

This template is a draft outline of the information typically included in a stormwater ordinance and is meant to provide a framework for internal discussions only.

AN ORDINANCE OF THE TOWN OF AGAWAM,  
MASSACHUSETTS ESTABLISHING A STORMWATER  
UTILITY

WHEREAS, the Town of Agawam has constructed and maintains a system of sewers, drains, basins, inlets, outfalls and other infrastructure to collect and manage stormwater; and

WHEREAS, the existing Stormwater Management System requires maintenance, repair, enhancements and replacement to meet existing and future needs, including flooding concerns and water quality protection; and

WHEREAS, Agawam finds that excess stormwater runoff peak rate, volume and poor water quality in a watershed can threaten public health, safety and welfare; and

WHEREAS, the requirements of the United States Environmental Protection Agency Municipal Separate Storm Sewer System (MS4) permit demand a comprehensive approach to municipal Stormwater management; and

WHEREAS, an engineering and financial analysis of the Stormwater management needs for Agawam has been performed concluding that substantial Stormwater management needs exist; and

WHEREAS, the Massachusetts Constitution (the Home Rule Amendment), Section sixteen of Chapter 83 of the General Laws of the Commonwealth of Massachusetts allows for the establishing of stormwater fees by municipalities,

NOW, THEREFORE, be it ENACTED and ORDAINED by the Agawam City Council, as follows:

**SECTION 1.0 GENERAL PROVISIONS**

**1.1. Title**

This Ordinance shall be known as the Stormwater Utility Ordinance of the Town of Agawam, Massachusetts, hereinafter referred to as this "ordinance."

**1.2. Responsibility for Administration**

The City Council (the "Council") shall administer, implement, and enforce this ordinance. Any powers granted to or duties imposed upon the Council may be delegated in writing by the Council to its employees or agents.

**1.3. Purpose**

The Stormwater Utility shall administer the stormwater management program of the Town. It shall be funded by revenue collected through the Stormwater Utility fee and such other revenue as may, from time to time, be appropriated. The stormwater management program, described in part through **Articles I and II of the Town's Stormwater Management Regulations**, is designed to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff and to protect and manage water quality by controlling the level of pollutants in stormwater runoff and the flow of water as conveyed by manmade and by natural stormwater management systems and facilities.

## SECTION 2.0 AUTHORITY

This ordinance is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution (the Home Rule Amendment), Section sixteen of Chapter 83 of the General Laws of the Commonwealth of Massachusetts and such other powers as granted to cities in the said General Laws.

## SECTION 3.0 DEFINITIONS

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Credit* means a reduction in the amount of a Stormwater Utility fee charged to the owner of a particular property where that property owner owns, maintains and operates on-site or off-site stormwater management systems or facilities, or provides services or activities that reduce or mitigate the Town's cost of providing stormwater management services, in accordance with the Town's approved credit policy.

(2) *Developable* shall mean a parcel of land, as designated by the Assessor or other local jurisdictional authority, that can be altered from its natural state to include impervious surface area.

(3) *Developed* means property altered from its natural state by construction or installation of greater than or equal to **two hundred (200) square feet** of impervious surfaces.

(4) *Drainage system* shall mean natural and manmade channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of stormwater runoff.

(5) *General Laws* means the General Laws of the Commonwealth of Massachusetts.

(6) *Impervious surface* includes any material or structure on or above the ground that prevents water infiltrating the underlying soil. **Impervious surfaces include, without limitation, roads, paved parking lots, rooftops, buildings or structures, sidewalks, driveways, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.**

(7) *Stormwater* is surface water that results from precipitation and that travels over natural or developed land surfaces to discharge into a drainage system or surface water body. Stormwater includes stormwater runoff, snow melt runoff, and surface water runoff and drainage.

(8) *Stormwater management services* mean all services provided by the Town which relate to the:

(a) Transfer, control, conveyance or movement of stormwater runoff through the Town;

(b) Maintenance, repair and replacement of stormwater management systems and facilities owned, controlled, or maintained by the Town;

- (c) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
- (d) Regulation, oversight, and enforcement of the use of stormwater management services, systems and facilities;
- (e) Compliance with applicable State and Federal stormwater management regulations and permit requirements including, but not limited to, public education and outreach. Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.

(9) *Stormwater management systems and facilities* mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, outfalls and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.

(10) *Stormwater Utility fee* means the periodic user fee imposed pursuant to this ordinance by the Town of Agawam which will be dedicated to the provision of public stormwater management services.

(11) *Undevelopable land* is all land including crops, forest land, pasture, conservation or recreation as designated by the Assessor.

(12) *Undeveloped land* shall mean all land that is not altered from its natural state to an extent that results in greater than two hundred (200) square feet of impervious surface area.

#### **SECTION 4.0 STORMWATER UTILITY FEE AND ENTERPRISE FUND ESTABLISHED; BILLING; DEPOSIT TO STORMWATER ENTERPRISE FUND**

(a) Pursuant to Section 16 of Chapter 83 of the General Laws, the Town hereby establishes a charge for the use of the stormwater management services of the Town to be known as the Stormwater Utility fee. Stormwater charges shall be established such that they will provide sufficient funds, proportionately calculated and assessed, to construct, operate, maintain, and regulate the systems and facilities in the Town of Agawam.

(b) The Stormwater Utility fee is assessed to each developed parcel, whether occupied or not. The fee shall be calculated on an annual basis and billed to the record title owner of the property.

(c) The Town shall establish a dedicated **Stormwater Enterprise Fund** in the Town budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the stormwater program. All revenues and receipts of the Stormwater Utility shall be placed in the Stormwater Enterprise Fund, which shall be separate from all other funds, and only expenses of the stormwater program shall be paid by the fund as provided in G.L. c.44,s. 53 F1/2.

(d) Expenditure of funds may consider both stormwater quality and quantity management needs, and can be used as described in Section 7.0.

## **SECTION 5.0 RATES**

(a) The City Council shall establish reasonable rates to defray the cost of administering and implementing the stormwater management program of the Town. The initial rates, and any later modifications, shall be based upon recommendation of staff and shall be set by the adoption of a Stormwater Fee Schedule Resolution by vote of the City Council. The schedule of said rates shall be on file in the office of the Town Clerk of the Town of Agawam.

(b) The billing rate structure shall consist of a uniform flat rate based on billing units of 1,000 square feet of impervious area on a developed parcel.

(c) Impervious area per parcel is determined by the Town of Agawam by utilizing available GIS data layers to calculate the area of building footprints, building structures, driveways, pathways, pools, sport courts, and parking areas. Any impervious areas within the town-owned right-of-way will not be attributed to the parcel and will not be considered as part of the total impervious area of the parcel.

## **SECTION 6.0 SCOPE OF RESPONSIBILITY FOR STORMWATER MANAGEMENT SYSTEMS AND FACILITIES**

(a) The Town owns or otherwise has rights which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:

(1) Within public road rights-of-way;

(2) On private property but within easements granted to, and accepted by, the Town of Agawam, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;

(3) On public land which is owned by the Town and/or land of another governmental entity upon which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.

(b) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the Town, and for which the Town lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

## **SECTION 7.0 PURPOSES OF THE STORMWATER UTILITY FUND**

Receipts from the Stormwater Utility fee, to the extent consistent with G.L. c. 44, s. 53 F1/2, shall be used for the following purposes:

(a) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater management systems and facilities;

- (b) All costs of administration and implementation of the stormwater management program, including the cost of labor and equipment attributable to the stormwater management program and the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (c) Payment on principal and interest on debt obligations;
- (d) Engineering and design, debt service and related financing expenses, construction costs for new facilities (including costs for contracted services) and enlargement or improvement or existing facilities;
- (e) Operation and maintenance of the stormwater system, including catch basin cleaning, ditch maintenance, street sweeping, pipe repairs, and stormwater facility repairs;
- (f) Capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants, soils, and other amenities to support stormwater management alternatives utilizing vegetation);
- (g) Illicit discharge detection and elimination;
- (h) Monitoring, surveillance, and inspection of stormwater control devices;
- (i) Water quality monitoring and water quality programs;
- (j) Retrofitting developed areas for pollution control;
- (k) Inspection and enforcement activities;
- (l) Billing and related administrative costs; and
- (m) Other activities which are reasonably necessary, including costs related to regulatory compliance.

## **SECTION 8.0 STORMWATER UTILITY FEE EXEMPTIONS**

- (a) The Town of Agawam finds that all developed property in the Town contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no developed public or private property located in the Town of Agawam shall be exempt from the Stormwater Utility fee charges.
- (b) The Town establishes exemptions to the Stormwater Utility fee as follows:
  - (1) *Undevelopable land.*
  - (2) *Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, and/or other developed property used for railroad purposes shall not be exempt from Stormwater Utility fee charges.*
  - (3) *Public streets, highways and rights-of-way. However, maintenance buildings and/or other developed property used for road maintenance purposes shall not be exempt from Stormwater Utility fee charges. All other State, Federal, and County properties are subject to the user fee charges on the same basis as private properties.*

## **SECTION 9.0 STORMWATER UTILITY FEE CREDITS**

(a) The Council (or their designee) is hereby authorized to grant credits to property owners to be applied against the Stormwater Utility fee based on the technical and procedural criteria set forth in the Stormwater Utility Credit Manual (Credit Manual) to be developed, maintained and, from time to time, amended by the Council. The Credit Manual shall be implemented during the first year of the Stormwater Utility and shall be available for inspection by the public at the Department of Public Works.

(b) The percentages 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 program in the delivery of services, and shall be approved by the Council (or their designee). The maximum possible credit for properties shall be detailed in the Credit Manual.

(c) Any credit allowed against the Stormwater Utility fee is conditioned on continuing compliance with the Town's design and performance standards as stated in the Credit Manual and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Town may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Manual or this ordinance.

(d) To obtain a credit, the property owner must make application to the Town on forms provided by the Town for such purpose. The forms are to be fully completed in accordance with the procedures outlined in the Credit Manual.

(e) When an application for a credit is deemed complete by the Director of Public Works, the Town shall have adequate time, to be further detailed in accompanying regulations, from the date the complete application is accepted to either grant the credit in whole, grant the credit in part, or deny the credit. Credits applied for by the property owner and granted in whole or in part, shall apply to all Stormwater Utility fees in accordance with the terms defined in the Credit Manual.

## **SECTION 10.0 STORMWATER UTILITY FEE BILLING, DELINQUECIES, COLLECTIONS AND ABATEMENTS**

(a) Failure to receive a Stormwater Utility bill is not justification for non-payment. The property owner, as identified from public land records of the Town of Agawam, shall be obligated to pay the appropriate Stormwater Utility fee for that property. If a property is unbilled, or if no bill is sent for a particular parcel of developed land, the Town may back bill for the fees as applicable for a period not to exceed two years of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.

(b) Stormwater Utility bills shall be committed to the Treasurer/Collector for collection. The Treasurer/Collector shall notify the Council (or their designee) **quarterly** of the amounts collected, and shall keep records of all paid and unpaid Stormwater Utility bills.

(c) In any case of nonpayment of a Stormwater Utility bill for sixty (60) days after the same is due, the Treasurer/Collector shall send a notice to the delinquent, and shall inform the Council (or their designee) in writing that such notice has been sent.

(d) In accordance with Sections 16A through 16F of Chapter 83 of the General Laws, charges for the Stormwater Utility fee, together with interest thereon and costs relative thereto, shall be a

lien upon the real estate for which the charge was billed. Such lien shall take effect by operation of law on the day immediately following the due date of such charge and, unless dissolved by payment or abatement, shall continue until such charge has been added to or committed as a tax in accordance with the requirements of Section 16C of Chapter 83 of the General Laws, and thereafter, unless so dissolved, shall continue as provided in Section 37 of Chapter 60 of the said General Laws.

(e) In addition to the method of collection specified in Sections 16A through 16F of the General Laws, the overdue charge may be collected through any other lawful means.

(f) In the event that a property owner believes the Stormwater Utility fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the Stormwater Utility bill, and after payment of the bill in full, apply to the Town for an abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than not that the billing is in error. The Town shall have sixty (60) days to consider the request for abatement and render a written decision which may deny the abatement, grant the abatement in full or grant the abatement in part.

## **SECTION 11.0 APPEALS AND HEARINGS**

(a) If a property owner is aggrieved by a written decision from the Town denying an application for abatement in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have thirty (30) days from the date of the written decision to file an appeal to the City Council. The appeal shall be in writing and shall specify the grounds thereof. Upon the filing of the notice of appeal, the Council shall make available all documents constituting the record upon which the particular decision was made. The Council shall set a date for hearing which shall be within ninety (90) days of the date of the filing of the appeal and notice thereof setting forth the place, date and time of hearing shall be sent to the property owner no less than ten (10) days prior to the hearing date. The Council shall render a written decision within ten (10) days of the conclusion of the hearing affirming the action or reversing the action. If reversing the denial of an abatement, the decision shall specify the sum to be abated, which shall not exceed the amounts paid. If reversing the denial of a credit, the decision shall specify the credit to be applied prospectively against future charges unless the property owner has paid the full amount of the Stormwater Utility fee as charged and has also requested an abatement.

## **SECTION 12.0 SEVERABILITY**

The invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

## **SECTION 13.0 EFFECTIVE DATE**

*To be inserted upon ordinance approval*