

ORDINANCE NO. 2018-_____

**AN ORDINANCE OF THE SOUTH SALT LAKE CITY COUNCIL
ENACTING TITLE 13.25 TO CREATE A STORM WATER UTILITY,
IMPLEMENT STORM WATER USER FEES,
AND ESTABLISH A STORM WATER ENTERPRISE FUND**

WHEREAS, the South Salt Lake City Council (the “Council”) met in a regular session on June 13, 2018, to consider, among other things, enacting Title 13.25 of the City of South Salt Lake Code of Ordinances with respect to the creation and operation of a storm water utility; and

WHEREAS, the City of South Salt Lake (“City”) owns and operates a storm water collection system which has been developed over many years and consists of a network of natural conveyances and manmade structures and conduits that collect, control and route storm water runoff; and

WHEREAS, the Council finds that inadequate management of the quantity and quality of storm water runoff causes flooding and property damage, carries concentration of heavy metals, oils, toxic materials into receiving and ground waters, and degrades the integrity of City neighborhoods and infrastructure; and

WHEREAS, the Council finds that such are hazards and pose a significant risk to public health, safety, and welfare; and

WHEREAS, the Council finds that such risks are best managed by a storm water system that is effectively maintained, improved, repaired, operated, regulated, and controlled, and thereby conveys a significant service to residents and businesses within the City limits; and

WHEREAS, the City has authority under the Utah Municipal Code, Utah Code Annotated Section 10-8-38(1)-(2), to “construct, reconstruct, maintain, and operate ... culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment and facilities necessary to the proper drainage ... of the city” and make a “reasonable charge” for such services;

WHEREAS, pursuant to the Federal Clean Water Act, 33 U.S.C. Chapter 26, the U.S. Environmental Protection Agency (“EPA”) has established rules and regulations setting forth the National Pollutant Discharge Elimination System (“NPDES”) permit requirements for municipal storm water discharges (“Phase II Permit Program”); and

WHEREAS, the State of Utah, through its Department of Environmental Quality (“DEQ”), has been delegated authority to administer the Phase II Permit Program and has adopted state rules and regulations implementing the Program; and

WHEREAS, the City, along with other municipalities in the Jordan Valley as a co-permittee of a Phase II Storm Water Permit, is required, among other things, to implement a storm water management program and associated ordinance to (1) control the contribution of pollutants to the storm water system associated with industrial sites, construction sites, and other activities within the City; (2) prohibit illicit discharges of pollutants into the storm water collection system spills, dumping, or disposal of materials other than storm water; (3) promote implementation of long-term storm water controls on development sites; (4) educate City residents and businesses about the storm water program; and (4) enforce compliance with the program and ordinance; and

WHEREAS, the City has an estimated \$11.3 million in storm water capital needs and projected annual operations costs of \$1,390,000 to implement the storm water program and make incremental capital improvements; and

WHEREAS, unlike all other co-permittees and most cities along the Wasatch Front, the City does not currently have a dedicated revenue source for storm water activities and capital costs;

WHEREAS, based on recommendations made to the City by consulting engineers Hansen, Allen, & Luce, Inc. (“Engineers”), the City Engineer, and City legal counsel, the Council finds that the owners of properties with impervious surfaces within the City contribute to, make use of, and benefit from the City’s storm water collection system and should proportionately contribute to the funding of the City’s efforts to maintain, operate, regulate, enforce, and improve the City’s storm water collection system and storm water management program; and

WHEREAS, the Council finds that implementing a storm water utility will assist in achieving compliance with the requirements of the Phase II Storm Water Permit; and

WHEREAS, the Council finds that implementing a storm water utility will enable ongoing maintenance, operations and the improvement of the storm water collection system and implementation and enforcement of the storm water program; and

WHEREAS, the Council hereby finds that the establishment of a storm water utility is the most fair and equitable method to fund the City’s storm water management program including the requirements of the Phase II Storm Water Permit, and the establishment of a storm water utility is in the best interest of the health, safety, and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED by the South Salt Lake City Council that the following be adopted as Title 13.25 of the City of South Salt Lake Code of Ordinances:

13.25.01. Policy and Purpose.

The City has determined and hereby declares that the City’s Storm Water System benefits and services all property within incorporated City limits and protects the health, safety, and welfare of the City and its residents, businesses, and visitors by managing and

controlling storm water runoff, reducing hazards to life and property from storm water runoff, reducing undesirable storm water conditions, and preventing polluted waters from entering receiving waters.

13.25.02 Definitions.

“Base Rate” means the standard Storm Water User’s fee set forth in the Consolidated Fee Schedule for the City of South Salt Lake.

“BMP” means Best Management Practices to improve storm water quality and prevent or detain storm water runoff.

“City” means the City of South Salt Lake.

“Council” means City of South Salt Lake Council.

“County” means Salt Lake County.

“Customer” or “Person” means any individual; public or private corporation and its officers; partnership; association; firm; trustee; executor of an estate; the State or its departments, institutions, bureaus, agencies; county; city; political subdivision; or any other governmental or legal entity recognized by law.

“Developed Property” means any parcel that has been altered from its natural conditions by grading, filling, overlaying, or the constructions of improvements or other impervious surfaces.

“Equivalent Residential Unit” or “ERU” means a unit equal to 2,700 square feet of impervious surface area. This is based on an average single-family residential parcel, which has an impervious surface area of 2,700 square feet. Total ERU's are calculated by dividing total square feet of impervious surface by 2,700 (one ERU), rounded to the nearest whole number.

“Impervious Surfaces” means any hard surface that prevents or hinders the absorption of water into the soil, or that causes reduced quality of runoff water, or causes water to runoff in greater quantities or at greater flow rates than the natural surface.

“Mitigation” means onsite facilities, BMPs or infrastructure which retain storm water onsite, manage water runoff, reduce storm water flow, and/or improve storm water quality.

“Other Developed Property” means all property that is not Single-Family Residential Property including, but not limited to, commercial, industrial, institutional, and multi-family residential property.

“Parcel” means a separately, segregated unit of land having an identified owner(s). A parcel has boundaries and a surface area which is identified and documented with an identification number by Salt Lake County.

“Phase II Permit” means the UPDES Permit issued to the Jordan Valley municipalities, including the City, Permit No. UTS000001, as amended.

“Reduced Rate” means the reduced Storm Water User’s fee rate set forth in the Consolidated Fee Schedule for the City of South Salt Lake for property owners that meet the requirements of Section 13.25.04(D).

“Single-Family Residential” means any one parcel of land containing no more than one single-family dwelling unit.

“Storm Water” means water produced by storms, surface drainage, snow and ice melt, and any other water produced by natural means.

“Storm Water Fund” means the fund created by this ordinance to receive Storm Water User Fees and operate, maintain, and improve the City’s Storm Water System.

“Storm Water Maintenance Agreement” means the permit required in Title 13.78.090 of the Storm Water Management Ordinance.

“Storm Water System” means all man-made storm sewer facilities and conveyances, and natural storm water systems owned or maintained by the City that store, control, treat, and/or convey storm water.

“Storm Water Program” means the City’s program developed to implement the requirements of the Phase II Permit.

“Storm Water Utility” means the utility created by this chapter which operates, maintains, regulates, and improves storm water facilities and programs within the City.

“Storm Water User Fee” means the fee(s) calculated pursuant to Section 13.25.04 of this chapter by multiplying the number of ERUs for the parcel (or one ERU for Single-Family Residential Parcels) by the Base Rate or Reduced Rate if applicable.

“Storm Water System” means all man-made storm water facilities, man-made or naturally occurring storm water conveyances including, but not limited to: designated open space and areas owned by and maintained by the City that retains, controls, or conveys storm water.

“Undeveloped Parcel” means any parcel that has not been altered, graded, filled, overlaid, or constructed and has less than five (5) percent Impervious Surface.

“UPDES Permit” means the state/national program for issuing, modifying, revoking and reissuing, termination, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402, and 405 of the Clean Water Act.

13.25.03 Storm Water Utility.

A. **Creation.** There is hereby created and established a Storm Water Utility operated by the City and funded by a service fee rate structure. The Storm Water Utility, under the legislative policy, supervision and control of the Mayor and Council, shall:

1. Administer and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the Storm Water System and the Storm Water Program; and

2. Implement the requirements of the Phase II Permit and the Storm Water Program.

B. **Enterprise Fund.** There is hereby established a storm water utility enterprise fund (“Storm Water Fund”) to record all revenue, expenses, asset and liability information as well as other financial transactions related to the Storm Water Utility. All fees and other revenue collected in accordance with this ordinance shall be recorded into the Storm Water Fund accounts and shall be used exclusively for the Storm Water Utility. All revenue and expenses and other financial information shall be reported as prescribed by the State of Utah’s Uniform Fiscal Procedures Act for Utah Cities.

C. **Administration.** The Storm Water Utility shall be administered by the City Engineer unless otherwise designated by the Mayor.

13.25.04 Storm Water User Fee

A. **Fee Imposed.** Beginning October 1, 2018, all owners of properties within the City that have Impervious Surfaces contribute runoff water to the Storm Water System or otherwise benefit from the Storm Water System are responsible for paying the Storm Water User Fee as set forth in this chapter.

B. **Base Rate.** The Council, by ordinance or resolution, shall establish, and periodically adjust, the Base Rate for the Storm Water Utility to ensure adequate revenues to fund the costs of storm water management. The Base Rate shall be set forth in the City of South Salt Lake Consolidated Fee Schedule, available at Title 3.11.

C. **Amount of Charge.** For purposes of calculating the Storm Water User Fee, there is hereby established an Equivalent Residential Unit (ERU”) of 2,700 square feet to be used to calculate respective fees using the Base Rate set forth in the City of South Salt Lake Consolidated Fee Schedule, Title 3.11. The ERU is derived from the average Impervious Surface of Single-Family Residential Parcels within the City limits. For the

purposes of determining the Storm Water User Fee, all properties are classified into one of the following classes:

1. **Single-Family Residential.** The Council finds that the intensity of development of most parcels classified as Single-Family Residential is similar and that it would be inefficient to determine the precise Impervious Surface on each parcel. Therefore, all Single Family Residential properties in the City shall be charged the equivalent of one (1) ERU multiplied by the Base Rate.

2. **Other Developed Property.** The Storm Water User Fee for all other non-Single-Family Residential property shall be the Base Rate multiplied by the numerical factor obtained from dividing the total impervious surface area (in sqft) of Other Developed Property by one ERU and rounded to the nearest whole number.

$$\frac{(\text{Impervious-Surface square footage} \div \text{One ERU}) \times \text{Base Rate}}{= \text{Storm Water User Fee}}$$

3. **Undeveloped Property.** Any parcel that has not been altered by grading, filling or construction and which has less than 5 percent impervious surface shall have no Storm Water User Fee assessed.

D. Reduced Rate for Implementing BMPs. An owner of Other Developed Property may apply to the City to calculate a Storm Water User Fee using the Reduced Rate set forth in the City of South Salt Lake Consolidated Fee Schedule, Title 3.11, where the owner has implemented Mitigation to reduce storm water runoff from the property. The Reduced Rate is available for commercial, industrial, institutional and multi-family developments that implement long term Best Management Practices “BMPs” to reduce or remove pollutants from storm runoff, before it leaves the development site. To qualify for this rate, the owner or representative of a parcel must:

1. Obtain BMP approval and secure a Storm Water Maintenance Agreement through the City's Engineering Department; and

2. Agree to allow inspections of the property to ensure the approved BMP is still in place and properly maintained. If BMPs are not properly maintained, the site will no longer qualify for a reduced rate.

E. Property Owners Responsible for Charges. The property owner of record is responsible for the Storm Water User Fee. An alternative billing arrangement may be requested as set forth in Section 13.25.05; however, the property owner retains all obligations for payment of Storm Water User Fees.

F. Policies. The City may adopt policies and rules to assist in applying, administering, and interpreting the service fee credit and other provisions related to the Storm Water Utility.

G. **Appeals.** Any person or property owner who is aggrieved by the provisions of this chapter, or the application and calculation of the service charge to their property may appeal to the City pursuant to Section 13.74.090 and Title 2.22 of the South Salt Lake City Code.

13.25.05 Billing and Collection. The City shall bill property owners of Impervious Surfaces for the Storm Water User Fee via a separate line item on existing utility bills or a separate invoice, consistent with the procedures set forth in Section 13.74.04 of the South Salt Lake City Code. Charges and fees shall be considered delinquent if not paid as determined by rules, policies, and procedures established by the City. Such delinquent fees shall be subject to recovery, with any assessed delinquent charges and fees, by civil action or otherwise pursuant to Section 13.74.040(H).

A. **Alternative Billing Arrangement.** Owners may assign the payment of the Storm Water User Fee to non-owners by signing an “Alternate Billing Agreement” with the City. Multi-Family properties may also choose to have individual property owners billed separately pursuant to an Alternate Billing Agreement.

13.25.06 Annual Report. The City’s Storm Water Division shall develop an annual report on the Storm Water Utility to be made available to the Council and Storm Water Utility Customers. This report shall summarize the financial activities of the Utility and the major areas of expenditure, activities, accomplishments, and the upcoming year’s priorities.

13.25.07 Severability. If any section of this chapter is determined to be illegal, invalid, or superseded by other lawful authority, including any federal or state legislative, regulatory, or administrative action, such section shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section.

This ordinance will take effect upon execution by the Mayor or after fifteen days from transmission to the office of Mayor if neither approved nor disapproved by the Mayor.

DATED this _____ day of _____, 2018.

BY THE CITY COUNCIL:

Ben B. Pender, Council Chair

ATTEST:

Craig D. Burton, City Recorder

City Council Vote as Recorded:

Beverly _____
deWolfe _____
Kindred _____
Mila _____
Pender _____
Siwik _____
Thomas _____

Transmitted to the Mayor's office on this _____ day of _____, 2018.

Craig D. Burton, City Recorder

MAYOR'S ACTION: _____

Dated this _____ day of _____, 2018.

Cherie Wood, Mayor

ATTEST:

Craig D. Burton, City Recorder

APPROVED AS TO FORM
DATE: 6/13/18

CITY ATTORNEY