

CHARTER ORDINANCE NO. 42

A CHARTER ORDINANCE EXEMPTING THE CITY OF HUTCHINSON, KANSAS, FROM THE PROVISIONS OF THE WATER POLLUTION ACT, K.S.A. 12-3101 THROUGH K.S.A. 12-3107, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS RELATING TO THE ESTABLISHMENT, OPERATION AND MAINTENANCE OF SEWER SYSTEMS, AND TO THE ESTABLISHMENT OF CERTAIN FEES RELATED THERETO, AND TO THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR THE GROUNDS AND IMPROVEMENTS NECESSARY FOR THE OPERATION OF SUCH SYSTEMS.

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

SECTION 1. The City of Hutchinson, Kansas, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself and hereby makes inapplicable to it Sections 12-3101, 12-3102, 12-3103, 12-3104, 12-3105, 12-3106 and 12-3107, Kansas Statutes Annotated, which apply to said City and the City provides further substitute and additional provisions as set forth herein.

SECTION 2. Definitions. For the purpose of this Charter Ordinance, the words and phrases "Sewer", "Sewer System" or "Sewer Systems" shall mean sanitary and/or storm sewers that exist at the time this Charter Ordinance is adopted or that are hereafter established and all appurtenances necessary in the maintenance and operation of the same including, but not limited to, pumping stations, sewage treatment plants, main sewers, intercepting sewers, surface drains, bridges, drainage ditches, curb and gutter of roadways, outfall sewers, channels, rivers, streams and other flood control facilities and works for the collection, transportation, pumping, treating and disposing of water carried wastes or storm or surface waters.

SECTION 3. Sewer Systems; powers of municipality. The City of Hutchinson, Kansas shall have all the powers necessary or convenient to plan, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate and maintain a Sewer System or Sewer Systems, including such powers as the City of Hutchinson may, from time to time, establish by way of ordinances adopted by the Governing Body of the City and including, but not by way of limitation, the following powers:

- (a)** To impose service charges and connection fees on property served by the City's Sewer System or Sewer Systems. The method of calculating and fixing such service charges and connection fees shall be established by ordinances, resolutions, rules or regulations heretofore or hereafter adopted, except that any fee related to storm water drainage shall be as initially established by this Charter Ordinance;
- (b)** To provide that sewer service charges and connection fees authorized in subparagraph (a) above, or in subsequent sections of this Charter Ordinance,

when delinquent, be certified by the Clerk of the City to the County Treasurer of Reno County to be placed on the tax roll for collection, subject to the same penalties and to be collected in like manner as other taxes, and such charges shall, thereafter, constitute a lien upon the real estate served by the Sewer System or Sewer Systems and against which such charges were made;

- (c) To use the proceeds of the sewer service charges and connection fees authorized in subparagraph (a) above to plan, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate and maintain a Sewer System or Sewer Systems;
- (d) To issue general obligation bonds or revenue bonds, as authorized by law, and to use the proceeds of the same to plan, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate and maintain a Sewer System or Sewer Systems;
- (e) To use the proceeds of the sewer service charges and connection fees authorized in subparagraph (a) above, or in subsequent sections of this Charter Ordinance, to pay the principal and interest on bonds heretofore or hereafter issued for planning, altering, enlarging, extending, improving, constructing, reconstructing, developing, redeveloping, operating and maintaining a Sewer System or Sewer Systems;
- (f) To contract with agencies of the federal government, public bodies of this state or other states, or with any private person or body for jointly planning, altering, enlarging, extending, improving, constructing, reconstructing, developing, redeveloping, operating and maintaining a Sewer System or Sewer Systems;
- (g) To contract with agencies of the federal government, public bodies of this state or other states, or with any private person or body for receiving and treating sewage or storm water from outside of the city limits of the City;
- (h) To plan, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate and maintain a Sewer System or Sewer Systems outside of the city limits of the City and to have the right of eminent domain both inside and outside the city limits of the City in order to acquire land and right of way for a Sewer System or Sewer Systems;
- (i) To borrow money and to apply for and accept advances, loans, grants, contributions or any other form of financial assistance from the federal government, the state, county or any other public body for the purposes of this ordinance, and the City may, when contracting with the federal government for any such financial assistance, include in any such contract such conditions imposed pursuant to federal law as the City may deem reasonable and appropriate;
- (j) To, under authority granted herein, establish a sanitary Sewer System utility (sewer utility), and a storm Sewer System utility (storm water utility); and

- (k) To establish a unified and consolidated billing system for its sanitary Sewer System utility, its storm Sewer System utility, its water utility, and its refuse collection.

SECTION 4. Same; rules and regulations authorized; billing and collection of sewer service charges; discontinuance of water service, when. The City of Hutchinson, Kansas, shall have the power by ordinance or resolution to adopt rules and regulations that shall include, but not be limited to, providing for the management and operating of its Sewer System or Sewer Systems, prohibiting the discharge into such Sewer System or Sewer Systems of matter deleterious to the proper operation of the Sewer System or Sewer Systems and the general health, safety and welfare of the community, establishing the types and characteristics of sewage and storm water that may be discharged into the Sewer System or Sewer Systems, establishing the method for calculating and fixing the service charges and connection fees for property served by the City's Sewer System or Sewer Systems, requiring security for the payment thereof, and providing methods and rules of collection, and providing for the disposition of the revenue therefrom, except any fee related to storm water drainage shall be as initially established by this Charter Ordinance. In the event any person, firm, corporation, political unit or organization living or operating on property served by the City's Sewer System or Sewer Systems shall neglect, fail or refuse to pay the service charges fixed by the Governing Body of the City, the City may, as authorized by rules and regulations adopted under the authority of this section and if a unified and consolidated billing system has been established, refuse the delivery of water and or other utility services of the City until such time as such charges are fully paid.

SECTION 5. Issuance of Sewer System revenue bonds; requirements.

- (a) The City of Hutchinson, Kansas shall have the power to issue revenue bonds from time to time in its discretion to finance the planning, altering, enlarging, extending, improving, constructing and reconstructing of a Sewer System or Sewer Systems under this ordinance. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues and funds of the City derived from or held in connection with its Sewer System or Sewer Systems. Provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government;
- (b) Bonds issued under this section shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this Charter Ordinance are declared to be issued for an essential public and governmental purpose and, together with interest thereof and income therefrom, shall be exempted from all taxes;
- (c) Bonds issued under this section shall be authorized by ordinance or resolution of the Governing Body and may be issued in one or more series and shall bear such date or dates, be payable on demand or mature at such time or times,

bear interest at such rate or rates, not exceeding the maximum rate of interest prescribed by K.S.A. 10-1009, be in such denomination or denominations, be in such form, have such rank or priority, be executed in such manner, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by such ordinance or resolution issued pursuant thereto.

SECTION 6. Same; powers supplemental and additional. The powers herein granted to plan, alter, enlarge, extend, improve, construct, reconstruct, develop, redevelop, operate and maintain a Sewer System or Sewer Systems and to issue bonds shall be supplemental to and not amendatory of the provisions of all other laws and shall not be construed to limit the City's authority under the provisions of any other laws.

SECTION 7. Code Amendment. That the Code of Ordinances of the City of Hutchinson, Kansas is hereby amended, by amending, Chapter 19 and adding Article X as follows:

ARTICLE X. STORM WATER UTILITY

Sections:

- 19-1001 Creation of Storm Water Utility**
- 19-1002 Program Responsibility**
- 19-1003 Operating Budget**
- 19-1004 Fee Schedule Established**
- 19-1005 Storm Water Utility Fund**

Sec. 19-1001. Creation of Storm Water Utility.

Pursuant to the provisions of Charter Ordinance No. 41, the City of Hutchinson does hereby establish a Storm Water Utility, the purpose of which is to assist the City of Hutchinson in its responsibility for the operation, construction, maintenance and repair of storm water drainage system facilities to provide adequate systems of collection, conveyance, detention, treatment and release of storm water and the reduction of potential hazards to property and life resulting from storm water runoff, improvement in general health and welfare through reduction of undesirable storm water conditions and improvements to the water quality in the storm and surface water system and its receiving waters.

Sec. 19-1002. Program Responsibility.

The City of Hutchinson shall be empowered to administer the Storm Water Utility and may delegate such duty and responsibility as is necessary to carry out the provisions of this Ordinance within the limits of the budget, directives and storm drainage regulations adopted by the Governing Body of the City of Hutchinson for this utility.

Sec. 19-1003. Operating Budget

The City of Hutchinson shall adopt an operating budget for each fiscal year. The operating budget shall set forth, for each fiscal year, the estimated revenues and the estimated costs for the storm water utility. The initial operating budget shall be for the fiscal year commencing January 1, 2006.

Sec. 19-1004. Fee Schedule Established.

A. There is hereby assessed against all property within the City that is connected to either water or sanitary sewer systems, or both, of the City, 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 water and/or sewer service to the property, shall all be jointly and severally responsible for the payment of said fee. Persons responsible for the payment of water and/or sewer service to the property shall include the person responsible for payment for water provided to a master meter that is then distributed to multiple users, whether or not said users are located on the same property as the master meter. The fee shall be calculated as follows:

1. All property devoted to a residential use shall be assessed the sum of One Dollar (\$1.00) per month per living unit. The term "residential" shall include single-family homes, mobile homes and mobile home parks, duplexes and apartment units. The term "residential" shall not include rooming or boarding houses, dormitories and similar facilities. 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.
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:

Less than or equal to 20,000 square feet.....	\$2.00
20,001 to 40,000 square feet.....	4.00
40,001 to 80,000 square feet.....	8.00
80,001 to 120,000 square feet.....	12.00
120,001 to 160,000 square feet.....	16.00
160,001 to 200,000 square feet.....	20.00
200,001 to 240,000 square feet.....	24.00
240,001 to 280,000 square feet.....	28.00
280,001 to 320,000 square feet.....	32.00
320,001 to 360,000 square feet.....	36.00
360,001 to 400,000 square feet.....	40.00
400,001 to 440,000 square feet.....	44.00
440,001 to 480,000 square feet.....	48.00
480,001 to 520,000 square feet.....	52.00

520,001 to 560,000 square feet.....	56.00
560,001 to 600,000 square feet.....	60.00
Over 600,000 square feet.....	64.00

3. 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.
4. For non-residential properties an impervious area amount of 60% has been used. For non-residential properties with 160,001 square feet or greater, with an impervious area of less than 40% of the total property size, the City Engineer may adjust the assessment to more accurately reflect the proportionate property size monthly fee assessment.

B. The monthly storm water utility fees set forth above shall be included as part of the monthly bill for water and or other utility services of the City, but shall be identified separately on said billing. Said fees shall be due at the same time as water and or other 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 Sections 10-209, 19-806 and 20-304 of the City of Hutchinson’s Code of Ordinances. 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.

1. Any person who disagrees with the calculation of their storm drainage fee or who believes that a reduction is justified may appeal the determination of their fee to the City Engineer. The appeal shall be in writing. The City Engineer shall thereafter hold an informal hearing. The City Engineer, 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 City Engineer. Based upon information provided, the City Engineer shall make a determination of the storm drainage fee for such property. The City Engineer shall notify parties in writing of his/her decision.
2. A person shall have the right to appeal the decision of the City Engineer to a board comprised of the City Manager, or his designee, the Director of Public Works and the Planning Director. Such appeal shall be made within fifteen

(15) days of the date of the written decision of the City Engineer. Such appeal shall be in writing and filed with the City Engineer. 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. Within seven (7) days after the conclusion of such hearing, the Board shall render a decision in writing that sets forth findings that support its decision. The decision of the Board shall be final and any further appeal of such decision shall be to the District Court pursuant to K.S.A. 60-2101(d).

C. Changes in the storm water utility fess from those set forth in this Charter Ordinance, may be established from time to time by resolution of the Governing Body.

Sec. 19-1005. Storm Water Utility Fund

The revenue generated by this storm water utility fee shall be set-aside in a special fund, which is hereby created to be known as the Storm Water Utility Fund. Such funds shall be used only for the construction, reconstruction, maintenance and repair of storm water system facilities, including the acquisition, and related costs thereof, of real estate for such use. In addition, said fund may be used to pay fees to study and prepare documents related to such facilities, and to make payments of principal and interest on bonds issued for such improvements. Nothing in this Article shall be deemed to limit or restrict the City's ability to use and obtain other sources of funds for the same or similar purposes.

SECTION 8. Nothing contained within this Charter Ordinance shall prohibit the Governing Body from the exercising authority granted hereunder by the adoption of simple ordinances enacted after the date hereof, including amendments to Article X of Chapter 19 of the Code of Ordinances.

SECTION 9. This Charter Ordinance shall be in effect until December 31, 2012.

SECTION 10. This Charter Ordinance shall be published once a week for two (2) consecutive weeks in the official City newspaper.

SECTION 11. This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, or on January 1, 2006, whichever date is later, unless a sufficient petition for a referendum is filed requiring a referendum to be held on this ordinance as provided in Article 12, Section 5, subdivision (c)(3) of the Constitution of the State of Kansas in which case this Ordinance shall become effective on January 1, 2006, or on the first day of the month following approval by a majority of the electors voting thereon, whichever date is later.

**PASSED BY THE GOVERNING BODY NOT LESS THAN TWO-THIRDS (2/3rds)
OF THE MEMBERS-ELECT VOTING IN FAVOR THEREOF, this 29th day of
March, 2005.**

CITY OF HUTCHINSON



Brad Dillon

**Brad Dillon
Mayor**

ATTEST:

Gina Rayburn

Gina Rayburn

Interim Finance Director/City Clerk