

ORDINANCE NO. 964

AN ORDINANCE AMENDING THE STAYTON MUNICIPAL CODE ("SMC") TO ADOPT CHAPTER 13.32 TO ESTABLISH A STORM DRAINAGE UTILITY FOR THE CITY OF STAYTON

WHEREAS, the City Council finds that the existing storm drainage facilities within the City are in need of annual maintenance and repair and there is also a need to construct new storm drainage facilities as recommended in the Storm Water Master Plan; and

WHEREAS, the City has concluded that in order to generate funds to construct recommended improvements and perform required maintenance on the City's storm drainage facilities, it is appropriate for the City to adopt a storm drainage utility fee on developed properties inside the City of Stayton.

NOW, THEREFORE, the Stayton City Council does ordain as follows:

SECTION 1. Chapter 13.32 of the Stayton Municipal Code relating to a Storm Drainage Utility is hereby added to the Stayton Municipal Code to read as set forth in Exhibit "A", attached hereto and incorporated herein.

SECTION 2. Fee not subject to Constitutional Limits. The Council hereby classifies the fees imposed by this ordinance a fee not subject to the limits of section 11b, Article XI of the Oregon Constitution. The City Administrator is directed to publish notice of this classification as required by ORS 305.583(9).

SECTION 3. Nothing in this ordinance shall be interpreted to impair any rights, duties, or obligations, contractual or otherwise, between any individual or entity and the Santiam Water Control District, which manages the waters in its canals and ditches.


SECTION 4. Nothing in this ordinance shall be deemed to preclude any fees or charges that the Santiam Water Control District may independently levy or assess for storm water drainage into its canals and ditches, to enforce the nonpayment thereof, or to preclude unpermitted discharges.

SECTION 5. Non-Emergency Ordinance. This ordinance is a non-emergency ordinance and will take effect 30 days after enactment of the City Council and approval by the Mayor.

ADOPTED BY THE STAYTON CITY COUNCIL this 16<sup>th</sup> day of December, 2013.

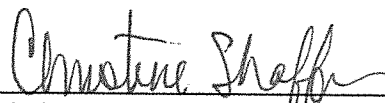
CITY OF STAYTON

Signed: 12-18-13

By:   
A. Scott Vigil, Mayor

ATTEST

Signed: 12/18/13

By:   
Christine Shaffer, Interim City Administrator

APPROVED AS TO FORM:

  
David A. Rhoten, City Attorney

**City of Stayton  
Chapter 13.32  
STORM DRAINAGE UTILITY**

Sections:

- 13.32.010 Short title.
- 13.32.020 Findings.
- 13.32.030 Definitions.
- 13.32.040 Storm drainage policy.
- 13.32.050 Establishment of storm drainage utility.
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**13.32.010 Short title.**

This Chapter shall be known as the "Storm Drainage Utility Code."

**13.32.020 Findings.**

- (1) The City provides a valuable public service by providing storm drainage facilities for the collection and disposal of storm water discharged from properties and public rights-of-way within the City. The storm drainage facilities constitute a public utility owned and operated by the City. The utility exists for the benefit of any person within the City who wants to have the public storm drainage facilities available for the diversion, collection and/or disposal of storm drainage and other runoff water from the person's property and represents a municipal service in a developed urban environment which is essential to the public health, safety and welfare.
- (2) Persons who use the public storm drainage facilities ought to be charged fees that reflect the cost of the management, maintenance, extension and construction of the public storm drainage facility as a public utility in the City. Persons who undertake the installation of runoff control facilities on their property that reduce or eliminate the discharge of storm water into public storm drainage facilities ought to be given credit, in proportion to the degree of reduction, against storm drainage utility fees that would otherwise be due.
- (3) Accordingly, the structure of the storm drainage utility fee is intended to be a fee for service and not a charge against the property. Although this structure is intended to constitute a service fee, even if it is viewed as a fee against property or against the person responsible, as a direct consequence of ownership of that property, the utility's fee structure should allow the person responsible to have the ability to control the amount of the fee.

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Similarly, the utility fee structure should reflect the actual cost of providing the service and not impose fees on persons not receiving a service. The actual costs may include all costs the utility might incur were it in private ownership.

- (4) Persons using water from the City potable water facilities use substantial amounts of water for irrigating lawns and gardens, washing structures, sidewalks, driveways and parking lots, and for other activities which result in the discharge of runoff into the public storm drainage facilities. These uses of water demonstrate a substantial relationship between persons' use of these water facilities and their use of the public storm drainage facilities.
- (5) Storm water runoff is directly impacted by the extent of development and improvements which have occurred on a parcel of land, the location of a property within a drainage basin and the location of existing storm drainage facilities. The amount of storm water runoff from a parcel of land is directly proportional to the development on the property and the amount of impervious surface on the parcel. The type of use and the amount of impervious surface on a property demonstrate a substantial relationship between the use and the impact on storm drainage facilities.
- (6) The Council concludes it is appropriate to have those who use storm drainage services or create the demand for such service to bear the cost of such service. Therefore, the Council further concludes it is appropriate for the City to establish a storm drainage utility fee for existing utility customers with rate categories based on the type of use and proportional to the amount of impervious surface existing on a served parcel of land.

### **13.32.030 Definitions.**

Except where the context otherwise requires, the definitions contained in this Section shall govern the interpretation of this Chapter.

- (1) "City Administrator" means the City's City Administrator or designee.
- (2) "Development" means any constructed changes to improved or unimproved property including, but not limited to, buildings or other structures, private storm drainage facilities, mining, dredging, filling, grading, paving, excavation, or drilling operations.
- (3) "Finance Director" means the City's Finance Director or designee
- (4) "Impervious surfaces" means those surface areas which either prevent or retard saturation of water into the land surface and cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions preexistent to development. Examples of impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas and gravel, oil, macadam, or other surfaces which similarly impact the natural saturation or runoff patterns which existed prior to development.
- (5) "Improved property" means any area which has been altered such that the runoff from the site is greater than that which could historically have been expected. Such a condition shall be determined by the Public Works Director.
- (6) "Open drainageway" means a natural or constructed path, ditch or channel which has the specific function of transmitting natural stream water or storm water from a point of higher elevation to a point of lower elevation.
- (7) "Person responsible" or "Person" means the owner, agent, occupant, lessee, tenant, contract purchaser, other person or entity having possession or control of property or the supervision of an improvement on the property.
- (8) "Public Works Director" means the City's Public Works Director or designee.
- (9) "Runoff control" means any measure approved by the Public Works Director that reduces storm water runoff from land surfaces on which development exists.

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- (10) "Single-Family Unit (SFU)" means a detached single family dwelling unit or an individual unit as "condominium unit." An SFU is presumed to have 2,500 square feet of impervious surface area for purposes of this chapter. The term "SFU" shall be inclusive of those units identified as detached single family dwelling as defined in Title 17 of the Code, attached single family dwelling as defined in Title 17 of this Code, and condominiums.
- (11) "Storm drainage facilities" means any structure(s) or configuration of the ground that is used or by its location becomes a place where storm water flows or is accumulated including, but not limited to, headgates, controls, pipes, sewers, gutters, manholes, catch basins, ponds, open drainageways, manmade or natural waterways and their appurtenances. For purposes of this Chapter, the North Santiam River, Stayton Ditch (Reid Power Canal), the Main Canal, the Salem Ditch, Lucas Ditch, and Mill Creek are storm drainage facilities.
- (12) "Storm water" means water from precipitation, snow melt runoff, surface runoff and drainage from any source.

**13.32.040 Storm drainage policy.**

- (1) The City Council declares its intention to acquire, own, manage, construct, equip, operate, and maintain within the City open drainageways, underground storm drains, equipment and appurtenances, necessary, useful, or convenient for public storm drainage facilities. The Council also declares its intention to manage, maintain and extend existing public storm drainage facilities.
- (2) The improvement of both public and private storm drainage facilities through or adjacent to a new development shall be the responsibility of the developer or property owner. The improvements shall comply with all applicable City ordinances, the Stayton Municipal Code, City policies, public works design standards and construction specifications and the City of Stayton *Storm Water Master Plan*.
- (3) No portion of this Chapter or statement or subsequent City interpretation or policies shall relieve the person responsible of assessments levied against their property for public facility improvement projects.
- (4) It is the policy of the City to participate in improvements to storm drainage facilities when authorized by the Public Works Director. To be considered for approval by the Public Works Director, a storm drainage facility must:
  - (a) Be public;
  - (b) Be a major benefit to the community;
  - (c) Be located in or on a public property, public right-of-way or an easement benefitting the City; and
  - (d) Be identified as a project in the Master Plan; or
  - (e) Be identified in a storm drainage management agreement with another public entity; or
  - (f) Be a rehabilitation and/or replacement of existing public storm drainage facilities.
- (5) The City shall maintain public storm drainage facilities located on City property, within a public right-of-way or within easements benefitting the City. Public storm drainage facilities to be managed by the City include, but are not limited to:
  - (a) Open drainageways;
  - (b) A piped drainage system and related appurtenances which has been designed and constructed expressly for use by the general public and accepted by the Public Works Director;

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- (c) Roadside drainage ditches along unimproved City streets;
  - (d) Flood control facilities (levees, dikes, overflow channels, detention basins, retention basins, dams, pump stations, groundwater recharging basins, etc.) that have been designed and constructed expressly for use by the general public and accepted by the City.
- (6) The City shall not maintain private storm drainage facilities. Private storm drainage facilities are typically not located on City property and are not in the public right-of-way. Private storm drainage facilities may include, but are not limited to:
- (a) Open drainageways and drainage swales;
  - (b) A piped drainage system and related appurtenances;
  - (c) Parking lot storm drainage facilities or systems;
  - (d) Roof, footing, and area drainages;
  - (e) Drainage systems not designed and constructed for use by the general public;
  - (f) Access drive or driveway culverts, either on private property or within the public right-of-way.
  - (g) Storm water detention basins, retention basins, ponds or wetlands.

**13.32.050 Establishment of storm drainage utility.**

A storm drainage utility is hereby created for the purpose of providing funds for the management, maintenance, extension and construction of public storm drainage facilities within the City or benefitting the City. The City Council finds, determines and declares the necessity of providing for the management, maintenance, extension and construction of City storm drainage facilities for health, safety, and general welfare of its inhabitants.

**13.32.060 Establishment of storm drainage utility fee.**

A storm drainage utility fee shall be paid by each person(s) responsible for residential and non-residential uses in the City.

- (1) The storm drainage utility fee shall be established by resolution of the Council, following a public hearing.
- (2) The storm drainage utility fee shall be established in amounts which will provide sufficient funds to properly manage and maintain public storm drainage facilities.
- (3) The storm drainage utility fee may be used for the construction of new storm drainage facilities, for the extension or modification of storm drainage facilities and for the maintenance of existing storm drainage facilities.
- (4) The Council may from time to time modify the storm drainage utility fee based upon revised estimates of the cost of properly managing, maintaining, extending, and constructing public storm drainage facilities.
- (5) Property not used for single-family dwelling purposes shall be considered to be furnished service in proportion to the amount of the property's impervious surface, and that for each 2,500 square feet (or increment of 100 square feet) of impervious surface, the property is furnished service equivalent to that furnished a single-family unit and that the minimum monthly fee shall be that established for a single-family unit.
- (6) The Council hereby classifies the fees imposed by this Code a fee not subject to the limits of section 11b, Article XI of the Oregon Constitution.

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**13.32.070 Fee Reduction or Waiver**

- (1) Except as the fee may be reduced or waived under subsection (2) of this Section, the obligation to pay the storm drainage utility fee arises when a person responsible uses storm drainage services. It is presumed that storm drainage services are used whenever there is an improved property and the person responsible requests water or sewer utility service. If there is no water service to the property or if water service is discontinued and the property is an improved property, the storm drainage utility fee shall be paid by the person having the right to occupy the property. The person required to pay the fee is hereafter referred to as the utility customer.
- (2) A utility customer may request a reduction or waiver of the storm drainage utility fee by filing an application on forms provided by the City. The storm drainage utility fee will be reduced in relation to the customer's ability to demonstrate that on-site storm drainage facilities meet or exceed the City's standards for storm water quantity and quality control at that site and the site does not discharge to public storm drainage facilities.
  - (a) Fee Waiver: The criteria for waiver of the storm drainage utility fee as it applies to a specific customer includes:
    - i. the location of the premises such that the premises has no frontage on a public street or driveway connection to a public street;
    - ii. the total retention of storm water with no effective discharge to storm drainage facilities;
    - iii. the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no storm water service from the storm drainage facilities; and
    - iv. proof that the petitioner's on-site storm drainage facilities are constructed and will be maintained to City standards.
  - (b) Fee Reduction to Lowest Rate Category: The criteria for reduction of the storm drainage utility fee to the lowest rate category as it applies to a specific customer includes:
    - i. total retention of storm water with no effective discharge to the storm drainage facilities;
    - ii. the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no storm water service from the storm drainage facilities;
    - iii. proof that the petitioner's on-site storm drainage facilities are constructed and will be maintained to City standards; and
    - iv. the petitioner's property has an existing driveway access to a public street.
    - v. The base rate for the lowest rate category will be charged because the user has a direct driveway access to a public street and therefore utilizes public storm drainage facilities in the public streets and rights-of-way.
  - (c) Any fee reduction or waiver given shall continue until the condition of the property is changed or until the Public Works Director determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.
- (3) For the purposes of this Chapter, dry wells are not an on-site mitigation control system eligible for fee reduction or fee waiver because of the potential water quality impact that dry wells may have on the City's groundwater resources.

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### **13.32.080 Storm drainage utility fee – Dedicated.**

All fees collected for the purposes specified in this Chapter shall be paid into the storm drainage accounts and accounted for by dedicated line items including, but not limited to, storm drainage maintenance and storm drainage construction. Such revenues shall be used for the purposes of the management, maintenance, extension, and construction of public storm drainage facilities.

### **13.32.090 Administration and Enforcement.**

- (1) The storm drainage utility fee shall be billed and collected with and as part of the monthly utility bill for those lots or parcels utilizing City water and/or sewer. For new construction the collection of the storm drainage utility fee will begin at the time the City begins collection of the monthly utility bill. In the event of non-payment, the City may bill the utility customer or take other action as authorized by law to collect from the responsible party.
- (2) In the event funds received from City utility billings are inadequate to satisfy in full all of the sanitary sewer charges, water charges, transportation maintenance fees and storm drainage utility fees, credit shall be given first to the sanitary sewer charges, second to the water service charges, third to the transportation maintenance fee and fourth to the storm drainage utility fee.
- (3) Any fee due which is not paid when due may be recovered in an action at law by the City. In addition to any other remedies or penalties provided by this Chapter, the Stayton Municipal Code or any other City ordinance, failure of any person responsible to pay fees promptly when due shall subject the person responsible to discontinuance of any utility services provided by the City and the City Administrator is empowered and directed to enforce this provision against such delinquent users. The employees of the City shall, at all reasonable times, have access to any improved property served by the City for inspection, repair, or the enforcement of the provisions of this Chapter. The City's enforcement rights shall be cumulative.

### **13.32.100 Administrative review – Appeals.**

- (1) Any utility customer who disputes the amount of the storm drainage utility fee or the category of use assigned to the customer's property pursuant to this Chapter may request a review and appeal such interpretation, but only in accordance with this Section. The dispute must first be presented to the Finance Director for review/settlement; and, if not settled, thereafter may be appealed to the City Administrator in accordance with this Section. Failure to appeal an interpretation made under this Chapter within the time and in the manner provided shall be sufficient cause to deny the relief requested. Disputes which result in changes in the storm drainage utility fee charged under this Chapter shall become effective with the next billing cycle.
- (2) Upon receipt of a disputed billing, the Finance Director shall conduct a review of the charges or the category of use assigned. The Finance Director will consider all relevant evidence presented by the customer and may request additional information from the public works department in order to render a decision. The Finance Director shall make a determination based on the evidence provided and provide notice to the customer.
- (3) A customer who wishes to appeal the Finance Director's decision shall submit a written appeal to the City Administrator within 10 days from the date of notice of the Finance Director's determination. The appeal shall specify the reasons for the appeal. The City Administrator shall review the matter and notify the appellant of the decision reached, in writing, within fifteen (15) calendar days. The City Administrator's decision shall be final.

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### **13.32.110 Exemptions.**

The City Council may, by resolution, exempt any class of user when the Council determines that the public interest deems it necessary or that the contribution to storm drainage facility use by the class to be insignificant.

### **13.32.120 Severability.**

In the event any section, subsection, paragraph, sentence or phrase of this Chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the Chapter shall continue to be effective. If a court of competent jurisdiction determines that this Chapter imposes a tax or fee, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the storm drainage fee shall be created and the remainder of this Chapter and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.

### **13.32.130 Violation: Penalties**

- (1) Except as otherwise set out specifically in this Chapter, any person violating any of the provisions or failing to comply with the requirements of this Chapter is guilty of a violation.
- (2) Except as otherwise provided in this Chapter, any person convicted of a violation of this Chapter shall be punished by a fine of not more than two hundred fifty dollars (\$250.00).
- (3) If any person has been convicted of a violation of this Chapter, at any time within two (2) years of such conviction, that person commits a second or subsequent violation, the person may be prosecuted as a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00).
- (4) The remedies provided in this section are cumulative and not exclusive. In addition to the penalties provided above and those specifically set out in particular sections of this code, the City, by and through its authorized personnel, may pursue any remedy provided by law including the institution of injunction, mandamus, abatement, or other appropriate proceeding to prevent, temporarily or permanently enjoin, or abate a code violation.

### **13.32.140 Violation: Each Act a Separate Violation**

Each day a violation continues constitutes a separate offense, and any person convicted of such offense shall be punished accordingly.

### **13.32.150 Effective Date**

This Chapter will take effect on March 15, 2014.