

**CITY OF DOVER**

## CITY OF DOVER - ORDINANCE

**Agenda Item#: 12.A.1.**

Ordinance Number: **O – 2023.12.13 - 16**  
Ordinance Title: Municipal Stormwater Utility  
Chapter: 123  
Section: 1 Formation and purpose; 2 Scope of responsibility of stormwater management system; 3 Authority; 4 Definitions; 5 Fee Established and Billing; 6 Rates; 7 Fee Credits; 8 Abatements; 9 Appeals and hearings; 10 Liens, enforcement, and violations; and 11 Maintenance and use of stormwater utility funds.

The City of Dover Ordains:

### 1. PURPOSE

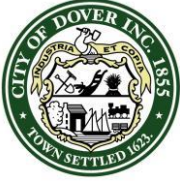
The purpose of this ordinance is to create a Municipal Stormwater Utility for the City of Dover and discharges of stormwater within same, as authorized by RSA 149-I:6, I-a et seq., “for the proper maintenance and operation of the stormwater system or stormwater utility and any appurtenant structures, and to promote flood control and erosion control, water quality management, ecological preservation, management of annual pollutant load contained in stormwater discharge, and municipal compliance with applicable state and federal stormwater laws and regulations.”

### 2. AMENDMENT

Chapter 123 entitled “Municipal Stormwater Utility” is hereby enacted as follows:

#### Section. 123-1 Formation and purpose

- A. The City Council finds that, as supported by scientific literature and policies promulgated by environmental regulators, impervious surfaces harm water quality by creating and exacerbating conveyance of pollutants via stormwater runoff. As stormwater travels, stormwater runoff picks up oil, chemicals, bacteria, sediment, and other pollutants and deposits them into local water bodies. Stormwater runoff has contributed to the impairment of Willand Pond and the Bellamy, Cocheco, Salmon Falls, Piscataqua Rivers, and other water bodies, most significantly the Great Bay. Additionally, heavy rainfall can lead to excess stormwater runoff, which can overwhelm the capacity of the City’s storm drains, causing water to inundate roads and public and private property. Reducing stormwater runoff aids public safety and can prevent flooding related traffic disruptions and residential basement flooding. Reducing stormwater runoff also reduces the volume of stormwater that flows directly into streams and rivers and reduces the potential for riverine flooding, which could also result in damages to infrastructure. In addition to improving water quality and reducing flooding, stormwater management can also protect drinking water and reduce drought impacts by allowing stormwater to recharge groundwater supplies.
- B. The City provides stormwater services for the public good, to promote environmental and water quality, and to meet the City’s regulatory and other obligations. The City has constructed and currently owns and operates storm sewers, stormwater drainage infrastructure, stormwater mitigation and treatment, together with other related infrastructure. The future and present usefulness of the City’s stormwater systems depends on the ability of the City to effectively manage, protect, control, use, and enhance stormwater services in the City. This, in turn, requires stable, ongoing funding by users of the stormwater system, in proportion to their use, as well as credits and other efforts aimed at reducing the adverse impacts of stormwater runoff.



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- C. There is hereby created a Dover municipal stormwater utility pursuant to RSA chapter 149-I. The stormwater utility shall be administered by City staff and funded by revenue collected through assessment and collection of fees and such funds as authorized within RSA 149-I:10-a.

### **Section 123-2 Scope of responsibility of stormwater management system**

The City’s Community Services Department, under the direction of the Director of Community Services or designee, is empowered to and shall be responsible for all acts necessary for the operation, management, administration, and enforcement of the City’s stormwater utility and requirements imposed by law. Specific duties include, but are not limited to, assessment, billing, collection, review and determination of credits, infrastructure system planning and maintenance of City property (i.e., catch basin cleaning, illicit discharge detection and elimination, and responding to emergency resident service calls), inspection of stormwater and related measures, and regulatory compliance.

### **Section 123-3 Authority**

The provisions of this ordinance are adopted pursuant to RSA 149-I:6 et seq., RSA 47:17 XV, RSA 31:39, I(l), and other applicable law.

### **Section 123-4 Definitions**

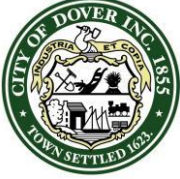
**Credit:** A reduction in the amount of a stormwater utility user fee to the owner of a particular property for the existence and use of beneficial, privately owned, maintained and operated on-site or off-site stormwater systems or facilities, or continuing provision of services or activities that reduce or mitigate the City's cost of providing stormwater management services for that particular property.

**Equivalent Residential Unit (ERU):** The statistical median amount of impervious surface area of a detached single-family residential property in the City. It is a measure that serves to compare runoff generated by different types of properties and a means to assess the stormwater utility user fee per property.

**Impervious Area:** Those areas within a property that stormwater cannot effectively infiltrate, including but not limited to surfaces such as building rooftops, pavement, sidewalks, concrete, paver stones or other stonework coverings, and compacted gravel. The sum of all impervious area on a property shall comprise the total impervious area for that property.

**Flood Resilience:** The ability of the City to proactively prepare for and recover from hazardous events such as extreme precipitation, coastal storms, and long-term sea level rise and associated flooding.

**Non-Single Family Property:** A property that is not exclusively used as a single family residential property as defined herein. Non-single family properties include, but are not limited to, such property as commercial and office buildings (mixed use and otherwise), industrial and manufacturing



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buildings, multi-tenant apartment buildings and other multi-family residential properties, and any other form of use not otherwise mentioned which is not a residential property, including Home Owners Associations (HOA) and other commonly held property.

**Single Family Residential Property:** A property that is used exclusively to provide a permanent dwelling unit to a single family. Properties with an authorized Accessory Dwelling Unit (ADU) are included in this definition.

**Stormwater:** Runoff from a storm event, snowmelt runoff, and surface runoff and drainage.

**Stormwater Utility:** The utility created and existing pursuant to the provisions stated herein, established to create a dedicated funding mechanism for the City’s stormwater and to incentivize land uses that reduce stormwater runoff, improve water quality, provide flood resilience, and provide other benefits.

**Stormwater Management System:** Those natural and man-made channels, swales, ditches, rivers, streams, brooks, creeks, wetlands, branches, reservoirs, ponds, drainageways, drainage structures, conveyances, storm drains, catch basins, inlets, gutters, pipes, culverts, bridges, head walls, lakes, and other physical works, properties, and improvements that collect, transport, transfer, control, pump, treat, convey, detain, retain, dispose of, or otherwise influence the movement of stormwater.

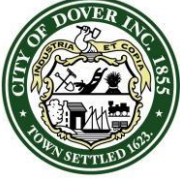
**Stormwater Utility User Fee (or User Fee):** The periodic user fee imposed pursuant to this ordinance by the City for providing stormwater management services. This term shall exclude special charges or assessments to the owners of particular properties for services, systems or facilities related to stormwater management, including, but not limited to, charges for development plan review, inspection of development projects, on-site stormwater control systems and other stormwater management services provided by the City for which a corresponding fee is collected for the service rendered.

**User:** Any person or entity liable for the stormwater utility fee on a property (including private, governmental, non-profit, and other public property owners) due to the presence of impervious surfaces.

**Undeveloped Land:** Land in its unaltered natural condition or which is modified to such a minimal degree as to have a hydrologic response comparable to land in an unaltered natural condition. Undeveloped land shall have minimal impervious surface, which impedes the infiltration of stormwater runoff or causes stormwater runoff to collect, concentrate or flow in a manner materially different from what would occur if the land were in an unaltered natural condition. For purposes of this ordinance, undeveloped land includes property altered from its natural condition by the creation or installation of 1600 square feet or less of impervious surface.

### Section 123-5 Fee Established and Billing

- A. General. Any user who has impervious surface in the City of Dover is responsible for, and shall be charged, the stormwater utility user fee payable to the stormwater utility. The stormwater utility user fee amount shall be determined by the Director of Community Services or designee based on the existence of impervious surface, the rate or fee amount set forth in the City



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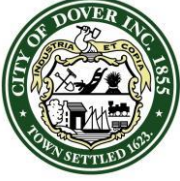
Council’s Schedule of Fees, and the provisions in § 123-6, and thereafter assessed and billed to the user on a quarterly basis for single family residential properties and monthly for non-single family residential properties. Bills are due and payable within thirty (30) days of receipt. Bills not paid within thirty (30) days of presentation shall be delinquent. Properties that meet the definition of undeveloped land will be exempt from the stormwater utility user fee.

- B. Identifying user. Fee owners of the subject real estate containing impervious surface shall be presumed to be the user, though the fee owner may request and apply to have one or more other persons (e.g., easement holders) recognized as the user of a portion or whole of impervious cover on the property, if and to the extent the fee owner can successfully carry the burden of showing that one or more other persons maintain the impervious cover on the property by right, all as determined within the discretion of the Director of Community Services or designee. In the case of impervious surface within a public highways or right of way, the governmental entity with public ownership and control of the highway shall be regarded as the user.
- C. Impervious surface. In determining if and to the extent any property contains or likely contains impervious area, the Director of Community Services or designee may use and rely on physical inspections, approved site plans, approved subdivision plans, building permits, aerial imagery, software analysis of same, and similar resources, or one or any combination thereof. The amount of impervious area on a property will be rounded down to the nearest 100 square feet for purposes of calculating the number of ERUs located on the property.
- D. Consolidation. Bills for the stormwater utility may be consolidated in the same bill as other City provided utilities, including water and sewer use, if any. Payments on any such consolidated bill shall be applied first to the first to the stormwater utility fee, next to the sewer utility fee, and finally to the water utility fee.
- E. Payment. Checks should be made payable to the “City of Dover”. Payment may be made in person or mailed to the Tax Collectors office in City Hall, 288 Central Avenue, Dover, New Hampshire 03820. Users may obtain a receipt for payment by mail by enclosing a self-addressed envelope with a payment made by mail. Credit for payment shall be made upon receipt of the payment by the City of Dover.

### Section 123-6 Rates

- A. Basis – The basis for the stormwater utility user fee charged to users shall be the total impervious area of a property, including any share of common property, as measured by ERUs in §123-6 C.
- B. Structure – The stormwater utility user fee will be proportional to the amount of impervious area on the property as measured in equivalent residential units, or ERUs. Dollar rates per ERU shall be set by the City Council on an annual basis as part of the City’s Schedule of Fees, based on a forecast of the annual cost of each component of the City’s stormwater management program.
- C. Equivalent Residential Unit (ERU) – one ERU is equivalent to 3,200 square feet. The table below depicts the applicable ERU factor per square foot of impervious area:





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Impervious Area (in sq ft)	ERU Factor
1,601-4,800	1.0
4,801-8,000	2.0
8,001-11,200	3.0
Over 11,200	1.0 per 3,200 sq ft**

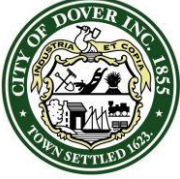
\* For properties under common or fragmented ownership, where assessing multiple ERUs would result in an overall assessment greater than the amount of impervious surface on the overall property area, the Director of Community Services or designee may use an alternative apportionment method, including but not limited to dividing the stormwater utility user fee due for the impervious surface on the overall property by the number of City water meters installed and in use on that property. In making an apportionment, the Director of Community Services or designee may also consult and use records determined to be reliable, including but not limited to land use records, Planning records, records on file at the registry of deeds, and Community Services records.

\*\*The number of ERUs for users with over 11,200 square feet of impervious area will be rounded to the closest whole ERU.

### Section 123-7 Fee Credits

- A. Pursuant to RSA 149-I:6-c, users may apply to for a credit toward the stormwater utility user fee charged to that user, provided the user carries his or her burden of demonstrating one or more of the authorized measures set forth below to accomplish on-site management of water quality impairment or peak runoff storage, or both.
- B. Credits shall be determined by the Community Services Director or designee.
- C. Single Family Residential Credit Program –All single family residential properties subject to the stormwater utility user fee are eligible for the following credits in the table below, comprising the Single Family Residential Credit Program and found to sufficiently accomplish on-site management of water quality impairment or peak runoff storage, or both.

Credit Type	Resources and Guidelines	Credit Amount
Dripline Infiltration Trench	Stormwater Credit Manual and the NHDES Soak Up the Rain Program for guidance.	Up to 25% credit for Impervious Area Managed per credit type
Driveway Infiltration Trench		
Dry Well		
Porous Pavement, Patio, Walkway		
Intensity of Development		
Rain Garden	Stormwater Credit Manual and/or the NHDES Soak Up the Rain Program for guidance.	10% credit per credit type
Vegetative Buffer		
Public Participation		



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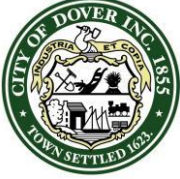
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Manage Offsite Stormwater	Must own and maintain a stormwater facility that is fully functioning as designed and permitted that meets local design standards and regulations.	Up to 50% credit for management of offsite impervious area equivalent to or exceeding onsite impervious area
Nitrogen Pledge	Pledge to not use lawn fertilizer or to only use slow-release organic nitrogen.	5% credit during the year of pledge

D. Non-Single Family Credit Program. All Non-Single Family Properties that are subject to the stormwater utility user fee are eligible for the following credits in the table below, comprising the Non Single Family Credit Program and found to sufficiently accomplish on-site management of water quality impairment or peak runoff storage, or both.

Credit Type	Resources and Guidelines	Credit Amount
Stormwater BMP	Management of stormwater with BMPs that meet local stormwater regulations and design standards.	Up to 50% credit for Impervious Area Managed per credit type
Offsite Stormwater Management		
Stormwater BMP Volume	Exceed local stormwater regulations with a minimum reduction of volume of 20% following development of redevelopment.	Up to 20% credit for Impervious Area Managed
Education	Stormwater Credit Manual	25% Credit per credit type
Intensity of Development		
Landscape Maintenance Plan	Stormwater Credit Manual and site plan regulations found at Dover Code §153-14 G (1) (H).	5% credit during the year of pledge

E. Limitations, conditions, and other requirements. Users may use one or a combination of any credits. The maximum credit eligible per user for each year is 100% of the stormwater utility user fee that would otherwise be assessed to that user. For users who manage stormwater off-site, the maximum credit eligible per user for each year is 100% of the stormwater utility user fee that would otherwise be assessed to that user for users that manage off-site stormwater. Users may not accumulate credits in excess of 100% or trade credits to other users. Credits may only be claimed once per stormwater management effort, and may not be duplicated or shared, unless



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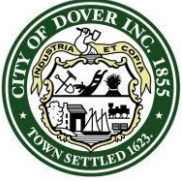
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applied for through an Home Owners Association or other community property association. Users receiving any credit will be required to provide periodic reports on credit compliance as requested by the City. Unless otherwise stated, any stormwater utility fee credits, once awarded, will be valid for three (3) years, after which the credit shall expire and the user may seek to renew any applicable credits.

- F. Disqualification; fraud. Any person who has successfully received a credit and is later found by the Director of Community Services or designee to have breached a condition of that credit and/or to have supplied the City material misinformation and/or fails to update a prior representation to the City upon change in material information, may be back-charged the credit amount for up to one year. Users applying for and receiving any credit are deemed to consent to periodic inspection of the users' property for purposes of verifying compliance with this ordinance.

### **Section 123-8 Abatements; waivers**

- A. In the event the user disputes the stormwater utility user fee assessed, or the denial in part or in whole of a credit, the user may, within one hundred eighty (180) days of the date of the billing, apply for an abatement through the abatement review team within the Community Services Department. Any application for abatement submitted after the payment due date will begin to accrue interest in accordance with RSA and may only be submitted after payment is made. Abatements shall be filed with the Utility Billing Office. All claims or arguments for abatement beyond one hundred eighty (180) days of the date of billing are irrevocably waived. The abatement review team shall consist of staff members of the Community Services Department appointed by the Community Services Director or designee.
- B. To prevail on any request for abatement on the basis of inaccurate impervious area, the user carries the burden of demonstrating that the impervious area is less than the amount used in calculating the billed stormwater utility fee. To prevail on any asserted entitlement to a credit, the user carries the burden of demonstrating that the user qualified for the credit at all applicable times. The user seeking abatement must provide all necessary information to make a determination, as reasonably requested by the abatement review team.
- C. The abatement review team shall review the abatement request and, issue a decision, in writing, within thirty (30) calendar days. If it is found that the impervious area is less than the amount used to calculate the stormwater utility fee, the sole remedy for the user shall be an abatement of the stormwater utility fee to the extent of any demonstrated accuracy, together with a refund to the account of any amounts improperly assessed and collected.
- D. The Community Services Director or designee may, for good cause, waive or vary the provisions of this chapter if, and only to the extent, the Community Services Director or designee finds such waiver to be in the interests of justice, consistent with the spirit of this chapter, and consistent with applicable law. Any person seeking a waiver may apply in writing with the Community Services Director (or designee) setting forth the provisions sought to be waived and



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the reasons for the requested waiver. Waivers will be granted or denied in whole or in part at the discretion of the Community Services Director or designee. A user aggrieved by a decision of the Community Services Director or designee concerning a requested waiver may appeal by following the appeals process in Section 123-9.

### **Section 123-9 Appeals and hearings**

- A. The user may appeal the decision of the abatement review team or the Community Services Director or designee, as the case may be, in writing to the Dover Utilities Commission within fifteen (15) days of a written decision by the abatement review team or the Community Services Director or designee, and not thereafter. The Dover Utilities Commission shall schedule a public hearing for the appeal, following any rules of procedure established by the Dover Utilities Commission. The Dover Utilities Commission shall issue a final decision no later than thirty (30) days after the close of the appeal hearing to the Dover Utilities Commission.
- B. After a decision has been reached by the Dover Utilities Commission, an aggrieved user may ask the City Council to review the proceedings for errors of law within thirty (30) days of the decision of the Dover Utilities Commission, and not thereafter. In the event the user is dissatisfied with the City Council's review, then, the user may seek to appeal to a Superior Court pursuant to RSA 149-I:15, within the requirements stated therein.

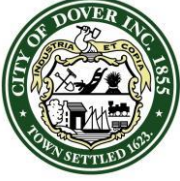
### **Section 123-10 Liens, enforcement, and violations**

- A. In accordance with RSA 149-I:11, in the collection of stormwater utility fees, the City shall have the same liens and use the same collection procedures as authorized by RSA 38:22.
- B. Interest on overdue charges shall be assessed in accordance with RSA 76:13. Inspections – Application for any credits or abatement is deemed as consent by the user for Community Service Department employees to enter the premises at a reasonable time for the purpose of inspecting the impervious area or asserted basis or bases for any credit.

### **Section 123-11 Maintenance and use of stormwater utility funds**

- A. All funds received from stormwater utility fees shall be kept and used as required by RSA 149-I:10-a.
- B. Annually, if and only to the extent authorized by vote of the City Council, all or part of any surplus in the stormwater utility fund may be placed in one or more capital reserve funds and placed in the custody of the trustees of trust funds pursuant to RSA 35:7. In the event such a reserve fund is created, then the City Council may expend such funds on stormwater capital projects pursuant to RSA 35:15 without prior approval or appropriation.





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### 3. TAKES EFFECT

This ordinance shall take effect as of July 1, 2024, following passage and publication of notice as required by RSA 47:18.

### AUTHORIZATION

Approved as to Funding: Daniel R. Lynch  
Finance Director

Sponsored by: Mayor Robert Carrier  
By Request

Approved as to Legal Form and Compliance: Joshua M. Wyatt  
City Attorney

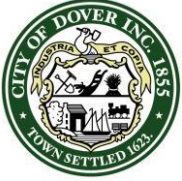
Recorded by: Jerrica Vanslyvong-Bizier  
City Clerk

### DOCUMENT HISTORY:

First Reading Date:	Public Hearing Date:
Approved Date:	Effective Date:

### DOCUMENT ACTIONS:

VOTING RECORD		
Date of Vote:	YES	NO
Mayor Robert Carrier		
Deputy Mayor Dennis Shanahan		
Councilor Michelle Muffett-Lipinski, Ward 1		
Councilor Robert Warach, Ward 2		
Councilor Deborah Thibodeaux, Ward 3		
Councilor Debra Hackett, Ward 4		
Councilor Fergus Cullen, Ward 6		
Councilor Linnea Nemeth, At Large		
Councilor Lindsey Williams, At Large		
Total Votes:		
Ordinance does   does not pass.		



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### ORDINANCE BACKGROUND MATERIAL:

This ordinance was originally presented to the Dover City Council on November 8, 2023 and reviewed at a workshop meeting on November 15, 2023. At the workshop policy points and additional concerns were discussed. In response to public feedback and staff input the Council requested changes to the originally proposed ordinance as further detailed below

The first policy point discussed at the workshop meeting concerned the first tier of users. The proposed change would eliminate billing for the .5 ERU tier. Billing will begin at 1.0 ERU. Public feedback raised issue with credit applicability to properties, HOAs specifically, that own less than 1600 SqFt of property but would otherwise qualify for credit for its members. This change was made by changing the definition of “Undeveloped Land” from improvements “of 400 square feet or less of impervious surface” to improvements “of 1600 square feet or less of impervious surface” (see Section 123-4). Additionally, the first tier of billing at .5 ERU has been eliminated and billing will start at 1 ERU for Impervious Area of 1,601 through 4,800 SqFt (see Section 123-6 part C). Finally, the credit applicability has been adjusted to reflect the elimination of the 05 ERU tier and not states that all properties “subject to the stormwater utility user fee” are eligible for credits (see Section 123-7 parts C and D).

The second policy point discussed at the workshop concerned the order of payment. As the ordinance was originally the order of payment was first to the sewer utility, next to the water utility and finally to the stormwater utility. This order effects the enforceability of the ordinance making the only “enforcement” mechanism is liening the property. This will become costly to the city quick. Liens only last for six years (RSA 38:22 II(c) and will need to be enforced by suit. The requested change was to make the order of payment be first to the stormwater utility, next to the sewer utility, and finally to the water utility. This change has been made in Section 123-5 part D.

The third policy point concerned the inclusion of private roads. The proposed edit was not supported by statute and no change has been made.

The fourth policy point discussed was to make 100% credit available for users even without off-site management (on-site only). This change was made by adjusting the available credit to 100% in Section 123-7 part E.

Finally, staff presented an additional concern relating to the inclusion of a variance and waiver provision to allow staff to grant waivers or variances if necessary to accomplish both the funding and stormwater management purposes of the utility. This change would provide staff with the discretion to address any unique situations that are not currently addressed in this ordinance. This change was made by adding Section 123-8 part D. Section 123-8 was renamed to Abatements; waivers, and Section 123-9 was updated to include appeals for decisions on variances or waivers.