

ORDINANCE #2010-757

AN ORDINANCE of the City of Asotin relating to Storm Sewer and Surface Water Management Public Utility

Chapter 13.38 Storm Sewer and Surface Water Management Public Utility

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13.38.010 Legislative Findings and Policy. The City Council finds, determines and declares that the streams, rivers, ponds, waterways, groundwater, and functionally related natural and manmade stormwater control facilities constitute a stormwater control facility.

The City Council finds that the streams, rivers, waterways and ponds are of vital importance to the citizens of the City, providing water, commercial transportation, natural beauty, and recreational activities that contribute to a robust tourist industry, and to the economic base of the community and the health and welfare of the citizens, and the degradation of these waters are detrimental to the economy and welfare of the community.

The City Council finds, determines and declares that the public stormwater control facility including its administration, which provides for the collection, monitoring, treatment, storage and disposal of stormwater, provides benefits and services to all property within the incorporated City limits. Such benefits may include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from flooding caused by stormwater runoff; as well as other stormwater

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damage including, road damage and other property destruction, improvements in general health and welfare through reduction of undesirable stormwater conditions; and improvements to the water quality of the stormwater and its receiving waters. Washington State Department of Ecology's decision to include the City in the NPDES Phase II municipal stormwater general permit program now requires the City of Asotin to implement local water quality protection activities and programs to reduce and control the potential to pollute surface waters and groundwaters by storm drainage originating on both public and private properties.

The City Council finds, determines and declares that the stormwater control facility requires a utility to provide the services described above.

The City Council finds, determines and declares that development of lands can alter both the amount of stormwater runoff and the amount of pollution contained in such runoff. The City further declares that a measurement based on a median amount of impervious surface, determined through the measurement of impervious surface on a random sampling (average) of single-family residential parcels within the Service Area or Permit Boundary constitutes a fair way to determine the burdens imposed upon the system and the benefits of the services received by the customer from the pollution management, flood control, regulatory services and drainage facilities provided by a utility for storm drainage and surface water management. The City further declares that an equivalent residential unit is a fair way to determine the customer's charges for provision of such services and management of drainage facilities.

The City Council finds, determines and declares that an equivalent residential unit of impervious surface will determine the potential level of pollution from a property, which has been well established in both engineering practice and water quality studies by the Environmental Protection Agency, the Washington Department of Ecology, the United States Geological Survey, the Natural Resources Conservation Service, and others.

The City Council finds, determines and declares that to fund the costs of storm sewer and surface water management public utility in the City, it is appropriate to adopt service charges for stormwater users based on equivalent residential units (ERU). The ERU is set at 3,700 square feet of impervious surface based on studies of the amount of impervious surface measured on a sample of residential properties within Clarkson, Asotin and the urbanized area of Asotin County. A non-residential developed property owner's charge will be the base rate multiplied by the number of ERUs on the property.

The City finds, determines and declares that City of Clarkston, the City of Asotin and County of Asotin are subject to the same requirements for managing stormwater control facilities and the most advantageous method of implementing management of the utility is to cooperatively manage one utility, pursuant to an Interlocal Agreement, thereby avoiding unnecessary duplication of staff, equipment and all other costs associated with the utility.

13.38.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

“Agency” means the entities delegated the authority to implement and enforce this ordinance by City.

“Base Rate” means the stormwater user’s fee for an equivalent residential unit (ERU).

“Best management practices” or “BMP” means schedules of activities, prohibitions of practices, maintenance procedures, and structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“CIP” means the storm and surface water management capital improvement plan adopted by the city and county.

“City” means the city of Asotin, Washington.

“Commercial Building” means a structure or use intended or used for business purposes, such as a retail store, a restaurant, an office, a service establishment, or a hotel or motel. A commercial use includes light repair service and the repair or maintenance of heavy equipment or machinery or such other uses normally associated with an industrial use

“Comprehensive plan” means the City of Asotin Comprehensive Management Plan (CMP).

“County” means the unincorporated urbanized areas of Asotin County, Washington.

“Detention” means the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system, the difference being held in temporary storage with the goals of reducing peak discharge rates and providing gravity settling of pollutants.

“Developed” means a parcel that has impervious surface area.

“Drainage control” means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a developed property, or separating, treating or preventing the introduction of pollutants to the drainage facility.

“Drainage facility” means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water. Drainage control facilities include, but are not limited to, all types of catch basins, pipes, detention/retention ponds, bioswales, and other structural and nonstructural

components that handle surface water.

“Duplex, Tri-plex, and Four-plex” mean buildings designed and arranged exclusively for occupancy in two (2), three (3), and four (4) separate dwelling units, respectively.

“Enforcement Officer” means the person or persons designated or appointed by the City or agency that is authorized to administer and enforce this Chapter, and their designees.

“Engineer” or “Licensed professional engineer or PE” means a person who is a licensed by the state of Washington to practice engineering.

“Equivalent residential unit” or “ERU” means, and is equal to 3,700 square feet of impervious groundcover, which approximates the median impervious surface area contained on single-family residential parcels within the Service Area. An ERU is the unit of impervious groundcover to be used by the utility in calculating service charges for each parcel of property.

“Hearings Officer” means the official appointed by the City for administrative hearings.

“Highways” means all impervious ways, lanes, roads, streets, boulevards and/or places open as a matter of right to public vehicular travel.

“Impervious Surface” is a relatively hard surface area, which either prevents or slows down the entry of water into the soil as under natural conditions prior to development. It is a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow different than the natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, paved parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled surfaces which similarly hinder the natural infiltration of stormwater.

“Interlocal agreement” means the Interlocal Cooperation Agreement between Asotin County, City of Asotin, and City of Clarkston for Storm Water Management, the execution of which was authorized by the Asotin County board of commissioners by Resolution No. _____ adopted on _____, the execution of which was authorized by the Asotin City Council by Resolution No. 2010-449 adopted on September 13, 2010, and the execution of which was authorized by the Clarkston City Council by Resolution No. 2010-18 adopted on September 13, 2010, and all amendments, modifications and clarifications to this agreement.

“Management team” means the committee established by the interlocal agreement to administer day-to-day operations and to make recommendations for policies, procedures and budgets to the Parties, and that is composed of one (1) County Commissioner, one (1) member each of the City Councils, the County Public Works Director, City of Clarkston Public Works Director and the City of Asotin Mayor or designee.

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“Municipal Separate Storm Sewer System (MS4)” or “Stormwater drainage system” includes, but is not limited to, the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, street gutters, ditches, dry wells, retention and detention ponds, manmade channels, or storm drains owned and operated by the City.

“Natural waters” (Reserved)

“National Pollutant Discharge Elimination System (NPDES) Phase II Permit” means the “Eastern Washington Phase II Municipal Stormwater Permit” issued by the Washington State Department of Ecology with an effective date of February 16, 2007 and subsequent reissues.

“Owner” or “owner of record” means all persons or entities holding fee title to land by a recorded deed or holding title as the purchaser under a recorded real estate contract.

“Parcel” means a state, county or city public right-of-way, or a unit of land segregated for tax purposes.

“Rainwater Harvesting System” means a properly engineered system used on commercial building to capture and put to beneficial use stormwater that would otherwise run off the property. Beneficial uses include toilet flushing and retention for grounds irrigation.

“Retention” is the process of collecting and holding surface and stormwater runoff with no release or outflow.

“Retention/Detention Facility” is 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 surface and stormwater runoff for a short period of time and then release it to the surface and stormwater management system.

“Service” means storm and surface water control and disposal facilities, improvements, operation and maintenance, monitoring of system, including all related planning and administration.

“Service area” means the “Permit Boundary” which is the geographic areas of the entire incorporated area of the City of Clarkston and the City of Asotin and the urbanized areas and urban growth areas of the cities and the urbanized area under the jurisdictional control of Asotin County and includes the 20-year growth boundary as defined by the Metropolitan Planning Organization.

“Stormwater” means that portion of precipitation that does not naturally percolate into the ground or evaporates, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

“Storm Drainage and Surface Water Management” means the planning, design, construction, regulation, improvement, repair, maintenance, monitoring and operation of facilities and programs relating to stormwater, including the reduction and control of illicit discharge, and reduction of erosion and minimization of impact on the natural stormwater drainage system during and after construction projects.

“Storm Sewer and Surface Water Management Public Utility Fund” or “Stormwater Fund” means the fund created by this ordinance to operate, maintain, monitor and improve the City’s stormwater public utility.

“Storm Sewer and Surface Water Management Public Utility” or “Stormwater Utility” or “Utility” means the agency formed by this ordinance to provide for management of the stormwater facility, including but not limited to, ensuring damages caused by stormwater to public and private parties be minimized, identifying and eliminating instances of illicit discharge, reduce surface erosion, implement best management practices for stormwater control on construction sites, implement best management practices for stormwater control on all new construction to minimize property damage and pollution of receiving waters due to stormwater, ensure all necessary reports required by the National Pollutant Discharge Elimination System permit are made, developing and implementing programs to prevent and reduce pollutants from municipal operations.

"Stormwater Control Facilities" or "Facility" means any facility, improvement, development, property or interest therein, made, constructed or acquired for the purpose of controlling, or protecting life or property from, any storm, waste, flood or surplus waters wherever located within the Service Area and shall include but not be limited to the improvements and authority described in RCW 35.67.010(3) and RCW 35.67.020.

“Stormwater and Surface Water System” or “Stormwater System” means all properties, interest, physical and intangible rights of every kind or nature owned, held or operated by the City, however acquired, insofar as they contribute to the management of storm or surface water. It shall further include without limitation, all such properties, interests and rights acquired by adverse possession or by prescription, directly or through another; in and to the drainage or storage, or both of storm or surface waters, or both; and through, under, or over lands, landforms, watercourses, streams, ponds and swamps. In each case or instance, their inclusion begins at a point where storm or surface waters first enter the stormwater control facility of the City within the City limits, and ends where storm or surface waters exit from the stormwater control facility of the City within the City limits, and in width to the full extent of inundation caused by the largest storm or flood condition.

“Stormwater User’s Fee” or “Fee” means the charge established under this ordinance for parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the City, including costs associated with enforcement of illicit discharge ordinance, and the reduction of

erosion, and degradation of the natural stormwater system, during and after construction.

“Undeveloped” means a parcel that has no impervious surface area.

“Utility” used herein means the Storm Sewer and Surface Water Management Public Utility created by this code.

13.38.030 Creation of Storm Sewer and Surface Water Management Public Utility.

Pursuant to RCW 35.67.010 -.020 and RCW 35.92.020, there is hereby created a City Storm Sewer and Surface Water Management Public Utility.

13.38.040 Utility Program Elements

The utility shall establish a program that includes the following elements: basin and watershed planning, education, capital improvements, operations and maintenance, monitoring, source control and fish protection.

- A. Basin and Watershed Planning. Reserved
- B. Education. Develop and implement a program to educate the public about land use and human activities that impact water quality and surface water management and the steps that can be taken to reduce pollutants in stormwater.
- C. Capital Improvements. Develop a six-year capital improvement program in conjunction with other participants in the Regional Stormwater Utility which defines the utility’s activities related to the acquisition, construction, replacement or renovation of drainage facilities or equipment needed to address surface and stormwater management objectives.
- D. Operations and Maintenance. Develop and implement an operations and maintenance program, including inspection, enforcement and monitoring, to assure that public drainage facilities are functional and effective. The utility shall only operate and maintain publicly owned drainage facilities.
- E. Source Control. Develop and implement a source control program to improve water quality. The source control program shall strengthen the use of BMPs (best management practices). The utility may provide financial assistance through low-interest loans, grants and cost sharing for the installation and/or demonstration of low impact development projects, restoration of streams, and repair of on-site stormwater disposal systems.
- F. Comply with NPDES Permit. Development, implementation and administration of a stormwater management program in compliance with the Department of Ecology Phase II municipal stormwater permit including annual reporting as required to the Washington State Department of Ecology. Minimum program elements include:

1. Public education and outreach: distribution of educational materials to the community about the impacts of stormwater discharges to water bodies and steps the public can take to reduce pollutants in stormwater.
2. Public involvement and participation: create and provide opportunities for the public to provide input regarding development and implementation of the stormwater management program.
3. Illicit discharge detection and elimination: detection and elimination of nonstormwater discharges to the stormwater system.
4. Construction site stormwater runoff control: reduce pollutants in stormwater from construction activities.
5. Post construction stormwater management for new development and redevelopment: to ensure that controls to prevent or minimize water quality impacts are in place.
6. Pollution prevention and good housekeeping for municipal operations: operation and maintenance procedures to reduce pollutant runoff from municipal operations.

13.38.050 Program Coordination

The utility shall coordinate surface and stormwater management programs and services by forming interlocal or operating agreements with other departments, governmental entities or special districts in order to achieve a comprehensive approach to surface water management. The utility shall endeavor to eliminate or reduce duplication and to achieve maximum program benefits in the most cost-efficient manner. The Management Team shall annually submit an operating plan, budget and written report to the City Council for review and approval.

13.38.060 Funding of Storm Sewer and Surface Water Management Public Utility.

Funding for the Storm Sewer and Surface Water Management Public Utility's services and drainage facilities may include, but not be limited to, the following:

- (1) Stormwater user's fees;
- (2) Civil penalties and damage assessments imposed for or arising from the violation of this ordinance;
- (3) Stormwater permit, development and/or inspection fees;
- (4) Revenue bonds and/or general obligation bonds; and
- (5) Other funds or income obtained from federal, state, local or private grants and/or loans.

13.38.070 Stormwater Funds. All revenues generated by, or on behalf of the Stormwater Utility shall be deposited in the Storm Sewer and Surface Water Management Public Utility Fund as established and maintained by the County, pursuant to the Interlocal Agreement. The revenue deposited into this account shall be used in accordance with state law and used only for the purposes of constructing, acquiring, adding to, maintaining, replacing, conducting, operating, managing, regulating, and controlling the stormwater system, or to secure the payment of all or any portion of any issue of general obligation bond or revenue bond issued for such purposes, or for other legal purposes consistent with this ordinance.

13.38.080 Operating Budget. The Management Team shall adopt an operating budget for the stormwater utility each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the established costs for operations and maintenance, capital improvement projects, and debt service.

13.38.090 Reserve Account. An operating and emergency reserve account shall be maintained with the designated funds to provide for cash flow, emergencies and capital improvement project needs.

13.38.100 Stormwater User's Fees Established. The City shall charge and collect from the owner of each and every developed property in the City a stormwater user's fee, which shall be set in the manner and amount as determined from time to time by resolution of the City Council, consistent with the Interlocal Agreement. The purpose of this fee is to fund the stormwater regulatory activities and services provided to developed property by the Storm Sewer and Surface Water Management Public Utility.

Prior to establishing or amending stormwater user's fees, the City shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the City. The process used to publish the date shall meet public notice requirements of local and state laws.

13.38.110 Equivalent Residential Unit.

- (1) **Establishment.** The equivalent residential unit (ERU) is hereby established for purposes of calculating the stormwater user's fee.
- (2) **Setting the ERU.** The ERU shall be set by the Management Team from time to time and ratified by the City Council by resolution. The ERU is hereby set as 3,700 square feet.
- (3) **Source of ERU.** The impervious surface area of developed property shall be determined through property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information.
- (4) **Minimum Service Charge.** The minimum charge for a developed property shall be based on 1.0 ERU.

(5) Base Rate and Review.

(A) Base Rate. The base rate for services to utility customers shall be determined from time to time by resolution of the City Council, consistent with the Interlocal Agreement. The effective date for such rates shall be established as set forth in the appropriate resolution of the City Council.

(B) The utility base rate schedule and fees set by resolution of the City Council shall be reviewed periodically and revised as necessary to reflect any changes in operation and capital costs and to ensure fair funding of the program.

13.38.120 Property Classification for Stormwater User's Fee. As authorized by RCW Chapters 35.67 and 35.92, City parcels shall be differentiated from one another based upon the stormwater burdens imposed by the amount of impervious surface.

(1) Customer Classification. For purposes of determining the stormwater user's fees, owners of all developed parcels in the City are classified into one of the following general classes:

- (a) Residential;
- (b) Duplex, Triplex and Four-plex; and
- (c) Non-residential.

(2) Residential Fee. The stormwater fee for single family residential parcels shall equal the base rate.

(3) Duplex, Triplex, and Four-plex Fee. The stormwater fee for a duplex, triplex and four-plex shall equal one half (1/2) the base rate multiplied by the number of dwelling units.

(4) Non-residential Fee. Owners of developed non-residential parcels shall pay a stormwater fee equal to the base rate multiplied by the numerical factor obtained by dividing the measured total impervious surface area of the parcel by one ERU.

13.38.130 Appeals of ERU Determination. If an owner of a non-residential parcel subject to this chapter, or other responsible party, believes the ERU applied to their property is incorrect, the owner may appeal the correctness of the ERU to the Agency, or his/her designee, within thirty (30) calendar days of the initial mailing of the billing for the fee. Such appeals shall be in writing to the Agency and shall specify the grounds of the appeal and the requested remedy. Upon resolution of the appeal, an appropriate adjustment to the ERU will be made accordingly.

13.38.140 Credits

(1) Credits for Properties Covered by Industrial or Municipal Stormwater Permits. Parcels or portions of parcels that meet one of the criteria listed below, to the Agency's satisfaction, shall receive a reduction of 20% from the annual fee charged under Chapter 13.38.120 as currently enacted or hereafter amended for that portion of the parcels covered under an applicable NPDES stormwater permit.

(a) Any parcel that has an active and valid NPDES Industrial Stormwater Permit. A copy of the permit and the Stormwater Pollution Prevention Plan (SWPPP) shall be provided to the Agency.

(b) Any parcel that has an active and valid NPDES Municipal Stormwater Permit. A copy of the permit and current version of the Stormwater Management Plan (SWMP) shall be provided to the Agency.

The property owner is responsible for providing all documentation necessary to demonstrate compliance with the above requirements. In the event that an applicable NPDES stormwater permit addresses only a portion of the total parcel, the credit will be applied to only that affected portion

(2) Credits for Schools Participating in Stormwater and Surface Water Education. The City Council finds that many of the concerns about stormwater quality are created by a general lack of knowledge about the relationship between human activities and the health of the environment. The City Council also finds that Public and Private schools can provide regional benefits to the City's Storm Sewer and Surface Water Management Public Utility by carrying out certain types of educational and community activities related to protection and enhancement of surface water, groundwater, and stormwater quality. Kindergarten through grade 12 schools that are in compliance with all requirements for their own stormwater drainage facilities, and that are carrying out surface water, groundwater, and stormwater quality educational and community activities in cooperation with the City may apply to the Agency for a credit, up to a maximum of 20%, towards their stormwater fees. The amount of an approved credit shall depend upon the nature and extent of the programs and activities being performed. Schools shall pay the full charge under Chapter 13.38.120 as currently enacted or hereafter amended until such time as a credit is granted by the Agency.

(3) Waiver of Utility Fees for Certain Property. The Agency shall waive stormwater and surface 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:

(a) Fees shall be waived for streets maintained by the jurisdictions that are signatory of the ILA, City rights-of-way, alleys provided that the City

transportation system continues to be an integral component of the City stormwater control facility.

(b) Fees shall be waived for municipal parks, public trails and bike paths so long as their owners cooperate with the utility in the provisions of educational services and water quality control efforts. Parks, trails and bike paths have minimal intensity of impervious development and provide opportunities for natural resource education and development of an appreciation for water quality.

(c) Fees shall be waived for all undeveloped parcels. The City Council finds that such parcels generally have no improvements built on them, generate little to no traffic, generate less runoff, and generally are in a natural state, thereby imposing no burden upon the system and receiving no benefit from the utility's services and drainage facilities. Information that a property categorized as undeveloped has impervious development will result in a loss of this waiver.

(4) Credit for Rainwater Harvesting Systems.

(a) The rate a city or town may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(b) Customers desiring this credit shall apply to the Agency and shall submit engineering design and operational information as deemed necessary by the Agency to make their evaluation and decision. The Agency will consider allowing at least a credit of 10% based upon the amount of rainwater harvested.

(5) Any municipal agency, with prior authorization from the Management Team, which performs in-kind services consistent with the purposes of the stormwater permit and enabling ordinances, may request an ERU adjustment in consideration of in-kind services pursuant to RCW 35.67.025.

13.38.150 Property Owners to Pay Fees. The owner of each developed parcel within the permit boundary as they now exist or as they may be hereafter amended, shall pay the stormwater user's fee and charges as provided in this chapter. From the date of issuance of the construction stormwater permit a newly developed parcel is required to pay the fee.

13.38.160 Billing Procedures and Penalties for Late or Non-Payment. The fees and charges as herein provided for shall be computed and billed on a monthly basis. All parcels which are currently served by any City utility services and are within the City shall be assessed their monthly fees and charges each month through their utility account. Parcels not being served by any City utility service (i.e. no water meter) will have new accounts created for stormwater service as needed. If one piece of property is served by more than one account, only one account will be charged stormwater rates for each piece of property, on a case-by-case basis. Any piece of property or parcel in use for any commercial, business, or other purpose with space that meets the definition of impervious surface shall be charged stormwater rates, regardless of use of other City utility services. The charges shall be due on or before the date of billing and shall become delinquent thereafter if not paid by the twentieth day following the date of billing.

Billings shall be mailed to the owner or beneficial owner of the property. Failure to receive such bills shall not relieve any person liable thereof from the obligation to pay the same, nor the property receiving such service, or capable of receiving such service, from such lien thereof as may thereafter attach to the property in the manner provided by law.

No sooner than 21 days after the date of a billing, the city shall send to a customer whose bill has not been paid a past due /disconnect notice by first-class mail. The notice shall contain information regarding the past due account balance, provide a pay-by date, and request the customer to make arrangements for payment. The notice shall also state that if sufficient arrangements have not been made for payment, that the city will disconnect or terminate the customer's water / sewer service. The notice will include information regarding fees associated with the delinquent account notification and fees associated with the disconnection and reconnection of water / sewer services. Fees for delinquent notification and reconnection of a customer's water / sewer service shall be set by the city council through a rate resolution.

If payment has not been made before delinquency, as set forth above in this Section, the City may submit the delinquent amount to a collection agency per the City's standard collection procedures as determined by the Agency and at the Agency's discretion.

For parcels with City water service, if payment has not been made before delinquency, as set forth above in this Section, the city shall take the following steps to notify the user and if necessary terminate stormwater service by shutting off water service to any delinquent utility customer.

(1) On or about the twenty-first day following the date of billing, the finance department shall give notice reasonably calculated under all the circumstances to apprise the user that:

(a) the user is delinquent in payments;

(b) water service will be shut off if the user is still delinquent in payment of stormwater charges seven days after the date of delinquency;

(c) the user has the right to protest the billing and appeal the amount due to the Agency;

(d) if the user does not request a hearing with the Agency, or his/her designee, within twenty days following the date of delinquency and does not pay the delinquent amount or amounts due in full within this same period or any extensions thereof resulting pursuant to the provisions of 13.38.160 (3), the stormwater service will be terminated by shutting off water service to that user.

(2) If the user requests a hearing on the amount due, a hearing must be held, and the user given an opportunity to be heard. The Hearings Officer must thereafter determine the amount due and owing and inform the user.

(3) The user shall be given **ten (10)** days to pay the amount determined by the Hearings Officer that is owed. If the amount owing has not been paid within **ten** days, stormwater service may be shut off by shutting off water service.

(4) Water service shall be restored if full payment of all amounts owing plus a turn-on charge as authorized in the City Water Utility Code, AMC 13.30.770, is made.

(5) If water service is to be cut off from a known rental unit where the tenant is not the person or entity responsible for paying for stormwater use or stormwater charges as shown on the records of the city finance department then, prior to termination of service for nonpayment and after the city has satisfied the procedures of this Section 13.38.160, the city shall place upon the premises at least five days prior to the scheduled cutoff of service such notice as is reasonably calculated to inform the tenant or tenants of the proposed cutoff of service.

(6) The City or any of its officers or employees shall not be liable for any damages that may occur because of water service being cut off pursuant to the provisions of this Chapter.

(7) "Notice reasonably calculated under all the circumstances to apprise the user," includes at the minimum, written notice to the user and the owner, if the owner is not the user, and the owner has so informed the city finance department. In addition, the city shall place upon the premises at least five days prior to the scheduled cutoff of service, notice which informs the user of the proposed cutoff of service, and the opportunity to protest the proposed cutoff in a meaningful manner.

(8) If termination of water service proves ineffective at securing the delinquent amount, then the City may pursue collection procedures in a manner consistent with delinquent parcels with no water service

Liens. Pursuant to RCW 35.67, the City shall have a lien for delinquent service charges and interest against the parcel that is the subject of the service charge billed. The lien shall be superior to all other liens and encumbrances, except general taxes and local and special assessments of the City. The lien shall be effective for a total not to exceed one year's delinquent service charges without the necessity of any writing or recording of the lien with the county auditor. The Agency administrator shall periodically certify delinquencies to the county auditor that exceed one year.

13.38.170 Hearing Request.

1. "Hearing Officer" means the official appointed by the City for administrative hearings.
 - a. The hearing officer shall hear all appeals of decisions under this ordinance.
 - b. The hearing officer shall hear evidence presented by whomever the City designates.
 - c. The hearing officer shall likewise hear evidence presented by the applicant appealing the decision or interpretation.
 - d. In the case of an appeal of a notice of civil violation and/or order to abate issued by the Enforcement Officer, the burden of proof at the hearing shall rest with the City. If the decision of the enforcement officer is found to be supported by a preponderance of the evidence, the decision shall be affirmed.
 - e. Formal rules of evidence need not be followed, but witnesses shall be sworn by the hearing officer and a written order issued.
 - f. An applicant may appeal the written notice of violation entered by the Hearing Officer to the District Court within twenty (20) days of the hand delivered notice or within twenty (20) days of the postmark of the mailed notice. The request must contain a copy of the written notice, and the name, address and telephone number of the applicant requesting the hearing. The request must also include a brief description of the reason the applicant believes there is no violation. This request will be mailed to the agency that will set the hearing date. The address will appear on the Notice of Violation. The District Court will review the matter de novo.
 - g. The City is not required to pay the hearing officer if a decision on a hearing has not been rendered within 30 days of the date of the hearing.
2. A person may appeal the written enforcement action taken under this ordinance before the Hearing Officer within twenty (20) days of the hand delivered notice or within twenty (20) days of the postmark of the mailed notice. The request must contain a copy of the written notice, and the

3. Failure of any person to file a timely appeal or failure of any person, who has filed an appeal to attend the scheduled hearing, shall constitute a waiver of his or her right to an appeal hearing.
4. Filing of an appeal shall stay the enforcement of any notice of civil violation, order to abate, collection of fine, penalties or assessments or termination of service during the pendency of such appeal except as otherwise provided.
5. A copy of the final order of the hearing officer shall be mailed to the appellant(s) within three (3) working days following the entry of a written order under this section. Unless otherwise stated in the order, such order shall be final and conclusive ten (10) days from the date of mailing thereof unless any party of record makes application to a court of competent jurisdiction for judicial review and stay of enforcement.

The result of this hearing may be appealed to the Municipal Court. The court may consider mitigating factors to reduce or suspend fines and jail time.

13.38.180 Severability. If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this chapter.

13.38.190 Effective Date. This ordinance shall take effect on and be in force five (5) days from and after its passage, approval, and publication as required by law.

PASSED by the City Council this _____ day of _____, 2010.

APPROVED by the Mayor this _____ day of _____, 2010.

Jim Miller, Mayor

ATTEST/AUTHENTICATE:

APPROVED AS TO FORM:

Ellen Boatman, City Clerk

Scott Broyles, Attorney

FILED WITH THE CITY CLERK: _____, 2010

PASSED BY THE CITY COUNCIL: _____, 2010

PUBLISHED: _____, 2010

_____, 2010

EFFECTIVE DATE: _____

ORDINANCE NUMBER: 2010-757