

Chapter 19

**STORMWATER USER FEES**

- Sec. 19-1:** Authorization
- Sec. 19-2:** Purpose
- Sec. 19-3:** Definitions
- Sec. 19-4:** Applicability
- Sec. 19-5:** Stormwater Division Created
- Sec. 19-6:** Stormwater Division Administration
- Sec. 19-7** Policies and Procedures
- Sec. 19-8:** Stormwater User Fee
- Sec. 19-9:** Billing and Enforcing Payment of Stormwater User Fees
- Sec. 19-10:** Stormwater Fund and Expenditures

**Sec. 19-1. Authorization.**

This Chapter is enacted pursuant to the authority vested in the City by Article XII, Section 2 of the Idaho Constitution, the Idaho Revenue Bond Act (I.C. § 50-1027 - 50-1042) and Idaho Code Sections 50-301, 50-332, 50-333 and 63-1311.

**Sec. 19-2. Purpose.**

The purposes of this Chapter are:

- A. To equitably allocate the operation, maintenance, improvement, and regulatory compliance expenses of the City's Stormwater Control System to users of the System in proportion to the level and type of services received from the System.
- B. To provide for the establishment of a system of stormwater user fees and provide that the fees collected are set aside and designated solely for use for the maintenance, operations, improvements, regulatory requirements, and program costs of the City's Stormwater Control System.
- C. To provide that all services mandated or authorized by this Chapter be furnished to customers at the lowest possible cost.
- D. To establish standards and implement programs necessary and/or convenient to comply with the requirements of the City's MS4 Permit as well as the rules governing collection, treatment,

detention and disposal of stormwater over the shallow and deep aquifers that underlie Moscow.

- E. To establish a City Stormwater Division to operate and maintain the City's Stormwater Control System and to manage stormwater and drainage issues within the City.

**Sec. 19-3. Definitions.**

For purposes of this Chapter, the following terms and acronyms shall have the meaning herein set forth unless the text of the use of the term clearly requires otherwise:

- A. *Administrator or Stormwater Administrator.* The person serving under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Division, the Stormwater Control System, and the City's system of stormwater user fees.
- B. *Impervious Surface.* Material which resists or blocks the passage of water into soils as would occur under natural conditions. Examples include but are not limited to, rooftops, roads, alleys, parking lots, sidewalks, patios, decks, and swimming pools.
- C. *MS4 Permit.* The national pollutant discharge elimination system (NPDES) permit issued to the City by the Environmental Protection Agency in compliance with the provisions of the Clean Water Act, 33 USC section 1251 et seq., as amended by the Water Quality Act of 1987, PL 100-4, for stormwater discharges from small municipal separate storm sewer systems also known and referred to as an MS4 Permit. Idaho is in the process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.
- D. *Stormwater Control System.* The City-maintained system of ditches, channels, swales, culverts, basins, treatment systems, gutters, inlets, storm pipes,

outfalls, ponds, creeks, rivers, wetlands, and any other appurtenances necessary, useful or convenient for the orderly collection, conveyance, treatment, and disposal of municipal stormwater runoff.

- E. Stormwater Fund.* A dedicated stormwater enterprise fund that is kept separate from the City's General Fund and solely used to cover stormwater costs, such as but not limited to: updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; studying, planning, operating, maintaining, and constructing the Stormwater Control System; and complying with all applicable stormwater regulations.
- F. Stormwater Review Board.* A group of people chosen by the Deputy City Supervisor to review appeals of the Stormwater Administrator's user fee determination.
- G. Stormwater User Fee.* A reasonably individualized fee charged to property owners or tenants for stormwater services provided by the City Stormwater Control System.

**Sec. 19-4. Applicability.**

All property, within the corporate limits of the City, containing impervious surface that drains stormwater runoff into the City's Stormwater Control System is subject to this Chapter. Properties that are not subject to the Chapter are exempt from the Stormwater user fee created by this Chapter.

**Sec. 19-5. Stormwater Division Created.**

- A. Stormwater Division Created. There is hereby created and established a Stormwater Division for the City. The Stormwater Division will have regulatory authority and responsibility for planning, design, construction, maintenance, operation, and administration of the City's Stormwater Control System, and the services provided by the City's Stormwater Control System.

- B. Stormwater Division's Regulatory Functions. The Stormwater Division is charged with administering and enforcing the City's existing stormwater ordinances, codes, and standards, as well as developing, administering, and enforcing future stormwater ordinances, codes, and standards necessary to comply with State and Federal regulations affecting the City's provision of stormwater services to customers within the City.

**Sec. 19-6. Stormwater Division Administration.**

- A. Stormwater Division Administration. The Stormwater Division shall be administered under the direction of a Deputy City Supervisor. The Stormwater Division will be administered in a manner similar to the City's existing Public Utilities.
- B. Stormwater Administrator. The Stormwater Division, Stormwater Control System, and City system of stormwater user fees shall be under the supervision of the Stormwater Administrator who shall serve in such capacity under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Division.
- C. Annual Reports. In order for the City Council to exercise its authority under I.C. § 50-1031, the Stormwater Division shall provide the Council with an annual report of the activities funded by stormwater user fees during the preceding year and a projection of the upcoming year's expenditures.

**Sec. 19-7. Policies and Procedures.**

The Stormwater Administrator is authorized to establish and update, from time to time, written policies and procedures to implement the provisions of this Chapter.

**Sec. 19-8. Stormwater User Fee.**

- A. Stormwater User Fee. The City may establish a system of periodic stormwater user fees that are

- proportionate to the costs of providing proprietary stormwater services to customers within the City in accordance with the costs of the operation and maintenance of the City's Stormwater Control System, including administration, planning, repair, improvement, regulatory compliance, and other stormwater costs, and for any redemption of bonds that are used to finance any system improvement.
- B. Fee Established by Resolution. The fee authorized by this Chapter will be set by Resolution of the City Council.
- C. Nature and Purpose of User Fee. The fees authorized by this Ordinance are not a one-time impact fee, capitalization fee, or buy-in fee. Rather, the fees will be charged to users on an ongoing, periodic basis. Revenue collected may be used for ongoing and recurring stormwater expenses, such as operations and maintenance, as well as capital expenditures and retirement of debt associated with capital expenditures.
- D. Quantification of User Fee. The amount of a customer's stormwater user fee shall be based on the user's pro-rata share of the cost of service a City stormwater customer receives from the City Stormwater Control System. The fee shall be reasonably determined based on the volume of runoff from a customer's property (as reflected in the extent of impermeable surface) into the City Stormwater Control System. Impervious surface area is well correlated with urban runoff volume; therefore, the volume of runoff into the City Stormwater Control System will be based on the amount of impervious surface on a customer's property that drains into the City Stormwater Control System. In addition, to better individualize user fees, customers may provide information to the City under Subsections 'E' and 'I' of this Section regarding on-site factors that eliminate or reduce the volume of customer's runoff, or the pollution it contains.
- E. System of User Fee Credits. The City shall provide a written system of user fee credits to better individualize fees to reflect a customer's stormwater burdens and services. The system of user fee credits will reasonably account for on-site practices or conditions that significantly (1) affect the expected volume and pollution of runoff flowing from a customer's property to the City Stormwater Control System; or (2) otherwise affect the cost for the City to manage and dispose of the customer's runoff. Some classes of stormwater customers may provide information to the Administrator and apply for applicable user fee credits. A decision regarding credit eligibility will be made by the Administrator within thirty (30) days of receiving a complete application. The burden of proof for initial and ongoing credit eligibility shall lie with the customer. The City may, at its discretion, charge a credit application processing fee that reasonably reflects the administrative cost of reviewing and processing the application.
- F. Exemption from User Fee. Properties that do not use the Stormwater Control System are exempt from the Stormwater User Fee because: (1) the property has no impermeable surface, (2) the property is served by its own stormwater system such that the property's stormwater runoff does not discharge to the City's Stormwater Control System, or (3) the property is directly and indirectly hydraulically disconnected from the City's Stormwater Control System. Customers may submit a request for an exemption under Subsections 'E' and 'I' of this section.
- G. Periodic Revisions to Fee Calculation. The City shall periodically revisit the stormwater fee structure and rate and make adjustments as necessary to account for the most recent information on anticipated stormwater costs, debt obligations, revenue on hand, and anticipated fees and other revenue.

- H. Customer Database. The City will use readily available information, such as aerial photographs or other data, to prepare a stormwater customer database containing calculations of impervious surface area on parcels within the City, along with parcel ownership. The City shall keep and maintain the customer database of impervious surface and fees over time. The City will recalculate a customer's impervious surface and fee, including reviewing whether the property is exempt, each time additional development occurs on the property that would significantly increase or decrease the amount of the fee. The recalculation of the fee will be triggered by an application for a building or site development permit.
- I. Stormwater User Fee Corrections. The City shall provide a process for customers to submit information to the Administrator to adjust or eliminate their stormwater user fee. A customer who believes that their fee is based on an incorrect calculation of impervious surface, that the subject property does not receive any drainage services from the City Stormwater Control System (for the reasons described in Subsection F above), or otherwise has an incorrect fee, may submit a written recalculation request to the Administrator within thirty (30) days after the fee is established or adjusted. The request must identify the basis for disagreement with the user fee and be accompanied by relevant supporting documentation. The City shall determine whether the fee should be recalculated and, if so, recalculate the fee, and notify the requestor, in writing, no later than thirty (30) calendar days following receipt of the completed written request for recalculation.
- J. Appeal of Stormwater User Fee Correction Decision. The Stormwater Administrator's decision regarding user fee credits or correction of user fees, as allowed under Subsections 'E' and 'I' of this Section, may be appealed to the

Stormwater Review Board by submitting a written appeal to the Stormwater Administrator within thirty (30) calendar days after the Administrator issues its decision. The request must identify the error(s) committed by the City in recalculating the fee and any other basis for claim of incorrect calculation and be accompanied by relevant supporting documentation. The Stormwater Review Board will not hold a public hearing on the appeal but will meet and review all submitted information and decide on the appeal. A final written decision from the Review Board will be issued no later than thirty (30) calendar days following receipt of the completed written request for recalculation unless the appellant agrees to an extension.

- K. Refund of Overpayment. The City will refund any stormwater user fee overpayment, plus any statutory interest, within thirty (30) calendar days if either the Stormwater Administrator or the Review Board determines that a user fee was improperly calculated as allowed by this Section.

#### **Sec. 19-9. Billing and Enforcing Payment of Stormwater User Fees.**

All billings for user fees charged under the provisions of this Chapter will be billed and collected in the same manner as the City's other Public Utilities as it relates to billing, payment, delinquency, and penalty provisions.

#### **Sec. 19-10. Stormwater Fund and Expenditures.**

- A. Segregation of Funds. All fees and charges received and collected under authority of this Chapter shall be deposited and credited to a special enterprise fund to be designated as the Stormwater Fund. All revenue accruing to the Stormwater Fund shall be maintained in a separate bank or financial account from, and shall not be co-mingled with, the City's general revenue fund.

- B. Accounting of Receipts and Expenditures. The accounts of the Stormwater Fund created by this Section shall show all receipts and expenditures for the maintenance, construction, operation, upkeep and repair of the City's Stormwater Control System, including the payment of any System bonds issued by the City, which, from time to time, may be outstanding.
- C. Other Revenue Sources. From time to time, the City, in its discretion, may deposit other monies into the Stormwater Fund to be used to cover stormwater costs, including, for example, revenue from grants, damages or penalties collected, or contributions of general revenue of the City.
- D. Expenditure on System Expenses Only. All funds generated by this Chapter, as well as other deposits to the Stormwater Fund as provided in Subsection C, will only be expended on the operation, maintenance and other expenses, including regulatory compliance, of the Stormwater Control System. No general street maintenance, repairs, or improvements such as filling potholes, repaving, striping, winter sanding, removal of limbs and other large debris from streets, or other general fund expenditures may be charged to the Stormwater Fund; however, repair and replacement of curbs and gutters and removal of pollutants from the Stormwater Control System via sweeping or other methods is authorized in order to maintain the integrity of the Stormwater Control System and comply with applicable regulations. The Stormwater Administrator and the Finance Director are charged with adopting additional policies and guidelines to ensure that monies in the Stormwater Fund are only spent on valid drainage system expenses.
- E. Availability of Deposited Funds. As provided by law, when budgeted and appropriated, the funds and credits to the account of the Stormwater Fund shall be available for the payment of maintenance, operation, repairs, and upkeep of the Stormwater Control System, compliance with the MS4 Permit, and to the extent legally available for payment into a sinking fund established for the payment of the principal and interest of any general obligation system bonds which shall from time to time be outstanding.
- F. Independence from the General Fund. The Stormwater Division shall operate independently of the City's general fund and shall have the same relationship to the City as the City's current Utility Programs. Upon creation of the Stormwater Division, the City's drainage facilities and assets, other than streets, shall be transferred to the Stormwater Division in accordance with Governmental Accounting Standards Board (GASB) Financial Reporting Principles.