

ORIGINAL

**ORDINANCE 2207**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, ADOPTING NEW  
CHAPTER 13.30 OF THE SUNNYSIDE MUNICIPAL CODE,  
AND REPEALING, REPLACING AND SUPERSEDING  
PREVIOUS CHAPTER 13.30 OF THE SUNNYSIDE  
MUNICIPAL CODE  
(Storm Water Management Utility)**

**WHEREAS**, the City Council of the City of Sunnyside has previously adopted ordinances codified at Chapter 13.30 of the Sunnyside Municipal Code establishing the City of Sunnyside Storm Water Management Utility; and

**WHEREAS**, the City Council finds and determines that current Chapter 13.30 of the Sunnyside Municipal Code should be repealed, superseded and replaced by new Chapter 13.30 of the Sunnyside Municipal Code, to state new provisions regarding the establishment, operation and maintenance of the Storm Water Management Utility; and

**WHEREAS**, the establishment of a storm water utility is mandated by state permits pertaining to management of storm water; and

**WHEREAS**, the City Council finds and determines that Title 13 of the Sunnyside Municipal Code should be amended to adopt new Chapter 13.30, and to repeal, replace and supersede current Chapter 13.30, and that such action is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

**Section 1.** Title 13 of the Sunnyside Municipal Code is hereby amended to add new Chapter 13.30 which shall read as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.


**Section 2.** Upon the effective date set forth below, current Chapter 13.30 of the Sunnyside Municipal Code shall be deemed repealed, replaced and superseded by new Chapter 13.30 of the Sunnyside Municipal Code as adopted pursuant to Section 1 above.

**Section 3.** New Chapter 13.30 of the Sunnyside Municipal Code adopted pursuant to Section 1 above shall be effective as and from January 1, 2009.

**Section 4.** Except as amended herein, Title 13 of the Sunnyside Municipal Code shall remain unchanged.

**Section 5.** This Ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 8<sup>th</sup> day of December, 2008.

  
PABLO GARCIA, MAYOR

ATTEST:

  
DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:

  
MARK A. KUNKLER, CITY ATTORNEY

## **Chapter 13.30 STORM WATER MANAGEMENT UTILITY**

Sections:

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**13.30.010 Purpose.**

To promote the public health, safety and welfare by promoting an approach to the management of surface and storm water problems within City limits and storm and surface water deliveries to City-owned storm water facilities.

**13.30.020 Storm water management utility created – Responsibilities.**

There is hereby created and established, pursuant to Chapter 35.67 RCW and RCW 35A.80.010, a storm water and surface water utility to be known as the "storm water management utility." All references to "the utility" in this chapter refer to the storm water management utility. The utility shall be administered and enforced by the City Manager. The City Manager is hereby authorized to specify such storm water facility operation, maintenance and performance standards, in the public rights-of-way of the City, as necessary to implement the requirements of this code and carry out the duties of the City Manager.

**13.30.030 Definitions.**

For the purpose of this title, certain terms or words herein shall be interpreted or defined as follows: Except where specifically defined in this chapter, all words in this title shall carry the customary meanings. Words used in the present tense include the future and the future includes the present and the plural includes the singular and the singular includes the plural.

1. "City" means the City of Sunnyside, Washington.
2. "City Manager" means the City Manager of the City or his or her designee.

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3. "Commercial property" means any parcel within the City that is zoned commercial pursuant to Title 17 SMC, including the following:

- a. B-1, Freeway Commercial (Chapter 17.40 SMC)
- b. B-2, General Commercial (Chapter 17.44 SMC)
- c. B-3, Retail Core Zone (Chapter 17.48 SMC)
- d. B-N, Neighborhood Business (Chapter 17.32 SMC)
- e. P-B, Professional Business (Chapter 17.36 SMC)
- f. Any Planned Unit Development (PUD)(Chapter 17.52 SMC) with a predominantly commercial use or purpose, as opposed to residential or industrial.

4. "Credit" means a credit to the service rates found in SMC13.30.070. Credits are defined further in SMC 13.30.080.

5. "Drainage facility" means the system of collecting, conveying, and storing surface and storm water runoff. Drainage facilities shall include, but not be limited to, all surface and storm water conveyance and containment facilities including streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and constructed.

6. "Impervious surface" means a surface which is covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other developed surface which impedes the natural infiltration of surface water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purpose of this chapter.

7. "Industrial property" means any parcel within the City that is zoned industrial pursuant to Title 17 SMC, including the following:

- a. M-1, Light Industrial (Chapter 17.56 SMC)
- b. M-2, Heavy Industrial (Chapter 17.60 SMC)
- c. Any Planned Unit Development (Chapter 17.52 SMC) with a predominantly industrial use or purpose, as opposed to residential or commercial.

8. "Intensity of development" means those levels of development and maintenance of impervious surface typically found or developed within the residential, commercial, industrial and public facility zones of the City. Intensity of development for each zone is calculated on the following basis. Information and research establishes that the average residential lot in the City is 10,090 square feet in area. The average impervious surface for such residential parcel is 2,130 square feet, resulting in an average imperviousness of 21 percent for such residential lot. Commercial and industrial developments have greater average imperviousness, with a greater area of such parcels covered by impervious surface. Public Facilities parcels include large parcels, such as public parks and school grounds, which are covered in large part with vegetation or lawn, with a consequent lower percentage of impervious surface. The intensity of development for each zone is expressed below as a "Reduction Factor." For example, the Reduction Factor for Residential is 21 percent, meaning that 21 percent of the average residential lot is covered by impervious surface.

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Residential Reduction Factor:	21 percent
Commercial Reduction Factor:	70 percent
Industrial Reduction Factor:	70 percent
Public Facilities Reduction Factor:	5 percent

The monthly Service Charge for each parcel in the City is calculated by multiplying the acreage of the parcel by the monthly Rate per Acre, and multiplying the resulting number by the applicable Reduction Factor.

The calculation is expressed as: Where  $x$  is the monthly Service Charge;  $a$  is the parcel area (in acres);  $b$  is the Rate per Acre;  $c$  is the applicable Reduction Factor; then:

$$x = a \text{ times } b \text{ times } c$$

The "Rate per Acre" is set forth in SMC 13.30.070.

9. "Maintenance" means the act or process of cleaning, repairing or preserving a system, unit, facility, structure, or piece of equipment.

10. "Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which is documented for property tax purposes and given a tax lot number by the Yakima County Assessor.

11. "Person" means any individual, firm, company, association, corporation, or governmental agency.

12. "Property owner of record" means a person or persons shown in the records of the County Assessor to be the owner of property.

13. "Public facilities parcel" means any parcel within the City that is zoned PF, Public Facilities, pursuant to Chapter 17.63 SMC, and any parcel zoned AP, Airport Zone pursuant to Chapter 17.62 SMC.

14. "Rate per Acre" means the dollar amount charged each month per acre pursuant to SMC 13.30.070.

15. "Residential parcel" means any parcel within the City that is zoned residential pursuant to Title 17 SMC, including the following:

- a. R-1, Low Density Residential (Chapter 17.12 SMC)
- b. R-2, Medium Density Residential (Chapter 17.16 SMC)
- c. R-3, High Density Residential (Chapter 17.20 SMC)
- d. M-H, Mobile Home Subdivision (Chapter 17.24 SMC)
- e. URA, Urban Residential Agriculture (Chapter 17.10)
- f. Any Planned Unit Development (Chapter 17.52 SMC) with a predominantly residential use or purpose, as opposed to industrial or commercial.

16. "Retention/detention facility" means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration and/or infiltration into the ground; or to hold runoff for a short period of time and then release it to the surface and storm water management system.

17. "Right-of-way" means the right-of-way of a State limited access highway, and City streets, alleyways, sidewalks and rights-of-way.

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18. "Service charges" means charges to parcels for storm and surface water management services, billed to the taxpayer of record maintained by Yakima County.

19. "Storm water" means the water originating from rainfall and other precipitation that is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, and wetlands as well as shallow ground water.

20. "Storm water management services" means the services provided by the storm water management utility, including but not limited to basin planning, facilities maintenance, street sweeping, regulation, financial administration, BMP implementation, public involvement, drainage investigation and enforcement, aquatic resource restoration, surface and storm water quality and environmental monitoring, natural surface water drainage system planning, intergovernmental relations, and facility design and construction.

21. "Storm water management system" means constructed drainage facilities and any natural surface water drainage features which collect, store, control, treat and/or convey surface and storm water including pipes, pump stations, and street gutters.

22. "Utility" means the storm water management utility created under the provisions of this chapter.

### **13.30.040 Ownership of City storm water facilities and assets.**

Title and all other incidents of ownership of the following assets are vested in the storm water utility of the City: All properties, interests, and physical and intangible rights of every nature owned or held by the City, however acquired, insofar as they relate to or concern storm water runoff.

### **13.30.050 Transfer of property to storm water management utility.**

The City Council expressly finds the value of the existing storm water system, or plan of storm and surface water facilities and needs, is equal to the value of release from primary responsibility thereof of any other utility or department of the City, insofar as it relates to or concerns storm or surface waters within the City. Accordingly, the entire original storm water system, as described above, including the rights and interests as a part thereof are, for purposes of RCW 43.09.210, hereby transferred to and subject to the administration of the City's storm water management utility created by this chapter. All other institutions and departments of the City having primary responsibility therefor within the City are, to the same extent, released from such primary responsibility. Inasmuch as the City now owns all of those facilities, including the rights and interests as a part thereof and the original system, there is no estimated cost thereof.

### **13.30.060 Liability disclaimer.**

A. Floods from storm water runoff may occasionally occur which exceed the capacity of storm drainage facilities constructed and maintained by funds made available under this chapter. The City's adoption of this code does not imply that property liable for the storm and surface water drainage charge shall always be free from storm water flooding or flood drainage. Further, this code does not purport to reduce the need or the necessity for any property owner to obtain flood insurance.

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B. This chapter shall be administered and enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

C. No provision of or any term used in this chapter is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

**13.30.070 Storm water service charges.**

A. Storm Water Service Charge. Monthly storm water service charges, as set forth in this chapter, shall be charged for the following rate categories:

a. Residential Parcels. The Storm Water Service Charge for each residential parcel shall be calculated by multiplying the acreage of the parcel by the monthly Rate per Acre, and multiplying the resulting number by the Residential Reduction Factor (0.21).

b. Commercial Parcels. The Storm Water Service Charge for each commercial parcel shall be calculated by multiplying the acreage of the parcel by the monthly Rate per Acre, and multiplying the resulting number by the Commercial Reduction Factor (0.70).

c. Industrial Parcels. The Storm Water Service Charge for each industrial parcel shall be calculated by multiplying the acreage of the parcel by the monthly Rate per Acre, and multiplying the resulting number by the Industrial Reduction Factor (0.70). The Storm Water Service Charge applicable to Industrial parcels is subject to the discount set forth in Section 13.30.080 for the reasons set forth therein.

d. Public Facilities Parcels. The Storm Water Service Charge for each Public Facilities parcel shall be calculated by multiplying the acreage of the parcel by the monthly Rate per Acre, and multiplying the resulting number by the Public Facilities Reduction Factor (0.05). The City Council finds, determines and concludes that properties within the Public Facilities designation are municipal, quasi-municipal, special purpose district, or government properties, which properties are not characterized by extensive development of impervious surfaces, and are currently supported by public taxes.

B. Rate per Acre – Adjustment. The Rate per Acre is \$34.39 per month. The Rate per Acre may be revised from time to time to defray the costs of operations, maintenance and development of the utility, including but not limited to development of capital facilities and improvements, and to conform to records of actual taxable parcels as maintained by Yakima County and the total annual assessment roll amount. The Rate per Acre may be adjusted annually by the City Manager to reflect adjustments or changes in maintenance and operations costs of the utility, and capital facilities development; provided, however, that no annual increase shall exceed six percent without prior approval of the City Council. In the event such rate is modified, the City Manager shall post the new rate at the offices of City Hall and may distribute or publish such new rate as deemed appropriate to advise the public.

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**13.30.080 Credits, discounts and exemptions.**

Credits to the rate presented in SMC 13.30.070 shall be allowed for the following purposes:

A. Low-Income Senior Citizen and Low-Income Disabled Citizen Special Utility Rate – Eligibility – Application. Any person who, as of November 30 of the year, has obtained from Yakima County any exemption or discount from property taxes for low-income senior citizen or low-income disabled citizen, shall receive a twenty-five percent (25%) discount on the rates listed in SMC 13.30.070, or as periodically adjusted by the City Manager, for the next succeeding year. The City Manager shall be authorized and empowered to implement the procedures for processing the low-income senior citizen and low-income disabled citizen special utility discount. Any discount received pursuant to this section shall not be applied retroactively.

B. Rain Water Harvesting. Pursuant to RCW 35.67.020(3) any customer installing a permissive rain water harvesting system is eligible to receive a 10 percent reduction in the fee noted within SMC 13.30.070, as or periodically amended. The customer will apply for the credit, following procedures established by the City Manager, with full documentation of the system's design and functionality in eight by 11-inch or larger drawings. The customer is required to show proof of maintenance and functionality of the system every two years to keep the rate reduction current. If proof is not provided, the City can immediately remove the rate reduction from the customer's billing account. Any discount received pursuant to this section shall not be applied retroactively.

C. Industrial Parcels. In order to promote economic development, creation of new jobs, economic growth of the community, and development of industrial properties within the City, the City Council finds, determines and concludes that Industrial parcels shall receive a discount of the Storm Water Service Charge equal to 33% of the service charge. The City Council finds, determines and concludes that such discount implements the City Council's local economic development policy and purposes.

D. Waiver of Utility Fees for Certain Property. The City Manager or his designee shall waive storm water utility fees for a parcel falling within the following special categories of property upon a showing that the parcel meets the following applicable criteria for so long as the criteria are met.

(1) City Rights-of-Way. Fees shall be waived for City streets and street rights-of-way, since they act as storm water conveyance facilities. The City streets fund also contributes to the proper operation, maintenance, repair, improvement and construction of the street drainage system.

(2) State Rights-of-Way. Fees shall be waived for State of Washington highway rights-of-way.

E. No other rate reductions are authorized for the storm water utility rates prescribed in SMC 13.30.070, as periodically amended by City Council.

**13.30.090 Management fund – Capital projects fund.**

A. There is established a storm water management fund as part of the water/sewer utility funds into which all revenue from the rates and charges in this chapter, together with all other utility revenue from user fees, connection charges,



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grants, taxes and other funding sources shall be deposited, and from which all expenditures related to the City's storm water management system, shall be paid. This fund shall be kept in the manner prescribed by State law as to accounting and reporting expenditures.

B. The City Council is authorized to establish as and when deemed appropriate a storm water capital projects fund into which revenue, in such amounts as determined appropriate by the City Council from time to time, from the rates and charges in this chapter, and revenues as set forth in subsection A above, shall be paid, to be used for capital improvements of the storm water utility. This fund shall be kept in the manner prescribed by State law as to accounting and reporting expenditures.

C. The City Manager shall conduct an annual review of the utility's operations, the total costs of operation and maintenance of the storm water retention, detention, collection and conveyance systems, and the schedule of rates and charges. They shall submit a report to the Mayor for each calendar year, summarizing the review and containing recommendations for rate adjustments to:

1. Maintain the proper proportionate distribution of operation and maintenance costs among users and user classes;
2. Ensure generation of sufficient revenue to pay the total operation and maintenance costs for the proper operation, maintenance and improvement of the utility.

### **13.30.100 Billing.**

The charges herein provided for shall be billed annually, shall be due and payable in accordance with the property tax billing procedures of Yakima County, and shall become delinquent thereafter if not paid. The owner of contiguous parcels having a single land use may receive a single billing for such parcels. The City may contract with any appropriate person or agency, including Yakima County, for the billing, receipting and disbursement of storm water service charges and revenues.

### **13.30.110 Remedies.**

The City may exercise any available remedy to collect the unpaid service charges, delinquent charges, interest, costs of collection and applicable penalties, including but not limited to, the lien for delinquent service charges and costs set forth in SMC 13.30.130 below. Collection of delinquencies, interest, penalty, and costs of collection for delinquent utility service charges shall be charged interest on the delinquent balance and penalty at the rate specified in SMC 13.30.130.

The City Manager or his designee may use the services of a collection agency to collect delinquent service charges in the manner and to the extent provided in RCW 19.16.500 as currently enacted or hereafter amended. The collection agency fee shall be added to the amount of the delinquent service charge.

### **13.30.120 Appeals.**

Any customer or property owner who feels that the storm water service charge as set forth in this chapter for their property has been incorrectly computed or applied may petition, in writing, to the City Manager for a review of said computations or application. The decision of the City Manager shall be final.

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**13.30.130 Liens for service – Interest.**

Pursuant to RCW 35.67.200 and 35.67.215, as currently enacted or hereafter amended, the City shall have a lien for delinquent or unpaid storm water service charges. Enforcement and foreclosure of said lien(s) shall be as provided by law. Interest on the unpaid balance shall be eight percent per year or such higher rate as authorized by State law. Penalties, as authorized by State law, will also be assessed.

**13.30.140 Storm water construction permit required.**

Beginning in 2010, prior to construction of any structure, grading or improvement upon real property located within City limits, a storm water plan shall be submitted and upon approval, a storm water construction permit shall be issued upon payment of the storm water construction permit fees as provided in SMC 13.30.150.

**13.30.150 Continuing development of utility.**

The City Council finds, determines and concludes that efforts of cities of the State of Washington, including the City of Sunnyside, to preserve, promote and protect the health, safety and welfare of its citizens, requires continuation of the development of storm water utilities, infrastructure and administrative means to incorporate advances in technology and science. To this end, the City Council recognizes that, as technology and ability to implement such technology improves, together with funding sufficient to enable such access and utilization, the City intends to pursue development of storm water service fees based upon actual percentages of impervious surface on each parcel.

**13.20.160 Service fees.** [Reserved]