

ORDINANCE NO. 1896

INTRODUCED BY: _____

AN ORDINANCE AMENDING CHAPTER 10 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO ADD ARTICLE IV ESTABLISHING A STORMWATER MANAGEMENT UTILITY AND AUTHORIZING THE COLLECTION OF A FEE THEREFOR

WHEREAS, providing stormwater facilities for the drainage and control of flood and surface waters within the City of Commerce City (the “City”), including areas to be subdivided and developed, is necessary in order that storm and surface waters may be properly drained, treated and controlled and to protect the health, property, safety and welfare of the City and its inhabitants;

WHEREAS, in addition, the State of Colorado and the Federal government have mandated through a National Pollutant Discharge Elimination System (NPDES) Permit, but not funded, various stormwater management requirements resulting in the need for stormwater management activities and capital projects on the local level;

WHEREAS, currently, more than fifteen local communities in the Denver metropolitan area operate stormwater utilities and assess fees to fund stormwater quality and infrastructure mandates and activities;

WHEREAS, to fund the City’s stormwater management activities and capital projects, additional funding must be generated in some manner;

WHEREAS, the owners of real property within the City are the ultimate beneficiaries and users of the City’s stormwater management system and should therefore pay a portion of the costs of providing the necessary facilities, maintenance and administration therefor; and

WHEREAS, the City Council hereby finds and determines that to promote the public health, safety and welfare, it is in the best interests of the residents of the City to establish a stormwater management utility as an enterprise fund operation of the City for the purposes of coordinating, designing, constructing, managing, operating and maintaining the City’s stormwater management system and to create a reasonable and equitable program to finance capital projects for stormwater management and the operation and maintenance of current and future stormwater management facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. Chapter 10 of the Commerce City Revised Municipal Code is hereby amended to add a new Article IV related to Stormwater Management as follows:

ARTICLE IV. STORMWATER MANAGEMENT.

Sec. 10-4001. Stormwater management utility created.

There is hereby established in the city's public works department a stormwater management utility to be operated as an enterprise of the city and which shall be responsible for the construction, maintenance, administration and operation of the city's stormwater management system and such other functions or duties as are authorized by the city council or applicable law.

Sec. 10-4002. Purpose.

(a) The purposes of this article are as follows:

(1) To establish a reasonable and equitable program to fund stormwater management capital projects, NPDES Permit compliance, and the operation and maintenance of, and the administrative activities related to, current and future stormwater management facilities by collecting from the ultimate beneficiaries and users of the stormwater management system a reasonable fee therefor and prescribing the manner and method by which such fees may be collected;

(2) To promote the public health, safety and welfare by permitting the movement of emergency vehicles during flooding periods and minimizing flood losses and the inconvenience and damage resulting from uncontrolled and unplanned stormwater runoff; and

(3) To allow the city to respond to current state and federal stormwater management mandates.

(b) This article is not intended to guaranty or imply that property subject to the provisions of this article will be free from stormwater flooding or flood damage, and this article shall not create any liability on the part of the city or any officer or employee thereof for any such damage.

Sec. 10-4003. Definitions.

For the purposes of this article, the following terms shall have the meanings ascribed herein unless the context clearly indicates otherwise.

Fee or utility fee shall mean the stormwater management utility fee established and authorized by this article.

Impervious surface shall mean surfaces on or in real property where the rate of infiltration of stormwater into the earth has been reduced by the works of humans. For purposes of this article, buildings, human-made structures, driveways, patio areas, roofs, concrete or asphalt sidewalks, parking lots or storage areas and any other bricked, oiled, or hard-surfaced areas that impede passage of stormwater into the earth's surface are deemed to be impervious.

Maintenance shall mean and include, but not be limited to, inlet cleaning and repair, culvert cleaning and repair, ditch and shoulder maintenance, city-owned detention/retention/drainage pond cleaning and repair, accident and spill cleanup, street sweeping and weed mowing.

Stormwater shall be defined as set forth in article III of this chapter.

Stormwater management shall mean and include, but not be limited to, all activities related to the administration, planning, master planning, financing, construction, operation and maintenance of the stormwater system and NPDES Permit.

Stormwater management facilities shall mean 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 of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, 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; settling basins; 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 management system means all of the stormwater management facilities used by the city for the control of stormwater and runoff.

Undeveloped property means any parcel of property that is not used for parking or storage and upon which no structure or foundation, or other improvements or fixtures of a permanent nature, have been constructed.

Sec. 10-4004. Stormwater management utility fee.

(a) Fee established. There is hereby imposed on the owner of each and every lot or parcel of land within the city containing an impervious surface a stormwater management utility fee, as provided herein. This fee is deemed reasonable and necessary and shall pay the costs of constructing, operating and maintaining existing and future city stormwater management facilities.

(b) Categorization of property – basis and amount of fee.

(1) For the purpose of this article, property within the city is hereby categorized as follows:

a. Standard Single-family detached residential parcels half (½) acre or smaller in size (SFDRs);

b. All other parcels (Non-SFDRs).

(c) Amount and rate of fee. The fee rate shall be established by resolution of the city council, as amended from time to time, and in accordance with the provisions of this article.

(1) All SFDRs shall be assessed a flat fee per individual parcel.

(2) Non-SFDR fees shall be assessed per square foot of impervious surface.

(d) Exemptions. All public highways, streets, roadways, alleys, sidewalks, multi-use paths and trails and all other public rights-of-way, and any railroad rights-of-way, irrigation canals, lakes used as stormwater facilities, and undeveloped property are exempt from the fee imposed by this article.

Sec. 10-4005. Stormwater management enterprise fund.

There is established a stormwater management enterprise fund. All moneys received from stormwater management utility fees shall be paid into such fund. Such fund shall be used only for the purposes set forth in section 10-4006 of this article and shall not be used for general governmental purposes.

Sec. 10-4006. Use of stormwater management enterprise fund.

The stormwater management enterprise fund shall be used only to pay the costs of construction, operation and maintenance of the stormwater management system and the costs of administration of the stormwater management utility. The city may pledge all or any portion of the fund, including revenues anticipated to be collected, to the payment of principal, interest, premium, if any, and reserves for general obligation bonds, revenue bonds or any other obligations lawfully issued or otherwise contracted for by the city for the payment or other financing of costs of the stormwater management system, including the costs of administration of the stormwater management utility, or for the purpose of refunding any obligations issued or otherwise contracted for such purposes.

Sec. 10-4007. Billing for fee.

(a) SFDRs. The city shall collect the fee annually for SFDRs by certifying the appropriate fees to the County Treasurer of Adams County, Colorado, as provided by state statute, to be collected on the property owner's tax bill, or other method as determined by the city council and allowed by law.

(b) Non-SFDRs. The city may either collect the fee annually by certifying the appropriate fees to the County Treasurer as set forth in subsection a. above or by arranging special invoice/payment terms to be paid to the city's finance department.

Sec. 10-4008. Enforcement – lien declared.

(a) In the event the owner 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 fees imposed by this article, the city may pursue any remedy available at law or equity to enforce and collect the fee. The city may also recover, in addition to fees due, all court cost, attorney fees, and interest on the amount owing.

(b) All stormwater facilities supplied and furnished by the city and supported by the stormwater management utility fee shall be deemed to be supplied and furnished to the real property so served without regard to the actual person, business, organization or entity billed for stormwater facilities. Accordingly, 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, with priority over any other lien or encumbrance, 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) If the owner of a lot or parcel of land within the city fails to pay the stormwater management utility fee as required herein, unless it is shown that such failure is due to reasonable cause and not due to negligence, intentional disregard of this article, and without intent to defraud, all as determined by the director of finance, there shall be added to such fee ten percent (10%) of the deficiency, and interest in such case shall be collected at one-half (½) of the rate established by the Colorado Banking Commission pursuant to C.R.S. 39-21-110.5.

Sec. 10-4009. Administrative appeals.

(a) Administrative hearing petitions. Any owner who disputes the amount of the Stormwater Management Utility fee assessed against such owner’s property may petition for a hearing as provided herein.

(1) The director of the department of public works or designee is hereby authorized to hold all such hearings.

(2) Petitions for hearing must be in writing and filed no later than thirty (30) days after the date of the invoice, notice of assessment or other such initial billing for the fee.

(3) Petitions may be submitted only once to dispute the amount of or categorization for the fee, except upon a showing of changed circumstances sufficient to justify the filing of such additional petition. No authorization is made hereunder to challenge the amount of the fee rate established by resolution of the city council.

(b) Standing and basis for administrative hearing petition.

(1) Any administrative hearing petition authorized herein may be submitted only once in connection with a particular property except upon a showing of changed circumstances sufficient to justify the filing of an additional petition

(2) SFDRs. The owner of SFDR may petition only on the basis that property has been incorrectly classified as SFDR.

(3) Non-SFDRs. The owner of a Non-SFDR may petition upon one or more of the following bases:

a. The impervious area on the property has been improperly measured or calculated.

b. A computational error was made in calculating the amount charged.

c. The property is improperly classified as Non-SFDR.

d. The property is exempt pursuant to section 10-4004(d) herein.

(c) Informal meeting. The public works director or designee may attempt to resolve the issues raised in the petition via a telephone conference or informal meeting with the property owner. The public works director shall make a final decision on the petition within thirty (30) days of receipt of the petition and may confirm or modify such fee or determination in accordance with the facts submitted. Such decision shall be in writing and notice thereof shall be mailed to or served upon the petitioner within ten (10) days from the date of the decision. Service by certified mail, return receipt requested, shall be conclusive evidence of notice for the purpose of this article. Such action shall be considered final and the remaining total liability, if any, shall be paid on or before thirty (30) days after the date of the decision.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED
THIS _____ DAY OF _____, 20__.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS _____ DAY OF _____, 20__.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk