

Cañon City Municipal Code

Title 13 Public Utilities

Chaper 13.10 STORMWATER UTILITY

13.10.010 Title.

This chapter shall be known and cited as the Stormwater Utility Ordinance of Cañon City. (Ord. 22-2004 § 1)

13.10.020 Findings, legislative intent and purpose, and authority.

A. The City Council finds and determines that:

1. Due to its general terrain and geographical location, property within the city is particularly subject to damage from floods and stormwater which, from time to time, overflow existing watercourses and stormwater facilities; and that the City's existing stormwater facilities are inadequate to control such overflow and other runoff or to prevent flooding in many parts of the city during and following certain storm events.
2. The City maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, and other components.
3. The stormwater system in the city needs regular maintenance and improvements.
4. Water quality is degrading due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the stormwater system.
5. The City is currently permitted, through the Colorado Water Quality Control Act, Colorado Stormwater Discharge Permit System, to discharge stormwater to state waters, provided that six (6) minimum measures are implemented within the next few years. The six (6) minimum measures include: (a) public education; (b) public involvement; (c) elimination of illicit discharges; (d) construction site erosion control; (e) post construction monitoring; and (f) municipal operations. There is a cost involved with this unfunded mandate to implement these measures.
6. The public health, safety, and welfare is adversely affected by poor ambient water quality and flooding that results from inadequate management of both the quality and quantity of stormwater.
7. All real property in the city either uses or benefits from the maintenance of the stormwater system.
8. The extent of use of the stormwater system by each property is dependant on factors that influence runoff, including land use and the amount of impervious surface on the property.
9. The costs of improving, maintaining, operating, and monitoring the stormwater system should be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the stormwater management system.
10. Management of the stormwater system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance stormwater management adequately with a user charge system that is reasonable and equitable so

that each user of the system pays to the extent to which such user contributes to the need for it.

- B. It is the intent and purpose of the City Council in enacting this chapter:
1. To promote the public health, safety and welfare by permitting the movement of emergency vehicles during storm or flooding periods and by minimizing storm and flood losses and the inconvenience and damage resulting from uncontrolled stormwater runoff in the city;
 2. To provide for the establishment and implementation of a master drainage plan for effective stormwater and flood management;
 3. To establish a Stormwater Utility Enterprise to coordinate, design, construct, manage, operate and maintain the stormwater and flood management systems and stormwater projects and facilities;
 4. To establish reasonable stormwater utility service charges based on the use and availability of stormwater facilities; and
 5. To encourage and facilitate urban water resources management techniques including without limitation, detention of floods and stormwater runoff, minimizing the need to construct stormwater facilities, reduction of pollution, and enhancement of the environment.
- C. The City's authority for the establishment of a Stormwater Utility Enterprise and a Stormwater Utility Fund and for the adoption of a system of charges to fund the City's Stormwater Utility Enterprise is derived from Section 6 of Article XX of the Colorado Constitution, Sections 3, 4 and 5 of Article I and Subsection 5(F) of Article VII of the Charter of Cañon City and Part 4 of Article 35 of Title 31, C.R.S. (Ord. 22-2004 § 1)

13.10.030 Definitions.

For purposes of this chapter, the following words shall have the following meanings, unless the context clearly indicates otherwise:

- A. "Base Rate" means the monthly base rate per square foot of impervious surface area that is used to calculate Stormwater Management Fee charges for individual properties. The base rate shall be calculated as provided in Section 13.10.065.
- B. "Base Unit" means one square foot.
- C. "Combined Utility Statement" means any single billing statement used by the City to periodically bill property owners for: (1) water service charges pursuant to Chapter 13.08; and (2) Stormwater Management Fees pursuant to this chapter.
- D. "Developed Property" means real property, which has been altered from its natural state by the addition of any improvements such as buildings, structures, parking lots, driveways or other impervious area.
- E. "Director" means the City Administrator or the City Administrator's designee.
- F. "Fiscal Year" means January 1 of a calendar year to December 31 of the same calendar year.

- G. "Grant" means a cash payment of public funds or contribution of money made directly to the Stormwater Utility Enterprise by a state or local governmental entity, or district, which is not required to be repaid. "Grant" does not include public funds paid or advanced to the Stormwater Utility Enterprise in consideration for the provision of any goods, services, facilities, rights or interest by the Stormwater Utility Enterprise to a state or local governmental entity, or district, nor does "grant" include refunds made in the current or next fiscal year, gifts, any payments directly or indirectly from federal funds or earnings on federal funds whether or not the state or local governmental entity, or district acts as a conduit for such payments, collections for another governmental entity, and any other payments or revenue excluded from the definition of "grant" under the Colorado constitution or law.
- H. "Impervious Surface Area" means the number of square feet of horizontal surface covered by buildings and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.
- I. "Impervious Surface" means a surface area which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, compacted, or other surface which impedes the natural infiltration of surface water.
- J. "Improvement" means any works of man or manmade change to real property including but not limited to buildings or other similar structures, streets, parking lots, driveways, patio areas, roofs, sidewalks, storage areas, paving and compacted surfaces.
- K. "Property Owner" means the property owner of record of any lot or parcel against which Stormwater Management Fees may be levied, as listed in the records of the Cañon City Water Department, or if not so listed, as listed in the records of the Park Center Water District, if available. If a property owner's identity is neither listed nor available in such Water Department or District records, the records of the Fremont County Treasurer shall be used to identify the property owner. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- L. "Revenue Bonds" means bonds, notes or other obligations lawfully, issued or otherwise contracted for, payable from the revenues derived or to be derived from the functions, services, benefits, or facilities of the Stormwater Utility Enterprise or from other available funds of the Stormwater Utility Enterprise.
- M. "Revenue Requirement" means the "Operating Revenue" projected for stormwater management programs of the Stormwater Utility Enterprise, as set forth in the City's annual budgets for the Stormwater Utility Fund.
- N. "Runoff" means that part of snowfall, rainfall or other stormwater which is not absorbed, transpired, evaporated, or left in surface depressions and which then flows controlled or uncontrolled into a watercourse or body of water.
- O. "Stormwater Facilities" means any one or more of the various devices used in the collection, disposition, or treatment of storm, flood or surface drainage waters, including manmade structures and natural watercourses for the conveyance of runoff, such as: conduits and appurtenant features, canals, ditches, streams, gulches, gullies, flumes, culverts, streets,

curbs, gutters, detention areas, pumping stations, pipes and related equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof and any and all rights or interest in such stormwater facilities.

- P. "Stormwater Management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of stormwater facilities and the stormwater system, and also includes the establishment and operation of programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control including, but not necessarily limited to, programs required by federal, state or local law, rule, regulation or permit.
- Q. "Stormwater Management Fee" or "Fee" means the monthly service charge payable by property owners that is established under Section 13.10.050 and assessed against lots, parcels or pieces of developed property to fund stormwater management programs in the city.
- R. "Stormwater Management Programs" means and includes all programs established, operated, maintained and/or participated in by the City for purposes of stormwater management, including specifically any programs required by federal, state or local law, rule, regulation or permit.
- S. "Stormwater System" means the system or network of stormwater facilities located in whole or in part within the city, including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities and other components, as well as all natural waterways.
- T. "Undeveloped Property" means any property which has no impervious surface area and, for purposes of this chapter, shall also mean all public streets owned or maintained by the City or State of Colorado and all City parks.
- U. "Water" means any stormwater, surface water, snow melt or ground water. (Ord. 15-2005 § 1: Ord. 22-2004 § 1)

13.10.040 Stormwater Utility Enterprise.

- A. There is hereby created a stormwater utility in the city.
- B. The stormwater utility shall constitute an enterprise empowered to coordinate, design, conduct, manage, operate and maintain the stormwater and flood management systems and stormwater facilities of the City, and to implement the provisions of this chapter. The Stormwater Utility Enterprise is authorized to issue its own revenue bonds. The enterprise shall be wholly owned by the City and operated in accordance with the Charter, ordinances and resolutions of the City and other applicable law.
- C. The City Council shall act ex officio as the governing body of the Stormwater Utility Enterprise.
- D. The Stormwater Utility Enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of Section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of Section 20 of Article X of the Colorado Constitution. Specifically, but not by way of limitation, the Stormwater Utility Enterprise is not authorized and shall not receive ten percent (10%) or more of its annual

revenue in grants. So long as the Stormwater Utility Enterprise continues to qualify as a “water activity enterprise” and as an “enterprise,” the Stormwater Utility Enterprise and all spending and revenue thereof shall not be subject to Section 20 of Article X of the Colorado Constitution. (Ord. 22-2004 § 1)

13.10.050 Stormwater Management Fee.

Beginning on December 1, 2005, a monthly Stormwater Management Fee shall be imposed upon all lots and parcels of developed property in the city to fund the City’s stormwater management programs. (Ord. 15-2005 § 2)

13.10.060 Classification of property for purposes of determination of the Stormwater Utility Fee and calculation of Stormwater Management Fees.

- A. For purposes of determining the Stormwater Management Fee, all properties in the city are classified into one of the two following classes:
 - 1. Developed property; or
 - 2. Undeveloped property.
- B. Developed Property. As to each lot or parcel of developed property, the monthly Stormwater Management Fee will be calculated by multiplying the amount of impervious surface area of such property (expressed in square feet) times the base rate.
- C. No Fee for Undeveloped Property. Undeveloped property shall not be charged a Stormwater Management Fee. (Ord. 15-2005 § 2)

13.10.065 Base rate.

- A. The City Council, by ordinance, shall establish and from time to time modify the monthly base rate to be used in calculating the Stormwater Management Fee for individual properties. The base rate shall be established at an amount intended to reasonably ensure the availability of funds needed to cover the costs of stormwater management programs in the City in accordance with the operating revenue requirement for these programs, as reflected in the City’s annual budgets for the Stormwater Utility Fund.
- B. The base rate shall be calculated by: (1) dividing the revenue requirement for stormwater management programs of the City for the applicable fiscal year by the aggregate of impervious surface area on developed property within the city existing at the time the base rate is calculated; and (2) by dividing the quotient thereof by twelve (12).
- C. City Council shall re-calculate the base rate no less often than once annually. Such re-calculation shall be conducted no later than sixty (60) days following the adoption of each annual budget. (Ord. 15-2005 § 2)

13.10.070 Stormwater Utility Fund.

- A. There is hereby created pursuant to Section 5(F) of Article VII of the Charter a special fund designated as the “Stormwater Utility Fund” which shall be separate and segregated from all other City funds. All Stormwater Management Fees paid and collected pursuant to this chapter shall be credited and deposited into the Stormwater Utility Fund. Monies in the Stormwater Utility Fund shall not be transferred therefrom to any other account of the City or used for any purpose other than as set forth in Subsection B of this section.

- B. Funds on deposit in the Stormwater Utility Fund and income earned thereon shall be used only for the following purposes:
1. The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater facilities;
 2. All costs of administration and implementation of the City's stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
 3. Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities;
 4. Operation and maintenance of the stormwater system;
 5. Monitoring, surveillance, and inspection of stormwater control devices;
 6. Water quality monitoring and water quality programs;
 7. Retrofitting developed areas for pollution control;
 8. Inspection and enforcement activities;
 9. Billing and administrative costs;
 10. Implementation of the six (6) minimum measures required under the Colorado Stormwater Discharge Permit.
 11. Other activities which are either mandated or reasonably required to manage stormwater runoff within the city or to comply with applicable federal and state laws, rules and regulations which regulate the flow, treatment and discharge of runoff into the waters of the United States or the waters of the State of Colorado. (Ord. 22-2004 § 1)

13.10.080 Stormwater Utility Enterprise debt issuance.

- A. The Stormwater Utility Enterprise is authorized to issue revenue bonds for the payment or other financing of eligible project costs or for the purpose of refunding any revenue bonds issued for such purpose. Such bonds shall be authorized by ordinance adopted by the City Council in the same manner as other ordinances of the City and, when required by the Charter or ordinances of the City, by an approving vote of the registered electors of the City at a general or special election called and conducted in accordance with the requirements of applicable law.
- B. The terms, conditions, and details of revenue bonds, the procedures related thereto, and the refunding thereof shall be set forth in the ordinance authorizing the revenue bonds. Each bond issued under this section shall recite in substance that said bond, including the interest thereon, is payable from the revenues and other available funds of the Stormwater Utility Enterprise pledged for the payment thereof. Notwithstanding any other provision of law to the contrary, such revenue bonds may be issued to mature at such times not beyond thirty (30) years from their respective issue dates, shall bear interest at such rates and shall be sold at private or public sale at, above, or below the principal amount thereof, all as shall be determined by the City Council. The powers provided in this section shall be in addition to and shall not modify, limit, or affect the powers conferred by any other law, either directly or indirectly.

- C. The City may pledge all or any portion of the Stormwater Utility Fund, including revenues anticipated to be collected, to the payment of principal, interest, premiums, if any, and reserves for revenue bonds, issued for the payment or other financing of any of the activities of this chapter, including but not limited to eligible project costs, or for the purpose of refunding any revenue bonds issued for such purposes. (Ord. 22-2004 § 1)

13.10.090 Billing and collection of Stormwater Management Fees—Combined Utility Statement.

- A. Stormwater Management Fees shall be determined on a monthly basis as a monthly charge, but shall be billed to the owners of the affected property according to the provisions of this section.
- B. Combined Utility Statements.
 - 1. In all situations where a property within the city is both connected to the City's water distribution system and assessed Stormwater Management Fees, the City shall bill for water charges and Stormwater Management Fees on a single "Combined Utility Statement" that will show water service charges, if any, and Stormwater Management Fees for the applicable billing period or cycle.
 - 2. When billed on a Combined Utility Statement, Stormwater Management Fees will be due and payable on the same date as water service charges for the same property are due and payable. Such due date shall be shown on the Combined Utility Statement.
 - 3. In situations where water charges for the same property are billed and payable quarterly, Stormwater Management Fees respecting such property also will be billed and payable quarterly. The amount thereof shall be calculated by multiplying the monthly Stormwater Management Fee times three (3).
 - 4. In situations where water charges with respect to a property are billed and payable monthly, the monthly Stormwater Management Fee for the same property shall be billed and payable monthly.
 - 5. Payments from owners of properties who receive a Combined Utility Statement (reflecting both Stormwater Management Fees and water service charges) will first be applied to satisfy all outstanding Stormwater Management Fees and then to reduce or satisfy, as the case may be, outstanding charges for water service.
 - 6. Delinquencies Regarding Charges on Combined Utility Statements.
 - a. As to any property with respect to which an unpaid Stormwater Management Fee billed on a Combined Utility Statement becomes delinquent, the Director of Finance shall have the authority to order water service to be shut off, provided that notice to the owner or occupant of such property shall first be given in the same manner as is provided for in Section 13.08.150 with respect to unpaid water charges.
 - b. If water service is turned off pursuant to the authority granted in this subparagraph, water service shall not be restored until all past due Stormwater Management Fees, water charges, penalties and interest, including turn off and turn on fees, have been paid in full. This remedy shall be in addition to, and not in lieu of, any other remedy available to the City with respect to the collection of unpaid Stormwater Management Fees and/or water charges.

- c. Delinquent Stormwater Management Fees shall be added to unpaid water charges, if any, for purposes of calculating late charges and/or penalties associated with any delinquent balance owing with respect to charges on a Combined Utility Statement.
- C. The procedures set forth in paragraphs 1, 2, 3, 4 and 5 of this subsection shall apply in situations where the City does not provide water service to a developed lot or parcel located within the city.
 1. Stormwater Management Fees will be billed to the owner of each such lot or parcel on a quarterly basis.
 2. Payment of each Stormwater Management Fee billed pursuant to this Subsection C shall be due thirty (30) days following the date of each billing statement.
 3. The due date for payment of the fee shall be reflected on each billing statement.
 4. Stormwater Management Fees shall be considered delinquent if not paid on or before their due date.
 5. A delinquent charge of five dollars (\$5.00), or one and one-half percent (1.5%) of the unpaid fee, per month, whichever is greater, shall be assessed upon fees not paid in full on or before five p.m. on the due date for such payment, as shown on the statement.
 - D. The obligation to pay Stormwater Management Fees shall not be affected by the failure of the owner to receive a bill or statement for such fees, provided that such statements are actually mailed to the property owner at the address of the affected property or at such other mailing address as might be designated by such owner in writing.
 - E. Any Stormwater Management Fee billed by the City shall constitute a lien against the property against which the Stormwater Management Fee was assessed. Such liens shall attach on the due date of the fee and shall remain until the fee and all other charges related to delinquency in the payment of the fee have been paid in full. (Ord. 15-2005 § 2)

13.10.095 Corrections or modifications of fees—Grounds and documentation.

- A. Property owners may request corrections, revisions or modifications of the Stormwater Management Fee assessed against their developed property. Such requests must be made in writing and must be based upon one or more of the following grounds:
 1. Incorrect classification of the property for purposes of determining the fee;
 2. Errors in the square footage of the impervious surface area of the property;
 3. Mathematical errors in calculating the fee to be applied to the property; and
 4. Errors in the identification of the property owner of a property subject to the fee.
- B. The Director shall make a determination with respect to any such request within thirty (30) days following his/her receipt of the property owner's completed written request for correction of the fee.
- C. A property owner must comply with all rules and procedures adopted by the City when submitting a request for correction of the fee and must provide all information necessary for the Director to make a determination on a request for correction of the fee.

- D. If a property owner alleges an error under Section 13.10.095(A)(2) and requests a hearing pursuant to Section 13.10.100(C), the request for hearing must include a certification by a registered engineer or professional land surveyor of the impervious surface area of the property before a hearing date will be set. Failure to comply with the provisions of this subsection shall be grounds for denial of the request. (Ord. 15-2005 § 2)

13.10.100 Administration and review.

- A. The administration of the provisions of this chapter is vested in and shall be exercised by the Director who may prescribe forms and rules and regulations in conformity with this chapter for the proper administration and enforcement of this chapter. The Director may delegate the administration of this chapter, or any part thereof, to duly qualified persons in the Department of Public Works, the City Engineer's office and/or the Finance Department.
- B. Every decision or determination of the Director shall be in writing and notice thereof shall be served upon or mailed by first class mail, postage prepaid to the affected person at his or her address shown on the records of the City. Service by first class mail as provided herein shall be conclusive evidence of service of such decision or determination. The decision or determination of the Director shall be final and conclusive upon the affected person unless he or she timely files a petition for hearing.
- C. Any person aggrieved by any decision or determination of the Director may petition the Director for a hearing on revision or modification of such decision or determination no later than thirty (30) days after notice thereof is served on the aggrieved person.
- D. Such petition shall be verified in writing upon forms approved by the Director and specify in detail the aggrieved person's reasons and grounds for revision or modification. The petition shall be accompanied by all documents or other evidence supporting the petition.
- E. The Director shall schedule a hearing on the petition not less than sixty (60) days from the date the Director receives the petition. The Director may designate a representative of the City as the hearing officer.
- F. The hearing shall take place at the time, date and location specified by the Director in the notice of hearing. Notice of the hearing shall be given to the petitioner by first class mail addressed to the petitioner at his or her address shown in the petition. The hearing shall be conducted in accordance with the rules and regulations issued by the Director. The petitioner shall have the burden of proof. Failure to timely file a petition or the failure of the petitioner or his or her representative to appear at the hearing shall constitute and be deemed to be a waiver of the right to a hearing by the aggrieved person.
- G. Within thirty (30) days after the hearing, the Director or hearing officer shall make findings of fact based upon relevant and competent information and evidence submitted at the hearing. The Director shall make a decision or determination based upon such findings and, if appropriate, modify his or her prior decision or determination accordingly. The decision or determination by the Director after hearing shall be final and conclusive upon the petitioner, subject only to review by City Council pursuant to the process and procedures specified in Chapter 2.52 of the Cañon City Municipal Code.
- H. A petition may be filed only once in connection with any decision or determination of the Director. (Ord. 22-2004 § 1)

13.10.110 Nonliability of City.

Runoff may occur which exceeds the capacity of City’s stormwater facilities. This chapter does not imply that real property liable for the charges and fees established herein will be free from runoff or flood damage. Nor shall this chapter create any liability on the part of, or cause of action against, the City or any officer or employee thereof for runoff or flood damage. This chapter does not purport to reduce the need or necessity for obtaining flood insurance. (Ord. 22-2004 § 1)

13.10.120 [This Section is Reserved].

13.10.130 Cooperation with the County.

- A. The City shall cooperate with Fremont County in providing stormwater facilities in stormwater basins, or parts thereof, extending from unincorporated areas of the county into the city and from the city into unincorporated areas of the county, and in general to carryout the drainage plans, if any, developed therefor.

- B. The City expresses its willingness to enter into an intergovernmental agreement with Fremont County to establish a joint Stormwater Technical Committee to review and recommend joint stormwater facilities, priorities and cost-sharing thereof to City Council and Board of County Commissioners of Fremont County, Colorado and to explore the viability of jointly creating a Stormwater Utility Authority. (Ord. 22-2004 § 1)

13.10.140 2008 Stormwater Base Rate Fee.

Effective January 1, 2008, the monthly “base rate” to be used to calculate stormwater management fees for individual developed properties in the City is adjusted to \$0.001768 per square foot of impervious surface area. An appendix reflecting this monthly base rate shall be attached to and incorporated into this chapter as “Appendix 13.10-2008” (replacing and superseding Appendix 13.10-A). Such adjusted base rate shall remain effective until the Council of Cañon City, by subsequent ordinance, adopts a different base rate in accordance with the applicable provisions of Chapter 13.10 of the Cañon City Municipal Code. (Ord. 29-2007 § 1)

Appendix 13.10 2009 Base rate calculation.

**City of Cañon City Stormwater Utility Fund
2009 BASE RATE CALCULATION**

Expenditures	\$ 891,810	
Transfers to Other Funds	\$ 185,000	Reimbursements for Central Services and Utility Billing costs
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Total Program Cost	\$1,076,810	
Less: Non-Operating Revenue	(26,200)	Utilization of accumulated reserves towards the 2009 costs
Use of Available Resources Balance	(291,910)	
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2009 REVENUE REQUIREMENT	\$758,700	
Estimated 2009 Impervious Square Feet	34,721,000	
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2009 Monthly Rate per Square Foot	\$0.001821	

(Ord. 26-2008 § 1)