

(Published at www.mcpcity.com beginning on November 13, 2020.)

ORDINANCE NO. 3346

AN ORDINANCE OF THE CITY OF MCPHERSON, KANSAS AMENDING CHAPTER 86, ARTICLE VI, SECTION 353 INCLUSIVE OF THE CODE OF THE CITY OF MCPHERSON, KANSAS RELATING TO THE FEE SCHEDULE OF A STORM WATER UTILITY.

WHEREAS, on June 20, 2016 the governing body of the City of McPherson passed Charter Ordinance No. 40 concerning a storm water utility for the City of McPherson, Kansas; and

WHEREAS, Charter Ordinance No. 40 went into effect on or about September 5, 2016; and;

WHEREAS, on September 6, 2016 the governing body of the City of McPherson passed Ordinance No. 3223 official establishing and setting a funding structure for a storm water utility for the City of McPherson, Kansas; and

WHEREAS, the rate established and set for an Equivalent Rate Unit (ERU) rate on September 6, 2016 was \$7.00; and

WHEREAS, the governing body desires to amend the current fee schedule for the storm water utility;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MCPHERSON, KANSAS:

Section 1. New Section. From and after the effective date of this Ordinance, Chapter 86, Section 353 of the Code of the City of McPherson, Kansas is hereby deleted in its entirety and in its place the following is inserted:

Section 86-353. Fee Schedule Established.

(a). There is hereby assessed against all property within the City that is connected to either water or sanitary sewer or electric systems ("Applicable City Services") of the City or its Board of Public Utilities, a monthly storm water utility fee. Such fee is based upon a determination of a comparable amount of impervious area for uses within each rate category, as set forth hereinafter. The owner, occupant and any person who is responsible for the payment of Applicable City Services, shall all be jointly and severally responsible for the payment of said fee. The fee shall be calculated as follows:

- (1). All property devoted to a residential use shall be assessed the sum of Eight Dollars (\$8.00) per month per living unit and such amount may be changed from time to time by a resolution adopted by the governing body. The term

“residential” shall include single-family homes, mobile homes and mobile home parks, duplexes and apartment units. Common areas, parking, on-site offices and similar improvements of apartment buildings and apartment complexes shall not be separately assessed. The term “residential” shall not include rooming or boarding houses, dormitories or similar facilities. A recreational vehicle (RV) pad that is available for lease to third parties shall be assessed as one-half (1/2) of a residential unit. The term “living unit” shall mean one or more rooms in a residential building which are arranged, designed, used or intended for use by one (1) family, and which includes cooking space and lawful sanitary facilities reserved for the occupants thereof. In the event a property that is part residential and part non-residential, the Public Works Director shall determine the predominate use of the property based on square footage and the entire property shall be assessed as if it were all devoted to the predominate use.

(2). Property devoted to any use other than residential, as set forth above, and further described as non-residential, shall be assessed a monthly fee based upon the number of square feet developed for that particular use and the associated charge as follows: impermeable area of the property divided by the Determined ERU (as defined below) equals the NERU (Number of Equivalent Residential Units). The NERU is multiplied by the adopted ERU rate to calculate the monthly fee. The ERU rate shall be assessed at the sum of Eight Dollars (\$8.00) per month. The ERU rate will be modified from time to time by Resolution of the governing body. The Determined NERU (Number of Equivalent Residential Units) is an average square footage of impermeable areas as determined in subparagraph (b) below. The Determined ERU is 3,318 square feet of impermeable area and in all cases, the minimum NERU shall be at least 1 unit for a non-residential property. For illustration purposes only, a commercial property with 10,000 square feet of impermeable area shall pay a month fee as follows:

$$10,000 \text{ sq. ft. (impermeable area)} / 3,318 \text{ (Determined ERU)} = 3.0139 \text{ (NERU)} \times 8.00 \text{ (ERU rate)} = \$24.11 \text{ (Monthly fee)}$$

(b). In determining the area of property developed for a particular use, the area measured shall include all property contiguous to the particular use, and under the same ownership, except that portion of said property that is both unimproved and legally subject to being subdivided from that portion actually devoted to the primary use. Most non-residential customers shall be placed in the proper fee category from reviewing billing records, aerial photos and/or tax assessor records. In situations involving extremely large, unusual or questionable properties, and properties with multiple building and multiple utility connections, actual measurements, including impervious areas, may be required and specially determined charges may be assessed for the total monthly fee.

(c). Notwithstanding anything to the contrary, property owned or leased by the City of McPherson, the Board of Public Utilities of the City of McPherson, any county, state or federal agency, any Unified School District or any accredited college or university shall not be assessed a storm water utility fee.

(d). The monthly storm water utility fees set forth above shall be included as part of the monthly bill for utility services of the City, but shall be identified separately on said billing. Said fees shall be due at the same time as utility services of the City charges are due and the failure to pay said fees shall be considered a failure to pay utility services of the City charges and enforceable pursuant to the Code of the City of McPherson, Kansas. In addition, any time utility services of the City are established, or re-established to a property, all fees hereunder shall be paid current, as of the date such service is established or re-established. The storm water utility fee is intended to be exempt from or not subject to the retailers' sales tax and should be interpreted accordingly. In the event that it is determined that retailers' sales tax applies to the storm water utility fee or state law is amended, sales tax and any arrearages owed by the City shall be added to the fee after adoption of a resolution of the governing body authorizing the same.

(e). Any person who disagrees with the calculation of their storm drainage fee or who believes that a reduction is justified based on the criteria in this section may appeal the determination of their fee to the Director of Public Works or designee ("Director"). The appeal shall be in writing and state the full basis of the challenge. The Director or designee shall thereafter hold an informal hearing. The Director or designee, prior to such hearing, may request that the appealing party provide information concerning the basis of the appeal, including a land survey showing the dwelling units, total property area and impervious area, as appropriate, if such information is deemed to be material by the Director or designee. Based upon information provided, the Director or designee shall make a determination of the storm drainage fee for such property. The property owner shall have the burden of proof in any challenge of the calculation of the storm water utility fee and any successful challenge shall be prospective for any fee due after the date the written appeal is received. Failure to timely object or notify the Director of a removal of impermeable surfaces shall be deemed a waiver. No refunds shall be issued. The Director or designee shall notify parties in writing of the decision within twenty (20) working days.

(f). A person shall have the right to appeal the decision of the Director or designee to the governing body. Such appeal shall be made within fifteen (15) days of the date of the written decision of the Director or designee to the governing body. Such appeal shall be in writing specifying any and all legal and factual basis for such appeal and filed with the Director. Any basis not stated shall be deemed waived. A hearing on such appeal shall be held within thirty (30) days from the date of filing and the applicant shall be given seven (7) days advance notice of the time and date of such hearing. The governing body may establish such rules for any hearing that it deems necessary. Within ten (10) days after the conclusion of such hearing, the governing body shall render a decision in writing that sets forth findings that

support its decision. The decision of the governing body shall be final and any further appeal of such decision shall be to the District Court pursuant to K.S.A. 60-2101(d).

Section 2. Repeal. All or parts of the Code conflicting with the provisions of this Ordinance are hereby repealed.

Section 3. Publication and Effective Date. This ordinance shall take effect and be in full force and effect the later of April 1, 2021 or from and after its passage, signature and publication of the full text of the ordinance on the city's website in compliance with K.S.A. 12-3007(b) and the City Code.

PASSED by the City Commission and signed by the Mayor this 23rd day of November, 2020.


CITY OF MCPHERSON, KANSAS



Thomas A. Brown, Mayor



Attest:



Tamra K. Seely, City Clerk