



# PORTLAND MAINE

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## MEMORANDUM

**TO:** Finance Committee

**FROM:** Ian Houseal, Assistant to the City Manager, Sustainability Coordinator

**DATE:** November 7, 2013

**SUBJECT:** Stormwater Service Charge Draft Finance Committee Recommendations to Council

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Please see the attached material in preparation for Thursday November 7, 2013 Finance Committee Meeting.

The following material will be supplemented by a presentation constituting the draft recommendations:

- Stormwater service charge recommendations;
- Single stormwater bill (semi-annual) start-up and first year budget; and
- Ordinance amendments.

Also see the following material requested by the Committee:

- Comparison of the stormwater service charge appeals process to the property value appeals process; and
- Legal Review.



# Stormwater Service Charge

## Recommendations

The following are a summary of recommendations developed by the Sustainable Stormwater Funding Task Force and the Portland Finance Committee. This summary is a compilation of original documentation, spreadsheets and other sources of information and in all cases the original documents should be utilized as primary reference.

Each of the following sections corresponds to the Paying for Stormwater Management: Stormwater Service Charge Recommendations PowerPoint presentation dated November 7, 2013. Sections below are numbered for cross referencing to the PowerPoint presentation.

### 1. Why Consider a Stormwater Service Charge?

In July 2010 Portland City Council approved the following resolution, providing justification for why the City should consider a Stormwater Service Charge. Section 24-80 of the proposed Stormwater Service Charge ordinance provides additional justification and reiterates the original council resolution.

*RESOLUTION SUPPORTING EFFORT TO DEVELOP A DETAILED PROPOSAL FOR A STORM WATER UTILITY PROGRAM. City Council Resolution 7-1-10*

*WHEREAS, uncontrolled storm water runoff can damage property and increase costs for City of Portland residents and businesses; and*

*WHEREAS, storm water runoff also contributes to nonpoint source pollution in the City's water bodies, including streams, rivers and Casco Bay; and*

*WHEREAS, the Federal Clean Water Act requires certain political entities including the City of Portland to implement storm water management programs including a multimillion dollar upgrade to the City's combined storm water and sanitary sewer system that will be underway for several years; and*

*WHEREAS, future expenses to cover investments in storm water improvements and maintenance will create an additional financial burden on City residents and businesses; and*

*WHEREAS, impervious surfaces on all real property in the City, including property owned by public and tax-exempt entities, contribute to runoff and the property owners either use or benefit from the storm water system; and*

*WHEREAS, a storm water utility fee may be an alternative source of revenue that will help the City provide improved storm water management and drainage services, and meet its Federally mandated environmental obligations; and*

*WHEREAS, a storm water utility fee may also reduce some of the future burden on sewer rate payers by directing costs to storm water generators.*

*NOW THEREFORE BE IT RESOLVED, that the Portland City Council supports the effort of staff and others to develop a detailed proposal for a storm water utility program.*



## 2. Sustainable Stormwater Funding Task Force Recommendations

On March 21, 2011 the City Council passed an Order establishing the Sustainable Stormwater Funding Task Force. The Sustainable Storm Water Funding Task Force (Task Force) was created to study and consider fair and equitable funding alternatives for operating, maintaining, and meeting the capital cost requirements of the City of Portland's stormwater and combined sewer infrastructure systems. The Task Force held 10 meetings from April 2011 through March 2012 in order to develop the following recommendations which were provided to the Portland Mayor and City Council on March 20, 2012. Meeting documentation and minutes can be found at

<http://www.portlandmaine.gov/sustainablestormwaterfunding.htm>.

### The Task Force understands that:

1. Portland's wastewater assets maintained by the City including the separated sewer system (62 miles of line), combined sewer system (133 miles of line), and storm drain system (133 miles of line) comprised of the sewer or storm drain lines themselves, catch basins, manholes, detention ponds, underground waste water storage facilities, and sewer pump stations.
2. The City is responsible for maintaining the sewer, stormwater, and combined sewer system.
3. The City maintains the stormwater system to convey stormwater runoff away from private property and public right-of-ways to prevent flooding and control erosion.
4. The City maintains the combined sewer system and the sewer system convey waste water to the waste water treatment facility.
5. The City's stormwater conveyance system may also include any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by the City of Portland.
6. The City is legally obligated to eliminate combined sewer overflows and administer a storm water program aimed at preventing polluted stormwater runoff from entering streams, rivers, wetlands, and coastal waters and restoring water quality in urban impaired streams located in Portland.
7. Sewer use charges are currently used to defray the current expenses of operating and maintaining the wastewater system, including any assessment made by the Portland Water District; to pay the interest and repay the principal on any outstanding or future indebtedness of the City for construction of sewers heretofore or hereafter constructed within the City; and to reimburse the City for the cost of computation, billing and enforcement of such charges.
8. Sewer use charge rates are increasing and will continue to increase as a result of decreasing sewer use volumes caused by water conservation activities by rate payers, costs related to maintaining the wastewater systems and increasing costs caused by meeting the City's legal obligations.
9. Funding Portland's wastewater assets require an ongoing flow of funds raised either through taxes or service charges.
10. Portland's current wastewater costs are related to the operation, capital renewal and reinvestment, and construction of the Sewer Overflow Abatement Plan.
11. The Combined Sewer Overflow Abatement Plan costs represent a large portion of the City's current and future wastewater costs with the Tier III Plan estimated to cost approximately \$170 Million and be constructed over the next fifteen years.
12. Portland's future stormwater conveyance capital and program cost requirements for meeting undetermined State or Federal regulations is unknown.



**The Task Force recommends:**

13. Continuing to fund Portland's wastewater assets through service charges as opposed to taxes.
14. Continuing to fund Portland sewer costs through the current sewer use charge which is by-nature derived from water usage billed to rate payers.
15. Funding Portland's stormwater costs through a stormwater use charge based impervious area (i.e. an area of a property comprised of rooftops, driveways, and parking lots.) of a property which is a surrogate for stormwater runoff.
16. Funding 50% of Portland's combined sewer costs through a stormwater use charge and 50% of Portland's combined sewer costs through the sewer use charge.

**The Task Force's believes that a stormwater use charge:**

17. Will contribute to Portland's regional and national competitive advantage because it will lower Portland's sewer rate as compared to other municipalities in the country.
18. Will diversify the funding streams available to meet the City's wastewater costs, reducing the total cost burden to most sewer rate payers.
19. Will reduce the relative cost burden to Portland industry, specifically industries located in Portland that are high water users and other entities that are relative high water users compared to properties that have extensive site area of roofs and pavement (i.e. impervious area).
20. Will be a more fair method of distributing cost with respect to the impact urban runoff has on the drainage system of the City.
21. Will offer opportunities for rate payers to reduce the overall impact to the system by making site improvements that reduce site runoff and improve the water quality of stormwater runoff.

**The Task Force recommends developing a stormwater use charge according to the following criteria:**

22. The Task Force examined multiple rate methodologies including a flat rate for all properties, a rate based on impervious area only, a rate based on impervious area and gross area, and a rate based on intensity of development. The Task Force believes that Portland should charge on the basis of impervious area only because an impervious only rate is most directly related to stormwater impact on the system.
23. The Task Force examined multiple rate structures for single family residential properties including a single tier, two tiers, multiple tiers, and a fully variable rate. The Task Force believes that Portland should use a simplified rate for residential properties consisting of two to three tiers. The tiers for commercial properties should approximate increments comparable to the residential tiers.
24. The Task Force considered whether roads should be exempt since roads are part of the conveyance system. The Task Force believes that Portland should exempt roads (i.e. public, private, and the airport runway) and should allocate wastewater costs on the grounds that the funding pool would shift from rate payers to property tax payers if not the case. Furthermore, the airport runway should be exempt on the grounds that it is a road.
25. The Task Force considered whether City property should be exempt and determined that City property should not be exempt since other public property in the city might be arguable exempt as well and public property has an impact on the system.
26. The Task Force considered a credit system for reducing stormwater use charges. The Task Force believes that the credits system should be tied to existing City development standards. Credits should be capped at 50% of the total stormwater use charge on the grounds that the majority of stormwater costs are unavoidable and due to maintenance and private action by individual properties would not reduce the impact on the system above that level.



27. The Task Force considered incentives and believes that offering one-time incentives for site retrofits that reduce stormwater runoff (i.e. rain barrels or rain gardens) to residential and commercial property is a valuable activity to support the City's stormwater program objectives.
28. The Task force believes that to reduce the impact on those rate payers that are most impacted by the stormwater use charge, the annual rate change should be limited.
29. The Task Force discussed the importance of an annual audit and believes that an annual audit of stormwater and sewer fund activities should be presented to the City Council annually.
30. The Task Force discussed the importance of accountability, continued public involvement and education during the transition period to a new wastewater fee structure and believes that a citizen committee to help with transition would be of value.

The Task Force was comprised of the following:

**Portland City Council**

Ed Suslovic

**Business Representative/Property Manager**

Todd Dominski, East Brown Cow Property Management

**Business Representative/Property Manager**

Vin Veroneau, JB Brown and Sons

**Residential Property Owner and Neighborhood Association**

**Organization Representative**

Dennis Martin, West End

**Tax-exempt Property Owner**

Bill Connolly, Real Estate Specialist, Mercy Hospital

**Advocacy Representative**

Curtis Bohlen, Casco Bay Estuary Partnership

**Roadway Systems**

John Cannell, MDOT

**Portland Water District**

Ron Miller, General Manager or designee

**Business Representative/Property Manager**

Peter Gellerson, Lathrop Property Management

**Industrial Wastewater Discharge Permit Holder**

Bill Bennet or Thomas Brigham, Oakhurst Dairy

**Residential Property Owner and Capisic Brook Watershed**

**Stakeholder Working Group Member Representative**

David E. Robinson

**Tax-exempt Property Owner**

Carol Potter or Tyler Kidder, Facilities Management Office, University of Southern Maine

**Advocacy Representative**

Joe Payne, Casco Baykeeper

**Citizen-at-large**

Fred Dillon

**Citizen-at-large**

Mitchell Brooks

### 3. Portland Finance Committee Process

Over four meetings, the Portland City Council's Finance Committee reviewed the recommendations of the Task Force additional documentation as necessary for development of a Stormwater Service Charge. Meetings were held on September 12, September 26, October 24 and November 7, 2013. The Finance Committee addressed several key Policy directions recommended by the Task Force, reviewed budget projections, projected stormwater service charges, and finalized a draft ordinance.

### 4. Key Policy Issue #1: Are Credit and One-Time incentive programs adequate?

*Task Force Recommendation(s): The Task Force considered a credit system for reducing stormwater use charges. The Task Force believes that the credits system should be tied to existing City development standards. Credits should be capped at 50% of the total stormwater use charge on the grounds that the majority of stormwater costs are unavoidable and due to maintenance and private action by individual properties would not reduce the impact on the*



system above that level. The Task Force considered incentives and believes that offering one-time incentives for site retrofits that reduce stormwater runoff (i.e. rain barrels or rain gardens) to residential and commercial property is a valuable activity to support the City's stormwater program objectives.

*Task Force Rationale:*

- Credits should be limited as there are fixed costs to maintenance and upgrade of stormwater management system regardless of reduction of private property runoff.
- One time incentives are adequate for homeowners as small stormwater systems are more difficult to assess and with maintenance guaranteed without an excessive burden on municipal staff which will impact overall stormwater service charge.

Finance Committee Considerations:

A subsequent legal review by City staff of Maine case law, City of Lewiston v. Gladu, advised that a credit up to 100% of the service charge will guarantee the voluntariness of the fee. In its analysis, the Court specifically stated that it was offering no opinion on whether the program would still be voluntary absent the option for a 100% credit. Voluntariness was indicated in the case law as a component of the four part test of whether the charge is a fee or tax.

Draft Recommendation:

In accordance with Code of Ordinances, Article V, Section 24-85 credit policies and procedures shall be established in a Stormwater Credits Manual which will outline various credit options for residential and commercial rate payers. Given the significant fixed costs to maintain and manage the stormwater system, the credit policy of the city shall provide appropriate opportunity for residential and commercial landowners to obtain up to 60% reduction of stormwater service charge if stormwater controls are consistent with Maine state law and local development standards for stormwater quantity (i.e. flooding) and stormwater quality management. A 60% credit mirrors the approximate fixed cost of providing stormwater services. Residential credits should be limited to those practices that can be easily documented and administered by the Portland Public Services staff. Additionally, a 100% credit will be made available. A draft Credit Manual will be made available to the City Council for review two months after adoption of the ordinance.

The following are draft general policies for further consideration in the Credit Manual:

- Credit is given to eligible properties as described in the Section 24-85 of the Stormwater Service Charge ordinance.
- It is the responsibility of the property owner (or his/her designee) to initiate and apply for stormwater service charge credits, and to provide all necessary substantiating information with a letter requesting the credit. An application form should be made available for credit application.
- Although the Department of Public Services staff is available to answer questions and provide technical assistance, the Department of Public Services is not responsible for initiating a credit application, performing engineering calculations, or otherwise assisting in the preparation of a request for a stormwater credit.
- Multiple credits may be given to eligible properties up to a maximum of 100% of the property's stormwater service charge.



- An approved credit will be applied to the property for the period of time the mitigation measures required for the credit are maintained in accordance with City requirements under City Code of Ordinances Chapter 32.

## 5. Key Policy Issue #2: Should Roadways Be Fully Exempt?

*Task Force Recommendation(s): The Task Force considered whether roads should be exempt since roads are part of the conveyance system. The Task Force believes that Portland should exempt roads (i.e. public, private, and the airport runway) and should allocate wastewater costs on the grounds that the funding pool would shift from rate payers to property tax payers if not the case. Furthermore, the airport runway should be exempt on the grounds that it is a road.*

*Task Force Rationale:*

- *One third (33%) of the total impervious area in the City is made up of roadways. 87% of the roadways are City owned or private – the rest are MDOT roadways. The non-MDOT roadway bill would be approximately \$2.22m annually. This revenue must come from either increasing the sewer bill or increasing property tax. The impact to the property tax rate was projected to be approximately \$0.29 per mil increase to property tax to cover roadway impervious fee billed to the City.*
- *The impact that roads have on the stormwater system is captured in the charge and credit system.*

Finance Committee Considerations:

The Finance Committee considered whether the roadway exemption provided sufficient incentive to the City to reduce runoff from roadways during road construction and reconstruction projects.

Draft Recommendation:

In accordance with Code of Ordinances, Article V, Section 24-83, roadways, railways and airport runways will be exempt from the stormwater service charge. The decision to reduce runoff from roadways/linear transportation systems is not as straightforward as it is from parcel-based impervious areas because other forces (e.g. safety, traffic count, parking needs, fire access, etc.) tend to drive roadway size and function independent of drainage and water quality issues. The City of Portland is concerned with the impact of roadway runoff and adopted a Complete Streets Policy on December 17, 2012. The Complete Streets policy obligates the City to consider stormwater management facilities during transportation improvement projects and directs the Department of Public Service and Department of Planning and Urban Development to develop design guidelines for complete streets. The establishment of the design manual and adherence to Complete Streets policies will guarantee that the City of Portland reduce runoff from its streets when and where it is appropriate.



## 6. Key Policy Issue #3: Should Fee Be Phased In?

*Task Force Recommendation(s): The Task force believes that to reduce the impact on those rate payers that are most impacted by the stormwater use charge, the annual rate change should be limited.*

*Task Force Rationale:*

- *If the Stormwater Service Charge is to pay for up to 50% of Combined Sewer Overflow abatement activities, which represent a significant portion of revenue requirements now and in the future, a stormwater service charge may be significant and impact on new rate payers should be limited where possible.*

Finance Committee Considerations:

The Task Force did not provide specific guidance on what upper limit of rate change should be and for what class of service user. The Finance Committee considered both initial rate impact and ongoing rate increase impact. These "impacts" are considered as a sum total of both the wastewater and stormwater service charge compared to a wastewater service charge only (i.e. if no stormwater service charge was implemented).

Draft Recommendation:

In order to balance both initial impact, which constitutes the largest single year increase to rate payers as a new fee, the Finance Committee recommends a phased in stormwater service charge. This option would set the first year stormwater service charge to include separated stormwater revenue requirements only and would not include costs associated with Combined Sewer service. The existing and future Combined Sewer costs and portions of the wastewater treatment costs associated with Combined Sewer would be moved onto the stormwater service charge over a period of three years. The impact of the phase-in is discussed further in Section 11.

## 7. Key Policy Issue #4: How Will Billing Be Administered?

*Task Force Recommendation(s): No recommendation.*

Finance Committee Considerations:

Currently the City of Portland establishes the Wastewater Service Charge but the actual billing administration is provided by the Portland Water District (PWD) as a service. The cost of wastewater service is based on water meter readings conducted by the PWD. This service is part of the fee paid to the PWD by the City as its payment for wastewater treatment services (a.k.a. Portland Water District Assessment). The Portland Water District currently sends out a water and wastewater bill to Portland residents on a monthly basis. The PWD has publicly stated that it is not willing to include a stormwater service charge on the current bill.

The Finance Committee considered the cost and administration implications of both stormwater only billing and a wastewater and stormwater service bill.



Recommendation:

Staff is evaluating the cost of the sewer stormwater billing option compared to the single stormwater bill.

## 8. Key Policy Issue #5: What is the Fee Schedule?

In accordance with the Code of Ordinances, Article V, Section 24-84 the City will conduct an annual analysis of the cost of Stormwater Management Programs, Services, Systems, and Facilities of the City for the purpose of setting an annual rate schedule for properties served by the City. The annual analysis will be conducted based on current and projected operating expenses and as a part of annual budget process.

The stormwater service charge will go into effect on January 1, 2015 and the rate will be \$4.60 to begin the phase-in period. Stormwater service charges, including but not limited to start up and administration, will be billed against the Sewer Enterprise Fund in the interim period and to be paid back to the Sewer Enterprise Fund upon initiation of the stormwater service charge.

## 9. What is the Projected Base Rate for Stormwater Service Charge?

Based on the distribution of square footage of impervious areas on City of Portland residential properties, the recommendation of the Task Force to maintain a simplified system for billing in multiple tiers, and in order to minimize administrative burdens and expenses, Portland has determined that a flat fee for increments of 1200 square feet of impervious surface is appropriate for all residential and commercial parcels in the City. The following figure demonstrates the number of single family residential properties in each of the Billing Units.

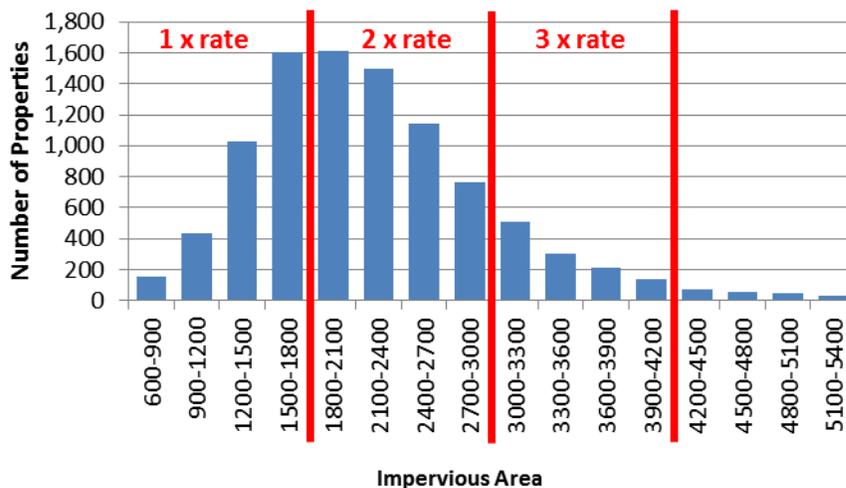


Figure 1-1: Distribution of the single family residential parcels in each proposed Billing Unit



In accordance with the Code of Ordinances, Article V, Section 24-84, the stormwater service charge will be based on actual square footage of impervious area on each parcel and will be rounded to the nearest 1,200 square foot Billing Unit. Parcels with less than 400 square feet of impervious area and no impervious surface, as defined in Section 24-83 of the City Ordinances, will have a billing unit of zero. Each residential and commercial parcel in the City will be charged a base rate per Billing Unit in the first year of the stormwater service charge in accordance with the phase-in policy. The stormwater service charge for the base Billing Unit will follow the following projected rate increase over the first five years of the establishment of the service charge to accommodate projected operating expenses over that time period and to accommodate the aforementioned phase-in policy.

	FY 2013	FY 2014	FY 2015	FY 2015	FY2016	FY 2017	FY 2018
	Actual	Actual	Estimated. (Jul)	Est. (Jan)	Est.	Est.	Est.
<i>Wastewater Sewer Charge (per Hundred Cubic Feet)</i>	\$8.11	\$8.35	\$8.58	\$7.05	\$6.83	\$6.39	\$6.06
Increase/Decrease of Rate from Previous Year		3%	3%	-18%	-26%	-7%	-5%
<i>Stormwater Service Charge (per Billing Unit)</i>	-	-	-	\$4.60	\$6.14	\$8.36	\$10.78
Increase/Decrease of Rate from Previous Year					25%	27%	22%

*Figure 1-2: Projected rate for stormwater service.*

## 10. What does the Stormwater Service Charge pay for?

In accordance with the Code of Ordinances, Article V, Section 24-84 the stormwater service charge will pay for stormwater management programs, services, systems and facilities approved by the city as necessary to carry out the functions of the stormwater program. In accordance with the Code of Ordinances, Article V, Section 24-82 expenditure of funds derived from the stormwater service charge shall be used to defray current expense of stormwater services and a portion of the cost of combined sewer overflow abatement. These include but are not limited to operating expenses; non-operating expenses, such as equipment and supplies; payment on principal and interest on debt obligations; capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants and other amenities to support stormwater management alternatives utilizing vegetation); reserve expenses; and others costs as deemed necessary by the Portland city council in order to maintain drainage services and comply with state and federal law.

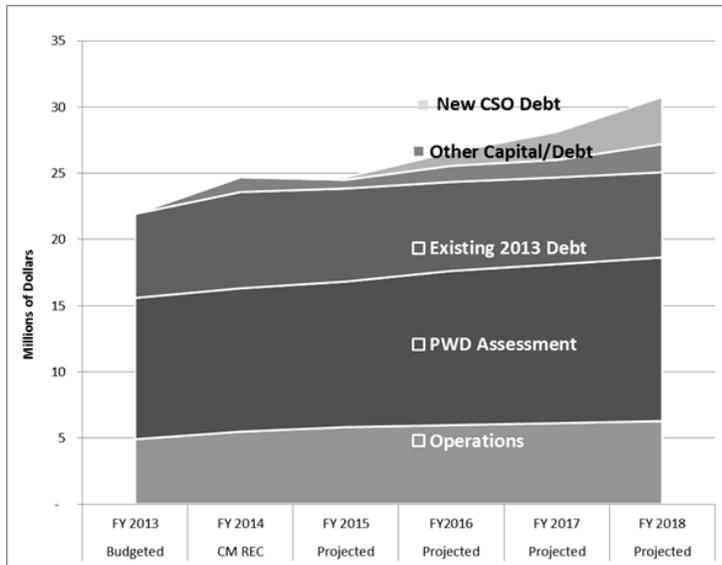


Figure 1-3: Projected revenue requirements for Wastewater and Stormwater Funds.

The division of expenditures will be as follows during the phase-in period and after the phase-in is complete. The approximate apportionment of sewer and stormwater expenditures is 70% wastewater service and 30% stormwater service after the phase-in period is complete. Stormwater service expenditures are assigned to the Stormwater Fund and wastewater service expenditures are assigned to the Sewer Fund with Combined Sewer expenditures assigned to both funds.

		FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
<b>New CSO Debt</b>	Wastewater	100%	100%	100%	50%	50%	50%
	Stormwater	0%	0%	0%	50%	50%	50%
<b>Other Capital/Debt</b>	Wastewater	0%	39%	32%	44%	50%	51%
	Stormwater	0%	61%	68%	56%	50%	49%
<b>Existing 2013 Debt</b>	Wastewater	100%	100%	100%	100%	100%	100%
	Stormwater	0%	0%	0%	0%	0%	0%
<b>PWD Assessment</b>	Wastewater	100%	100%	100%	95%	85%	75%
	Stormwater	0%	0%	0%	5%	15%	25%
<b>Operations</b>	Wastewater	100%	42%	40%	40%	40%	40%
	Stormwater	0%	58%	60%	60%	60%	60%

Figure 1-4: Projected allocation of revenue needs between Wastewater and Stormwater Funds.

## 11. What is the impact of the Stormwater Service Charge?

The new Stormwater Service Charge reflects costs currently borne by the Sewer Enterprise Fund, therefore impacts for properties must consider both increased stormwater service charge and decrease in wastewater service charge to



account appropriately for “impact”. Impacts vary on type of property and relative proportion of Impervious Area to Wastewater Use. For this summary the impact on an average residential homeowner’s monthly bill is considered.

The following figure documents the projected changes to wastewater service (per HCF) charge over time if NO stormwater service charge is implemented. The projected wastewater service charge is utilized as a basis for analysis of impact.

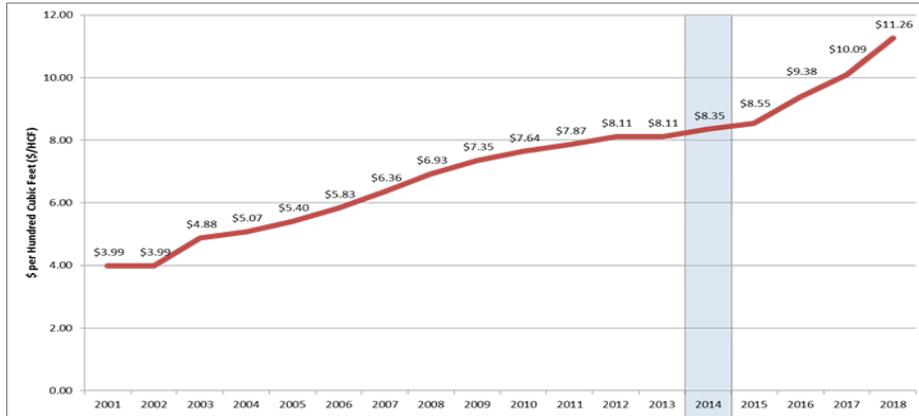


Figure 1-5: Projected Sewer Rate per HCF without Stormwater Service Charge.

The following is an example of the impact of the combined stormwater and wastewater service charge to an average residential homeowner using average wastewater (5 HCF per month) and average IA of 2200 sf or 2 Billing Units. After initial increase in monthly bill **due to the phase-in of the fee** there is a decrease when compared to wastewater service charge only and a reduction in acceleration of total bill percent increase.

	FY 2013	FY 2014	FY 2015	FY 2015	FY2016	FY 2017	FY 2018
	Actual	Actual	Estimated (Jul)	Est. (Jan)	Est.	Est.	Est.
Average Homeowner Monthly Wastewater Bill	\$40.55	\$41.75	\$42.90	\$35.25	\$34.15	\$31.95	\$30.30
Average Homeowner Monthly Stormwater Bill	\$0.00	\$0.00	\$0.00	\$9.20	\$12.28	\$16.72	\$21.56
Monthly Bill with Stormwater and Wastewater Service Charge		\$41.75	\$42.90	\$44.45	\$46.43	\$48.67	\$51.86
Monthly Bill without implementation of Stormwater Service Charge		\$41.75		\$42.75	\$46.90	\$50.45	\$56.30

Figure 1-6: Projected Impact of Monthly Bill with and without implementation of the Stormwater Service Charge for the average Homeowner.



	FY 2013	FY 2014	FY 2015	FY 2015	FY2016	FY 2017	FY 2018
	Actual	Actual	Estimated (Jul)	Est. (Jan)	Est.	Est.	Est.
Monthly Bill with Stormwater and Wastewater Service Charge		\$41.75	\$42.90	\$44.45	\$46.43	\$48.67	\$51.86
Percent Change in Combined Bill from Previous Year				6%	4%	5%	7%
Monthly Bill without implementation of Stormwater Service Charge		\$41.75		\$42.75	\$46.90	\$50.45	\$56.30
Percent Change in Monthly Bill from Previous Year Without Implementation of Stormwater Service Charge				2%	10%	8%	12%

Figure 1-7: Percent changes in average homeowner monthly bill with and without stormwater service charge.

Impacts to other non-residential facilities will need to be made on a case by case basis and through the use of the Portland Stormwater Fee Calculator (in progress)

## 12. What remains to be accomplished before January 2015?

### December 2013:

- Council adoption of ordinance, budget and rate

### January-April 2014:

- Purchase software for web based customer system; schedule installation with Sungard
- Review and update maps and impervious data files to prepare for billing, including necessary field visits
- Hire IT staff and DPS Engineer
- Develop credit manual and finalize credit policies
- Internal staff management group formed to review, revise and execute outreach plan including development of appropriate outreach materials
- Meet with non-residential landowners most influenced by changes to service charge structure

### May-June 2014 (needs to be after Assessor's determination of value on April 1)

- Test GIS data for completeness, accuracy
- Test final GIS data against land file for billing information
- Populate library file with billing data
- Set up accounts
- Design bill layout
- Run test billings
- Reconcile to General Ledger
- Review individual amounts for exceptions that may indicate errors
- Initiate public meetings/process



#### **July-August 2014**

- Install web system
- Test on line access, communication, and payment process
- Check payment posting and reconciliation of accounts
- Begin hiring process for other staff
- Continue public process

#### **September 2014:**

- Hire and train billing staff
- Hire and train Admin Assistant (customer service)—DPS
- Test delinquent account activity
- Create and send sample bills (Oct 1), establish review period (by appointment)
  - Appointments by DPS & consultant

#### **October -November 2014:**

- Public makes appointments to review billing, City refines billing file
- Hire collections staff, train

#### **December 2014:**

- Check for land file updates, make changes to billing file

#### **January 2014:**

- Actual billing begins

**Stormwater Program**  
**Estimated Startup and First Year Funding Requirement**  
11/4/2014

**EST STARTUP COSTS**

Misc implementation costs	\$	10,000	
IT staff		7,500	
DPS Engineer		8,333	
Mailed estimates		14,500	
Contract engineering (help during sample billing period)		50,000	
3 computers		4,500	
Web based interface for payment		30,000	
Work station supplies/equip		1,500	
<b>Total</b>	<b>\$</b>		<b>126,333</b>

**EST FIRST YEAR COSTS**

Finance Admin (split from Sewer budget)	56,166		
Stormwater Billing/Collection	482,300		
DPS Admin/dispatch (split from Sewer budget)	153,066		
Engineering (split from Sewer budget)	431,586		
Stormwater Management	2,002,370		
Indirect costs	40,000		
Benefits	435,000		
Capital	395,000		
Debt Service (FY14 projects)	50,575		
<b>Total</b>		<b>4,046,063</b>	
<b>Total Estimated Costs, startup through first year</b>			<b>\$ 4,172,396</b>

**EST VALUE OF CREDITS (7%)**

**EST UNCOLLECTED AMOUNT (10%)**

**Total Estimated Funding Requirement**

292,068
<u>417,240</u>
<u><u>\$ 4,881,704</u></u>

**REVENUE**

STW Fee per ERU	\$	4.60	
Est number of ERU/month		88,418	
Est Annual STW revenue*			<u><u>\$ 4,881,704</u></u>

\* 88,418 ERU x 12 months = 1,061,016 ERU/year  
Transition for first year only requires cash transfer from Sewer Fund, to be reimbursed through future STW fee increase:  
Revenue collection Jan 5015-June 2015 \$ 2,440,852  
Transfer from Sewer Fund Balance \$ 2,440,852

## Chapter 24 SEWERS\*

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**\*Cross reference(s)**--Buildings and building regulations, Ch. 6; disposal of wastes by food service establishments, § 11-26; land use, Ch. 14; streets, sidewalks and other public places, Ch. 25.

**State law reference(s)**--Sewers and drains, 30 M.R.S.A. § 4351 et seq.  
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Art. I. In General, §§ 24-1--24-15

Art. II. Sewer Construction, §§ 24-16--24-30

Art. III. Sewer Use Regulations, §§ 24-31--24-70

Art. IV. ~~Sewer Use~~Sanitary Sewer User and Industrial Pre-treatment Charges, §§ 24-71--24-77

Art. V. Stormwater Service and User Charges,

### ARTICLE I. IN GENERAL

#### Sec. 24-1. Reserved Purpose

The city is responsible for the health and safety of the public and maintaining over 300 miles of sewer line comprised of the sanitary sewer and storm sewer lines themselves, catch basins, manholes, detention ponds, underground waste water storage facilities, and sewer pump stations.

The city maintains a sewer system in order to convey domestic wastewater and stormwater runoff from private and public property for treatment at the Publicly Owned Treatment Works.

The city maintains a stormwater drainage system in order to convey stormwater runoff away from private and public property to prevent flooding, reduce pollution discharge to waters of the State of Maine, and to control erosion of streams and channels.

The city council finds that funding the comprehensive wastewater and stormwater programs to properly operate this infrastructure should be equitably paid for by properties making use of sewer and stormwater services provided by the city according to costs incurred to provide those services.

**Sec. 24-2. Definitions. Reserved.**

For the purposes of this chapter, all words shall have their normal meanings and such meanings as may be in common use in the field of wastewater treatment. Certain words are more particularly defined. For the purposes of this Chapter, the term:

Act shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, U.S.C. § 1251 et seq., and the regulations promulgated thereunder, as amended from time to time.

Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, which begins eight (8) feet outside the outer face of the building wall.

Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.

Combined sewer shall mean a sewer conveying both stormwater and wastewater.

Discharge shall mean any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants

District shall mean the Portland Water District, a quasi-municipal corporation existing pursuant to Chapter 84 of the Private and Special Laws of Maine of 1975, as amended, with a business address of 225 Douglas Street, Portland, Maine.

Domestic wastewater shall mean the liquid wastes and liquid borne wastes discharged from the sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, home laundry rooms, kitchens, and floor drains essentially free of industrial wastes or toxic materials.

Industrial user shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.

Industrial waste shall mean any liquid, gaseous, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

Interceptor sewer shall mean a large sewer used to intercept a number of main or trunk sewers and convey wastewater and stormwater runoff to treatment or other disposal facilities.

National pollutant discharge elimination system or NPDES permit shall mean a permit issued pursuant to § 402 of the act, 33 USC § 1342, and M.R.S.A. Title 38, § 414-A.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

POTW (publicly owned treatment works) ("facility") shall mean the treatment works, as defined by § 212 of the act, operated by the Portland Water District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater consisting of domestic, commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, pump stations and other conveyances which convey wastewater to the facility and may be owned by the city. For the purposes of this chapter, POTW shall also include any sewers that convey wastewater to the treatment works from persons who are, by permit, contract, or agreement with the city, users of the facility.

POTW treatment plant shall mean that portion of the facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal wastewater, industrial waste, septage and holding water and other trucked-in wastes as allowed under the provisions of this article.

Private wastewater disposal system shall mean a treatment tank with the effluent discharging into a subsurface absorption area, or such other facilities as may be permitted under the procedures set forth in rules and regulations adopted by the state department of health and welfare pursuant to 22 M.R.S.A. § 42(3), and the city's plumbing code.

Private sewer system shall mean any sewer system within the

city not owned by or constructed by a public authority.

Private wastewater treatment works shall mean all facilities other than private sewage disposal systems for treating and disposing of wastewater within the city not owned by a public authority. Private wastewater treatment works shall be distinct from private wastewater disposal systems as the effluent is discharged directly into surface water bodies. Private wastewater treatment works shall be licensed by the state department of environmental protection, in accordance with the provisions of 38 M.R.S.A. §§ 413, 414.

Public works authority shall mean the department of public services.

Public sewer shall mean a sewer directly owned, operated or controlled by the city or the Portland Water District.

Sanitary sewer shall mean a sewer, conveying either exclusively domestic wastewater and industrial waste or a sewer also conveying stormwater runoff together with ground and surface water that is not admitted intentionally.

Sewer shall mean a pipe or conduit for conveying liquid or liquid-carried waste.

Storm sewer shall mean a sewer for conveying stormwater runoff, groundwater, subsurface water, condensate, cooling water or other similar discharge but which excludes domestic wastewater and polluted industrial wastes.

Stormwater shall mean any stormwater runoff, snowmelt runoff, and surface runoff and drainage. "Storm water" shall have the same meaning as stormwater.

Stormwater drainage system shall mean any publicly owned or operated conveyance for stormwater, natural and human-made including, but not limited to, storm sewers, city and state roads including the Maine Turnpike and other physical works with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, culverts, human-made channels, swales, ditches, swamps, rivers, streams, creeks, brooks, reservoirs, ponds, drainage ways, inlets, pipes, head walls, lakes, properties, and improvements which transfer, control, convey or

otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.

Stormwater services shall mean the program and maintenance activities as well as the pipe, conduits, or other conveyances or facilities provided by the city including but not limited to necessary programs, improvements, or maintenance required to meet national pollutant discharge elimination system (NPDES) permits the city may hold or other regulatory or court imposed obligations on the city, or general maintenance of pipes, conduits or other facilities improvements and other unforeseen improvements necessary to provide stormwater service to the city.

Wastewater shall mean a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions and industrial establishments, together with such ground, surface, and stormwater as may be present.

Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently on a natural basis.

Westbrook Inter-Municipal Sewer Service Area shall mean the Domestic and sanitary sewage and waste water from the Riverside Street/Warren Avenue/Forest Avenue vicinity of Portland as defined on the plan to the Rules and Regulations enacted by the Public Works Authority, and on file in the Department of Public Works Services, intercepted by the District and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment.

(Ord. No. 263-96, 5-20-96; Ord. No. 97-03/04, 12-17-03)

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Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Reference - Council Order 54-02/03 § An Order Authorizing Three-Party Sewer Service Agreement with Portland Water District and City of Westbrook).

**Sec. 24-3. ~~Reserved~~Administration.**

(a) The director of public services shall establish rules and regulations governing the availability and use of city wastewater collection and treatment facilities and stormwater

drainage system. The rules and regulations shall be consistent with federal law and ordinances. Said wastewater rules shall be enacted in conjunction with the Portland Water District prior to enactment.

(b) The rules shall be enacted in the same manner as the rules for solid waste disposal are promulgated, prescribed in section 12-105(b) and (b.1) of this Code, with the exception that the rules will go into effect twenty (20) days after enactment by the director unless stayed by action of the city council. Proposed rules shall be delivered to the council as a communication prior to enactment.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-4. Enforcement Agency.**

The public works authority or the Portland Water District as agent for the city and at the request of the public works authority, shall administer and enforce the provisions of this chapter.

(Ord. No. 263-96, 5-20-96)

~~Reserved.~~

- Sec. 24-5. Reserved.
- Sec. 24-6. Reserved.
- Sec. 24-7. Reserved.
- Sec. 24-8. Reserved.
- Sec. 24-9. Reserved.
- Sec. 24-10. Reserved.
- Sec. 24-11. Reserved.
- Sec. 24-12. Reserved.
- Sec. 24-13. Reserved.
- Sec. 24-14. Reserved.
- Sec. 24-15. Reserved.

**ARTICLE II. SEWER CONSTRUCTION**

**Sec. 24-16. Accepted streets.**

When any person owning property on an accepted street shall petition for the construction of a sewer in the street, such sewer may be constructed under one (1) of the following arrangements at the option of the petitioner, subject to the

approval of the public works authority:

- (a) Upon authorization by the city council, thea sewer shall be constructed by the city, the cost of a ~~sanitary, combined or interceptor~~ sewer to be recovered in part as hereinafter provided; or
- (b) The petitioner may cause thea sewer to be built to the specifications of the public works authority and under his or her supervision, with or without regard to competitive bids. Upon completion of thea sewer, the city shall be reimbursed in full for its costs, including engineering and inspection, and thea sewer shall be deeded to the city as a public sewer at no cost to the city.

(Code 1968, § 704.1; Ord. No. 101-81, §§ 1--3, 9-21-81)

#### **Sec. 24-17. Dedicated streets.**

When any person owning property on a street, which prior to July 7, 1948, has been dedicated, constructed and used for public travel but has not been accepted by the city, shall petition for the construction of a sewer in the street, such sewer may be constructed under one (1) of the following arrangements at the option of the petitioner, subject to the approval of the public works authority:

- (a) Upon authorization by the city council, thea sewer shall be constructed by the city, the cost ~~of a sanitary, combined or interceptora~~ sewer to be recovered in part as hereinafter provided; or
- (b) The petitioner may cause thea sewer to be built to the specifications of the public works authority and under his or her supervision, with or without regard to competitive bids. Upon completion of thea sewer, the city shall be reimbursed in full for its costs, including engineering and inspection, and at such time as the street is accepted by the city, thea sewer shall be deeded to the city as a public sewer at no cost to the city.

(Code 1968, § 704.2; Ord. No. 101-81, §§ 4, 5, 9-21-81)

#### **Sec. 24-18. Initiative of city council.**

The city council may, on its own initiative and without petition therefor, authorize construction by the city of ~~sewers~~sewer in accepted and dedicated-but-unaccepted streets, the cost of a ~~sanitary, combined or interceptor~~ sewer to be recovered in part as hereinafter provided.

(Ord. No. 101-81, § 6, 9-21-81)

**Sec. 24-19. Costs.**

(a) A charge is hereby established for the connection heretofore or hereafter of any property to a ~~sanitary, combined or interceptor~~ sewer constructed by the city or the Portland Water District and completed on or after January 1, 1978. Such charge shall be due and payable upon application for a connection permit as provided in section 24-39, and except for connections made before November 15, 1981, shall be in lieu of all other charges related thereto, including the fee for the connection permit and street and sidewalk opening charges as provided in section 25-156, provided that connection is made in accordance with article III of this chapter. This section shall not apply to any property assessed for the cost of sewer construction according to law.

(b) For any such sewer completed heretofore, the charge shall be two hundred dollars (\$200.00) per each sanitary sewer connection made heretofore or hereafter but before November 15, 1981, and one thousand dollars (\$1,000.00) per each such connection made thereafter.

(c) For any such sewer completed hereafter, the charge shall be two thousand dollars (\$2,000.00) per each such connection, provided that the city council may, from time to time, by order readjust the charge according to the then-prevailing cost of sewer construction and the anticipated number of such connections.

(Ord. No. 101-81, § 7, 9-21-81)

**Cross reference(s)**--Uniform procedure for collecting assessments, § 1-16.

**Sec. 24-20. Reserved.**

**Sec. 24-21. Reserved.**

**Sec. 24-22. Reserved.**

**Sec. 24-23. Reserved.**

- Sec. 24-24. Reserved.
- Sec. 24-25. Reserved.
- Sec. 24-26. Reserved.
- Sec. 24-27. Reserved.
- Sec. 24-28. Reserved.
- Sec. 24-29. Reserved.
- Sec. 24-30. Reserved.

**ARTICLE III. SEWER USE REGULATIONS\***

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\*Editor's note--Ord. No. 263-96, passed May 20, 1996, amended this article in its entirety, in effect repealing the former provisions and enacting similar new provisions as herein set out. Formerly, such provisions pertained to sewer use regulations, consisted of substantive §§ 24-31--24-60, and derived from §§ 309.1--309.29 of the 1968 Code, as amended by the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
13-76	--	10- 6-76	221-88	1	1- 4-88
154-79	--	3-19-79	228-88	1	2- 1-88
355-84	1--14, 16, 17	1- 4-84	77-91	--	8- 7-91
317-87	1	2- 2-87	37-93	--	7- 7-93

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**Sec. 24-31. Scope.**

The provisions of this article shall apply to and govern all types of buildings requiring sanitarywastewater facilities; the excavation, construction, installation, usage, maintenance, extension, alteration, repair or removal of any building sewer, building storm drain, sanitary sewer system, or storm drainage or sewer system; the connection of building sewers and building

storm ~~drains~~sewers to sanitary sewer systems, and/or storm drainage systems or combined sewers; the types of wastes or wastewaters prohibited from public sewers and storm drainage systems; permitted and prohibited concentrations and strengths of wastewater; and situations in which use of a private sewage disposal system is permissible.

(Ord. No. 263-96, 5-20-96)

### **Sec. 24-32. Intent and purpose.**

(a) It shall be the intent and purpose of this article to eliminate existing pollution, and to prevent further pollution caused by inadequate wastewater disposal, and to accomplish the necessary local legislation to meet the pollution abatement schedule for the Portland Regional Wastewater Plan established by the state and the federal government. All this is in furtherance of the health, welfare, comfort and convenience of the inhabitants of the city.

(b) Whereas the Portland Water District has been designated by state legislative action and local public referendum as the regional agency responsible for interception and wastewater treatment, and is the owner and operator of the POTW treatment plant, none of the provisions of this article shall be construed to repeal or otherwise interfere with the rights, duties or powers granted to the Portland Water District pursuant to Chapter 433 of the private and special laws of the State of Maine of 1907, as amended.

(Ord. No. 263-96, 5-20-96)

### **Sec. 24-33. Reserved.**

### **Sec. 24-~~32.1. Administration~~34. Definitions.**

~~(a) The director of the public works authority shall establish rules and regulations governing the availability and use of city wastewater collection and treatment facilities. The rules and regulations shall be consistent with federal law and ordinances. Said rules shall be enacted in conjunction with the Portland Water District prior to enactment.~~

~~(b) The rules shall be enacted in the same manner as the rules for solid waste disposal are promulgated, prescribed in section 12 105(b) and (b.1) of this Code, with the exception~~

~~that the rules will go into effect twenty (20) days after enactment by the director unless stayed by action of the city council. Proposed rules shall be delivered to the council as a communication prior to enactment.  
(Ord. No. 263-96, 5-20-96)~~

~~**Sec. 24-33. Enforcing officer.**~~

~~The public works authority or the Portland Water District as agent for the city and at the request of the public works authority, shall administer and enforce the provisions of this article.  
(Ord. No. 263-96, 5-20-96)~~

~~**Sec. 24-34. Definitions.**~~

For the purposes of this article, all words not defined in section 24-2 shall have their normal meanings and such meanings as may be in common use in the field of sanitation and wastewater treatment. ~~Certain words are more particularly defined.~~ For the purposes of this article, the term:

~~Act shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, U.S.C. § 1251 et seq., 86 Stat. 816, PL 92-500 and the regulations promulgated thereunder, as amended from time to time.~~

B.O.D. (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in milligrams per liter.

~~Building shall mean a structure built, erected and framed of component structural parts designed for the housing, shelter, enclosure or support of persons, animals or property of any kind.~~

~~Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, which begins eight (8) feet outside the outer face of the building wall.~~

~~Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.~~

       *Categorical industrial user* shall mean an industrial user subject to national categorical pretreatment standards.

       *Caustic alkalinity (hydroxide alkalinity)* shall mean a measure of the capacity of wastewater, which exhibits a pH of greater than or equal to 8.3, to neutralize acids.

~~Combined sewer shall mean a sewer receiving both surface runoff and wastewater.~~

       *C.O.D. (chemical oxygen demand)* shall mean the measure of the oxygen required for oxidation of the organic matter in a sample that can be oxidized by a strong chemical oxidizing agent under standard laboratory procedure.

~~District shall mean the Portland Water District, a quasi-municipal corporation existing pursuant to Chapter 84 of the Private and Special Laws of Maine of 1975, as amended, with a business address of 225 Douglas Street, Portland, Maine.~~

~~Domestic wastewater shall mean the liquid wastes and liquid borne wastes discharged from the sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, home laundry rooms, kitchens, and floor drains essentially free of industrial wastes or toxic materials.~~

*F.O.G.* shall mean the measure of fats, wax, grease and oils (other than petroleum based materials).

       *Garbage* shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and produce, and from the handling, storage and sale of food and produce.

       *Incompatible pollutant* is defined as any pollutant other than biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria or additional pollutants identified in the POTW's NPDES permit to discharge, which the POTW was not designed to treat and does not remove to a substantial degree or may be toxic to the POTW or receiving water.

~~Industrial user shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.~~

~~Industrial waste shall mean any liquid, gaseous, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.~~

~~Interceptor sewer shall mean a large sewer used to intercept a number of main or trunk sewers and convey wastewater to treatment or other disposal facilities.~~

Industrial user shall mean a source of indirect discharge or any source which discharges industrial waste to the facility.

Interference means a discharge which, alone or in conjunction with discharges from other sources, inhibits or disrupts the facility, its treatment processes or operations, or its sludge processes, use or disposal, and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation), or of the prevention of wastewater sludge use or disposal by the facility in accordance with applicable federal, state, or local statutes and regulations or permits issued thereunder, as set forth in 40 CFR  403.3(i).

mg/l shall mean milligrams per liter.

National categorical pretreatment standard shall mean any regulations containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the act, which apply to a specific category of industrial users and which are found in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.

~~National pollutant discharge elimination system or NPDES permit shall mean a permit issued pursuant to § 402 of the act, 33 USC § 1342, and M.R.S.A. Title 38, § 414 A.~~

~~Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.~~

pH shall mean the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions in a solution expressed as

~~POTW (publicly owned treatment works) ("facility") shall mean the treatment works, as defined by § 212 of the act, operated by the Portland Water District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater consisting of domestic, commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, pump stations and other conveyances which convey wastewater to the facility and may be owned by the city. For the purposes of this article, POTW shall also include any sewers that convey wastewater to the treatment works from persons who are, by permit, contract, or agreement with the city, users of the facility.~~

~~POTW treatment plant shall mean that portion of the facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal wastewater, industrial waste, septage and holding water and other trucked-in wastes as allowed under the provisions of this article.~~

~~Private wastewater disposal system shall mean a treatment tank with the effluent discharging into a subsurface absorption area, or such other facilities as may be permitted under the procedures set forth in rules and regulations adopted by the state department of health and welfare pursuant to 22 M.R.S.A. § 42(3), and the city's plumbing code.~~

~~Private sewer system shall mean any sewer system within the city not owned by or being constructed by a public authority.~~

~~Private wastewater treatment works shall mean all facilities other than private sewage disposal systems for treating and disposing of wastewater within the city not owned by a public authority. Private wastewater treatment works shall be distinct from private wastewater disposal systems as the effluent is discharged directly into surface water bodies. Private wastewater treatment works shall be licensed by the state department of environmental protection, in accordance with the provisions of 38 M.R.S.A. §§ 413, 414.~~

Properly shredded garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been

shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

~~Public sewer shall mean a common sewer directly owned, operated or controlled by the city or the Portland Water District.~~

~~Sanitary sewer shall mean a sewer that carries liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.~~

~~Sewer shall mean a pipe or conduit for carrying wastewater.~~

*Significant industrial user* shall mean any industrial user subject to categorical pretreatment standards, and any other industrial user that discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the facility's operation or for violating any pretreatment standard or requirement; provided, however, that upon a finding that an industrial user meeting the foregoing criteria has no reasonable potential for violating any pretreatment standard or requirement or for adversely affecting the facility's operation, the city may, at any time, upon its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

Slug shall mean any discharge of nonroutine, episodic nature, including, but not limited to, an accidental spill, noncustomary batch discharge, or any discharge of wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average

twenty-four-hour concentration or flow rate during normal operation or which may adversely affect the POTW.

~~Storm drain or storm sewer shall mean a sewer for conveying rainwater, groundwater, subsurface water, condensate, cooling water or other similar discharge but which excludes wastewater and polluted industrial wastes.~~

Total suspended solids (TSS) shall mean the total suspended matter that floats on the surface of, or is suspended in water, wastewater, or other liquids, and which is removable by laboratory filtration.

~~Wastewater shall mean a combination of the liquid and the water carried wastes from residences, commercial buildings, institutions and industrial establishments, together with such ground, surface and stormwaters as may be present.~~

~~Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently on a natural basis.~~

~~Westbrook Inter Municipal Sewer Service Area shall mean the Domestic and sanitary sewage and waste water from the Riverside Street/Warren Avenue/Forest Avenue vicinity of Portland as defined on the plan to the Rules and Regulations enacted by the Public Works Authority, and on file in the Department of Public Works, intercepted by the District and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment.  
(Ord. No. 263-96, 5-20-96; Ord. No. 97-03/04, 12-17-03)~~

~~Cross reference(s) — Definitions and rules of construction generally, § 1-2.~~

~~Reference — Council Order 54-02/03 § An Order Authorizing Three Party Sewer Service Agreement with Portland Water District and City of Westbrook).~~

## **Sec. 24-35. Sanitary facilities required.**

Every building intended for human habitation, occupancy, employment, recreation or other purposes, situated within the city shall ~~be provided with~~provide suitable and sufficient

Sec. 24-36

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sanitary facilities for the use of the occupants thereof, which facilities in character, number and method of installation shall comply with all health laws of the state, ordinances of the city, and rules and regulations of the state bureau of health so far as the same are compatible and not inconsistent.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-36. Connection to public sewer required.**

The owner of any building used for human habitation, occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public sanitary, combined or interceptor sewer, is hereby required at his expense to connect the building ~~drainage system~~ sewer in the most direct manner possible with the proper public sewer in accordance with the provisions of this article, provided that the public sewer is within two hundred (200) feet of the building (the two hundred (200) feet to be measured in such manner so as not to pass over any property owned privately by anyone other than the owner of the premises from which such measurement is being made). Any required compliance with this section shall be completed within one (1) year after the date of official notice to do so.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-37. Exception for private wastewater system.**

Where the public sewer does not extend to within two hundred (200) feet distant from the nearest point of the building (measured as described in section 24-36), the public sewer shall, at such time, be classified as inaccessible with regard to such premises. Where the public sewers are inaccessible to premises, any building required to be provided with sanitary facilities under section 24-35 shall comply with the following:

- (a) The owner may at his own expense connect with the public sewer even though the building is over two hundred (200) feet distant from the public sewer; or
- (b) Where liquid-carried wastes or wastewater result, they shall discharge into a private wastewater disposal system; or

- (c) Where liquid-carried wastes or wastewater result, they shall discharge into a private wastewater treatment works.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-38. Private wastewater systems discontinued.**

(a) At such time as a public sewer becomes accessible, as defined in section 24-36, to a property served by a private wastewater disposal system, direct connection shall be made to the public sewer by the owner of such property in compliance with this article within twelve (12) months of receipt of official notice to do so. At the time that direct connection to the public sewer is completed, use of the private wastewater disposal facilities shall have been discontinued. Such abandoned private wastewater disposal system shall be cleaned of sludge and waste materials and filled with clean bankrun gravel or dirt within thirty (30) days ~~of abandonment~~.

(b) The closing and filling of the private wastewater disposal system and the connection to the public sewer system shall be inspected by the public works authority. The fee for such inspection shall be a minimum of ten dollars (\$10.00) per septic tank plus ten dollars (\$10.00) per hour for all inspection time exceeding one (1) hour. The permit for the connection to the public sewer is the same as those required under sections 24-39 and 24-42.

(c) No such work may be approved unless notice is given to the public works authority sufficient to permit the inspector to be present at the filling of the private wastewater disposal system and the connection to the public sewer. No new sewer construction or sewer repair or reconstruction may be approved if backfilled and/or covered prior to inspection. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the ~~health authority~~city.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-39. Public sewer connection; permit; fee.**

No person shall uncover, make any connections with or openings into, alter or disturb either any public sewer or

appurtenance thereof or any private sewer or appurtenance thereof without first obtaining a written permit from the public works authority or the Portland Water District, if required. The fee for such permit shall be fifty dollars (\$50.00).

(Ord. No. 263-96, 5-20-96; Ord. No. 261-01/02, 5-20-02)

**Sec. 24-40. Costs.**

All costs and expense incidental to the installation, connection and maintenance of the building sewer shall be borne by the owner.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-41. Separate connections required.**

A separate and independent building sewer shall be provided for every new building, and a separate connection shall be made for each building sewer. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the public works authority, to meet all requirements of this article.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-42. Defective building sewers to be repaired or replaced.**

(a) Whenever any building drain or building sewer connected to the public sewers, or to a private sewer system connected to the public sewers is found to be defective, deteriorating or substandard, the owner of the building served by such building drain or sewer shall be served by the public works authority with written notice stating the nature of the defect and providing a fifteen (15) day period for the satisfactory repair or replacement of such building sewer and requiring the owner to make a new connection to the public sewer at the owner's expense.

(b) All work done pursuant to this section shall be inspected by the public works authority. The fee for such inspection shall be twenty-five dollars (\$25.00), ~~represented by the permit fee required under section 24-39.~~

(c) *Failure to comply.* When a person to whom an order is directed fails to fully comply within the fifteen (15) day

period, it shall be lawful for the city to repair a building drain or building sewer which is located within the public right-of-way, and all costs thereof shall be charged to the owner thereof.

(d) *Lien procedure.* The public works authority shall keep an accurate account of the expense of the work under this article, and as soon as practicable after completion of such work, the city shall assess to the person(s) upon whom notice has been served pursuant to subsection (a) of this section their just cost thereof, and all assessments so made shall constitute a lien on the property to be enforced in the manner provided for the collection of sewer assessments within the city.

(Ord. No. 263-96, 5-20-96)

**Cross reference(s)**--Uniform procedure for collecting assessments, § 1-16.

#### **Sec. 24-43. Methods of construction.**

On all work done within the scope of this article, the size, slope, alignment and materials of construction of a building sewer, and the methods to be used in placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the public works authority's building sewer construction specifications. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain shall be lifted by a means subject to the approval of the public works authority and discharged to the building sewer.

(Ord. No. 263-96, 5-20-96)

#### **Sec. 24-44. Public sewer connection limitations.**

(a) No person shall make connection of sanitary ~~convenienc~~facilities such as toilets, washrooms, urinals, sinks, showers, drinking fountains, kitchens or laundry rooms, nor discharge or cause to be discharged any waste or domestic wastewater to a building's stormwater system or building storm drain which in turn is connected directly or indirectly to a ~~publiethe~~ storm draindrainage system.

(b) No person shall make connection of roof downspouts,

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foundation drains, sump pump, areaway drains or other sources of surface runoff or groundwater, nor discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(c) Stormwater ~~and all other unpolluted drainage~~ shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the public works authority. Industrial cooling water or unpolluted process waters may be discharged, on approval of the public works authority, to a storm sewer, combined sewer or a natural outlet.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-45. Connections to public sewer.**

The connection of the building sewer into the public sewer shall be constructed in the following manner:

(a) The public works authority shall be notified in advance of the time when the connection is to be made. Such notice must be sufficient to permit the public works authority to inspect the building sewer during construction and to be present when the connection is made to the public sewer.

(b) In the case of new construction, domestic wastewater systems and stormwater drainage systems shall be kept separated from their connections to the proper city sewers.

(c) The building sewer shall be connected to the public sewer at the point designated by the public works authority.

(d) No building sewer connection constructed pursuant to this section can be approved if such sewer is backfilled and/or covered prior to inspection. No connection to the public sewer constructed pursuant to this section can be approved if such connection is made other than in the presence of an inspector from

the public works authority or the Portland Water District, as required. No such unapproved or unapprovable building sewer in the city may be used, and if the building served by such building sewer is occupied, the owner of such building will be held to be in violation of this section, with each day in which the violation continues deemed to be a separate violation.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-46. Sewer excavations.**

(a) All excavations under this article within the public way shall be in accordance with article VII of chapter 25 of this Code.

(b) All excavations for sewer installation shall be made and maintained in compliance with the provisions of the construction safety rules and regulations of the state, applicable to excavation work.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-47. Prohibited wastes.**

(a) No person shall discharge or cause to be discharged any waters or wastes prohibited by public works authority rule; or:

(1) Any noxious or malodorous gas or substance capable of creating a public nuisance.

(b) The public works authority may, if deemed necessary in his judgment, impose the following limitations on discharges of the following described waters or wastes to any public sewer or any part thereof:

(1) Any aluminum exceeding a concentration of 500 milligrams per liter;

(2) Any iron exceeding a concentration of 10 milligrams per liter;

(3) Any tin exceeding a concentration of 2 milligrams per liter;

- (4) Any fluorides exceeding a concentration of 100 milligrams per liter;
- (5) Any phenols exceeding a concentration of 100 milligrams per liter;
- (6) Any chlorides exceeding a concentration of 3,000 milligrams per liter;
- (7) Any sulphates exceeding a concentration of 600 milligrams per liter;
- (8)
  - a. Any waters or wastes containing animal or vegetable based fats, wax, grease or oils, whether emulsified or not, in excess of 500 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
  - b. In the Westbrook Intermunicipal Sewer Service Area, any waters or wastes containing animal or vegetable based fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperature between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).
  - c. Any waters or wastes containing hydrocarbon (nonpolar) based fats, wax, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees centigrade).

(Ord. No. 263-96, 5-20-96; Ord. No. 250-97, 4-9-97; Ord. No. 97-03/04, 12-17-03)

**Sec. 24-48. Prohibited wastes permitted how; cost.**

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters or wastes contain any of the substances or possess the characteristics listed in section 24-47, and which in the judgment of the public works authority may have a deleterious effect upon the wastewater works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the public works authority may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the public sewer as required by rule;
- (3) Require control over the quantities and rates of discharge (flow equalization); and/or
- (4) Require payment to cover the added cost of handling and treating the wastes.

(b) If the public works authority permits or requires pretreatment or waste flow equalization, the design and installation of the plants and equipment shall be subject to its review and approval subject to the provisions of the state plumbing code, and the provisions of this article

(c) Where preliminary treatment or flow equalizing facilities are provided for any water or wastes, the owner shall bear the cost and responsibility for installing and maintaining them in continuously satisfactory and effective operating condition, as determined by the public works authority.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-49. Separate systems required.**

Any person discharging or causing to be discharged into any public sewer both domestic wastewater and industrial wastes from any building or premises shall install separate drainage systems for the domestic wastewater and industrial waste. The control manhole required by rule shall be installed in the industrial waste system; or where two (2) separate systems are required, the two (2) systems may be joined in the control manhole provided that samples of each system can be sampled separately.

**Sec. 24-50. Discharge permit.**

(a) All categorical users and other dischargers of industrial wastes shall obtain a discharge permit from the public works authority as required by rule. New users shall obtain permits prior to any discharge. Applications and permits shall be in a form prescribed by the public works authority and shall be subject to an application fee of three hundred dollars (\$300.00) per permit. Additionally, each permit shall be subject to an issuance fee which shall equal the direct and indirect costs of any previous advertisement of noncompliance and any other outside services which in the discretion of the public works authority are required in order to review and evaluate the application or to implement a pretreatment program for such permitted user.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-51. Public wastewater works not to be damaged.**

No person shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the public ~~wastewater works~~sewer or stormwater drainage system.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-52. Right of entry.**

The public works authority, or the Portland Water District as its agent, bearing proper credentials and identification, shall be permitted to enter upon all properties with sewer or ~~storm~~stormwater drainage systems connected to the public sewer and producing industrial or process wastes, at reasonable times and upon reasonable notice for the purpose of inspection, observation, measurement, sampling and testing or otherwise enforce the rule, including copying of reports and records relating to the industrial pretreatment program in accordance with the provisions of this article.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-53. Exclusion of industrial waste.**

(a) The public works authority or the Portland Water District shall have authority to temporarily exclude any

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industrial waste, whether pretreated or not, from the ~~municipal~~ public sewers whenever, in its or their opinion, such action is necessary for the purpose of determining the effects of such wastes upon the sewers, wastewater ~~works~~ system or wastewater treatment facilities.

(b) The public works authority or the Portland Water District shall notify the affected user prior to taking such actions and shall afford the user a reasonable time for response. The public works authority or the Portland Water District shall have the authority to take actions necessary to halt the discharge of pollutants from any user to the treatment works which reasonably appears to present an imminent endangerment to the health or welfare of persons or the POTW. Such actions shall be preceded by a notification, oral or written, to the user.

(Ord. No. 263-96, 5-20-96)

#### **Sec. 24-54. Demolition of buildings.**

(a) No building served by a building ~~drainage system,~~ ~~sanitary drain~~ or ~~storm sewer, or both,~~ which is connected to the public sewers or to a private sewer system connected to the public sewers, may be demolished prior to the termination of the building ~~and/or facility~~ sewer or drain at the ~~city~~ public sewer under the inspection of the public works authority. The building sewer shall be terminated at the main, at the point designated by the public works authority.

(b) Notice of intent to demolish a building shall be given to the public works authority, by means of a copy of the application for a demolition permit from the building authority or by direct notice to the public works authority, in advance of the time when the building drain or sewer is to be terminated. No such demolition permit shall be issued until a drain termination permit has been issued by the public works authority and a copy thereof has been given to the building authority.

(c) The fee to terminate the building and/or facility sewer and/or drain system will be paid to the city in advance of the termination. The fee of two hundred fifty dollars (\$250.00) per termination represents inspection fees and materials to terminate sewer service. Upon payment of this fee and approval by the public works authority, the applicant shall be issued a

sewer termination permit.

(d) Failure to give notice of intent to demolish a building to the public works authority, or to terminate the building drain prior to demolition thereof, or to obtain a permit therefor, shall be deemed a violation of this section, with each day in which the violation continues deemed to be a separate violation.

(e) All excavation for sewer service termination shall be made and maintained in compliance with all provisions of the construction safety rules and regulations of chapter 25, article VII of this Code.

(f) *Violations.* The property owner who fails to obtain a sewer termination permit and terminate the sewer or drain from the building to be demolished to the citypublic sewer shall be guilty of an offense.

(g) *Failure to comply.* When a person to whom an order is directed fails to terminate a building sewer or drain within a ten-day period, it shall be lawful for the city to terminate the building sewer or drain. All city costs thereof shall be charged to the property owner.  
(Ord. No. 263-96, 5-20-96)

**Sec. 24-55. Written notice required.**

Forty-five (45) days' written notice shall be given to the public works authority by any person proposing to:

- (a) Substantially change the volume or character of pollutants over that being discharged into the treatment system at time of enactment of this article;
- (b) Create a new discharge into the treatment system of pollutants from any source which would be a new source as defined in section 306 of the act if such a source were discharging pollutants elsewhere;
- (c) Create a new discharge into the treatment system of pollutants from any source which would be subject to section 301 of the act if it were discharging such pollutants elsewhere.

**Sec. 24-56. Violations.**

Any person failing to comply with or violating any provision of this article shall be served by the public works authority with written notice stating the nature of the failure or violation and providing a reasonable time limit for the satisfactory correction thereof. Such person shall, within the period of time stated in such notice, permanently cease or correct all such failures or violations. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this section shall be guilty of an offense. Any person violating any of the provisions of this article shall be liable to the city and shall be assessed a civil penalty of a minimum of one thousand dollars (\$1,000.00) per day for each violation of industrial pretreatment standards and requirements, and in addition, shall be liable for any expense, loss or damage occasioned by the city by reason of such violation-, including reasonable attorney's fees. The city may seek injunctive relief for the purposes of enforcing this article.

(Ord. No. 263-96, 5-20-96)

**Sec. 24-57. Appeals.**

(a) Whenever the person receiving written notice shall deem himself aggrieved by an order made by the public works authority, the person may file an appeal to the city manager within ten (10) days of the date of the written notice, and the person shall be afforded a hearing on the matter before the city manager or his designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.

(b) In cases of applicability or interpretation of this article, the city manager may revoke such order made by the public works authority.

(c) In cases where compliance with such order made by the public works authority would cause undue hardship, the city manager may extend the time limit of such order or they may permit exceptions to, or waive requirements of, or grant a variance from the specific provisions of this article, subject

always to the rule that the city manager shall give due consideration to the purposes of this article in eliminating existing pollution, preventing further pollution and promoting the public health, safety and welfare.  
(Ord. No. 263-96, 5-20-96)

- Sec. 24-58. Reserved.
- Sec. 24-59. Reserved.
- Sec. 24-60. Reserved.
- Sec. 24-61. Reserved.
- Sec. 24-62. Reserved.
- Sec. 24-63. Reserved.
- Sec. 24-64. Reserved.
- Sec. 24-65. Reserved.
- Sec. 24-66. Reserved.
- Sec. 24-67. Reserved.
- Sec. 24-68. Reserved.
- Sec. 24-69. Reserved.
- Sec. 24-70. Reserved.

**ARTICLE IV. SANITARY SEWER USE USER AND INDUSTRIAL PRE-TREATMENT CHARGES\***

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**\*Editor's note**--Ord. No. 263-96, passed May 20, 1996, amended this article in its entirety, in effect repealing the former provisions and enacting similar new provisions as herein set out. Formerly, such provisions pertained to sewer use charges, consisted of substantive §§ 24-71--24-78, and derived from §§ 322.1--322.3, 322.5--322.8 of the 1968 Code, as amended by the following legislation:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
326-77	--	5-16-77	123-89	--	10- 2-89
					2-21-90

420-77	--	7-18-77	259-90	--	
284-78	--	5-15-78	79-91	--	8- 7-91
102-81	1, 3	9-21-81	88-92	1, 2	9- 9-92
476-82	1--3	4- 6-82	187-95	--	3- 6-95
523-83	1--3	6- 8-83	157-96	--	2- 5-96
17-88	--	6-20-88			

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**Sec. 24-71. Definitions.**

Unless the context specifically provides otherwise, the meanings of terms used in this article, not defined elsewhere in this chapter shall be as follows:

*Commercial unit* shall mean any structure or portion of a structure from which wastewater or industrial waste is discharged, excepting only dwelling units as defined hereinafter and shall include industrial users. Commercial units owned by different entities within the same structure and sharing the same water meter shall be treated as one (1) commercial unit.

*Dwelling unit* shall mean one (1) or more rooms occupied or designed to be occupied by one (1) or more natural persons as a single housekeeping unit with sanitary facilities, other than a place of public accommodation as defined hereinafter, discharging only domestic wastewater and shall include each unit of ownership in any condominium. If the occupant or occupants of rooms fit the definition of a dwelling unit except for the fact that the occupants share sanitary facilities with an occupant or occupants of other rooms located within the same structure, the number of units in the structure shall be deemed to be the total number of toilets or urinals located within such structure.

*Parcel of land* shall mean any area of land shown on the assessor's maps on the April first last preceding the operative date, located within the city, which is either connected in fact

to a sewer within the city, or developed-but-unconnected to a sewer within the city, which sewer is nevertheless accessible to the area within the meaning of section 24-36.

*Place of public accommodation* shall mean any establishment having sanitary facilities located therein which gives or offers shelter or lodging to members of the general public, whether transient or long term and shall include but is not limited to hotels, motels, guest houses, hospitals, rest homes, nursing homes, inns, fraternity houses and dormitories.

*Treatment facilities* shall mean all wastewater treatment plants owned and operated by the Portland Water District or by the city.

*Total organic carbon or TOC* shall mean the determination of organic matter present by the measurement of carbon dioxide produced by pyrolysis measured in accordance with 40 CFR Part 136.

*Volume of water* shall mean the amount of water, estimated or measured, whichever is less, provided to the property by the Portland Water District during the previous period of the calendar year. This term shall include any amounts of water obtained from other sources whether or not water is also provided by the district.  
(Ord. No. 263-96, 5-20-96)

**Cross reference(s)**--Definitions and rules of construction generally, § 1-2.

**Sec. 24-72. ~~Sewer~~Sanitary sewer user charges.**

(a) *Applicability*. There are levied upon all parcels of land charges for cost of treatment of wastewater and stormwater and for the operation and maintenance of the wastewater system.

(b) *Billing*. Bills for all charges under this article may be sent to the record owner, or to the person requesting water service. Bills shall be sent to each such owner or person every month, except that persons billed quarterly or seasonally by the Portland Water District for water service may be billed quarterly or seasonally for all charges under this article. All payments shall be credited against the oldest outstanding bill sent to such owner or person. Any payments made to the Portland

Water District or its agents, which do not indicate to which account they are to be applied, shall be applied as provided by contract between the city and the Portland Water District.

Bills shall contain an amount for sanitary sewer user charges, and if delinquent as provided in section 1-16 of this Code, shall include charges for interest to be computed in the same manner as provided for real estate taxes.

(c) *Computation.* The user charges shall be computed in accordance with the following schedule, as from time to time amended, which shall be sufficient to meet costs of the eligible purposes for which such charges may be used. User charges under this section for both dwelling units and commercial units billed for water used after July 1, 2011 the foregoing rate shall be eight dollars and eleven cents (\$8.11) per hundred cubic feet of volume for connected parcels of land. The user charge for developed but unconnected parcels of land shall be one dollar and seventy-one cents (\$1.71) per hundred cubic feet of volume. Each metered billing unit shall have a minimum charge of at least one hundred (100) cubic feet per month.

(d) *Purposes for which charges may be used.* Charges and assessments made under this article shall be used consistently with 33 U.S.C.A. § 1281 et seq., and applicable federal regulations for the following purposes:

- (1) To defray the current expenses of operating and maintaining the wastewater system, including any assessment made by the Portland Water District;
- (2) To pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of sewers heretofore or hereafter constructed within the city;
- (3) To reimburse the city for the cost of computation, billing and enforcement of such charges.

(e) *Collection.* Charges assessed pursuant to this section shall be enforceable pursuant to section 1-16 of this Code.

(f) *Disconnection for nonpayment of charges.* The Portland Water District shall disconnect sewer users with unpaid sanitary

sewer ~~use~~user charges according to the same terms and procedures used to disconnect water users with unpaid water ~~use~~user charges.

(Ord. No. 263-96, 5-20-96; Ord. No. 88-97, 9-15-97; Ord. No. 118-01/02, 12-3-01; Ord. No. 249-02/03, 5-19-03, Ord. No. 31-03/04, 7-21-03(enacted as emergency); Ord. No. 218-03/04, 5-17-04; Ord. No. 249-04/05, 5-16-05, enacted as emergency; Ord. No. 244-07/08, 5-19-08; Ord. No. 265-08/09, 5-18-09; Ord. No. 225-09/10, 5-17-10; Ord. No. 227-10/11, 5-16-11)

### Sec. 24-73. Industrial surcharges.

(a) *Applicability.* Each industrial user except those included in the Westbrook Inter-Municipal Sewer Service Agreement Area, shall be subject to surcharges in addition to any other treatment charge if the wastewater discharged by such user is determined by the public works authority, in accordance with 40 CFR Part 136, to exceed any of the following concentrations:

- (1) BOD of two hundred fifty (250) mg/l; or COD, where indicated for specific wastewater and a correlation between BOD and COD is established in such wastewater; or TOC, where indicated for specific wastewater and a correlation is established between TOC and BOD in such wastewater;
- (2) TSS content of three hundred (300) mg/l.

(b) *Computation of surcharge for BOD.* The surcharge for BOD shall reflect the cost of removing the excess BOD and shall be computed in accordance with the following formula:

$$\text{Surcharge for BOD} = \frac{(C_1 - 250 \text{ mg.l})}{S_1} \times Q \times 8.34 \times$$

Where  $C_1$  = The concentration of BOD in mg/l

$Q$  = The total volume of wastewater contributed during the billing period, in millions of gallons

8.34 = Conversion factor of gallons to pounds

$S_1$  = \$0.1633 for each pound of BOD in dollars

(c) *Computation of surcharge for TSS.* The surcharge for TSS shall reflect the cost of removing the excess TSS and shall be computed in accordance with the following formula:

$$\text{Surcharge for TSS} = \frac{(C_2 - 300 \text{ mg/l})}{S_2} \times Q \times 8.34 \times$$

Where  $C_2$  = The concentration of TSS in mg/l

$Q$  = Total volume of wastewater contributed during the billing period, in millions of gallons

8.34 = Conversion factor of gallons to pounds

$S_2$  = \$0.0817 for each pound of TSS in dollars

(d) Westbrook Inter-Municipal Sewer Service Agreement area may be surcharged for BOD and TSS, based on the cost of treatment at the Westbrook Gorham Regional Treatment Plant.

(e) *Industrial surcharge fee.* An industrial surcharge fee is hereby established for all permitted discharges from all permitted users at a rate of \$0.0857 per hundred cubic feet of volume, provided that the city council may, from time to time, by order, readjust the surcharge fee according to the then prevailing cost of administering the industrial pretreatment program and the anticipated number of permitted users and anticipated volume to be surcharged.

(f) *Appeals.* Any person aggrieved by a determination of the public works authority made pursuant to this section may appeal such determination to the city manager, within thirty (30) days of notification of such determination. Such person may submit additional evidence and shall be heard orally by the manager or his deputy. The manager may modify the public works authority's determination if satisfied that the determination was erroneous, inconsistent with this chapter, or with applicable rules, regulations or grant requirements made pursuant to 33 U.S.C.A. c. 26. All determinations of the manager shall be rendered within a reasonable period of time, not to exceed ninety (90) days from the date of such hearing and shall be final.

(Ord. No. 263-96, 5-20-96; Ord. No.97-03/04, 11-17-03)

**Sec. 24-74. Reserved.**

**Sec. 24-75. Volume measurements.**

(a) *Water volume measurements.* Whenever in this article there is reference to volume of water, and the charges of such person are computed in whole or in part upon such volume of water, the use of such standard shall give the public works authority the right to require any person obtaining water from sources other than the Portland Water District to install and maintain at such person's own expense water meters of a type approved by the public works authority for the purpose of determining the volume of water obtained from their other sources and to report the volume of such water recorded by such meter to the public works authority. Following installation, such meter shall not be removed without the written permission of the public works authority.

(b) *Wastewater volume.* Devices for measuring the volume of wastewater discharged by a commercial or industrial user may be required by the public works authority if these volumes cannot be determined from the water volume records. Any person who is a commercial or industrial user may, at his option, install devices approved by the public works authority for the metering of wastewater and may have the charges based upon the volume of wastewater rather than upon water volume. All metering devices for determining the volume of wastewater shall be installed, owned and maintained by the person to be charged. Following approval and installation, such meters may not be removed without the consent of the public works authority and may be read by the public works authority at all reasonable times.

(c) *Submetering of water volume.* Any person who feels that recorded water records are not a reliable index of his discharge volume may install an additional water meter of a type approved by the public works authority to measure the volume of water which can be shown not to enter the sewerage system. The person installing such a meter shall immediately notify the public works authority of such installation and shall be responsible to the public works authority for reporting meter readings once every month. Such person shall be credited with the volume charges for the volume shown by such meter, which meter shall be accessible for reading by the city or its agents at all reasonable times.

(d) *Review.* Any person subject to charges under this article may make a written request for review of such charges by the city manager as provided in section 1-16 of this Code. The city manager may review and modify such charges, to the extent that justice requires, upon affirmative proof by such person that:

- (1) The volume of metered water consumed exceeds the volume of wastewater generated by the unit;
- (2) The difference between the volume of water and of wastewater exceeds ten (10) percent of the metered water measurement;
- (3) The amount of the difference can be established to a substantial certainty by reliable tests or is documented by reliable sources prepared for purposes unconnected with wastewater disposal; and
- (4) Measurement by the measuring devices provided for in the preceding subsections is impossible or impractical.

(Ord. No. 263-96, 5-20-96; Ord. No. 37-09/10, 8-17-09; ~~Ord. No. 155-12/13, 3-4-13~~)

#### **Sec. 24-76. Assessments.**

(a) *Lien.* All assessments upon a parcel of land made under this article shall create a lien for the benefit of the city.

(b) *Reserved.*  
(Ord. No. 263-96, 5-20-96)

**Cross reference(s)**--Uniform procedure for collecting assessments, § 1-16.

#### **Sec. 24-77. Violations.**

Any person violating the provisions of this article, other than the requirement of payment of charges or assessments, shall be guilty of an offense.

(Ord. No. 263-96, 5-20-96)

**ARTICLE V. STORMWATER SERVICE CHARGES**

**Sec. 24-80. Purpose; Stormwater Service.**

Stormwater services assist the city in meeting the regulatory obligations imposed by national pollutant discharge elimination system (NPDES) permits or other court orders or regulations promulgated from the act by reducing pollution and increasing water quality within the city.

Stormwater services assist the city in protecting the public health, safety and welfare and the environment and providing stormwater services and regulation of the use thereof renders and/or results in both service and benefit to individual properties, property owners, business, citizens, and residents of the city and to all properties, property owners, businesses, citizens, and residents of the city concurrently and for the environment.

The area of impervious surface on each property is the most important factor influencing the cost of providing stormwater services by the city or to be provided by the city in the future, and the area of impervious surfaces on each property is therefore the most appropriate parameter for calculating a periodic stormwater service charge.

The City of Portland presently owns and operates storm sewers, combined sewers, and the stormwater drainage system, which have been developed over many years. The future usefulness of those existing services owned and operated by the city, and of additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use, and enhance stormwater services in the city with the management of other water resources in the city. In order to do so, the city must have adequate and stable funding for its stormwater service operating needs and capital program.

Stormwater services are needed throughout the city because many of those areas are developed. While specific service and facility demands may differ from area to area at any given point in time, a stormwater service area encompassing all lands and water bodies within the city is consistent with the present and future needs of the community.

The provision of stormwater services in the city promotes an essential regulatory purpose by influencing where stormwater runoff flows and how it is managed, thereby reducing flooding, erosion and water pollution caused by stormwater runoff.

By mitigating the impact of stormwater runoff from developed properties, stormwater services provided by the city help prevent damage that would subject a parcel owner to civil liability.

The city council is responsible for the protection and preservation of the public health, safety, and welfare of the community, and the environment and finds that it is in the best interest of the health, safety, and welfare of the citizens of the city and the community at large and the environment to provide stormwater services accounted for in the city budget as a separate enterprise fund dedicated solely to the provision of stormwater services and to institute funding methods associated therewith.

**Sec. 24-81. Definitions.**

Unless the context specifically provides otherwise, the meanings of terms used in this article shall be as follows:

*Credit* shall mean a conditional reduction in the amount of a stormwater service charge to developed land based on the provision and continuing presence of an effectively maintained and operational approved on-site stormwater system or facility or other service or activity that reduces the cost of providing service.

*Detached dwelling unit* shall mean developed land containing one structure which is not attached to another dwelling and which contains one or more bedrooms, with a bathroom and kitchen facilities designed for occupancy by one family. Detached dwelling units may include houses, manufactured homes, and mobile homes located on one or more individual parcels of land or properties. Developed land may be classified as a detached dwelling unit despite the presence of incidental structures associated with residential uses such as garages, carports, or small storage buildings. Detached dwelling unit shall not include developed land containing: structures used primarily for non-residential purposes, manufactured homes and mobile homes

located within manufactured home or mobile home parks where the land is owned by others than the owners of the manufactured homes or mobile homes, or multiple-unit leased residential properties.

Developed land shall mean property altered from its natural state by construction or installation of more than 400 square feet of impervious surfaces as defined in this chapter.

Duplexes, triplexes and quadraplexes shall mean developed land containing two (duplex), three (triplex), or four (quadraplex) attached residential dwelling units located on one or more properties and shall be treated as detached dwelling units for the purposes of rate calculations.

Exemption shall mean not applying to, or removing the application of the stormwater service charge from, a property. No permanent exemption shall be granted based on taxable or non-taxable status or economic status of the property owner.

Impervious surfaces are those areas that prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Impervious surfaces include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Multiple dwelling unit residential properties shall mean developed land whereon five or more attached residential dwelling units are located and shall include, but not limited to, apartment houses, condominiums, town homes, attached single-family homes, boarding houses, group homes, hotels and motels, retirement centers and other structures in which five or more family groups commonly and normally reside or could reside. In the application of stormwater service charges, multiple dwelling unit properties shall be treated as other developed lands except that individually owned units located on individually owned properties shall be treated as detached dwelling units.

Other developed land shall mean, but shall not be limited to, multiple dwelling unit residential properties, manufactured

home and mobile home parks, commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, parking lots, parks, recreation properties, public and private schools and universities, research stations, hospitals and convalescent centers, airports, agricultural uses covered by impervious surfaces, water reservoirs, and water and wastewater treatment plants.

Undeveloped land shall mean land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have no pavement, asphalt, or compacted dirt or gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur naturally.

**Sec. 24-82. Authority and Establishment of the Stormwater Fund.**

(a) Under the authority of the Maine Constitution, Article VIII, and Title 30-A M.R.S.A. § 3001, the city hereby establishes the stormwater service charge to fund stormwater services within the city. Such stormwater charges shall be maintained and accounted for separately in accordance with generally accepted accounting principles as determined by the city's finance director.

(b) Charges made under this article shall be used for the following purposes:

To defray the current expenses of stormwater services and a portion of the current expenses of the combined sewer system attributable to providing stormwater service;

To pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of the storm drainage system and a portion of the combined sewer systems heretofore or hereafter constructed within the city similarly attributable to providing stormwater service;

To reimburse the city for the cost of computation, billing, and enforcement of such charges.

(c) The city manager will designate appropriate public works authority management and other personnel, including support as needed of personnel from other city departments such as finance, to provide stormwater services and to collect and account for the stormwater service charge imposed hereunder.

**Sec. 24-83. Exemptions.**

Exemptions from stormwater charges established under this article are not allowed, except as provided in this section. Exemptions shall be allowed for:

(a) All city and state-owned or maintained roads easements and rights-of-way, including the Maine Turnpike;

(b) Undeveloped land;

c) Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from storm water service charges;

(d) Airport runways, taxiways and aprons upon which public and private aircraft operate;

**Sec. 24-84. Stormwater Service Charge.**

(a) There is levied upon all developed land stormwater service charges for the cost of providing stormwater services. The basis for this charge is the measured amount of impervious surface area on the developed land as determined by the City. This measured area may be updated from time to time at the discretion of the public works authority upon evidence of impervious surface area change or the availability of updated or more accurate information.

(b) Fees collected hereunder to fund stormwater services can also be supplemented by other revenues available to the city, including but not limited to state, federal, general and special city funds, and private grants and loans.

(c) In order to fully recover the cost of providing stormwater services while fairly and reasonably apportioning the cost among developed land throughout the city, the following stormwater service rates shall apply:

- (a) Detached dwellings units, duplexes, triplexes and quadraplexes shall be charged \$4.60 per one thousand two hundred (1,200) square feet of impervious area. The square feet of impervious area shall be rounded to the nearest one thousand two hundred (1,200) square feet.
- (b) Other developed lands shall be charged \$4.60 per one thousand two hundred (1,200) square feet of impervious area. The square feet of impervious area shall be rounded to the nearest one thousand two hundred (1,200) square feet.

#### **Sec. 24-85. Credits**

(a) Owners of developed land may apply for and receive a voluntary stormwater service charge credit for an inspected on-site systems or facilities. The director of the public works authority or his/her designee shall determine such stormwater service fee credits based on the technical requirements, design and performance standards contained in the city's stormwater credits manual, to be adopted by the director of the public works authority pursuant to this ordinance, as it may be updated or amended from time to time.

(b) It is the responsibility of the record owner to initiate and apply in writing for stormwater service charge credits, and to provide all necessary information with a letter requesting the credit. The department of public services is not responsible for initiating a credit application, performing engineering calculations, or otherwise assisting in the preparation of a request for a credit. Credits will only be applied if the requirements outlined in the city's stormwater credit manual are met including but not limited to completion of on-going maintenance, guaranteed right-of-entry for inspection, and submittal of annual self-certification reports or other required reports as required per ordinance.

(c) Credits will be applied to the stormwater service

charge while stormwater facilities or management practices are functioning as approved by the city. If the approved practice or facility is not functioning as approved, or is terminated, the credit will be cancelled. Once the credit has been cancelled, the customer must reapply for the credit.

(d) The department of public services will only review complete credit requests. If approved, the credit will be applied to the first bill issued 30 days after the approval.

(e) Credits are defined as either a set charge reduction or a percent reduction applied as a credit adjustment to the charge calculation and credits may be additive for each credit category.

(f) Detached dwellings units, duplexes, triplexes and quadraplexes shall be eligible for stormwater service charge credits under the following categories:

(1) Cisterns, dry wells, or rain gardens installed and maintained according to the city's stormwater credit manual are eligible for a set charge reduction credit if at least fifty percent of the developed land's roof area drains to a cistern, drywell, or rain garden or if runoff is captured from the developed land's impervious area equal to at least fifty percent of the roof area and the total minimum impervious area capture area is at least 600 square feet.

(2) Green roofs installed and maintained according to the city's stormwater credit manual are eligible for a set charge reduction credit if at least fifty percent of the developed land's roof area is covered with a green roof and the total green roof area is at least 600 square feet.

(3) Any number of rain barrels connected to downspouts installed and maintained according to the city's stormwater credit manual are eligible for a total set charge reduction credit.

(g) All developed land shall be eligible for stormwater service charge credits under the following categories:

(1) General standard of section V of the department of planning and urban development's Technical and Design Standards

and Guidelines and chapter 32 without exception or waiver are eligible for a percentage reduction credit.

(2) Flooding standard of section V of the department of planning and urban development's Technical and Design Standards and Guidelines and chapter 32 without exception or waiver as applicable are eligible for a percentage reduction credit.

(3) Green roofs installed and maintained according to the city's stormwater credit manual are eligible for a set charge reduction credit per 2400 square feet (minimum increment) of green roof area.

4) Other credits, including a credit of one hundred percent (100%) of the stormwater service charge may be granted on a sliding scale for properties providing on-site or off-site stormwater management measures that reduces the impact of the property on the cost of providing stormwater services, provided that such systems are adequately maintained and exceed performance standards specified under Maine's Stormwater Management Law and regulations as well as any additional stormwater management performance standards imposed by this Code of Ordinances. The scale for credits shall reflect the extent to which the subject properties reduce the peak rate of runoff from the property and avoids costs incurred in providing stormwater services.

**Sec. 24-86. Billing.**

(a) All charges under this article shall be sent to the record owner of a given property. The record owner may request, subject to the approval of the director of the public works authority, that the full charge be billed to the owner's designated tenant. The director may direct billing to the tenant of the property if the tenant is currently billed for water and sanitary sewer charges. The record owner shall be liable for payment even if the stormwater service charges are billed to the tenant of the property.

(b) Condominiums shall have the full charge for the developed land equally divided among all condominium owners of developed land. The condominium owners may appeal the director in writing to adjust the fraction of the charge applied to each

condominium owner. The director will require signed confirmation from each condominium owner of developed land that they approve the adjustment to the fraction of the charge applied.

(c) Billing shall be monthly.

(d) Bills shall contain an amount for stormwater service user charges, and if delinquent, as provided in section 1-16 of this Code, shall include charges for interest to be computed in the same manner as provided for real estate taxes and such delinquency may be collected by a civil action against the owner and/or may result in a lien being placed on the property as specified in section 24-88.

**Sec. 24-87. Right of appeal and adjustments.**

(a) A record owner may request review of the amount of the stormwater service charge imposed on such owner by written request to the director of the public works authority within 30 calendar days of the date the customer receives the service charge bill.

(b) The owner shall demonstrate the stormwater generated by the property is less than the amount used in calculating the developed land's stormwater service charge. Factors that will be considered include the impervious area of the property and the activities of the owner or features of the property that are available for credit.

(c) An owner must comply with all rules and procedures adopted by the director when submitting a request for appeal or adjustment of the stormwater service charge and must provide all necessary information to make a determination.

(d) The director of the public works authority or his/her designee shall review the service fee and issue a determination, in writing, within 30 calendar days.

(e) A finding that the stormwater generated by a property is less than the amount used to calculate the developed land's stormwater service charge, the sole remedy to the owner shall be re-calculation of the stormwater service charge based on the corrected level of stormwater generated. A finding that the stormwater generated is not less than the amount used to

calculate the developed land's stormwater service charge shall be conclusive with respect to that property and shall remain effective unless the owner changes the impervious area or the stormwater management practice of the property.

(f) An owner may appeal the director of the public works authority decision to the city manager or his/her designee within 30 days of the date of the decision. An owner may appeal a decision of the manager to a court of competent jurisdiction pursuant to the applicable Rules of Civil Procedure.

**Sec. 24-88. Right of enforcement and violations.**

(a) The director of the public works authority or his/her designee is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(b) It shall be unlawful for any person to violate or to fail to comply with the requirements of this article or its fees. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

(c) Any person who violates this article may also be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this article also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this section; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(d) Without limiting the foregoing, failure to comply with this article may also be enforced as a nuisance and be subject to an abatement action, in addition to, or alternatively to, the enforcement actions described above.

(e) Consent agreement. The enforcement authority, with the approval of corporation counsel and the city manager, may enter

into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(f) Delinquent fees. Any owner that fails to pay the stormwater service charge when due shall be responsible for the amount of the unpaid service charge, interest on the unpaid amount, and attorneys' fees and other costs of collection. To the extent permitted by law, the fee, when overdue, including interest and penalties, is a lien on real property and may be collected in the same manner as a sewer user lien pursuant to state law. Delinquent amounts may also be collected by a civil action against the person.

**Sec. 24-89. Limitation of liability.**

This article shall not be interpreted to mean that property subject to the charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater drainage systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Therefore the following limitations on liability, in addition to any other limitations or immunities existing in law, are set forth:

(1) It is the express intent of the city that this article will protect the public health, safety and welfare of properties and persons in general. However, this ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the service area.

(2) The city shall not be held liable for flood damage or assessing and removing pollution sources, and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the city, or its officers, agents or employees for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.

(3) The issuance of any permit, plan approval or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action

seeking the imposition of monetary damages against the city or its officers, employees or agents.

(4) Operation of stormwater drainage systems located on private property or public property not owned by the city and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvements of the system, shall be the legal responsibility of the property owner, except as may be affected by the laws of the State of Maine and the United States of America.

**Sec. 24-90. Severability.**

Each section of this ordinance is severable from all other sections. If any part of this ordinance is deemed invalid by a court or competent jurisdiction, remaining portions of the ordinance shall not be affected and shall continue in full force. Whenever this ordinance conflicts with any other ordinance of the city, State of Maine, or federal government, the stricter standard shall apply, except as limited by state or federal law.

**Sec. 24-91. Reserved.**

**Sec. 24-92. Reserved.**

**Sec. 24-93. Reserved.**

**Sec. 24-94. Reserved.**



# PORTLAND MAINE

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## MEMORANDUM

**TO:** John Anton, City Councilor, Chair, Finance Committee, Jill Duson, City Councilor, Vice Chair, Finance Committee, David Marshall, City Councilor, District 2, Nick Mavodones, City Councilor

**FROM:** Michael J. Bobinsky, Director of Public Services

**DATE:** October 31, 2013

**SUBJECT:** Storm Water Fee Appeals Process

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Section 24-87 Right of appeal and adjustments, in the proposed amendments to the Sewer Code to incorporate Article V Stormwater Service Charges, provides for the process by which a property owner may request a review of the amount of the stormwater service charged. We plan to include an outline of this appeals process as part of a future document that lists the standard operating procedures for the credit policy, and other relevant information about the new storm water fee program. The appeals process will also be included in this separate document. Key elements of the appeals process as listed in the proposed ordinance is as follows:

-Property owner request a review of the amount of the stormwater service charge to the Department of Public Services – Office of the Director.

-Property owner must provide documentation that the stormwater generated by the property is less than the amount used in calculating the stormwater service charge.

-The Director of Public Services has 30 days to review the request and issue a determination in writing to the property owner.

-If stormwater amount used in calculating the fee is found to be inaccurate, then billing adjustments are made.

-Customers may appeal the Director of Public Services decision to the City Manager within 30 days of the date of the decision. If continued to disagree with decision of the City Manager, then the property owner can seek remedy in Civil Court.

**At the October 24 meeting, the Finance Committee requested that staff contrast the process for appealing Stormwater billing with that of the appeal process for property tax appeals. The following is the comparison:**

Action Step	Stormwater charge appeal	Property tax appeal
City official receive initial appeal:	Director of Public Services	City Assessor
Time line for initial response:	30 Days	60 Days
Actions if not timely:	Appeal to CM	Appeal is denied
Time line for response/action:	30 days	Applicant has 60 days
Next level of appeal:	Civil Court-final	Board of Assessment Review
Time line for response/action:	N/A	60 days
Next Level of appeal:	N/A	*County Superior Court
		^State Board - Prop Tax Review

\*-Residential property and other property types that do not exceed \$1,000,000 in tax value may appeal action (or lack of decision) taken by the BAR to Cumberland County Superior Court within 30 days; nonresidential exceeding \$1,000,000 in tax value an appeal must be filed with the State Board of Property Tax Review within 60 days.

**CITY OF PORTLAND  
M E M O R A N D U M**

**TO:** Chair John Anton and Members of the Finance Committee

**CC:** Michael F. Brennan, Mayor; Mark Rees, City Manager; and Ellen Sanborn, Finance Director

**FROM:** Danielle P. West-Chuhta, Corporation Counsel *DPWC*

**DATE:** November 4, 2013

**RE:** **Storm Water Ordinance**

This memo is written in response to several questions posed by Councilor Anton and other members of the Finance Committee with regard to the proposed Storm Water Ordinance. The following is a summary of my responses to each of the aforementioned questions:

**Can the Sewer Fund Bear the Costs of the Storm Water Phase-in Period?**

The language of the City's ordinance broadly defines sewer as "a pipe or conduit for conveying liquid or other liquid-carried waste." Chapter 24, section 24-2. The ordinance goes on to provide that wastewater shall mean "a combination of the liquid and water-carried wastes from residences, commercial buildings . . . together with such other ground, surface and stormwater as may be present." *Id.* Finally, the ordinance provides that the charges made for sewer may be used for, among other things, to defray the expenses of operating and maintaining the wastewater system" and "to pay the interest and repay the principal on outstanding or future indebtedness of the city for construction of sewers . . ." *Id.* at section 24-73.

As a result of these definitions, it is appropriate for the sewer monies to fund the start-up/phase-in of the storm water program. With that said, the City's Finance Director has also made it clear that "[i]n order to avoid contributing general fund money to the stormwater effort, and since the stormwater costs are now borne by the Sewer Fund, [she] would transfer cash from the Sewer Fund to the Stormwater Fund to cover costs until it began realizing its own revenue stream." See the Memo attached hereto as Exhibit A. Thereby further alleviating any potential concerns.

**Are Credits Important/Does There Need to be a 100% Credit Option?**

In City of Lewiston v. Gladu the validity of a storm water fee was reviewed by the Maine Law Court through the application and consideration of the following four factors:

(1) whether the primary purpose is to raise revenue; (2) whether the assessment is paid in exchange for exclusive benefits not received by the general public; (3) whether the assessment is voluntary; and (4) whether the assessment is a fair approximation of the cost to the government and the benefit to the individual of the services provided.

City of Lewiston v. Gladu, 2012 ME 42, ¶ 9 (quotations and citations omitted).

Through out the review of all of four of these factors, as well as outlined in the cases that the Court cited in its analysis, the voluntariness of a fee was of primary importance in determining that the proposed user fee is a fee and not a tax. “In other words, whether . . . [there is] the ability to avoid the assessment if he/[she] wishes to do so.” Id. at ¶ 21. It is important for the proposed ordinance to “provide for credits to offset or eliminate the fee.” Id. at ¶ 22.

It is also clear from the cases cited by the Law Court that the credit must be based on the impervious surface area and applies to all properties. Overall, if the person minimizes the impact to the system (as a result of the items they receive a credit for) then that person should receive a credit.

#### **Is it Necessary to Differentiate Between MS4 and Combined Sewer Areas?**

There is no need to differentiate in the ordinance between properties that are served by the City’s MS4 system and those that are served by a combined sewer system. This is because the separation of the City’s sewer system is not the primary or exclusive reason why the proposed storm water fee is being instituted and is not the only item that the fee monies will be spent on. On the contrary, the proposed ordinance makes it clear that the fee will be used “[t]o defray the current expenses of storm water services . . . [t]o pay the interest and repay the principal on any outstanding or future indebtedness of the city for construction of the storm drainage system and a portion of the combined sewer systems . . . [and] [t]o reimburse the city for the cost of computation, billing and enforcement of such charges.” Chapter 24, at section 24-82.

#### **Would Property Tax Exempt Organizations (like the State and Federal Government, etc.) be Required to Pay the new fee?**

Tax exempt properties are still required to pay user fees. See Municipal Corporations, McQuillin, Section 44.62.20. Consequently, as described above in the other legal memorandum provided to the Finance Committee on this subject, since the City’s proposed storm water fee is a valid user fee that meets all the requirements of the *Gladu* holding (i.e. it is a fee and not a tax), and is a payment given in return for a government provided benefit, any tax exempt property (including federal and state properties) would be required to pay the fee under Maine law.

### **What is the Difference Between the Real Estate Valuation Appeal Process and the Proposed Appeal Process in the Stormwater Ordinance?**

Under Maine law, a record owner of a parcel of land can appeal their real estate valuation (i.e. seek an abatement) under 36 M.R.S.A. section 841 for the following reasons: (1) because of an alleged overvaluation; (2) to correct an illegality, error or irregularity in the assessment; and/or (3) because of poverty or infirmity. If the owner is seeking abatement for an overvaluation, such an appeal must be filed within 185 days of the commitment of the tax. If the individual/entity, however, is seeking to correct an illegality, error or irregularity in the assessment, their appeal must be filed within 1 year, but not later than 3 years from the assessment. And, finally, if they are seeking abatement because of poverty or infirmity, such a request must be made within 3 years of the date of the tax commitment.

On the other hand, the appeals process for the storm water fee is different and is specifically provided for in section 24-87 of the proposed ordinance. Under this process, a record owner can appeal their bill (only because the storm water generated on site is less than the City calculated; and the only factors that will be considered is the impervious area and credits available to the owner) to the Director of Public Services within 30 calendar days of the date of the bill. Thereafter, they can appeal that decision to the City Manager within 30 calendar days; and finally they can appeal that decision to the Superior Court pursuant to Rule 80B within 30 calendar days of the date of the City Manager's decision.

Please note that credits under the proposed ordinance can be applied for at any time. See Chapter 24, section 24-85. They must be approved by the Department of Public Services, and they will be applied to the first bill issued 30 calendar days after approval of the credit by the Department of Public Services. *Id.*

### **What are the Differences Between the Lewiston and the Proposed Portland Storm Water Ordinances?**

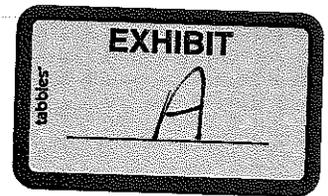
Attached hereto as Exhibit B is a first draft of the proposed storm water ordinance which highlights the differences between the Lewiston Ordinance and the City's proposed Ordinance. Essentially, the attached draft shows that the City first attempted to adopt the Lewiston ordinance with some minor adjustments to reflect specific areas that are unique to the City. The City's proposed ordinance has been edited further, but still primarily tracks the language used by the City of Lewiston.

### **How Does the Proposed Ordinance Conform With the Various Case Law Holdings?**

Based on the applicable case law, it is essential for the City's proposed storm water fee to be for something that each land owner individually and exclusively benefits from. See Gladu, at ¶¶ 17-20. The fee also needs to be a fair approximation of the cost of the service to the City, and be part of a regulatory program that is intended to raise

monies to cover the cost of administering the program. Id. at ¶¶ 13-16. It is further important for there to be the option of not using the City's storm water service (i.e. have a 100% credit in place), and the fees need to be deposited into a separate fund/account, not in the general fund. Id. at ¶¶ 21-23.

Overall, the City's proposed ordinance lines up nicely with the aforementioned requirements and holdings on this subject. More specifically, it has a broad purpose section which specifies the specific public policy reasons for adopting the fee, it contains specific language about how the fees may be spent and where they are to be kept (i.e. in a separate fund), it provides a right to appeal, and it has the option of seeking credits (including a 100% credit).



**CITY OF PORTLAND, MAINE  
MEMORANDUM**

**TO:** Danielle West-Chuta, Corporation Counsel

**FROM:** Ellen Sanborn, Finance Director

**DATE:** October 28, 2013

**RE:** Accounting for Stormwater Revenue and Expenditures

This memo will describe how the accounting for a new Stormwater program would be handled.

The current stormwater activity is paid for from the Sewer Fund through the sewer user fee. To establish a stand-alone stormwater program, with a separate fee structure and ordinance, we would set up a new fund to account for the associated revenue and expenditures. This would be an enterprise fund, as allowed and described by Generally Accepted Accounting Principles, or GAAP.

The fund would not initially have any cash balance, since the collection of revenue would begin after the need to make expenditures, such as for developing the billing file data and sending out sample bills. In order to avoid contributing general fund money to the stormwater effort, and since the stormwater costs are now borne by the Sewer Fund, I would transfer cash from the Sewer Fund to the Stormwater Fund to cover costs until it began realizing its own revenue stream. This transfer would be considered a liability "due to" the Sewer Fund and an asset "due from" the Stormwater Fund, and would show as such on the financial statements of both funds. At the time the Stormwater Fund had sufficient cash to repay the Sewer Fund, the transfer would be made to satisfy the liability.

Please let me know if you need any additional information.

Sec. 32-41. Reserved.  
Sec. 32-42. Reserved.  
Sec. 32-43. Reserved.  
Sec. 32-44. Reserved.

(Note: This ordinance would be all new language in Portland's code. The marked revisions shown are changes made to Lewiston's ordinance to try to tailor it to Portland. This also needs to be coordinated with the rest of Chapter 32 on Stormwater management - Articles I - III. Also note that the track changes program was not used; strikes and underlines were made by using "format/font/strikethrough" and the "U(nderline)". Thus you have to go through and check each individual change rather than doing an "accept all changes". I have put this into Portland's format and section numbering etc. Ultimately, the final version would all be shown as new language.)

#### ARTICLE IV. STORMWATER UTILITY

##### DIVISION 1. ESTABLISHMENT OF STORMWATER UTILITY

(Note: Division 2 is the fee/credit schedule which would be part of the ordinance rather than a separate policy).

Sec.32-45. Findings. (Note: These need to be tailored to Portland)

Whereas, the city council finds that water quality in the watersheds within and surrounding the city, including but not limited to watersheds associated with the ~~Androscoggin River, No Name Pond, Garcelon Bog, Jepson Brook, Hart Brook, No Name Brook, Stetson Brook, Gully Brook, Goff Brook, Moody Brook and Salmon Brook,~~ (Note: provide names) along with their tributaries, and Casco Bay itself, are potentially threatened by pollutants associated with existing land use and future development; and

Whereas, the city council finds that poor water quality ~~in the watershed~~ can threaten public health, safety, and welfare; and

Whereas, the city is legally obligated to eliminate combined sewer overflows and administer a storm water program aimed at preventing polluted stormwater runoff from entering streams, rivers, wetlands, and coastal waters and restoring water quality in urban impaired streams located in Portland; and

Whereas, the city is responsible for maintaining the separated sewer system (62 miles of line), combined sewer system (133 miles of line), and stormwater system (133 miles of line) comprised of the sewer or storm drain lines themselves, catch basins, manholes, detention ponds, underground waste water storage facilities, and sewer pump stations; and

Whereas, the city maintains the stormwater system in order to

convey stormwater runoff away from private property and public right-of-ways to prevent flooding and control erosion; and

~~Whereas, the existing stormwater management system is deteriorating and may be inadequate to meet existing and future needs, and flooding concerns may arise; and~~

Whereas requirements of the U.S. Environmental Protection Agency ("EPA") demand a comprehensive approach to municipal stormwater management, and the city wishes to take a proactive approach to these requirements; and

The city council makes the following additional findings:

- (a) The stormwater management needs of the city have been identified in a needs analysis entitled ~~(Stormwater/CSO Utility Feasibility Study Preliminary Results)~~ dated April 11, 2002, by Camp Dresser and McKee, Inc. and an analysis entitled "CleanWater Act Master Plan" dated December 12, 2000, by Metcalf & Eddy ("stormwater studies") **(Note: identify appropriate studies for Portland)** that indicate more effective stormwater management in the city would contribute to the health, safety and welfare of the residents. Further, this analysis reveals that stormwater facilities and activities associated with stormwater management provide services and benefits to all properties, property owners, residents and citizens of the city.
- (b) Given the scope of stormwater management needs identified by the stormwater studies, it is appropriate and necessary to authorize the formation of a stormwater utility unit, as a program comprised of personnel from the city's department of public services ~~and department of public works~~ and with the support as needed of other appropriate city department personnel such as finance, and department of public works and with dedicated funding components, charged with the responsibility to establish, operate, maintain, control, and enhance the stormwater management programs, services, systems, and facilities of the city.
- (c) In order to establish, operate, and maintain the stormwater infrastructure of the city, ensure the future usefulness of the existing system through additions and improvements, and provide other services associated with stormwater and watershed management, sufficient and stable funding is required for the operation, maintenance and improvement of the stormwater management programs, services, systems, and facilities of the city.

- (d) A stormwater utility service fee schedule that efficiently takes into account impervious surface area, and uses intensity and nature of land use as the most appropriate and equitable method of allocating the cost of stormwater management programs, services, systems, and facilities of the city and between and among rural (?) and urbanized areas of the city and residential dwelling units, non-residential properties and other developed lands for governing assessments and collections of the utility.

#### **Sec. 32-46. Purpose.**

Stormwater runoff is one (1) of the largest contributors to water quality violations in urban and urbanizing areas of Maine. According to the U.S. Environmental Protection Agency (EPA), polluted stormwater runoff is a leading cause of impairment to the nearly forty (40) percent of surveyed U.S. water bodies which do not meet water quality standards (U.S. EPA, 1995). When polluted stormwater runoff is discharged directly into surface water bodies, several adverse effects can occur: public health can be threatened from contaminated drinking water sources, food sources, and recreational waters; aquatic habitats can be damaged or destroyed; and aesthetic values of waterways can decline. Management of stormwater is critical to ensuring the integrity of valuable surface water resources. An effective approach to managing stormwater and related impacts is creation of a utility that delivers stormwater management services to a community.

Therefore, the city hereby establishes a stormwater management utility for the following purposes:

- (a) To determine the necessary level of municipal stormwater management services for the city;
- (b) To maintain and improve the drainage facilities of the city, to ensure that they perform to design capacity while using best management practices to meet local, state, and federal water quality standards;
- (c) To mitigate the damaging effects of uncontrolled and unmanaged stormwater runoff;
- (d) To support and promote sound stormwater management practices that mitigate nonpoint source pollution, reduce flooding, and enhance area drainage within the city and;
- (e) To support the goals and objectives of the city ordinances addressing stormwater management in other sections of this Code ~~of Ordinances~~ and to comply with applicable law, including the Maine Department of Environmental Protection

Stormwater Management Regulations.

**Sec. 32-47. Authority and jurisdiction.**

(a) Under the authority of the Maine Constitution, Article VIII, and Title 30-A M.R.S.A. § 3001, the city hereby establishes the Portland Stormwater Utility ("utility") as a program comprised of personnel of the department of public services ~~and department of public works~~ and with the support as needed of other appropriate city department personnel such as finance, to provide stormwater management programs, services, systems, and facilities of the city. The city ~~administrator~~ manager will ~~appoint~~designate a superintendent of stormwater management and a director of field operations, who may be selected from existing city personnel, to carry out the responsibilities of the utility. **(Note: Will Portland want to have these positions as new positions? Or should we just make the director of public services the head of the utility?)**

(b) The utility or its designee, such as the finance department, is authorized to assess and collect service fees from all persons owning land within the municipality that benefit from the services provided by the utility, including all persons that own land from which stormwater runoff discharges directly or indirectly to the stormwater management systems and facilities managed by the utility.

(c) The utility will assume all responsibility for providing stormwater management programs, services, systems, and facilities of the city, including maintaining and improving stormwater infrastructure; providing engineering services for stormwater management; regulating, in accordance with local, state and federal regulations, stormwater discharges from each parcel contributing to the stormwater management systems and facilities; and collecting utility fees. The superintendent of stormwater management, **(?)** or his/her designated representative, is authorized to make recommendations for stormwater management plans during any required review process for new and/or existing development. **(Note: how does this coordinate with Articles I - III which regulate stormwater discharges? Does the utility assume responsibility directly for all of the activities under Articles I - III? If so, then this should be re-worked to be explicit.)**

(d) The boundaries and jurisdiction of the stormwater utility shall encompass all portions of the City of ~~Lewiston~~ Portland.

**Sec.32-48. Definitions.** **(Note: The definitions in the existing 32-1 and these proposed definitions from the Lewiston ordinance need to be reviewed and a determination made if there is duplication or**

**conflict, and if so, what should be used in Portland. Someone should also review the definitions in state law and regulation as referenced).**

The definitions contained in Maine's Stormwater Management Law and Regulations (38 M.R.S.A. §420D; 06-096 CMR Ch. 500 (Oct. 30, 2005, as amended on December 27, 2006 and December 27, 2011), are incorporated herein by reference. Additional terms used in this article are defined as follows:

*Credit:* Credit shall mean a conditional reduction in the amount of a stormwater service fee to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility or other service or activity that reduces the stormwater management utility's cost of providing services.

*Customers of the stormwater utility:* Customers of the stormwater utility shall include all persons, properties, and entities served by and/or benefiting from the utility's acquisition, management, maintenance, extension, and improvement of the public stormwater management systems and facilities and regulation of public and private stormwater systems, facilities, and activities related thereto, and persons, properties, and entities which will ultimately be served or benefited as a result of the stormwater management program.

*Developed land:* Developed land shall mean property altered from its natural state by removal of vegetation, construction, or installation of improvements such as buildings, structures, or other impervious surfaces, or by other alteration of the property that results in a meaningful change in the hydrology of the property during and following rainfall events (agricultural and forestry operations that do not create impervious surface area excepted).

*Director:* The director of public services or his/her authorized designee.

*Ephemeral stream:* A channel that flows only during wet weather following a precipitation event and typically flows no more than a few days after the storm.

*Equivalent residential unit (ERU):* A measure used to standardize the utility service fees for residential properties, or classes of residential properties, and based on the average amount of impervious area of a base residential parcel. The ERU shall also be used as the basis for standardizing and determining the equivalent size of non-

residential properties and other developed lands. The staff of the utility, together with consulting engineers, shall undertake an analysis to identify the amount of square feet of impervious surface area of an ERU and this will be identified as part of the stormwater service fee schedule in division 2 of this article policy.

*Exemption:* Exemption shall mean not applying to, or removing the application of the stormwater management utility service fee from, a property. No permanent exemption shall be granted based on taxable or non-taxable status or economic status of the property owner.

*Hydrologic response:* The hydrologic response of a property is the manner whereby stormwater collects, remains, infiltrates, and is conveyed from a property.

*Impervious surfaces:* Impervious surfaces are those areas that prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Impervious ~~areassurfaces~~ include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

*Intermittent stream:* A stream or river that flows during both wet and dry weather only during the wettest part of the year and exhibits no flow during dry weather during at least a portion of the year, and is depicted as a thin solid line on United States Geological Survey (USGS) quadrangle maps.

*Other developed lands:* Other developed lands shall mean, but not be limited to, mobile home parks, commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, parking lots, parks, recreation properties, public and private schools and universities, colleges, research facilities and stations, hospitals and convalescent centers, airports, agricultural uses covered by impervious surfaces, water and wastewater treatment plants, and lands in other uses which alter the hydrology of the property from that which would exist in a natural state.

*Perennial stream:* A stream or river that flows during both wet and dry weather throughout the year and over multiple years in duration, and that is depicted as a bold line on USGS quadrangle maps.

*Pollution:* The contamination or other alteration of the physical, chemical or biological properties of any natural waters of the City of ~~Lewiston~~Portland and Casco Bay, or the discharge of any liquid, gaseous, solid or radioactive or other substance into any such waters as will or is likely to create a nuisance, or render such water harmful, detrimental, or injurious to the public health, safety and welfare or to other beneficial uses.

*Residential dwelling unit:* Residential dwelling unit shall mean developed land containing one or more structures and which contains one or more bedrooms, with a bathroom and kitchen facilities, designed for occupancy for dwelling purposes. Dwelling units may include single-family houses, single duplex units under common ownership, manufactured homes, condominiums, townhouses, and mobile homes located on one or more individual lots or parcels of land. Developed land may be classified as a residential dwelling unit despite the presence of incidental structures associated with residential uses such as barns, garages, carports, or small storage buildings such as tool sheds or woodsheds.

*Stormwater:* Precipitation as it falls to the earth, surface runoff and drainage, and paths taken by such water. It includes any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water". (Note: the last sentence is from the 32-1 definitions)

*Stormwater management programs, services, systems, and facilities:* Stormwater management programs, services, systems, and facilities are those administrative, engineering, operational, regulatory, and capital improvement activities and functions performed by the ~~City of Lewiston~~ city in connection with managing the stormwater management systems and facilities of the city, plus all other activities and functions necessary to support the provision of such programs and services.

*Stormwater management systems and facilities:* Those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes, city and state roads including the Maine Turnpike and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.

*Stormwater service fees:* Stormwater service fees shall mean the periodic service fee imposed pursuant to this article

for the purpose of funding costs related to stormwater management programs, services, systems, and facilities.

*Stormwater service fee schedule fee policy:* The ~~policy-fee~~ approved by the city council from time to time, identifying the specific fee structure and formulas upon which stormwater service fees and credits will be based.

*Undeveloped land:* Land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have no pavement, asphalt, or compacted dirt or gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur naturally.

~~Lewiston~~Portland stormwater utility: The program within the city of ~~Lewiston~~Portland staffed by the public services department, with the support as needed of other appropriate city department personnel such as finance and public works department, responsible for providing the stormwater management programs, services, systems, and facilities pursuant to this article.

(Ord. No. 06-10, 7-27-06; Ord. No. 06-14, 11-2-06)

**Sec. 32-49. Establishment of stormwater fund.**

(a) The city ~~administrator~~ manager shall establish a dedicated stormwater fund in the city budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the utility. All revenues and receipts of the utility shall be placed in the stormwater fund, which shall be separate from all other funds, and only the expenses of stormwater management programs, services, systems, and facilities of the city shall be paid by the fund. **(Note: get finance input on this.)**

(b) To carry out the purposes of this article, the utility and the stormwater fund may also accept loans, state, federal and private grants, and allocations of funds from the city's general fund or special purpose funds.

(c) Stormwater service fees will be set at a rate that covers the costs necessary to carry out the stormwater management programs, services, systems and facilities approved by the city as necessary to carry out the functions of the utility. Expenditure of funds from the stormwater fund is limited to the following:

1. Operating expenses;
2. Non-operating expenses, such as equipment and supplies;
3. Payment on principal and interest on debt obligations;
4. Capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants and other amenities to support stormwater management alternatives utilizing vegetation);
5. Reserve expenses; and
6. Others costs as deemed necessary by the city council.

**Sec. 32-50. Requirements for on-site stormwater management.**

**(Note: Is all of this already covered in 32-1 et seq? Do we need it at all)?**

All property owners and developers of property within the city shall provide, manage, maintain and operate their stormwater systems to meet all requirements of the Maine Stormwater Management Law, and regulations and all other applicable stormwater management requirements now specified or later specified in this Code of Ordinances, including, but not limited to, the non-stormwater discharge ordinance (secs. ~~32-174-200~~ et seq.), the private stormwater elimination policy, **(Note: do we have this?)** and applicable development performance standards contained in this Code or incorporated herein. The city council hereby adopts and incorporates the requirements of the private stormwater elimination policy, **(Note: relevant to Portland???)** ~~subject to revision and amendment by the council upon recommendation of the superintendent of stormwater.~~

Failure to comply with these requirements shall constitute a nuisance and be subject to abatement action, in addition to the enforcement actions described in ~~subsection 32-5574-311(a)~~. In the event that a public nuisance is found to exist by a court of appropriate jurisdiction, and the property owner fails to abate said nuisance within a reasonable time as allowed by the court, the city may take all legally authorized actions necessary to enforce the court's judgment, including entering upon the property and causing such work as is reasonably necessary to be performed, with the actual cost thereof assessed against the owner in the same manner as a tax levied against the property. From the date of filing such action, the city shall have lien rights that may be perfected, after judgment, by filing a notice of lien in the court of appropriate jurisdiction. The city shall have the right, pursuant to this article, for its designated officer and employees to enter upon private and public property owned by entities other than the city,

upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to ensure compliance. Failure to comply with the standards identified herein will also subject the property owner to enforcement action, as described in section ~~32-5574-311~~ herein. **(Note: Do we need/want to include this paragraph, See 32-39 under Article III and 32-55 below)**

**Sec. 32-51. Services provided.**

(a) For the purposes of operating, maintaining and improving the stormwater management system and facilities, the city owns or has legal access to portions of the system that:

1. Are located within public streets, easements, and rights-of-way of the ~~city jurisdiction~~; and/or
2. Are subject to access provisions established by the city for the purpose of operating, maintaining, and/or improving stormwater systems and facilities.

(b) Stormwater systems located on private property or on public property for which no access provisions have been made shall be considered the legal responsibility of the property owner.

(c) The utility may provide some or all of the following services in exchange for collecting a service fee:

1. Administer the stormwater management program for the city;
2. Perform necessary studies and analysis of the service area or potential service area(s);
3. Acquire, construct, operate, maintain, manage, protect, and enhance the stormwater infrastructure, including betterments and connections to the public drainage system; mapping of natural and man-made features affecting stormwater management;
4. Detect and eliminate illicit discharges to the stormwater management system;
5. Periodically inspect properties to determine contribution to municipal stormwater load;
6. Inventory stormwater management facilities;
7. Maintain an up-to-date database of residential and non-residential properties in the service area, billing class codes for each parcel, runoff contributions of each property to the stormwater system for non-residential

- properties, and charges and payments for each account;
8. Determine compliance with applicable local, state and federal regulations, the stormwater discharges from each parcel contributing to the stormwater system;
  9. Perform inspections of stormwater management structures and facilities, both during and after development/construction;
  10. Perform master planning and engineering for watershed management and capital improvements;
  11. Recommend and provide advice to update and/or revise local comprehensive plans with respect to stormwater management;
  12. Obtain federal and state permits necessary to conduct its duties;
  13. Obtain and administer grants and loans from public and private sources as authorized by the city council;
  14. Receive and track service fees collected by the city;
  15. Review development plans and provide comment to the planning and code enforcement department of the city;
  16. Make recommendations regarding acquisition of property, easements and rights-of-way in critical areas serving as buffers, retention or infiltrating areas, or providing means to gain access to properties to perform utility duties.
  17. Educate and inform the public about the impacts of stormwater runoff and the components of a stormwater management plan; and
  18. Perform any and all other necessary functions in connection with stormwater management programs, services, systems, and facilities of the city.

(d) The utility will be responsible for addressing all applicable state and federal quantity and water quality standards for stormwater. This includes the responsibility for addressing all applicable state and federal stormwater permits required for the city, including National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer systems (MS4) permits and other Phase I and Phase II industrial stormwater permits for applicable municipal activities, and carrying out applicable actions under all local stormwater ordinances. ~~Whereas the City of Lewiston~~

city is regulated under Phase II of the NPDES permit program, (?) the utility will assume responsibility for meeting federal NPDES permit requirements for MS4s, including compliance with the six federally mandated minimum control measures:

1. Public education and outreach;
2. Public participation/involvement;
3. Illicit discharge detection and elimination;
4. Construction site runoff control;
5. Post-construction runoff control; and/or
6. Pollution prevention/good housekeeping

**Sec. 32-52. Service area.**

The service area of the utility will include all areas within the municipal boundaries of the city of ~~Lewiston~~ Portland.

**Sec. 32-52. Stormwater utility service fees.**

(a) The city may determine and modify from time to time the service fees of the utility in order that the funds generated correspond to the cost of stormwater management programs, services, systems, and facilities of the city. In general, funding for the stormwater utility shall be equitably derived based on methods that establish a link between the fees and degree of impact imposed on the stormwater management system and facilities.

(b) To the extent that other funding methods are employed by the city to manage stormwater both within and outside the service area, stormwater service fees shall support and be consistent with plan review and inspection fees, special fees for services, fees in lieu of regulatory requirements, impact fees, special assessments, and other fees. **(I'm not sure what the foregoing sentence means.)** Fees collected to fund stormwater management activities of the utility can also be supplemented by other revenues available to the city, most notably state, federal, and private grants or loans.

(c) ~~After adoption of the ordinance,~~ The utility, guided by the city ~~administrator~~ manager and with the assistance of those consultants deemed necessary by the utility and approved by the city administrator manager, shall undertake an analysis of the cost of stormwater management programs, services, systems, and facilities of the city for the purpose of setting an annual rate schedule for properties served by the utility. The recommendations of the utility (and/or city ~~administrator~~ manager) shall be submitted for approval

by the city council. The fee schedule approved by the city council shall be designated as the stormwater service fee schedule and made a part of this ordinance ~~and be made part of the city's policy manual~~. No bills will be issued to customers prior to city council approval of the stormwater service fee schedule. **(Note: Is this something that will be done before the ordinance is passed so that we can include the fees in the proposed ordinance? And then we could do any periodic amendments through the budget process the way we do with sewer rates.)**

(d) Rate studies shall be conducted periodically by the utility to determine all changes and future updates to the stormwater utility use fee schedule ~~policy~~. Any revision to the stormwater service fee schedule ~~policy~~ will be approved by the city council prior to implementation.

### **Sec. 32-53. Credits and exemptions.**

(a) Credits against service ~~charges~~fees ~~are an appropriate means of adjusting payments to the utility and will only~~ be granted to those properties that go beyond the requirements of state and local laws and regulations as provided herein. Credits against service ~~charges~~fees may be granted on a sliding scale for properties providing on-site or off-site stormwater management measures that reduce the impact of the property on the cost of providing stormwater management services, provided that such ~~measures~~systems are adequately maintained and exceed performance standards specified under Maine's Stormwater Management Law and regulations as well as any additional stormwater management performance standards imposed by this Code ~~of Ordinances~~. **A fee credit schedule (I think this schedule should be part of this ordinance)** and a manual for the stormwater utility shall be developed by the utility's staff and consultants specifying the necessary performance standards for **stormwater systems to qualify for a credit**. The scale for credits shall reflect the extent to which the subject properties reduce the peak rate of runoff from the property, or avoid other costs incurred by the stormwater management utility in the delivery of services, and shall be ~~determined~~approved by the director, ~~department~~ of public services. The fee credit schedule shall be submitted to and approved by the city council as part of the stormwater service fee schedule ~~policy and be made part of the city's policy manual~~. **(Note: will this all be done before the ordinance is passed so it can be put into the ordinance?)**

(b) Credits may be provided for the following:

1. Properties upon which a permanent and/or perpetual conservation or other protective easement has been provided may receive service fee credits, ~~as established by the city council~~, provided such easement:

- a. Reduces or compensates for the impact that the subject property, or an unrelated property, has on public or private stormwater systems or the water quality of receiving waters;
  - b. Improves the function of public stormwater systems or the water quality of receiving waters; or
  - c. Provides other substantial benefits as identified in writing by the ~~city council~~ director.
2. Creation of freshwater wetlands (~~assuming the~~ other than a created wetland which is not part of a mitigation project associated with a permitted impact to a natural wetland);
  3. Stormwater management practices (e.g., on-site detention and retention facilities); and
  4. Peak flow reduction (may be same as c). **(Note: what is the parenthetical phrase referring to? Is it 1.c. above?)**

(c) Exemptions from stormwater service fees are not allowed, except as provided in this section. Exemptions shall be allowed for:

All city and state-owned or maintained roads, easements and rights-of-way, including the Maine Turnpike, because these roads are part of the stormwater management systems and facilities.

**(Note: see "exempt person" in section 32-1 which seems to be broader than this.)**

#### **Sec. 32-54. Fee collection schedule.**

(a) Stormwater service fees shall be collected quarterly. To minimize administrative costs, notification and collection of stormwater utility fees shall be coordinated, to the extent possible with the collection of water and sewer service charges. A customer shall have 30 days from receipt of a service fee bill to make payment. Interest, at a rate determined by the city council as part of the stormwater utility user fee schedule, shall be charged on delinquent accounts after 30 days.

(b) A customer of the utility may request review of the amount of the service fee imposed on such customer by written request to the director ~~superintendent of stormwater~~ within 30 days of the date the customer receives the service fee bill. The ~~superintendent~~director shall review the service fee and issue a determination, in writing, within 30 days. A customer may appeal the director's ~~superintendent's~~ decision to the city manager ~~council~~

within 30 days of the date of the director's decision.  
Aggrieved persons may appeal a decision of the council to a court of  
competent jurisdiction within 30 days of the date of the manager's  
council decision. (Note: this was under 2-55(c) "Delinquent fees"  
in Lewiston's ordinance. I think it fits better here).

**Sec. 32-55. ~~Right to~~ Enforcement and violations.**

(a) The director of public services, or his authorized  
designee city administrator, or his authorized designee is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(b) It shall be unlawful for any person to violate or to fail to comply with the ~~stormwater management~~ requirements of this ~~article section 74-305~~. Whenever the enforcement authority believes that a person has violated ~~section 32-50~~ this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452 ~~and section 1-8 of the Code of Ordinances.~~  
**(Note: the stormwater management articles I - III already have enforcement provisions, see Section 32-39)**

(1) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this ~~section 74-305~~, article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it including, without limitation:

- a. the cessation of discharges, practices, or operations in violation of this article;
- b. at the person's expense, the abatement or remediation of conditions; and/or
- c. the payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

(2) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates ~~section 74-305~~ this article shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452 and ~~section 1-8 of the Code of~~

~~Ordinances.~~ Each day such violations continue shall constitute a separate violation. Moreover, any person who violates ~~section 74-305~~ this article also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of section; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (3) *Consent agreement.* The enforcement authority, with the approval of the city manager, may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of section 74-305 and of recovering fines, costs and fees without court action.
- (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his designee, other than the enforcement authority board of appeals in accordance with the City's Code of Ordinances, App. A, Art. IX. The notice of appeal must be received within 30 days from the date of the notice of violation. The ~~board of appeals~~ city manager shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The ~~board of appeals~~ city manager may affirm, reverse or modify the decision of the enforcement authority. The city manager's decision shall be in writing with findings of fact and conclusions of law. A party aggrieved by the decision of the ~~board of appeals~~ city manager may appeal that decision to the Maine superior court ~~within 45 days of the date of the board of appeals decision~~ pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 45 days of the decision of the ~~board of appeals~~ city manager upholding the decision of the enforcement authority, then the enforcement authority may initiate an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (c) Delinquent fees. ~~(1)~~ Any person that fails to pay the

service fee when due shall be responsible for the amount of the unpaid service fee, interest on the unpaid amount at a rate determined by the city council as part of the stormwater utility use fee schedule, a minimum penalty of \$200.00, and attorneys' fees and other costs of collection. Delinquent amounts may be collected by a civil action against the person.

~~(2) A customer of the utility may request review of the amount of the service fee imposed on such customer by written request to the superintendent of stormwater within 30 days of the date the customer receives a service fee bill. The superintendent shall review the service fee and issue a determination, in writing, within 30 days. A customer may appeal the superintendent's decision to the city manager council within 30 days of the date of the superintendent's decision. Aggrieved persons may appeal a decision of the council to a court of competent jurisdiction within 30 days of the date of the manager's council decision.~~ (Note: See section 2-54 above).

~~(Ord. No. 06 10, 7 27 06)~~

#### **Sec. 32-56. Limitation of liability.**

Floods from stormwater may occasionally occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this chapter. This chapter shall not be interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Therefore the following limitations on liability are set forth:

1. It is the express intent of the city that this stormwater utility ordinance will protect the public health, safety and welfare of properties and persons in general. However, this ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the jurisdiction of the stormwater utility.
2. The city shall not be held liable for flood damage or assessing and removing pollution sources, and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the city, or its officers, agents or employees, for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.

3. The issuance of any permit, plan approval or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of monetary damages against the city or its officers, employees or agents.
4. Operation of stormwater systems located on private property or public property not owned by the city of ~~Lewiston~~Portland and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvements of the system, shall be the legal responsibility of the property owner, except as may be affected by the laws of the State of Maine and the United States of America.

**Sec. 32-57. Severability.**

Each section of this ordinance is severable from all other sections. If any part of this ordinance is deemed invalid by a court or competent jurisdiction, remaining portions of the ordinance shall not be affected and shall continue in full force and effect. Whenever this ordinance conflicts with any other ordinance of the city, State of Maine, or federal government, the stricter standard shall apply, except as limited by state or federal law.

**Sec. 32-58. Applicability.**

This ordinance and the fees, obligations and requirements identified herein shall apply to all use of and benefit from the city's stormwater management systems and facilities, occurring on or after ~~July 1, 2006~~\_\_\_\_\_ . All persons owning land within the municipality that benefit from the services provided by the utility shall be subject to service fees for their use of the stormwater management systems and facilities occurring on or after ~~July 1, 2006~~\_\_\_\_\_ .

**Sec. 32-59. Reserved.**

DIVISION 2. FEES AND CREDITS

**Sec. 32-60. Fee schedule.**

In accordance with Division 1 and ~~its~~ he ~~Code of Ordinances,~~ ~~Article IV, Chapter 74, Section 74 304 and 74 308,~~ the city has ~~conducted~~ analysis of the cost of stormwater management programs, services, systems, and facilities of the city ~~for the purpose of setting an annual rate schedule for properties served by the utility.~~ In accordance with said cost analysis and an analysis of the impact on the stormwater systems and facilities generated by properties within the city, the city establishes the following

stormwater service fees ~~are hereby established~~, effective July 1, 20\_\_:

- (1) *Base rate.* Based on the average square footage, the ratio of impervious surface area contained within properties within the city and the impact on the stormwater system, and in order to minimize administrative burdens and expenses, the city has determined that a flat fee for the first 2,900 square feet of impervious surface is appropriate for all parcels. Each parcel in the city will be charged a base rate of \$50.00 for the first 2,900 square feet of impervious surface (as defined in section ~~32-4874-302~~ above of the City Ordinances). Parcels with no impervious surface (~~as defined in Section 74-302 of the City Ordinances~~) as determined by the city will not be subject to a fee. **(Note: we should do an analysis and come up with our own numbers if we have not already done so.)**
  
- (2) *Single Family Homes, Mobile Homes and Duplex Residential Units.* The city has determined the average amount of impervious surface area of a single family home in the city is 2,900 square feet. ~~The average amount of impervious surface area per mobile home lot in a mobile home park is approximately 2,800 square feet.~~ The average amount of impervious surface area for duplex residential properties average 4,350 square feet. Single family, ~~mobile homes~~ and duplex residential parcels generally are uniform throughout the service area. To minimize administrative burdens and expenses:
  - a. Single family home properties and mobile homes will be charged a flat rate of \$50.00 per annum.
  - b. Duplex residential properties will be charged at a flat rate of \$74.00 per annum.
  
- (3) *Mixed Use Residential Properties.* Mixed use residential properties, where the owner of the property has established a homestead exemption for the property and is also running a business on the property will be assessed a blended stormwater utility rate. The impervious surface on the parcel will be counted as follows in determining the stormwater utility fee:
  - i. 40% of the total impervious surface on the parcel will be considered part of the primary residence and will be assessed the fees as described in paragraph ~~1-2~~ above. This will be considered first in identifying the 2,900 square feet of

impervious surface making up the Base Rate.

ii. ~~60~~\_\_% of the total impervious surface on the parcel will be considered part of the business and will be assessed as described in paragraph 4 below. If the residential portion of the impervious surface did not use the entire ~~2,900~~\_\_\_\_\_ square feet of the Base Rate, the remaining amount may be applied to this part of the impervious surfaces.

iii. Any mixed use property owner that has a homestead exemption on the property may request an individual review of their property's stormwater utility fee. However, if such a review is requested and performed, the blended ~~40~~\_\_% / ~~60~~\_\_% rate will no longer apply and the actual rate calculated during the review will be used to determine the final stormwater utility fee.

(4) *Unit Fee for Other Properties.* Properties other than single family homes and duplex and mixed use residential properties (as described in paragraphs (2) and (3) above) will also be charged a flat fee of ~~\$50.00~~\_\_\_\_\_ per annum if the impervious surface area is less than ~~2,900~~\_\_\_\_\_ square feet. In addition to the ~~\$50.00~~\_\_\_\_\_ base rate, parcels having more than ~~2,900~~\_\_\_\_\_ square feet of impervious surface will be charged ~~\$0.0540~~\_\_\_\_\_ for every square foot of impervious surface exceeding the ~~2,900~~\_\_\_\_\_ square feet base amount.

(5) *Stormwater system connection ~~or disconnection~~ fee.* A permit must be obtained prior to the connection of any parcel to the city's stormwater system. A permit application, in the form ~~attached as Appendix 1.A~~ approved by the director must be filed with the director ~~of public services or his designee~~, along with a permit fee of ~~\$53.00~~\_\_\_\_\_ per application to cover administrative costs. The applicant(s) is responsible for all costs (including materials, labor and equipment) to effect the connection ~~or disconnection~~.

(6) *Stormwater system disconnection notice and fee.* Any person connected to the stormwater system must give written notice to the director of public services prior to disconnection, and pay a fee of \$\_\_\_\_\_ at the time of such notice.

~~Fee: A Fee of \$53.00 will be charged for each connection or disconnection.~~

a. This stormwater connection or disconnection fee in paragraphs (5) and (6) above will be charged for a connection or disconnection from any of the city's underground stormwater system pipes or catch-basins and/or for installation/removal of driveway culverts where ditches rather than an underground system serves the area. Payment of the fee shall be made at the time of application or notice of disconnection.

b. If, in the discretion of the director ~~of public works~~, the connection or disconnection requires the services of ~~the~~ a city inspector, the applicant will be responsible for an additional ~~\$25.00~~ \_\_\_\_\_ for each visit by the inspector. Said charges will be billed to the applicant(s) upon completion of each inspection.

- (7) *Delinquent Fees.* Any person that fails to pay ~~the service~~ any fee when due under this section shall be responsible for the amount of ~~the unpaid service fee~~, plus interest on the unpaid amount at a rate identified and determined by the finance director ~~Public Utility Commission for Lewiston's Water Utility and approved by the city council~~ as part of the stormwater utility use fee schedule, a minimum penalty of \$200.00, and attorneys' fees and other costs of collection. Delinquent amounts under this section may be collected by a civil action against the person.

## **Sec. 61. Credit policy.**

(a) General Policies. Based on the cost analysis conducted pursuant to Division 1., Article IV, Chapter 74, Sections 74-308 and 74-309, the city has established ~~determined that~~ two types of credits ~~are appropriate at this time~~ for property owners that have implemented certain systems and measures to mitigate the impact of stormwater on the city's stormwater systems and facilities:—

- (1) A city stormwater system impact credit (as described in section 622.2) will be provided for properties that demonstrate substantial portions (more than 50%) of the subject property do not impact the city's stormwater system ~~as defined herein~~.
- (2) A permit improvements credit (as described in Section 63) will be provided for properties to parcels that develop on-site retention/detention facilities that enable the city to avoid additional capital and operating costs associated with stormwater runoff.

~~General policies for stormwater utility credits are listed below~~

~~with policies, details and special circumstances that may be specific to individual credits are described in sections 2.2 and 2.3 below.~~

(b) General criteria for credits.

(1) Credit ~~is~~ will be given to eligible properties only as described in ~~this policy~~ section 62 and section 63.

(2) It is the responsibility of the property owner (or his/her designee) to initiate and apply in writing for stormwater utility credits, and to provide all necessary substantiating information with a letter requesting the credit.

~~Although the Department of Public Services staff is available to answer questions and provide technical assistance,~~

(3) The department of public services is not responsible for initiating a credit application, performing engineering calculations, or otherwise assisting in the preparation of a request for a stormwater utility credit.

(4) The department of public services will only review complete credit requests. ~~The reviews are anticipated to be complete within four (4) weeks after a complete application is received.~~ If approved, the credit will be applied to the first full quarterly bill issued at least 30 days after the approval. Any approved request for a stormwater credit will be effective from the beginning of the fiscal year the application was submitted or the date the owner purchased the property (whichever is later).

(5) Multiple credits may be given to eligible properties up to a maximum of 100% of the property's stormwater utility fee.

(6) An approved credit will be applied to the property without further application for the period of time the mitigation measures required for the credit are maintained in accordance with city requirements ~~as described herein.~~

**Sec. 32-62. City stormwater system impact credit.**

(a) Availability. The city stormwater system impact credit is available only to those properties having a stormwater collection and discharge system that does not result in impact to the city's stormwater management and system facilities ~~as defined in Section 74-302 of the Code of Ordinances.~~ To be eligible for a credit, it must be demonstrated that no stormwater collected on and/or discharged from at least **50 percent** of the impervious surface on a property reaches any part of the city's stormwater ~~control~~ management system. ~~An analysis of the city's watershed drainage~~

~~paths identified areas of the City where properties are more likely to qualify for this credit. Those areas are shown on the "Direct Drainage Areas Study" map included at the end of this policy. Properties not located in these areas very likely impact the city's stormwater control system.~~

(b) ~~Criteria. for city stormwater system impact credit.~~

- (1) The discharge from the property's stormwater collection system must not impact the city's stormwater infrastructure (including the street system), nor negatively impact water quality or quantity issues downstream from the discharge point.
- (2) The amount of the credit will be based upon how much of the property's impervious surface is drained through a system that does not impact the city's system. The maximum credit of 100% can be obtained if 100% of the impervious surface is drained without impacting the city system, 80% if at least 80% of the parcel does not impact the city system, and 50% if at least 50% is drained without impacting the city system.
- (3) The equipment, systems and facilities comprising a property's stormwater collection and discharge system must be owned, operated and maintained, either on-site or by record of agreement, by the applicant. The applicant must provide documentation of the activities that will occur in order to inspect and maintain the system to the standards presented therein.
- (4) In the event that the stormwater system (or a portion thereof) is not located on the property owned and/or operated by the applicant, the applicant must provide a copy of a record agreement between the applicant and the owner of the off-site facility and a statement that the owner understands the applicant will receive the stormwater fee credit for the facility. In addition, the owner of the off-site parcel should provide a letter to the department of public services indicating he/she is in agreement with the information contained in the request for a stormwater utility credit.
- (5) If the applicant does not operate and maintain the facility as required, the credit will be discontinued.
- (6) Maintenance requirements for the system must meet the most recent version of the Best Management Practices (BMPs) established by the Maine DEP.

(c) ~~Application. To apply~~ An applicant for a city stormwater system impact credit, ~~the applicant~~ must submit the following information:

- (1) Cover letter to the department of public services identifying all attachments and explaining why the credit is being requested and how much of a credit is being requested.
- (2) A description of the onsite stormwater collection and discharge system and an analysis of the downstream flow paths of stormwater from the property.

(c) Properties that would not trigger the need for development review as described in Section V of the department of planning and urban development's Technical and Design Standards and Guidelines~~in Appendix A, Article XIII, Section 2~~ shall identify:

- (1) How stormwater is collected and where it flows on the property;
- (2) The flowpath of stormwater after it leaves the property, including identification of any and all stormwater structures the drainage would flow through such as catchbasins, piping, culverts, and ditches ~~and etc.~~ This flow path will be followed until the brook or stream carrying the stormwater leaves the city limits and does not re-enter. ~~(Note: There are some brooks or streams that leave the City for a short distance and then re enter the city).~~

(d) Properties that would trigger the need for development review as described in Section V of the department of planning and urban development's Technical and Design Standards and Guidelines~~Appendix A, Article XIII, Section 2~~ shall identify:

- (1) On-site roof drains, catchbasins, piping, culverts, retention ponds and other on-site collection system structures and any and all discharge points.
- (2) A stormwater management plan/report identifying the on-site collection system is capable of capturing the stormwater from a 2, 10 and 25 year storm and the pre- and post-development stormwater discharge from the property. (For properties that were developed before these analyses were required, a statement that the property has historically not had any issues with flooding or stormwater quality may be accepted.)
- (3) A copy of any Maine Department of Environmental Protection

and/or City permits approving the stormwater system. (NPDES permit if discharging to a state regulated receiving water).

- (4) A copy of the maintenance plan for the on-site collection system.
- (5) The flowpath of stormwater after it leaves the property, including identification of any and all stormwater structures the drainage would flow through such as catchbasins, piping, culverts, ditches and etc. This flow path will be followed until the brook or stream carrying the stormwater leaves the city limits and does not re-enter. (~~Note: There are some brooks or streams that leave the City for a short distance and then re-enter the City).~~

### **Sec. 32-63. Permit improvements credit.**

(a) Availability. The permit improvements credit is available only to those properties having a stormwater collection and discharge system that exceeds the requirements of a permit issued by the Maine Department of Environmental Protection and/or a permit issued by the city of ~~Lewiston~~ Portland approving the applicant's stormwater management system. In order to exceed the requirements of a Maine DEP and/or city permit a property owner/applicant must have installed a stormwater management system which exceeds the minimum capacity required or allowed by the DEP or city permit. ~~For~~ By way of example: this might include construction of larger retention/detention pond than was required by the regulatory permit enabling upstream flows from other properties to be captured and/or a system providing control for storms exceeding the applicable design storm.

#### **~~CREDIT CRITERIA:~~**

- (b) Criteria.
  - (1) A stormwater collection and discharge system for the property (or applicable portion of the property) must be designed by a licensed professional engineer. The system design must have been reviewed and approved by the Maine Department of Environmental Protection or the department of public services as part of the property's development stormwater permit.
  - (2) The installed system must exceed the capacity of the system approved by the Maine Department of Environmental Protection and/or the city permit for the property's development/stormwater permit. The amount of the credit will be based upon how much the property's installed stormwater system exceeds the regulatory requirements at

the time of application. Under current regulations, retention/retention (correct term?) facilities must meet the requirements of the 25 year storm. (True?) The City will provide a credit of 25 percent for facilities that are sized to handle the 50 year storm; a credit of 30 percent for facilities sized to handlemeet the 100 year storm; and facilities providing capacity for sized to handle storms exceeding the 100 year storm will be eligible for a 35 percent credit.

~~OWNERSHIP AND MAINTENANCE:~~

- (3) The facilities of a property's stormwater collection and discharge system must be owned, operated and maintained, either on-site or by record of agreement, by the applicant. The applicant must provide documentation of the activities that will occur in order to inspect and maintain the system to the standards presented therein.
- (4) In the event that the stormwater system (or a portion thereof) is not located on the property owned and/or operated by the applicant, the applicant must provide a copy of a record agreement between the applicant and the owner of the off-site facility and a statement that the owner understands the applicant will receive the stormwater fee credit for the facility. In addition, the owner of the off-site parcel should provide a letter to the department of public services indicating he/she is in agreement with the information contained in the request for a stormwater utility credit.
- (5) If the applicant does not operate and maintain the facility as required, the credit will be discontinued.
- (6) Maintenance requirements for the system must meet the most recent version of the Best Management Practices (BMPs) established by the Maine DEP.

~~APPLICATION FOR PERMIT IMPROVEMENTS CREDIT:~~

(c) To apply for a Permit Improvement Credit, the applicant must submit the following information:

- (1) Cover letter to the department of public services identifying all attachments and explaining why the credit is being requested and how much of a credit is being requested.
- (2) Engineering drawings and calculations identifying:
  - a. The stormwater collection and discharge system (including the location of the discharge) as designed and

submitted as part of the permitting process.

b. The stormwater collection and discharge system (including the location of the discharge) as constructed in the field (as-built drawings) and identifying those portions of the system which exceeded those approved as part of the original permit.

c. Run-off curve number computations and time of concentration calculations for each subcatchment. Applicant must provide pond descriptions and storage routing calculation for any stormwater management structure, detention pond and culvert backwater areas. Calculations must follow Maine DEP requirements regarding methodologies and models.

d. Copy of the Maine Department of Environmental Protection and/or city permits approving the stormwater system. This would include submitting a copy of the NPDES permit if the discharge is going directly to a state regulated receiving water.

e. Copy of the maintenance plan for the system (if available). **(What does the parenthetical phrase mean?)**

f. If some or all of the stormwater collection system for the parcel is off-site, a letter from the owner of the off-site facility stating he/she understands the applicant will receive the stormwater fee credit for the facility and indicating he/she is in agreement with the information contained in the request for a stormwater utility credit. ~~(see paragraph d. above)~~

#### **Sec. 32-64 Private Road Credit.**

~~Notwithstanding paragraph 2.1, when the stormwater utility was established city owned roads were considered a part of the stormwater collection system, while~~

(a) Private roads providing access to residential properties are considered a part of the stormwater collection system ~~were not~~. Private roads providing access to residential properties may apply for ~~this~~ a credit and may receive **up to a 100 percent credit** as provided in 32-62(b)(2) above for impervious surface of access roads after the first 100 feet in length. (Private roads 100 feet and less in length are considered driveways to which the private road credit ~~will~~does not apply.)

(b) Criteria for credit for a private road are as follows:

(1) The property owner must be being billed for the impervious

surface of the private road.

- (2) The private road must be more than 100 feet in length. The end of the private road will be considered to be the beginning of the first parking area.
- (3) This credit applies only to ~~only~~ private roads providing access to residential units.

#### **~~OWNERSHIP AND MAINTENANCE~~**

- (4) The access road must be owned and maintained by the owner or his/her representatives.
- (c) Application for private road credit
- (1) To apply for a private road credit, the applicant must submit the following information:
    - a. A cover letter to the department of public services identifying all attachments and explaining why the credit is being requested and how much of a credit is being requested. The letter shall identify how many living units are served by the private road.
    - b. Drawings showing the length, width and area of the private road starting at the property line (or wherever the road begins on the property) and extending to the beginning of the first parking area, the end of the private road or another property line (whichever is shortest). ~~Note:~~ The approved credit will not include the first 100 feet of length for the road.
    - c. Description of the maintenance performed for the private road, ditches, and associated stormwater collection system.