeals of Fees.

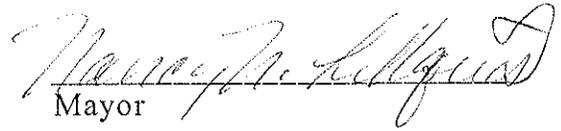
A. Appeal to the Engineer. If an owner of a parcel subject to this chapter, or other responsible party, believes the stormwater user's fee applied to their property is incorrect or otherwise disagrees with the utility rate determination, the owner may appeal the correctness of the fee to the engineer within thirty (30) calendar days of the mailing of the billing for the fee. Such appeals shall be in writing and shall specify the grounds of the appeal and the requested remedy and shall include a deposit sufficient to cover the engineer's cost of review. The engineer may make an adjustment to the charges consistent with the criteria provided in EMC 9.100.100 and EMC 9.100.120. If the engineer determines that the adjustment does not result in more than a ten percent (10%) decrease to the original stormwater user's fee, the applicant shall be responsible for the engineer's cost of review. Applicants shall be refunded the full deposit amount for adjustments that are determined by the engineer to result in more than a ten percent (10%) decrease in stormwater user's fees. Decisions of the engineer regarding such appeals shall be final unless appealed to the city council in a timely manner in accordance with subsection B.

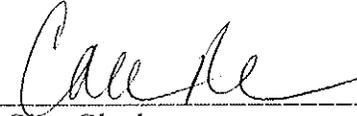
B. Appeal to the City Council. The decision of the engineer of an appeal filed in accordance with subsection A may be appealed to the city council. Such appeal must be in writing and filed with the city clerk within thirty (30) calendar days of the date of the decision of the engineer. The written appeal must specify the grounds of the appeal and request a hearing before the city council. The city clerk shall set a time and place for the appeal hearing. At the hearing, the city council shall make a final determination regarding the appeal based upon the criteria provided in EMC 9.100.100 and EMC 9.100.120.

Section 6. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this chapter.

Section 7. Effective Date. This ordinance shall take effect and be in full force on January 1, 2010.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 7th day of Dec., 2009.


Mayor

ATTEST: 
City Clerk

APPROVED AS TO FORM:


CITY ATTORNEY

PUBLISH: December 10, 2009

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4549 is a true and correct copy of said Ordinance of like number of said City as the same was passed by said Council, and that Ordinance No. 4549 was published as required by law.


COREEN M. RENO, CMC