

CHAPTER XIII STORMWATER UTILITY

13-1 STORMWATER UTILITY SERVICE CHARGE.

13-1.1 Short title.

This section may be cited as the "Stormwater Utility Service Charge Ordinance".
(Ord. #2003-22, § 2)

Sec. 13-1.2 Legislative findings.

The governing body of the city has determined that:

- A. The federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the city of Santa Fe, to implement stormwater management programs within prescribed time frames, and the environmental protection agency, pursuant to the federal Clean Water Act, has published rules for stormwater outfall permits.
- B. Section 3-49-5 NMSA 1978 authorizes cities to "open, construct, repair, keep in order and maintain water mains, laterals, reservoirs, standpipes, sewers and drains," and Section 3-27-4 authorizes cities to "levy by general ordinance a just and reasonable service charge" for "maintaining, enlarging, extending, constructing, and repairing water facilities."
- C. The Santa Fe region will benefit from the city's efforts to maintain and improve the system of stormwater facilities and other efforts to improve and safeguard the water quality of the Santa Fe River and its tributary arroyos, due to their reliance on the Santa Fe River and groundwater for their long-term supply.
- D. The stormwater system that provides for the collection, treatment, storage and disposal of stormwater provides benefits and services to the Santa Fe region. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; and improvements to the water quality in the stormwater and surface water system and its receiving waters.

(Ord. #2003-22, § 3)

13-1.3 Purpose.

The city shall impose a stormwater utility service charge on the monthly utility bills of its utility customers for the purpose of funding the operation, construction and maintenance of stormwater facilities, for stormwater system planning, and for review of stormwater development plans for compliance with stormwater management codes.

(Ord. #2003-22, § 4)

13-1.4 Definitions.

For the purpose of this section, the following definitions shall apply:

Construction means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities.

Stormwater means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration, and drainage.

Stormwater management means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.

Stormwater utility service charge means the charge established under this section and levied on utility customers to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the city.

(Ord. #2003-22, § 5)

13-1.5 Stormwater utility service charge established.

Each city utility customer account, except those set forth in subsection 13-1.6, shall be billed a monthly stormwater utility service charge as shown on the attached Exhibit A.* The governing body shall, by ordinance, periodically amend Exhibit A* based upon increased costs to the city for stormwater management. The stormwater utility service charge is in addition to any other charge that the city has the right to charge under any other rule or regulation of the city.

(Ord. #2003-22, § 6; Ord. #2010-17, § 1)

Editor's note(s)—Exhibit A, referred to herein, may be found at the end of this chapter.

13-1.6 Exemptions from charges.

Customers may be exempt from monthly stormwater utility service charge if they meet the following:

- A. Any customer filing an affidavit setting out the following facts:
 - (1) The customer is the head of the household residing in the residence being assessed;
 - (2) The household's gross annual income does not exceed one hundred twenty percent (120%) of the most recent federal poverty guidelines issued by the U.S. Department of Health and Human Services; and
 - (3) The customer shall submit documents as required by city policy in order to verify income.
- B. Any person filing an affidavit requesting exemption of the charge consents to any reasonable investigation and substantiation by the city of the facts stated in the affidavit.
- C. The filing of a false statement or otherwise fraudulently obtaining the benefits of this subsection is a violation of the Santa Fe Code and is punishable pursuant to Section 1-3 of this Code and shall entitle the city to recover any fraudulently exempted amount and applicable interest penalties.

(Ord. #2003-22, § 7)

13-1.7 Use of revenues.

Stormwater utility service charge revenues shall be accounted for separately from other funds of the city. The charges and any interest earned on the fund shall be spent only for the following:

- A. The acquisition, design, construction, maintenance and operation of the stormwater system, including capital improvements designated in the capital improvement program;
- B. Administration and enforcement of this section and all regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the stormwater system, including, but not limited to, the quantity and/or velocity of the stormwater conveyed thereby;
- C. Preparation and revision of comprehensive drainage infrastructure and monitoring plans;
- D. Review of development plans for conformity with stormwater regulation and inspection and acceptance of extensions and connections to the stormwater system;
- E. Enforcement of regulations to protect and maintain water quality and quantity within the system in compliance with water quality standards established by state, regional and/or federal agencies as now adopted or hereafter amended;
- F. Other activities related to the improvement, maintenance and operation of the stormwater system.

(Ord. #2003-22, § 7)

13-2 STORMWATER ILLICIT DISCHARGE CONTROL.

13-2.1 Title.

Section 13-2 may be cited as the "Stormwater Illicit Discharge Control Ordinance".

(Ord. #2005-3, § 2)

13-2.2 Legislative findings.

The governing body of the city has determined that the federal Clean Water Act, 33 U.S.C. 1251 et seq., requires the city of Santa Fe, to implement a stormwater management plan to comply with stormwater discharge permits issued under the national pollutant discharge elimination system (NPDES), which includes the requirement to detect and eliminate illicit discharges of pollutants into the municipal storm drain (storm sewer) system.

(Ord. #2005-3, § 3)

13-2.3 Purpose.

The purpose and intent of the Stormwater Illicit Discharge Ordinance is to protect and enhance the water quality of watercourses and groundwater by prohibiting non-stormwater discharges to the city's storm drain system.

(Ord. #2005-3, § 4)

13-2.4 Definitions.

For the purpose of this section, the following definitions shall apply:

Abate means to bring to a halt, eliminate or, where that is not possible or feasible, to suppress, reduce, or minimize.

City means the city of Santa Fe.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

Hazardous material means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit discharge means any direct or indirect non-stormwater discharge to the storm drain system that contains any pollutant(s).

Illicit connection means either of the following:

- A. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or
- B. Any drain or conveyance connected from a commercial or industrial establishment to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the city.

NPDES stormwater discharge permits means general, group, and individual stormwater discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil, anti-freeze, and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; branches, trimmings, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens, dissolved and particulate metals; animal wastes; wastes and residues that result from constructing or remodeling a building or structure (including but not limited to sediments, slurries, mud, plasters, and concrete rinsates); and noxious or offensive matter of any kind.

Pollution means the human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses.

Premises means any lot or combination of contiguous lots held in single ownership and the buildings, structures or other appurtenances thereon.

Storm drain system means publicly-owned facilities and appurtenances operated by the city by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, curbs, gutters, drop inlets, piped storm drains (culverts), pumping facilities, retention and detention basins, natural and human-made or altered drainage channels and arroyos, reservoirs, and other drainage

structures which are within the city and are not part of a publicly owned treatment works as defined at 40 CFR 122.2.

Stormwater means any surface flow, runoff, snow melt, and drainage consisting entirely of water from rain and snow storm events.

Waters of the United States means surface watercourses and water bodies as defined at 40 CFR 122.2, including all natural waterways, channels, and depressions in the earth that may carry water, even though such waterways may only carry water during rain and snow storms and may not carry stormwater at and during all times and seasons.

(Ord. #2005-3, § 5)

13-2.5 Responsibility for administration.

The city shall administer, implement, and enforce the provisions of this section. Any powers granted or duties imposed upon the city may be delegated in writing by the city to persons or entities acting in the beneficial interest of or in the employ of the city.

(Ord. #2005-3, § 6)

13-2.6 Prohibition of illicit discharges.

- A. No person shall discharge or cause to be discharged any direct or indirect non-stormwater discharge to the storm drain system that contains any pollutants that cause or contribute to a violation of local, state or federal water quality standards.
- B. Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to waters of the U.S. when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illicit discharges unless determined to cause a violation of the provisions of the Clean Water Act, state law or this section:
 - (1) Water line flushing;
 - (2) Uncontaminated pumped groundwater and other discharges from potable water sources;
 - (3) Landscape irrigation and lawn watering;
 - (4) Rising groundwater;
 - (5) Uncontaminated groundwater infiltration to the storm drain system;
 - (6) Uncontaminated foundation drains;
 - (7) Uncontaminated water from crawl space pumps;
 - (8) Air conditioning condensation;
 - (9) Uncontaminated nonindustrial roof drains;
 - (10) Springs;
 - (11) Individual residential car washing;
 - (12) Flows from riparian habitats and wetlands; or
 - (13) Dechlorinated swimming pool discharges; street wash waters; and flows from fire fighting.

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- C. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the federal environmental protection agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. If requested, a copy of said NPDES permit, waiver, or waste discharge order shall be provided to the city within ten (10) days of request.

(Ord. #2005-3, § 7)

13-2.7 Prohibition of illicit connections.

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(Ord. #2005-3, § 8)

13-2.8 Waste disposal prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any component of the storm drain system, or water of the U.S., any pollutant.

(Ord. #2005-3, § 9)

13-2.9 Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other substances that would pollute, contaminate, obstruct, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines in order to protect against erosion and degradation of the watercourse originating or contributed from their property.

(Ord. #2005-3, § 10)

13-2.10 Requirement to notify the city of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of a hazardous material said person shall immediately notify emergency response officials of the occurrence. In the event of a release of nonhazardous materials, said person shall notify the city's public works department in person or by phone or facsimile no later than 5:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city's public works department within three (3) business days of the

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phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

(Ord. #2005-3, § 11)

13-2.11 Authority to inspect.

Whenever necessary to make an inspection to enforce any provision of this section, or whenever the city has probable cause to believe that there exists any condition which constitutes a violation of this section, the city may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater discharge compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the city is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ord. #2005-3, § 12)

13-2.12 Authority to sample, establish sampling devices and test.

During any inspection as provided herein, the city may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities. In the event the owner or occupant denies permission to sample, establish sampling devices, and test, the city is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such samples, sampling devices, or tests.

(Ord. #2005-3, § 13)

13-2.13 Requirements to eliminate illicit discharges.

The city may require by written notice that a person responsible for an illicit discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illicit discharges.

(Ord. #2005-3, § 14)

13-2.14 Requirement to eliminate illicit connections.

The city may require by written notice that a person responsible for an illicit connection to the storm drain system comply with the requirements of this section to eliminate the connection by a specified date.

(Ord. #2005-3, § 15)

13-2.15 Violations; penalties, and enforcements.

- A. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the Illicit Discharge Control Ordinance. Each day the violation continues shall be considered a separate offense.
- B. Whenever the city finds that a person has violated or is violating a requirement of the section the city may:
 - (1) Issue a written notice of violation;
 - (2) File a citation in municipal court as set forth in Section 1-3 SFCC 1987;

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- (3) Commence a civil action in district court for appropriate relief, including injunctive relief;
 - (4) Determine that the violation is a threat to public health, safety, and welfare and is therefore declared a nuisance, and as such may be abated as set forth in elsewhere in this code.
- C. A notice of violation shall state with reasonable specificity the nature of the violation and set forth a deadline for correction of the violation pursuant to the requirements set forth in the notice. The notice shall further advise that, should the violator fail to correct the violation pursuant to the requirements, the city will take any and all measures necessary to abate the violation and and/or restore the property and the expense thereof shall be charged to the violator pursuant to subsection 13-2.17 SFCC 1987.

(Ord. #2005-3, § 16)

13-2.16 Abatement by city.

If after the notice is issued, the violation has not been corrected pursuant to the requirements set forth in said notice, the city or a contractor, designated by the city, shall request permission to enter upon the subject private property and if granted, is authorized to take any and all measures necessary to abate the violation and/or restore the property. In the event the owner or occupant refuses entry after a request to enter and abate has been made, the city is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ord. #2005-3, § 17)

13-2.17 Charging cost of abatement/liens.

Within thirty (30) days after abatement of the violation by the city, the city shall notify the owner of the property of the cost of abatement, including administrative costs. If the amount due is not paid within ten (10) days, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The city may assess a fee for the placement of the lien.

(Ord. #2005-3, § 18)

13-2.18 Exigent circumstances abatement.

The city, pursuant to its police powers, is authorized to require immediate abatement of any violation of this section that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the city, the city and/or its agents are authorized to enter onto private property and to take any and all measures required to remediate the violation for the protection of the community. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking other and further relief authorized under this section.

(Ord. #2005-3, § 19)

13-2.19 Severability.

The requirements and provisions of this section and their parts, subparts and clauses are severable. In the event that any requirement, provision, part, subpart or clause of this section, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent

of the governing body that the remainder of the section be enforced to the maximum extent possible consistent with the governing body's purpose of detecting and eliminating illicit discharges.

(Ord. #2005-3, § 20)

EXHIBIT A
CITY OF SANTA FE
STORMWATER UTILITY SERVICE CHARGE
(Subsection 13-1.5)

Applicability: In addition to any other charge that the city has a right to charge under any rule or regulation of the city, water utility customers, except those set forth in subsection 13-1.6, shall pay a monthly stormwater utility service charge. Stormwater utility service charge revenues shall be accounted for separately from other funds of the city. Programs to be funded shall be pursuant to subsection 13-1.7 A through F.

Service Area: Within the corporate limits of the city of Santa Fe, New Mexico and those areas outside the corporate limits to which water utility service has been authorized by action of the governing body of the city of Santa Fe.

Rate: Effective January 1, 2020, the monthly stormwater utility service charge shall be the following:

Residential Charge	
<u>Meter Size</u>	<u>Stormwater Utility Service Charge</u>
All meters	\$5.50
Commercial Charge	
<u>Meter Size</u>	<u>Stormwater Utility Service Charge</u>
½"	\$5.50
¾"	\$8.25
1"	\$13.75
1½"	\$27.50
2"	\$44.00
3"	\$85.50
4"	\$137.50
6"	\$275.00
8"	\$440.00

(Ord. #2010-17; Ord. # 2019-31)