

COUNCIL ACTION FORM

Admin Item

Meeting Date: August 15, 2013

Staff Contact: John Sullivan, Public Works Director

Agenda Item: Consideration of an ordinance establishing Article 5 of Chapter 15 of the Westwood Municipal Code Titled "Storm Water Management System and Operation of the Storm Water Management Utility".

Background / Description of Item:

Charter Ordinance No. 16 was approved at the June 6, 2013 Special City Council meeting, and published in *The Legal Record* in the June 11, 2013 and June 18, 2013 editions. After the sixty-day protest petition for a referendum on the matter, if no petition is filed, the charter ordinance becomes effective on the 61st day after publication. No petitions for a referendum have been submitted.

Charter Ordinance No. 16 provides the provisions which will allow the City of Westwood to operate a Storm Water Management System and the Operation of the Storm Water Management Utility.

The proposed ordinance will establish a new Article 5, of Chapter 15 of the Westwood Municipal Code for a Storm Water Utility, including the creation, administration, operating budget, revenue, appeal process, and fee collection process. The rates to be charged will be established by resolution in a separate Council action.

The City Clerk will have until August 25, 2013, to provide to the County the required data for collection of the Westwood Storm Water Utility Fee on the 2013 property tax bills, which will be for payment in December of 2013 and May of 2014.

Staff Recommendation:

Staff recommends that the City Council pass Ordinance No. _____ adopting Article 5 of Chapter 15 of the Westwood Municipal Code Titled "Storm Water Management System and Operation of the Storm Water Management Utility".

ORDINANCE NO. 936

AN ORDINANCE OF THE CITY OF WESTWOOD, KANSAS AMENDING IN PART AND REPEALING IN PART CHAPTER 15, ARTICLE 5 OF THE WESTWOOD CITY CODE, RELATING TO STORM WATER UTILITY.

WHEREAS, Article 5 is currently reserved for future use;

WHEREAS, the Governing Body, upon further review of Article 5, wishes to create a Storm Water Utility for the City of Westwood, Kansas.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

SECTION 1. That Chapter 15, Article 5 of the Westwood City Code is hereby amended to read as follows:

ARTICLE 5. STORM WATER MANAGEMENT SYSTEM AND OPERATION OF THE STORM WATER MANAGEMENT UTILITY.

15-501. Outline of Sections.

- 15-502 Definitions
- 15-503 Creation of Storm Water Utility
- 15-504 Findings and Determinations
- 15-505 Administration
- 15-506 Operating Budget
- 15-507 Storm Water Management Service Fee
- 15-508 Appeal Procedure
- 15-509 Storm Water Service Management Fee Collection
- 15-510 Storm Water Utility
- 15-511 ERU Rate and ENRU Rate
- 15-512 Severability

15-502. Definitions. In addition to the words, terms and phrases elsewhere defined in this Article, the following words, terms and phrases, as used in Article, but only for the purposes of this Article, shall have the following meanings:

- (1) "Bonds" means revenue or general obligation bonds or notes heretofore or hereafter issued to finance the costs of storm water management.
- (2) "Building Permit" means a permit issued by the Building Inspector/Code Administrator which permits construction on a structure.
- (3) "City" means the City of Westwood, Kansas.

- (4) "City Council" means the governing body of the City.
- (5) "Costs of Capital Improvement" means costs incurred in providing capital improvements to the storm water management system or any portion thereof including, without limitation, alteration, enlargement, extension, improvement, construction, reconstruction, and development of the storm water management system; professional services and studies connected thereto; principal and interest on bonds heretofore or hereafter issued, including payment of delinquencies of principal and interest due on bonds that are otherwise payable from special assessments; studies related to the operation of the system; costs of the storm water management service fee study, performed to establish storm water management service fees for the storm water utility and to determine other start up costs of the storm water utility; costs related to the National Pollutant Discharge Elimination System Permit study, application, negotiation and implementation, as mandated by federal and state laws and regulations; acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise, for the storm water management system or for its protection; and costs associated with purchasing equipment, computers, furniture, etc., necessary for the operation of the system or the utility.
- (6) "Debt Service" means an amount equal to the sum of (i) all interest payable on bonds during a fiscal year, and (ii) any principal installments payable on the bonds during such fiscal year.
- (7) "Developed Property" means real property, other than undisturbed property.
- (8) "Director" means the person appointed by the City to be the Director of the City's Public Works Department or the Director's designee.
- (9) "Dwelling Unit" means one or more rooms designed, used or intended for living quarters for one (1) family, with a kitchen, sleeping and sanitary facilities in a single-family, duplex, multi-family or condominium residential property.
- (10) "Effective Date" means the date this ordinance is published in the official City newspaper and, pursuant hereto, takes effect.
- (11) "Equivalent Residential Unit" (ERU) means a unit of measure, established by a City Council resolution or ordinance, that is equal to 500 square feet of impervious surface area of single-family residential property with a single-family detached dwelling unit, detached garage and/or accessory structures, athletic courts, swimming pools and any paved or hard surface driveways located thereon within the City's limits.
- (12) "Equivalent Residential Unit Rate" (ERU Rate) means a storm water management service fee, established by City Council resolution or ordinance, charged for each ERU.
- (13) "Equivalent Non-Residential Unit" (ENRU) means a unit of measure, established by a City Council Resolution or Ordinance, that is equal to 500 square feet of impervious surface area.
- (14) "Equivalent Non-Residential Unit Rate" (ENRU Rate) means a storm water management service fee, established by City Council Resolution or Ordinance, charged for each ENRU.
- (15) "Exempt Property" means public right-of-way, public trails, public streets, public alleys, public sidewalks, and public lands and/or easements upon which the public storm water management system is constructed and/or located.

- (16) "Fiscal Year" means a twelve-month period commencing on the first day of January of any year.
- (17) "Impervious Area" means the total number of square feet of hard surface area on a given property that either prevents or retards the entry of water into the soil matrix, or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under natural conditions as undisturbed property. "Impervious area" includes but is not limited to, roofs, roof extensions, driveways, pavement and athletic courts, swimming pools, detached garages and/or accessory structures.
- (18) "Nonresidential Developed Property" means developed property other than residential developed property.
- (19) "Operating Budget" means the annual storm water utility operating budget adopted by the City for the succeeding fiscal year.
- (20) "Operations and Maintenance" means, without limitation, the current expenses, paid or secured, for operation, maintenance and repair and minor replacement of the system, as calculated in accordance with generally accepted accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including professional services, equipment costs, labor costs, and the cost of materials and supplies used for current operations.
- (21) "Public Storm Water Management System" means all elements of the storm water management system that have been officially dedicated to and accepted by the City.
- (22) "Residential Developed Property" means developed property used for single family detached dwelling units and/or up to and including 4 attached dwelling units.
- (23) "Revenues" means all rates, fees, assessments, rentals, charges or other income received by the storm water utility in connection with the management and operation of the storm water management system, including amounts received from the investment or deposit of monies in any fund or account, as calculated in accordance with generally accepted accounting practices.
- (24) "Storm Water Management Service Fee" means a fee authorized by Charter Ordinance 16 and this Article, as set forth in a resolution or an ordinance adopted or amended by the City Council, established to pay operation and maintenance, costs of capital improvements, debt service associated with the storm water management system and other costs included in the operating budget.
- (25) "Storm Water Management System," "Sewer System" or "System" means storm sewers that exist on the Effective Date or that are hereafter established, and all appurtenances necessary in maintaining and operating the same, including, but not limited to, pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; wet and dry bottom basins; and other flood control facilities and works for the collection, transportation, conveyance, pumping, treatment, control, management, and disposal of storm or surface water or pollutants originating from or carried by storm or surface water.

- (26) "Storm Water Utility" or "Utility" means the utility created by this Article to operate, maintain and improve the storm water management system and for all other purposes, as set forth in this Article.
- (27) "Undisturbed Property" means real property that has not been altered from its natural condition in a manner such that the entrance of water into the soil matrix is prevented or retarded.

15-503. CREATION OF A STORM WATER UTILITY. Pursuant to the provisions of K.S.A. 12-3101, et seq., as modified by City Charter Ordinance No. 16, the City's general home rule authority, nuisance abatement authority, police powers and all other authority, the Westwood City Council does establish a storm water utility and declares its intention to operate, construct, maintain, repair and replace the public storm water management system and operate the storm water utility.

15-504. FINDINGS AND DETERMINATIONS. The City Council finds, determines, and declares that the elements of the storm water management system providing for the collection, conveyance, detention, retention, treatment and release of storm water benefit and provide services to real property within the incorporated City limits. The benefits of the storm water management system include, but are not limited to, the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of storm water; the reduction of hazards to property and life resulting from storm water runoff; improvement in general health and welfare through reduction of undesirable storm water conditions; improvement of water quality in the storm and surface water system and their receiving waters; and appropriate balancing between development and preservation of the natural environment.

15-505. ADMINISTRATION. The storm water utility, under the supervision of the Director, shall have the power to:

- A. administer the acquisition, design, construction, maintenance, operation, extension and replacement of the storm water management system, including any real and personal property that is, will become a part of, or will protect the system;
- B. administer and enforce this Article and all regulations, guidelines and procedures relating to the design, construction, maintenance, operation and alteration of the storm water management system, including but not limited to, the flow rate, volume, quality and/or velocity of the storm water conveyed thereby;
- C. advise the City Council on matters relating to the storm water management system;
- D. review plans concerning the creation, design, construction, extension and replacement of the storm water management system and make recommendations to the City Council;
- E. make recommendations to the City Council concerning the adoption of ordinances, resolutions, guidelines and regulations in furtherance of this Article and/or to protect and maintain water quality within the storm water management system, in compliance with water quality standards established by state, county, regional and/or federal agencies, as now adopted or hereafter adopted or amended;
- F. analyze the cost of services and benefits provided by the storm water management system and the structure of fees, service charges, fines and other revenues of the storm water utility at least once each year;

- G. make recommendations to the City Council concerning the cost of service and benefits provided by the storm water management system and the structure of fees, service charges, fines and other revenues of the storm water utility; and
- H. administer programs established pursuant to this Article or pursuant to ordinances, resolutions, regulations or guidelines hereafter adopted by the City Council that provide for credits and/or incentives which reduce storm water management service fees imposed against properties.

15-506. **OPERATING BUDGET.** The City shall, as part of its annual budget process, adopt an operating budget for the storm water utility for the next following fiscal year. The operating budget shall conform with State Budget Law, city policy and generally accepted accounting practices. The initial operating budget commences January 1, 2013, and ends December 31, 2013.

15-507. **STORM WATER MANAGEMENT SERVICE FEE.**

- A. Service Fee Established. Subject to the provisions of this Article, there is imposed on each and every residential developed property and nonresidential developed property, other than property that is not serviced by the storm water management system or is exempt property, a storm water management service fee. This storm water management service fee shall be determined and set by the provisions of this Article in accordance with the ERU, ERU Rate, ENRU and ENRU Rate. The fee shall be established by resolution of the City Council and may be amended from time to time by resolution of the City Council.
- B. Storm water management service fee for Residential Developed Property. The storm water management service fee for residential developed property shall be determined by dividing the Impervious Area of the Residential Developed Property by the square footage of one ERU and multiplying the resulting number by the ERU Rate. In the event of a newly constructed dwelling unit, or a change to an existing residential developed property occurs, the charge for the storm water management service fee attributable to that dwelling unit or residential developed property shall commence upon the issuance of the Certificate of Occupancy by the Building Official or the final inspection of the issued building permit by the Building Official for that dwelling unit or residential developed property. The number of ERU's for a newly constructed dwelling unit or the additional ERU's for an improvement to an existing residential developed property shall be based on the new or additional impervious surface created by the new residential dwelling unit or the improvements or additions made to a residential dwelling unit. The Building Official shall notify the Director of the parcel number, address and additional square footage of impervious surface permitted on a residential developed property so that the ERU's or additional ERU's can be calculated for the given residential developed property. Prior to the Certificate of Occupancy, or the final inspection, of a permitted project, the Director shall inform the Building Official of the prorated amount due for the storm water management fee for the residential developed property for the remaining portion of the calendar year at which time the City Clerk shall collect the additional fee from the property owner prior to issuance of the Certificate of Occupancy Permit or the final inspection. The Director shall make the necessary changes to the database for the residential developed property to include the additional ERU's for calculating the storm water management service fee for that

property. The minimum storm water management service fee for any residential developed property shall be equal to one ERU rate.

- C. Storm water management service fee for Non-Residential Developed Property. The storm water management service fee for nonresidential developed property shall be the total square footage of impervious surface area of the nonresidential developed property divided by the square footage of one ENRU and multiplying the resulting number by the ENRU Rate. In the event of newly developed nonresidential property, redevelopment of nonresidential property or expansion of the impervious surface area on a nonresidential developed property, the charge for the storm water management service fee attributable to that development shall commence upon the issuance of a Certificate of Occupancy permit or the final inspection. The number of ENRU's for a newly developed, or additional ENRU's for redeveloped or the expansion of impervious surface area for non-residential property shall be calculated based on the approved plans by the Building Official. The Building Official shall notify the Director of the parcel number, address and additional square footage of impervious surface permitted on the non-residential developed property so that the ENRU's or additional ENRU's can be calculated for the given non-residential developed property. Prior to the Certificate of Occupancy, or the final inspection, of a permitted project, the Director shall inform the Building Official of the prorated amount due for the storm water management service fee for the non-residential developed property for the remaining portion of the calendar year. The City Clerk shall collect the additional storm water fee from the property owner prior to issuance of the Certificate of Occupancy Permit or the final inspection. The Director shall make the necessary changes to the database for the non-residential developed property to include the additional ENRU's for calculating the storm water management service fee. The minimum storm water management service fee for any non-residential developed property shall be equal to one ENRU rate.
- D. Dwelling Unit and Impervious Surface Calculation. The Director shall initially, and from time to time, determine the number of ERU's located on residential developed property to establish the storm water management service fee, as provided for in the Subsection B. of this section. Nonresidential developed property in the City shall have its square footage of impervious area calculated to establish the storm water management service fee, as provided for in Subsection C of this section. The Director shall make the initial calculation with respect to existing nonresidential developed property and may from time to time change this calculation from the information and data deemed pertinent by the Director. With respect to property proposed to be nonresidential developed property, the applicant for development or redevelopment approval shall submit square footage impervious area calculations, in accordance with the submission requirements, as set forth in the applicable section of Chapter 16 of the City Code.

15-508. APPEAL PROCEDURE.

- A. Owners of residential or nonresidential developed property, with respect to which a storm water management service fee has been imposed, who disagree with:
- (1) the calculation of the storm water management service fee; or
 - (2) whether their property is served by the storm water utility;

may appeal the calculation or finding to the City Council. The owner/appellant must file a written notice of appeal with the City Clerk within thirty (30) days following the determination of the Director from which the appeal is being taken. The appealing party, by the date set in writing by the Director, which shall not be less than seven (7) days, shall provide information concerning the basis of the appeal, including a land survey prepared by a registered surveyor showing dwelling units, total property area, type of surface material and impervious area, as appropriate, and any other information that the Director shall request in writing to the appellant. The Director may waive the submission of a land survey, if the Director determines that the survey is not necessary to make a determination on the appeal. Based on information provided, the City Council shall make a determination as to whether the storm water management service fee should be adjusted or eliminated for the subject property. The City Clerk shall notify the appellant in writing of the decision.

- B. In all instances, the burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence, that the determination of the Director, from which the appeal is being taken, is erroneous.
- C. The filing of a notice of appeal shall not stay the imposition, calculation or duty to pay the fee. The appellant shall pay the storm water management service fee, as stated in the billing, to the Johnson County, Kansas Treasurer. If the City Council determines that the appellant should not pay a fee, pay a fee amount less than the amount appealed from, or receive a credit, the City shall issue a check to the appellant in the appropriate amount within ten (10) business days of the date of the applicable written decision, which in no event shall be more than the amount of the fee paid by the appellant as of the date the check is issued. If the credit is larger than the amount paid and additional fees are due for the same tax year, the City will issue the remaining credit within ten (10) business days after the remaining fees have been paid in full.
- D. The decision of the City Council shall be final.

15-509. STORM WATER MANAGEMENT SERVICE FEE COLLECTION.

- A. The storm water management service fee shall be billed by the Johnson County, Kansas Clerk and collected by the Johnson County, Kansas Treasurer. The storm water management service fee shall be shown as a separate item on the County's annual ad valorem property tax statement, in accordance with the procedures established in an agreement, pursuant to K.S.A. 12-2908, between the City and the County, as hereby authorized. The payment of storm water management service fee bills for any given property shall be the responsibility of the owner of the property that is provided service by the storm water system.
- B. Storm water management fees shall be subject to interest and penalties for late payment, which interest and penalties shall be the same as that imposed for late payment of ad valorem property taxes collected by the County, and, as and to the extent permitted by applicable law, shall be assessed, shall constitute a lien and be collected by the County in the same manner as late charges are assessed and collected by the County for ad valorem property taxes, regardless of whether the storm water management service fees were incurred when a property owner was in possession of the property or a non-owner was in possession of the property.

15-510. **STORM WATER UTILITY.** Storm water management service fees collected by the City shall be paid into a fund that is hereby created and shall be known as the “Storm Water Utility Fund.” This revenue shall be used for the purpose of paying costs of capital improvements, administration of the storm water utility, operation, maintenance and debt service of the storm water management system, and to carry out all other lawful purposes of the utility. In addition, fund transfers from this fund to the Bond and Interest Fund may be made to pay debt service on bonds issued by the City to fund the City’s storm water management activities.

15-511. **ERU RATE and ENRU RATE.** The ERU and the ENRU rate that is used determine the storm water service management fees for each residential developed property and nonresidential developed property shall be as established by resolution heretofore adopted or hereafter adopted by the City Council, and as thereafter amended by resolution of the City Council.

15-512 **SEVERABILITY.** In the event that any portion or section of this Article is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, the decision shall in no manner affect the remaining portions or sections of this Article, which shall remain in full force and effect.

SECTION 2. That Chapter 15, Article 5 of the Westwood City Cod, to the extent inconsistent with the above is hereby repealed.

SECTION 3. This Ordinance shall take effect and be in force from and after its passage, approval, and publication in the official city newspaper.

PASSED by the Governing Body this 15th day of August, 2013.

APPROVED by the Mayor this 15th day of August, 2013.

/s/ John M. Yé
John M. Yé, Mayor

ATTEST:

/s/ Frederick L. Sherman
Frederick L. Sherman, City Clerk

APPROVED AS TO FORM:

/s/ Ryan B. Denk
Ryan B. Denk, City Attorney