

STATE OF WISCONSIN WAUKESHA COUNTY VILLAGE OF ELM GROVE

AN ORDINANCE CREATING CHAPTER 326
OF THE VILLAGE CODE OF ORDINANCES
ESTABLISHING A STORM WATER MANAGEMENT UTILITY

THE VILLAGE BOARD OF THE VILLAGE OF ELM GROVE DO ORDAIN AS FOLLOWS:

SECTION 1: Chapter 326 of the Village of Elm Grove Code of Ordinances is hereby created as follows:

ARTICLE I, STORM WATER MANAGEMENT UTILITY

§326-1. Findings.

A. The management of storm water and other surface water discharges within and beyond its border is a matter that affects the public health, safety and welfare of the Village, its citizens and businesses and others in the surrounding area.

B. Failure to effectively manage storm water and other surface water discharge from already developed and vacant property may create, among other things, erosion of lands, threaten businesses and residences with water damage and create sedimentation and other environmental damage.

C. The Village's Storm Water Management System, which provides for the regulation, collection and disposal of storm and surface water discharge, is of benefit and provides services to all real property within the incorporated Village limits.

D. The costs of operating and maintaining the Village's Storm Water Management System, ensuring regulatory compliance and financing necessary plans, studies, repairs, replacement, improvements, and extension thereof should, to the extent practicable, be allocated among property classes in proportion to the contribution to the System from each property class.

E. The final report entitled "Storm Water Service Charge Study, Village of Elm Grove, Waukesha County, Wisconsin August/2004" prepared by Ruekert & Mielke, Inc. and dated is hereby declared to constitute the study and description of the analytical determinations that demonstrate a rationale basis for the enactment of this ordinance.

§326-2. Establishment of Storm Water Management Utility.

In order to protect the health, safety and welfare of the public, there is hereby established the Village of Elm Grove Storm Water Management Utility.

§326-3. Definitions.

41 A. *Administrative Costs.* The costs of general management and administration of the Storm Water
42 Management Utility, development plan and erosion control plan review, and compliance with the
43 requirements of Wisconsin Administrative Code Chapter NR 216, include, but are not limited to, the
44 following:

45 (1) Wages, salaries and related employee expenses for management and administration of the
46 Utility together with fringe benefits and premiums paid on such wages and salaries for the State
47 Worker's Compensation Coverage.

48 (2) Utility billing and accounting expenses.

49 (3) Office supplies.

50 (4) Permit fees.

51 (5) Consultant and legal fees.

52 B. *Board.* The Village Board of the Village of Elm Grove.

53 C. *Capital Cost.* The cost of acquiring, purchasing, leasing, planning, designing, constructing,
54 extending and improving all or any part of the Storm Water Management System and any principal,
55 interest or premiums on any indebtedness incurred for these purposes.

56 D. *Debt Retirement.* All annual principal and interest requirements and obligations of the Village that
57 relate to storm water management system improvements.

58 E. *Equivalent Runoff Unit (ERU).* An amount of impervious surface area on a lot or parcel that is
59 equivalent to the amount of impervious surface on a typical developed single-family residential lot. The
60 square feet of impervious surface area per ERU shall be as established by the Village Board from time to
61 time by resolution and set forth in a Storm Water Utility Rate Table.

62 F. *Impervious Area or Impervious Surface.* A horizontal surface which has been compacted or covered
63 with a layer of material so that it is highly resistant to infiltration by rainwater. It includes but is not
64 limited to asphalt, concrete, streets, roofs, sidewalks, parking lots, and other similar surfaces.

65 G. *Operation and Maintenance Costs (O&M).* All direct and indirect costs, excluding debt service and
66 other capital costs, necessary to ensure adequate drainage and control of storm and surface waters on a
67 continuing basis and assure optimal long term function of storm water management system facilities.
68 O&M costs may include expenses for, but not limited to, the following purposes:

69 (1) Wages and salaries and related employee expenses for operating and maintenance of the
70 Storm Water Management System, and supervisory personnel, together with fringe benefits and
71 premiums paid on such wages and salaries for the State Worker's Compensation coverage.

72 (2) Fuel and other operating supplies.

73 (3) Repairs to and maintenance of the equipment associated therewith.

74 (4) Premiums for hazard insurance.

75 (5) Premiums for insurance providing coverage against liability for the injury to persons and/or
76 property.

77 (6) Rents and leasing costs.

78 (7) Operation, licensing and maintenance costs for trucks and heavy equipment.

79 (8) Consultant and legal fees.

80 (9) Replacement costs.

81 H. *Replacement Fund*. Expenditures for obtaining and installing equipment, accessories and
82 appurtenances which are necessary during the useful life of the storm water management system to
83 maintain the performance for which such system was designed and constructed.

84 I. *Storm Sewer*. A sewer that carries storm and surface drainage but excludes domestic wastewater and
85 industrial wastes.

86 J. *Storm Water Management Program*. Any activities undertaken by the Village of Elm Grove for the
87 collection, transportation, storage, treatment, and disposal of storm and surface water and for the
88 reduction or elimination of pollutants in storm and surface water, including, but not limited to
89 administration, operation and maintenance of the Storm Water Management System and Utility,
90 constructing storm water sewerage facilities, and complying with the requirements of the Wisconsin
91 Statutes and Administrative Code.

92 K. *Storm Water Management System*. Any plant, facilities, fixtures or equipment owned or leased by
93 the Village for the collection, transportation, storage, treatment, and disposal of storm water and surface
94 water. Such facilities may include, without limitation by enumeration, surface and underground drainage
95 conduits of any type, storm sewers, watercourses, retaining walls and ponds, and such other facilities as
96 will support a storm water management system.

97 L. *Storm Water Service Charges*. Charges imposed on properties in the Village to recover the
98 administrative, operating, maintenance and capital costs relating to storm water management facilities
99 benefiting properties in the Village. Storm Water Service Charges may include user charges or any other
100 special fees and charges that may be required to provide for an equitable sharing of Utility costs by
101 properties in the Village.

102 M. *Utility*. The Storm Water Management Utility of the Village of Elm Grove.

103 N. *Village*. The Village of Elm Grove.

104 **§326-4. Application.**

105 The application of this section, its rules, regulations and rates, shall apply to all real property within the
106 incorporated limits of the Village.

107 **§326-5. Powers and Duties of the Utility.**

108 A. *Facilities*. The Village through the Storm Water Management Utility may acquire, construct, lease,
109 own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such

110 facilities as are deemed by the Village to be proper and reasonably necessary for a system of storm and
111 surface water management. These facilities may include, without limitation by enumeration, surface and
112 underground drainage facilities, storm sewers, watercourses, retaining walls and ponds, and such other
113 facilities that will support a Storm Water Management System.

114 B. Rates and Charges. The Village through the Storm Water Management Utility may establish such
115 rates and charges as are necessary to finance planning, design, construction, maintenance and operation
116 of the facilities, regulatory compliance, and administration of the Utility in accordance with the
117 procedures set forth in this ordinance.

118 C. Budgeting. The Village through the Storm Water Management Utility shall prepare an annual
119 budget, which is to include all administrative, regulatory compliance, operation and maintenance costs,
120 debt service, and other costs related to the operation of the Storm Water Management Utility. All costs
121 shall be allocated amongst users of the Storm Water Management System as recommended by the
122 Finance Committee and determined by the Board.

123 D. The Village may utilize the full authority provided in §66.0821, Wis. Stats, with respect to financing
124 methods, user charges, and other matters therein dealt with and shall have all legal authority permitted
125 for municipal utilities to impose reasonable charges for services.

126 **§326-6. Management of Utility.**

127 A. The oversight of the Storm Water Management Utility is hereby vested in the Village Board. The
128 Board shall direct and delegate the management and operation of the Storm Water Management Utility to
129 Village staff, and shall prescribe the functions thereof as may be necessary to operate and manage the
130 Storm Water Management Utility.

131 B. The Public Works/Utility Committee, appointed in accordance with Village of Elm Grove Ordinance
132 § 80-3(A)(5), shall make recommendations to the Village Board concerning the operation of the Utility.

133 C. The Finance Committee of the Village Board, in consultation with the Public Works/Utility
134 Committee, shall make recommendations to the Village Board concerning the Utility budget, service
135 charge rates and expenditures.

136 D. The Village Board shall establish a Storm Water Management Fund, which shall be used for
137 collection of revenues and payment of expenses relating to the Utility. Any excess of revenues over
138 expenditures in a year shall be retained by the Fund for subsequent years' needs.

139 E. All Utility receipts shall be collected and accounted for by the Village Treasurer.

140 F. The Village Board shall cause an annual audit of the books of the Storm Water Management Utility
141 to be made and shall make the books and records relating to the Utility available for inspection during
142 regular business hours.

143 **ARTICLE II, Storm Water Management Service Charges**

144 **§326-7. Purpose.**

145 There is hereby established a uniform system of storm water service charges that shall apply to each and
146 every lot or parcel within the Village. It shall be the policy to establish storm water service charges in such
147 amount in order to pay for all or a part of the following costs relating to the Utility: 1) operation and
148 maintenance (O&M); 2) administrative; 3) contributions to a replacement and capital improvement fund; and
149 4) debt service, including debt retirement, debt service reserves and coverage requirements. The Board may
150 establish and modify storm water service charges as necessary so as to assure that the charges generate
151 adequate revenues to pay the costs of the storm water management program and that costs are allocated fairly
152 and proportionately to all parcels in the Village.

153 **§326-8. Charges.**

154 Storm water service charges may include the following components:

155 A. User charge. A user charge may be imposed on all property that has impervious surface area. The
156 charge to each parcel shall be based upon the number of ERUs assigned to the parcel. The user charge
157 for each parcel shall be equal to the product of the user charge rate in terms of dollars per ERU, and the
158 number of ERU's assigned to the parcel.

159 B. Special charge. A special charge may be imposed on property that is in an area specially benefited by
160 a particular storm water management facility. This charge will be developed to reflect the benefits in a
161 particular area that may not be appropriate to allocate to property throughout the Village.

162 C. All storm water service charge rates shall be established from time to time by resolution of the
163 Village Board and set forth in a Storm Water Utility Rate Table attached thereto.

164 **§326-9. Customer Classification.**

165 A. For purposes of imposing the user charges, all lots and parcels in the Village shall be classified into
166 the following five customer classifications:

167 (1) Single-family and Duplex Residential

168 (2) Condominium Residential

169 (3) Multi-Family Residential

170 (4) Non-Residential

171 (5) Undeveloped

172 B. ERU's shall be calculated for each classification as follows:

173 (1) Single-family and Duplex Residential: 1 ERU per dwelling unit.

174 (2) Condominium Residential. The Village Manager shall be responsible for determining the
175 total impervious area of each condominium parcel based on the best available information,
176 including, but not limited to data supplied by the Village Engineer, Village Assessor, Building
177 Inspector or Planning and Zoning Administrator, aerial photography, the property owner, tenant or
178 developer, or actual on-site measurement. The total impervious area of the parcel shall be divided

179 equally among the condominium units to determine the square feet of impervious area per unit.
180 This amount shall be divided by the number of square feet per ERU as established by the Village
181 Board and set forth in the Storm Water Utility Rate Table to determine the number of ERUs to
182 assign to each unit, except that in no case shall a condominium unit be assigned less than 0.5 ERUs.
183 The number of ERUs per unit shall be rounded to the nearest 0.5 ERUs.

184 (3) Multi-family Residential. The Village Manager shall be responsible for determining the
185 impervious area of each multi-family residential parcel based on the best available information,
186 including, but not limited to data supplied by the Village Engineer, Village Assessor, Building
187 Inspector or Planning and Zoning Administrator, aerial photography, the property owner, tenant or
188 developer, or actual on-site measurement. The total impervious area of the parcel shall be divided
189 by the number of square feet per ERU as established by the Village Board and set forth in a Storm
190 Water Utility Rate Table to determine the number of ERUs, except that in no case shall a multi-
191 family parcel be assigned less than 0.50 ERUs per dwelling unit. The number of ERUs shall be
192 rounded to the nearest 0.50 ERUs.

193 (4) Nonresidential Property. The Village Manager shall be responsible for determining the
194 impervious area of each nonresidential parcel based on the best available information, including, but
195 not limited to data supplied by the Village Engineer, Village Assessor, Building Inspector or
196 Planning and Zoning Administrator, aerial photography, the property owner, tenant or developer, or
197 actual on-site measurement. The total impervious area of the parcel shall be divided by the number
198 of square feet per ERU as established by the Village Board and set forth in a Storm Water Utility
199 Rate Table to determine the number of ERUs to assign to the parcel. The number of ERUs per
200 parcel shall be rounded to the nearest 0.50 ERUs.

201 (5) Undeveloped Property. For any lot or parcel that has no impervious surface area, no ERUs
202 shall be assigned for purposes of imposing user charges under this ordinance.

203 C. New Construction. For all classifications other than single family and duplex residential the
204 construction of new or expanded buildings, driveways, or other structures shall be subject to an increase
205 in the number of ERUs assigned to a lot or parcel. The Village shall recalculate the number of ERUs
206 upon completion of new construction.

207 **§326-10. Determination of Storm Water Service Charges.**

208 The amount of the charge to be imposed for each classification shall be made by resolution of the Village
209 Board. The current rates will be set forth in a Storm Water Utility Rate Table and kept on file in the office of
210 the Village Clerk. The rates shall be reviewed by the Village Board on an annual basis and adjusted as
211 necessary.

212 **§326-11. Billing and Payment.**

213 A. User charges for residential users shall be billed in advance on an annual basis. All commercial users
214 shall be billed on a quarterly basis. Payment of commercial bills shall be made within 25 days of mailing
215 by the Village. In the event that such bill is not paid when due, a penalty of 1.5% per month on the
216 unpaid balance shall be added thereto. All bills shall be payable at the office of the Village Treasurer,
217 13600 Juneau Boulevard, Elm Grove, Wisconsin 53122.

218 B. The property owner is held responsible for all storm water service charges on real property that s/he
219 or it owns. All storm water bills and notices of any nature relative to the storm water management
220 program will be addressed to the owner and delivered to the addressee by first class mail.

221 C. Reasonable care will be exercised in the delivery of Storm Water Service Charges bills. A failure to
222 receive a Storm Water Service Charges bill, however, shall not relieve any person of the responsibility
223 for payment of Storm Water Service Charges within the prescribed period nor exempt any party from any
224 penalty imposed for delinquency in the payment thereof.

225 D. Unpaid storm water service charges shall be a lien upon the property served and shall be enforced as
226 provided in §66.0809(3), Wis. Stats.

227 **§326-12. Appeals.**

228 A. The storm water service charge, a determination of ERUs or ERU credits may be appealed by filing a
229 written appeal with the Village Manager prior to the due date if not paid, or within thirty (30) days of
230 payment. The appeal shall specify all bases for the challenge and the amount of the storm water service
231 charge the appellant asserts is appropriate. Failure to timely file an appeal waives all right to contest
232 such charge.

233 B. The Village Manager shall determine whether the storm water charge is fair and reasonable, or
234 whether an adjustment or refund is due the appellant. The Village Manager may act with or without a
235 hearing and shall inform the appellant in writing of his or her decision.

236 C. The appellant has thirty (30) days from the decision of the Village Manager to file a written appeal to
237 the Village Board. The written appeal shall specify all grounds constituting the basis of the appeal of the
238 Village Manager's decision and shall again state the amount of the charge that the appellant considers to
239 be appropriate. The appeal must specifically address the determination of the Village Manager.

240 D. The Village Board shall review said written appeal and shall determine whether the storm water
241 charge is fair and reasonable, or whether an adjustment or refund is due the appellant. The Village Clerk
242 shall provide five (5) business days prior written notice of the time and place of the Board's
243 consideration of the appeal to the owner at the address listed in the appeal. The Board shall base its
244 decision on the record submitted to it at its meeting. The Village Clerk shall notify the appellant in
245 writing of the Board's determination by first class mail addressed to the owner using the address listed in
246 the appeal.

247 E. If as a result of any appeal a refund is due the owner, such refund shall be applied as a credit on the
248 owner's next storm water charge bill.

249 **ARTICLE III, Severability**

250 **§326-13. Severability.**

251 If any provision of this chapter, or the application thereof to any party or circumstance, is held invalid, the
252 invalidity shall not affect other provisions or applications of this chapter which can be given effect without
253 the invalid provision or application, and to this end the provisions of this chapter are declared severable.

254 **SECTION 2:** If any section, sentence, clause, phrase or portion of this ordinance is for any reason held
255 invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate,
256 distinct and independent provision, and such holding shall not affect the validity of the remainder of such
257 ordinance.

258
259 **SECTION 3:** This ordinance shall take effect and be in full force from and after its passage and publication.

260
261 Passed and approved this ____ day of
262 _____, 2004.

263
264
265 VILLAGE OF ELM GROVE,

266
267 By: _____
268 Susan Freedy, Village President

269 ATTEST:

270
271 _____
272 Mary S. Stredni, Village Clerk

d:\documents and settings\my documents\word-ss\village of elm grove\ordinances & resolutions\storm water chap 326 6 4 04.doc