

(Summary Publish in the Leavenworth Times on June 15, 2018)

ORDINANCE NO. 8077

**AN ORDINANCE OF THE CITY OF LEAVENWORTH, KANSAS,
ESTABLISHING A NEW CHAPTER 103 OF THE LEAVENWORTH
CODE OF ORDINANCES, RELATING TO STORMWATER UTILITY.**

WHEREAS, on February 13, 2018, the Governing Body approved Charter Ordinance No. 58, which became finally effective as of May 9, 2018, exempting the City from the provisions of the Kansas Water Pollution Act, K.S.A. 12-3101 *et seq.*, such that the City may have subsequently provided for the creation of a stormwater management program and a stormwater utility fee for the City of Leavenworth;

WHEREAS, the Governing Body wishes to create a stormwater utility for the City of Leavenworth, Kansas; and

WHEREAS, the Governing Body has determined that a new Chapter 103 should be established in the Leavenworth Code of Ordinances for such stormwater utility, management program, and fee.

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

Section 1. That a new Chapter 103 of the Leavenworth Code of Ordinances is hereby established to read as follows:

Chapter 103

STORMWATER MANAGEMENT

Article I. Stormwater Management Utility

Sec. 103-1. Definitions. In addition to the words, terms and phrases elsewhere defined in this Article, the following words, terms and phrases, as used in this Article, but only for the purposes of this Article, shall have the following meanings:

- (a) *Bonds* means revenue or general obligation bonds or notes heretofore or hereafter issued to finance the costs of stormwater management.
- (b) *Building Permit* means a permit issued by the Building Inspector/Code Administrator which permits construction on a structure.
- (c) *City* means the City of Leavenworth, Kansas.
- (d) *City Commission* means the governing body of the City.

- (e) *Costs of Capital Improvement* means costs incurred in providing capital improvements to the stormwater management system or any portion thereof including, without limitation, alteration, enlargement, extension, improvement, construction, reconstruction, and development of the stormwater 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 stormwater management service fee study, performed to establish stormwater management service fees for the stormwater utility and to determine other start-up costs of the stormwater 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 stormwater 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.
- (f) *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.
- (g) *Developed Property* means real property, other than undisturbed property, vacant property, or exempt property.
- (h) *Director* means the person appointed by the City Manager to be the Director of the City's Public Works Department or the Director's designee.
- (i) *Effective Date* means the date this ordinance is published in the official City newspaper and, pursuant hereto, takes effect.
- (j) *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 stormwater management system is constructed and/or located.
- (k) *Fiscal Year* means a twelve (12)-month period commencing on the first day of January of any year.
- (l) *Multifamily Dwelling Unit* means an individual residential dwelling unit (whether an apartment, loft, condominium, duplex unit, or otherwise) which unit itself is not a single family residential property, but which unit may be located on or as part of single family residential property or nonresidential developed property. A multifamily dwelling unit may include, but need not be limited to, a Dwelling in Mixed-Use Structure, an

Attached Dwelling, an Elderly or Retirement Home Dwelling, a Live/Work Dwelling, a Multi-Family Dwelling, a Townhouse Dwelling, a Two-Family Dwelling, an Apartment, as such terms are defined or described in the City's Development Regulations, as adopted and amended from time to time.

- (m) *Nonresidential Developed Property* means developed property other than single family residential property or a multifamily dwelling unit (both as classified by the City), and includes commercial property and industrial property.
- (m) *Operating Budget* means the annual stormwater utility operating budget adopted by the City for the succeeding fiscal year.
- (o) *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.
- (p) *Public Stormwater Management System* means all elements of the stormwater management system that have been officially dedicated to and accepted by the City.
- (q) *Single Family Residential Property* means developed property used for single family detached dwelling units. For purposes of this Article, if multiple single family detached dwelling units (including but not limited to mobile homes) are located on one parcel of single family residential property, then each such unit shall be treated as a separate single family residential property.
- (r) *Revenues* means all rates, fees, assessments, rentals, charges or other income received by the stormwater utility in connection with the management and operation of the stormwater 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.
- (s) *Stormwater Management Service Fee* means a fee authorized by this Article, as set forth in a resolution or an ordinance adopted or amended by the City Commission, established to pay operation and maintenance, costs of capital improvements, debt service associated with the stormwater management system, and other costs included in the operating budget.
- (t) *Stormwater Rate* means a rate or fee structure for the stormwater management service fee, established by City Commission resolution or

ordinance, charged for each property within the City that established by this Article or by a City Commission resolution or ordinance to be subject to such stormwater rate. The stormwater rate may be established on a residential property, multifamily, nonresidential property, commercial, industrial, square footage, or other basis as the City Commission may determine.

- (u) *Stormwater 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 the following, to the extent owned or controlled by the City: pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; arches; pipes; natural and manmade wetlands; channels; ditches and culverts; rivers, streams, and creeks; 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.
- (v) *Stormwater Utility or Utility* means the utility created by this Article to operate, maintain and improve the stormwater management system and for all other purposes, as set forth in this Article.
- (w) *Undisturbed Property or Vacant 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, or real property that is not single family residential property or nonresidential developed property, a multifamily dwelling unit, or exempt property.

Sec. 103-2. Creation of a Stormwater Utility; Findings and Determinations.

(a) Pursuant to the provisions of K.S.A. 12-3101, *et seq.*, as chartered out of by the City pursuant to Charter Ordinance No. 58, the City's general home rule authority, nuisance abatement authority, police powers and all other authority, the Leavenworth City Commission does establish a stormwater utility and declares its intention to operate, construct, maintain, repair and replace the public stormwater management system and operate the stormwater utility.

(b) The City Commission finds, determines, and declares that the elements of the stormwater management system providing for the collection, conveyance, detention, retention, treatment and release of stormwater benefit and provide services to real property within the incorporated City limits. The benefits of the stormwater management system include, but are not limited to, the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of stormwater; the reduction of hazards to property and life

resulting from stormwater runoff; improvement in general health and welfare through reduction of undesirable stormwater 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.

Sec. 103-3. Administration. The stormwater 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 stormwater 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 stormwater management system, including but not limited to, the flow rate, volume, quality and/or velocity of the stormwater conveyed thereby;
- (c) advise the City Commission on matters relating to the stormwater management system;
- (d) review plans concerning the creation, design, construction, extension and replacement of the stormwater management system and make recommendations to the City Commission;
- (e) make recommendations to the City Commission concerning the adoption of ordinances, resolutions, guidelines and regulations in furtherance of this Article and/or to protect and maintain water quality within the stormwater 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 stormwater management system and the structure of fees, service charges, fines and other revenues of the stormwater utility at least once each year;
- (g) make recommendations to the City Commission concerning the cost of service and benefits provided by the stormwater management system and the structure of fees, service charges, fines and other revenues of the stormwater utility; and
- (h) administer programs established pursuant to this Article or pursuant to ordinances, resolutions, regulations or guidelines hereafter adopted by the City Commission that provide for credits and/or incentives which reduce stormwater management service fees imposed against properties.

Sec. 103-4. Operating Budget.

The City shall, as part of its annual budget process, adopt an operating budget for the stormwater 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, 2019, and ends December 31, 2019.

Sec. 103-5. Stormwater Management Service Fee.

- (a) *Service Fee Established.* Subject to the provisions of this Article, there is imposed on each and every single family residential property, nonresidential developed property, and multifamily dwelling unit, a stormwater management service fee. This stormwater management service fee shall be determined and set by the provisions of this Article in accordance with the stormwater rate. The amount of the fee shall be set out in Appendix F.
- (b) *Statement of Stormwater Rate.* The stormwater rate that is used to determine the stormwater management service fee for each single family residential property, nonresidential developed property, and multifamily dwelling unit shall be as established by ordinance or resolution heretofore adopted or hereafter adopted by the City Commission, and as thereafter amended by ordinance of the City Commission.
- (c) *Stormwater Management Service Fee for Single Family Residential Property.* The stormwater management service fee for single family residential property shall be determined by reference to the stormwater rate, as established by a City Commission resolution or ordinance. The Director shall update the database for residential developed properties on an annual basis. In the event of newly-constructed residential property, the charge for the stormwater management service fee attributable to that new single family residential property shall commence as of the first day of the calendar year after the date the building permit has been issued for that new single family residential property, regardless of whether a certificate of occupancy has been issued.
- (d) *Stormwater Management Service Fee for Nonresidential Developed Property.* The stormwater management service fee for nonresidential developed property shall be determined by reference to the stormwater rate, as established by a City Commission resolution or ordinance. The Director shall update the database for nonresidential developed properties on an annual basis. In the event of newly-constructed nonresidential property, the charge for the stormwater management service fee attributable to that new nonresidential developed property shall commence as of the first day of the calendar year after the date the building permit

- (b) Stormwater 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 stormwater 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.

Sec. 103-8. Stormwater Utility.

Stormwater management service fees collected by the City shall be paid into a fund that is hereby created and shall be known as the "Stormwater Utility Fund." This revenue shall be used for the purpose of paying costs of capital improvements, administration of the stormwater utility, operation, maintenance and debt service of the stormwater 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 stormwater management activities.

Sec. 103-9. Issuance of Sewer Revenue Bonds; Requirements.

- (a) Having chartered out of, and exempting the City from, the provisions of the Kansas Water Pollution Act, K.S.A. 12-3101, pursuant to Charter Ordinance No. 58, the City Commission shall have the power to use any unencumbered municipal revenues and/or to issue revenue bonds from time to time in its discretion, without an election, to finance the planning, altering, enlarging, extending, improving, constructing, and reconstructing the Stormwater Management System. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the City derived from or held in connection with its Sewer System or Sewer Systems; provided, however, that payment of these bonds, both as to principal and interest, may be further secured by a pledge of other unencumbered municipal revenues and/or of any loan, grant, or contribution from the federal government, the State of Kansas, other states, counties, cities, drainage districts, public bodies of the state, or any person.
- (b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this section are declared to be issued for an essential public purpose and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes as and in accord with the law of any applicable taxing jurisdiction.

- (c) Bonds issued under this section shall be authorized by ordinance or resolution of the City Commission and may be issued in one or more series and shall bear such date or dates, be payable on demand or mature at such time or times, bear interest at such rate or rates, not exceeding the maximum rate of interest prescribed by law (including K.S.A. 10-1009), be in such form, have such rank or priority, be executed in such manner, and have such other characteristics as may be provided by such ordinance or resolution.
- (d) Pending the issuance of revenue bonds authorized by this section, the City Commission may issue revenue anticipation bonds of the City for the purpose of providing interim financing for a project, such revenue anticipation bonds being payable from revenue bonds issued to provide permanent financing for activities authorized by this Article and the income, proceeds, revenues, and funds of the City derived from or held in connection with its Sewer System.

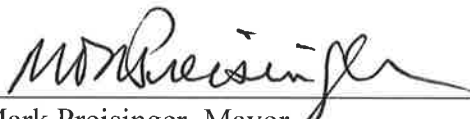
Sec. 103-10. Severability.

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


PASSED and APPROVED by the Governing Body on the 12th day of June, 2018.





Mark Preisinger, Mayor

ATTEST:



Carla K. Williamson CMC, City Clerk