

## Chapter 6: Public Services, Public Ways, and Public Improvements

- 6.1 Purpose.** The purpose of this Chapter is to provide regulations governing the provision of public services, public ways, and the construction of public improvements within the City.
- 6.2 Cemetery and Interment.** The interment of deceased persons shall be governed by the following rules and regulations:
- A. Licenses.** No burial or interment shall be made within the City unless within in a burial lot in a public cemetery under an irrevocable licenses purchased from the City.
  - B. Granting and Transfer of Licenses.** All licenses for right of internment in a public cemetery shall be granted and transferred by the Clerk. Each license shall be granted for right of internment in a described lot in a public cemetery upon payment of consideration as specified in Chapter 10. Each license shall be irrevocable, except that the license is revoked if the City refunds the consideration paid for the license or the license is transferred back to the City. Each license must be granted to an individual or an individual and their spouse jointly. A licensee, whether an individual or an individual and their spouse jointly, may make a Family Transfer of the license to any of their heirs within three (3) degrees of consanguinity, as shown below in Table 1, provided the transfer be made in the official records by the Clerk and the transfer fee specified in Chapter 10 is also paid. A licensee may make a Non-Family Transfer of the license to any other person chosen by the licensee according to the following process: 1) the license shall transfer the license back to the City in exchange for the consideration paid for the license and 2) the City shall then transfer the license to the identified person for the fee specified in Chapter 10.
  - C. Limit of Burials Per Space.** There shall be only one burial of one body on each grave space. Burials of cremains are limited to two per space.
  - D. Supervision.** All burials shall be supervised by a designee of the City.
  - E. Containers.** All burials shall be in an outside container of cement or some substance of equal durability.
  - F. Restrictions on Markers.** The portion of the cemetery which is designated (which is that portion of the cemetery which is located in Section 3 and is North of the dividing East-West Road) as the Memorial Section shall have markers which are flush with the ground and shall have no other fixtures, receptacles except invertible vases which are part of the marker or other objects placed thereon which are not flush with the ground, unless placed thereon by the City.
  - G. Plantings.** All plantings, whether permanent or seasonal, on the cemetery shall be approved by the Manager.
  - H. Removal of Receptacles, Flowers, or Other Decorations.** All receptacles, flower arrangements or decorative items shall be removed within a reasonable length of time, and if the same are not removed may be removed by the caretakers. Flower arrangements and decorative items shall be permitted in the Memorial Section for such period even though the same are not flush with the ground.
  - I. Rules.** The Manager shall make such rules, not in conflict with the provisions of this section, as may be needed for the detailed operation of the cemetery.



1. **Term of Office.** All appointments to the Board shall be for six (6) years, except to fill vacancies. Each term shall commence on July first. Appointments shall be made every two (2) years of one-third (1/3) the total number or as near as possible, to stagger the terms.
2. **Vacancies.** The position of any resident Trustee shall be vacated if such member moves permanently from the City. The position of a nonresident Trustee shall be vacated if such member moves permanently from the County or into the City. The position of any Trustee shall be deemed vacated if such member is absent from six (6) consecutive regular meetings of the Board, except in the case of sickness or temporary absence from the City or County. Vacancies in the Board shall be filled in the same manner as an original appointment except that the new Trustee shall fill out the unexpired term for which the appointment is made.
3. **Compensation.** Trustees shall receive no compensation for their services.
4. **Membership.** The Board shall consist of seven (7) members. Six (6) members shall be residents of Avoca and one (1) member should be a rural resident of East Pottawattamie County. All resident members are to be appointed by the City Council. The rural resident member is to be appointed by the County Board of Supervisors.
5. **Qualifications.** All resident members of the Board shall be bona fide citizens and residents of the City. The rural resident members shall be bona fide citizens and resident of East Pottawattamie County. Members shall be over the age of eighteen (18) years.

**B. Duties and Responsibilities of Board.** The board shall have and exercise the following duties and responsibilities:

1. **Officers.** To meet and elect from its members a President, a Secretary, and such other officers as it deems necessary. The City Treasurer shall serve as Board Treasurer, but shall not be a member of the Board.
2. **Physical Plant.** To have charge, control, and supervision of the Library, its appurtenances, fixtures and rooms containing the same.
3. **Charge of Affairs.** To direct and control all affairs of the Library.
4. **Hiring of Personnel.** To employ a librarian, and authorize the librarian to employ such assistants and employees as may be necessary for the proper management of the Library, and fix their compensation; provided, however, that prior to such employment, the compensation of the librarian, assistants and employees shall have been fixed and approved by a majority of the members of the Board voting in favor thereof.
5. **Removal of Personnel.** To remove the librarian, by a two-thirds (2/3) vote of the Board, and provide procedures for the removal of the assistants or employees for misdemeanor, incompetency or inattention to duty.
6. **Purchases.** To select, or authorize the librarian to select, and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, other Library materials, furniture, fixtures, stationery and supplies for the Library within budgetary limits set by the Board.

7. **Uses by Nonresidents.** To authorize the use of the Library by nonresidents and to fix charges for such use.
8. **Rules and Regulations.** To make and adopt, amend, modify or repeal rules and regulations, not inconsistent with this Code and the law, for the care, use, government and management of the Library and the business of the Board, fixing and enforcing penalties for violations.
9. **Expenditures.** To have exclusive control of the expenditure of all funds allocated for Library purposes by the Council, and of all moneys available by gift or otherwise for the erection of Library buildings, and of all other moneys belonging to the Library including fines and rentals collected under the rules of the Board.
10. **Gifts.** To accept gifts of real property, personal property, or mixed property, and devises and bequests, including trust funds; to take the title to said property in the name of the Library; to execute deeds and bills of sale for the conveyance of said property; and to expend the funds received by them from such gifts, for the improvement of the Library.
11. **Enforce the Performance of Conditions on Gifts.** To enforce the performance of conditions on gifts, donations, devises and bequests accepted by the City on behalf of the Library.
12. **Record of Proceedings.** To keep a record of its proceedings.
13. **Historical Materials.** To have authority to make agreements with the local county historical or genealogical society to set apart the necessary room and to care for such books, film and other research materials as may come into the possession of the local county historical or genealogical society. The Trustees are further authorized to purchase necessary receptacles and materials for the preservation and protection of the research materials of a historical or educational nature and to pay for the same out of funds allocated for Library purposes.
14. **Annual Report.** The Board shall make an annual report to the Council.

**6.4 Public Safety Department.** The purpose of this section is to establish a Public Safety Department. The Public Safety Department shall be responsible for police protection, fire protection, rescue and emergency medical services, animal control, building inspections, and code enforcement.

**A. Fire and Emergency Medical Division.** The Public Safety Department shall have a Fire Division to prevent and extinguish fires and to protect lives and property against fires, to promote fire prevention and fire safety, to provide out-of-hospital emergency medical services, to respond to and mitigate hazardous materials incidents, and to answer all emergency calls for which there is no other established agency within the corporate limits of the City and in service of intergovernmental agreements made under Chapter 28E of the Code of Iowa.

1. **Organization.** The Fire and Emergency Medical Division shall consist of the Fire Chief and such other officers and personnel as may be authorized by the Manager.

- B. Police Division.** The Public Safety Division shall have a Police Division.
  - 1. Organization.** The Police Division shall consist of the Police Chief and such other law enforcement personnel or contract police protection service as authorized by the Council.
  - 2. Appointment of Police Chief and Officers.** A Police Chief may be appointed under Iowa Code 372.4(2) and other law enforcement officers shall be appointed by the Manager.
- C. Building Division:** A building division is hereby established which shall be under the jurisdiction of a building official designated by the Manager. The building official shall enforce all the provisions of any applicable building code as prescribed by local law or ordinance and as outlined by Iowa Code section 103A.19.
- D. Other Activities.** The Public Safety Department shall provide animal control and code enforcement services.
- E. Public Safety Director.** The Manager may appoint a Public Safety Director to oversee and coordinate the activities of the Public Safety Department.

**6.5 Edginton Park.** The purpose of this section is to establish Edginton Memorial Park as a public park.

- A. Board of Commissioners.** There shall be a Board of Park Commissioners for the City consisting of three (3) citizens of legal age. The Board's authority shall have control of Edginton Memorial Park.
  - 1. Compensation.** All members of the Commission shall serve without compensation, except their actual expenses, which shall be subject to the approval of the Council.
  - 2. Election Term.** One commissioner shall be elected at each regular City election for a term of six (6) years.
  - 3. Duties and Responsibilities.** The Board shall, by resolution, have the authority to establish policies and regulations for the operations of Edginton Park.
  - 4. Treasurer.** The Clerk shall be the treasurer of the Board and pay out all moneys under the control of the Board on orders signed by the Chairperson and Secretary, but shall receive no compensation for such services as treasurer.

**6.6 Golf Course.** The purpose of this section is to establish a Municipal Golf Course and Clubhouse service for the City.

- A. Board.** There shall be established an Advisory Board for the Avoca Municipal Golf Course and Clubhouse consisting of 5 citizens of Avoca who have attained the age of 18. Each term shall commence on the first day of April.
  - 1. Appointment.** The Council shall appoint the members of the Board to terms of three (3) years. One-third of the appointments to the Board shall be made every year or as near as possible, to stagger the terms. The initial appointments to the board shall specify two two-year terms and three three year terms; thereafter all appointments, other than interim replacement appointments, shall be for a three year term.

2. **Compensation.** All members of the Board shall serve without compensation, except their actual expenses, which shall be subject to the approval of the Council.
3. **Duties and Responsibilities.** The Board shall have the following duties and responsibilities:
  - a. **Personnel.** The Board will not have the authority to hire or terminate employees; authority to hire and terminate employees will remain with the Manager.
  - b. **Rules and Regulations.** Subject to the subsequent approval by the Council, the Board may recommend rules and regulations for the use of golf course facilities. Such rules shall be posted on the facility or otherwise publicized in a manner to provide adequate notice to the public.
  - c. **Fees.** Subject to the subsequent approval by the Council, the Board may recommend the establishment or imposition of all appropriate charges and fees for the use of the golf course, golf clubhouse, and any other facilities located on the golf course premises.
  - d. **Operations and Marketing.** The Board shall approve an operational and marketing plan for the golf course facility.
  - e. **Subject to Policies.** The Board will be subject to the financial policies, purchasing policies, and employee policies as adopted by the Council.

**B. Administrator.** The Manager shall serve as the administrator for the Board. All policies of the Board shall be coordinated through the Manager.

**6.7 Design Standards and Specifications for Improvements.** The purpose of this section is to adopt uniform design standards and specifications for improvements within the City of Avoca.

- A. Improvements are those that meet any of the following:
  1. Are initiated, designed, and constructed by or under the supervision of the City as a public improvement, and maintained by the City.
  2. Are initiated, designed, and constructed by a private owner/developer's private engineer and contractor. Upon acceptance of the improvements by the City the improvements are maintained by the City.
  3. Those improvements that require review and approval by the Council or Commission of the City of Avoca, but will remain under private ownership.
- B. The *Iowa Statewide Urban Standard Specifications for Public Improvements*, published by the Center for Transportation Research and Education of Iowa State University, and as from time to time amended or supplemented, are hereby adopted by reference as if set out fully as the City's standard specifications for public improvements.
- C. The *Iowa Statewide Urban Design Standards for Public Improvements*, published by the Center for Transportation Research and Education of Iowa State University, and as from time to time amended or supplemented, are hereby adopted by reference as if set out fully as the City's design standards for public improvements.

**6.8 Right-of-Way Regulations.** The purpose of this section is to ensure that all public grounds, utility easements, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons are open, in repair, and free from nuisance.

- A. Building, Planting, or Using Property Located in the Public Right-of-Way or Easement.** Any person who builds any structure or plants any foliage of any kind in the public right-of-way does so at said person's own risk. Should the City or other utility find it necessary to disturb the ground or otherwise clear structures, bushes, trees or plants located in the safety easement or in any way use any utility easement to maintain, replace or relocate any utility structure or device, the City or utility shall not be responsible for replacing, repairing, replanting or restoring any structure or plant placed in the easement right-of-way by any property owner.
- B. Damage to Mailboxes.** Should the City or other utility, damage or destroy any mailbox erected by a property owner within the confines of the street, road, or alley right-of-way, through use of the right-of way including but not limited to snow removal or street cleaning, the City or responsible utility shall pay the actual costs of replacement or repair up to a maximum of \$75.00.
- C. Maintenance of Area Between Lot Line and Curb Line.** It shall be the responsibility of the abutting property owner to maintain all property outside the lot and property lines and inside the curb lines or edge of public streets, except that the abutting property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way. Maintenance includes timely mowing, trimming trees and shrubs and picking up litter.
- D. Permit Required.** No person shall perform any of the following work in the public right-of-way, unless such person has obtained a permit from the City and has agreed in writing that said removal, reconstruction or installation will comply with all ordinances and requirements of the City for such work:

  - 1. Connections to the public water system.
  - 2. Installation or replacement of private water service pipes or water service shut-off valves.
  - 3. Connections to the public sanitary sewer system.
  - 4. Installation or replacement of private sanitary sewer service pipes.
  - 5. Construction or reconstruction of driveways.
  - 6. Construction or reconstruction of sidewalks.
  - 7. Installation of stormwater control devices, including driveway culverts.
  - 8. Planting of trees or shrubs.
- E. Structures in the Right-of-Way.** No property owner shall construct any structure, such as a retaining wall, in the public right-of-way.
- F. Driveway Culverts.** The property owner shall, at the owner's expense, install any culvert deemed necessary under any driveway or any other access to the owner's property and before installing a culvert, permission must first be obtained from the City. In the event

repairs are needed at any time with respect to culverts, it shall be the responsibility of the property owner to make such repairs.

- G. Restoration of Public Property.** Any street, sidewalk, or other public property that is affected by any work shall be restored to as good a condition as it was previous to the excavation. After refilling, the affected area shall be maintained in good repair.
  - H. Ground Cover.** Living ground cover, such as grass, shall be provided within the area between the lot line and curb line of properties, exclusive of sidewalks and other improvements. Non-living materials (such as walk on bark, mulch, and ornamental rock) may be used for up to twenty-five percent (25%) of the right-of-way exclusive of access.
  - I. Responsibility for Maintenance of Driveways and Sidewalks.** It is the responsibility of the property owners abutting any public right-of-way to repair, replace or reconstruct, or cause to be repaired, replaced, or reconstructed, all broken or defective driveways and sidewalks and to maintain it in a safe and hazard-free condition.
  - J. Removal of Snow and Ice Accumulations.** It is the responsibility of the abutting property owners to remove snow, ice and accumulations promptly from sidewalks. If a property owner does not remove snow, ice or accumulations within twenty-four (24) hours after being deposited, the City may do so and assess the costs against the property owner for collection in the same manner as a property tax.
  - K. Responsibility for Sidewalk Maintenance and Liability for Injuries.** It is the responsibility of the abutting property owners to repair, replace or reconstruct, or cause to be repaired, replaced or reconstructed, all broken or defective sidewalks and to maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or traveled portion of the public street. An abutting property owner who fails to maintain or repair defective or broken sidewalks as set forth in this section shall be liable for damages caused by said failure to repair, replace or reconstruct broken or defective sidewalks. The City's general duty to maintain public places pursuant to Section 364.12 of the Code of Iowa does not include a duty to remove natural accumulations of snow or ice from sidewalks or to repair, replace or reconstruct all broken or defective sidewalks. However, when the City is the abutting property owner, it has the specific duty of the abutting property owner as set forth in this section.
  - L. Sidewalk Repairs Required.** If the abutting property owner does not maintain sidewalks as required, the Manager or their designee may serve notice on such owner requiring the owner to repair, replace or reconstruct sidewalks within a reasonable time and if such action is not completed within the time stated in the notice, the City may require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax.
  - M. Failure to Perform.** If the abutting property owner does not perform an action required under the above section within a reasonable time, the City may perform the required action and assess the cost against the abutting property for collection in the same manner as a property tax.
- 6.9 Solid Waste.** The purpose of this section is to regulate and provide a means for the removal solid waste and refuse from the City.
- A. Collection Service.** The collection of solid waste from residences within the City shall be only by the designated collector approved the Council. Each household in the City shall be a subscriber for the collection of garbage and refuse and shall pay the fees for collection thereof as set forth herein with the monthly water bill.



- B. Collection Practices.** Subject to the conditions and limitations set forth in the contract with the designated collector, the City or its contractor shall make collection of garbage and rubbish as follows:
1. The Council shall enter into a contract with the designated collector which shall establish appropriate rules for collections and containers.
  2. Residential collections of matter in containers shall be made on a regular schedule once each week.
  3. Each residential customer shall place containers near the street edge in the public right-of-way in order to receive collection service. Containers shall be promptly removed from the public right-of-way following collection.
  4. City staff shall remove containers left in the public right-of-way forty-eight (48) hours after collection and the fee described in Chapter 10 for such removal shall be charged to the account holder.
  5. The City shall collect garbage and refuse charge for the service. This service charge is to be paid as an addition to the water bill. All residential units of the City will be charged for collection services, except for vacant units that have shut-off water service. Residential units that have a private water-service will be billed for collection services. All delinquent accounts are subject to a late payment penalty in the amount of 10% of the fee due and further subject to a stoppage of service with a ten-day notice. Any service charge not paid, when due, shall constitute a lien upon the premises served and shall be collected as follows.
- C. Non-Residential Service.** Non-residential property owners or occupants shall be required to arrange for removal of solid waste at such intervals so as there is no excess accumulation of solid waste.

**6.10 Water Utility.** Pursuant to an election held in November, 1941, a municipally owned Water Utility was established. The management and control of the Water Utility were placed in the hands of a Board of Trustees by this same election.

- A. Water Board of Trustees Appointments.** The Mayor shall appoint, subject to the approval of the Council, three (3) persons to serve as trustees for staggered six (6) year terms. No public officer or salaried employee of the City may serve on the Water Board.
- B. Compensation.** The Council shall by resolution set the compensation of Board members.
- C. Responsibility of the Board.**
1. **Charges for Service.** The Board shall establish all charges and rates for service by resolution, to be published in the same manner as an ordinance of the Council.
  2. **Powers of Municipal Corporation.** The Board of Trustees may exercise all powers of the City in relation to the Water Utility, with the following exceptions:
    - a. **Taxes, Ordinances and Bonds.** The Board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.



service outside of the City limits shall be two hundred fifty percent (250%) of the rates and charges for properties located within the corporate limits of the City.

**K. Shutting-Off the Water Supply to a Property.** The following rules shall govern how the water supply to a customer may be shut-off by the City:

1. **Failure to Make Payment.** In conformance with State Law, the Water Utility may shut-off the water supply to any customer for failure to make payment for any services, materials, or labor supplied in relation to the customer's account for water service, or
2. **Vacant Property.** Any property which has been vacant for more than thirty (30) days shall be shut-off from the water supply, or
3. **Violations.** The maintenance of any property standards violation shall be sufficient cause for the property on which the violation is maintained to be disconnected from the water supply.
4. **Duration of Shut-Off.** Following shut-off the water supply shall not be turned on again until all factors justifying the disconnection have been corrected.

**L. Adoption of State Plumbing Code.** The installation, alteration, repair, and replacement of all water systems and connections to the water system shall conform to the State Plumbing Code (2009 Universal Plumbing Code).

**6.11 Sanitary Sewer Utility.** A municipally owned Sanitary Sewer Utility is hereby established by the Council. The purpose of this Section is to establish rules and regulations governing the treatment and disposal of sanitary sewage within the City.

**A. Board of Trustees.** Under the authority of Code of Iowa Section 392.1, the City Council has established an administrative agency to administer the Sanitary Sewer System Utility. The administrative agency shall be known as the Sanitary Sewer Utility Board. The members of the Water Board of Trustees, created in 6.19A) of this Chapter, shall serve as the Sanitary Sewer Utility Board.

**B. Responsibility of the Board.**

1. **Charges for Service.** The Board shall establish all charges and rates for service by resolution, to be published in the same manner as an ordinance of the Council.
2. **Powers of Municipal Corporation.** The Board may exercise all powers of the City in relation to the Sanitary Sewer Utility, with the following exceptions:
  - a. **Taxes, Ordinances and Bonds.** The Board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.
  - b. **Property.** Title to all property must be in the name of the City but the Board has full control of such property subject to limitations imposed by law.
3. **Reports to Council.** The Board shall make a detailed annual report to the Council including a complete financial statement.

- 4. **Control of Revenue.** The Board shall control tax revenues allocated to it as well as all moneys derived from operations, which shall be accounted for in a separate fund.
  - 5. **Policies and Regulations.** The Board shall, by resolution, have the authority to establish policies and regulations for the operations of the Sanitary Sewer Utility.
- C. **Director and Staff.** The Manager shall serve as the administrator for the Sanitary Sewer System Utility. All departmental activity shall be brought to the Board of Trustees by the Manager and all policy shall be coordinated through the Manager. Other staff appointed by the City Council and Manager shall serve as the Utility Staff for the Sanitary Sewer System Utility. The Sanitary Sewer System Utility shall annually appropriate an appropriate amount of funds to support the Manager and Utility Staff positions given the work demands created by the Utility.
  - D. **Rates for Users with Private Water Systems.** Users whose premises have private water systems shall pay for charges determined by metering the water system.
  - E. **Mandatory Connections.** The owners of all residences and business establishments intended or used for human habitation, occupancy, or uses, must connect their sewage facilities to the public sewers, if reasonably available.
  - F. **Lien for Failure to Pay.** The City shall have a lien upon the property served by the Sanitary Sewer Utility for all delinquent rates and charges, and these delinquent rates and charges shall be collected in the same manner as other taxes.
  - G. **Prohibited Connections.** From the effective date of this Section, sanitary sewer service line connections and sanitary sewer mainline extensions are prohibited outside the city limits. All properties and subdivisions seeking to be served by the sanitary sewer system shall annex into the City limits prior to the extension of services. Properties receiving city water service shall connect to the city's sewer system. If a property does not connect to the city's sewer system, the property shall not be connected to the city's water system.
  - H. **Adoption of State Plumbing Code.** The installation, alteration, repair and replacement of all plumbing systems and connections to the sanitary sewer shall conform to the State Plumbing Code (2009 Universal Plumbing Code).
- 6.12 Stormwater Management Utility.** Pursuant to the authority of Section 384.84, Code of Iowa, as amended, the Council hereby establishes a storm water management utility in the city. The entire city, as may be increased from time to time, shall constitute a single storm and surface water drainage district. The purpose of this Section is to establish the Storm Water Management Utility, to authorize charges for use of, and discharge to, the storm and surface water drainage systems of the City of Avoca; and to provide for collection of delinquent charges.
- A. **Administrative Agency.** Under the authority of Code of Iowa Section 392.1, the City Council has established an administrative agency to administer the Stormwater Management Utility. In the capacity of serving the Stormwater Management Utility, the administrative agency shall be known as the Stormwater Management Utility Board. The Water Board of Trustees, created in 6.9(A) of this Chapter, shall serve as the administrative agency.
  - B. **Responsibility of the Board.** The powers and duties of the board shall be the following:

1. **Charges for Service.** The Board shall establish all charges and rates for service by resolution, to be published in the same manner as an ordinance of the Council.
  2. **Powers of Municipal Corporation.** The Board may exercise all powers of the City in relation to the Stormwater Utility, with the following exceptions:
    - a. **Taxes, Ordinances and Bonds.** The Board may not certify taxes to be levied, pass ordinances or amendments, or issue general obligation or special assessment bonds.
    - b. **Property.** Title to all property must be in the name of the City but the Board has full control of such property subject to limitations imposed by law.
  3. **Reports to Council.** The Board shall make a detailed annual report to the Council including a complete financial statement.
  4. **Control of Revenue.** The Board shall control tax revenues allocated to it as well as all moneys derived from operations, which shall be accounted for in a separate fund.
  5. **Policies and Regulations.** The Board shall, by resolution, have the authority to establish policies and regulations for the operations of the Water Utility.
- C. Director.** The Manager shall serve as the administrator for the Stormwater Management Utility. All departmental activity shall be brought to the Board by the Manager and all Board of Trustees policy shall be coordinated through the Manager. Other staff appointed by the Council and Manager shall serve as the Utility Staff for the Stormwater Management Utility. The Stormwater Management Utility shall annually appropriate an appropriate amount of funds to support the Manager and Utility Staff positions given the work demands created by the Utility, but the City Council shall establish the total wages and benefits of said employees.
- D. Establishment of the ESU Rate.** Fees shall be established for each property according to Equivalent Service Units.
1. Except as provided otherwise, one equivalent service unit shall be deemed to be 2,500 square feet of impervious surface area.
  2. The ESU rate to be applied to residential and non-residential properties on the effective date of this ordinance is \$2.50 per ESU per month.
  3. In the event the owner and the occupant of a particular property are not the same, the liability for payment of the storm water management charge attributable to the property shall be joint and several as to the owner and occupant. The storm water management charge shall be a monthly service charge and shall be determined by the provisions of this ordinance and the ESU unit and ESU rate which is herein established and from time to time adjusted as hereinafter provided.
  4. The storm water management charges provided above shall be applied and computed for each contributor during the designated billing period from and after August 1, 2009.

5. **Residential Property.** The storm water management charge for a parcel classified as a single family residential (R) by the county assessor's office property shall be a percentage of the ESU Rate, based upon the impervious area of the lot or parcel upon which the single family residence is located, as referenced by the following table:

**Table 1: Residential Property ESU Impervious Area of the Property**

Impervious Area of the Property	Percentage of the ESU Rate
250 square feet, or less	50% of One (1) ESU
250 to 5,000 square feet	100% of One (1) ESU
5,000 square feet or more, or a parcel size exceeding 1.0 acres more, but less than 2.0 acres	150% of One (1) ESU
For parcels exceeding 2.0 acres	150% of One (1) ESU, plus 50% of One (1) ESU on the remainder of the parcel in excess of 2.0 acres.

Note 1:

In the absence of accurate area calculation information by the county assessor's office, the single-family residential properties shall be charged One (1) ESU. Structures defined as multi-family, but containing individually owned units shall be charged One (1) ESU per unit, and shall be charged to the individual owners of said units.

Note 2:

For all newly constructed single family residential units, the storm water management charge attributable to that residence shall commence on the 1<sup>st</sup> day of the month in which a certificate of occupancy, the date in which occupancy occurs, or 30 days after construction has ceased, whichever is first.

6. **Multi-Family Residential Property.** The storm water management charge for a multi-family residential property shall be the ESU rate multiplied by the number of individual dwelling units existing on the property. For all newly constructed multi-family residential units, the storm water management charge attributable to each residential unit shall commence on the 1<sup>st</sup> day of the month after a certificate of occupancy, the date in which the first unit is occupied, or 30 days after construction has ceased, whichever is first.
7. **Mobile Home Park Property.** The storm water management charge for any area classified and zoned as a mobile home park shall be the ESU rate multiplied by the number of individual park spaces, whether occupied or not, in the mobile home park. For all newly constructed mobile home parks, the storm water management charge attributable to each space shall commence on the 1<sup>st</sup> day of the month after the date in which the first unit is placed in the mobile home park.
8. **Undeveloped Property Classified as Agriculture, Commercial, or Industrial.** The storm water management charge for an unimproved parcel classified as agriculture (A), commercial (C) or industrial (I), defined as parcel of land with no impervious surfaces, shall be the ESU rate multiplied by 0.50 for each acre of land, or part thereof in the assessed parcel. A minimum fee of One Half (1/2) of an ESU shall be charged on all parcels containing less than one (1) acre. Properties located in a commercial zoning district or those which are not located in the 100-Year flood plain shall pay seventy percent (70%) of this amount. Properties located in the 100-Year flood plain shall pay thirty-five percent (35%) of this amount.

9. **Developed Property Classified as Agriculture with Improvements.** The storm water management charge for an improved agricultural parcel shall be charged One (1) ESU multiplied by a factor of 1.5 based on a parcel size to 2.0 acres of ground. All other land within the parcel in excess of 2.0 acres shall be charged in accordance with Section 8 of this ordinance.

10. **Developed Property Classified as Commercial or Industrial Outside the “Town Center District.”** The storm water management charge for a developed commercial, industrial or public use parcel located outside the “Town Center District” as defined by the City of Avoca, Iowa “Official Zoning Map”, as amended, on a parcel of land less than 1.0 acre in size, shall be One (1) ESU multiplied by the following factor:

<b>Percent of Impervious Surface</b>	<b>Factor</b>
Less than 30%	1.6
Over 30%	2.4

11. **Developed Property Classified as Commercial or Industrial Within the “Town Center District.”** The storm water management charge for a developed commercial, industrial or public use parcel located within the “Town Center District” as defined by the City of Avoca, Iowa “Official Zoning Map”, as amended, on a parcel less than 1.0 acres in size, shall be One (1) ESU multiplied by the following factor:

<b>Percent of Impervious Surface</b>	<b>Factor</b>
Less than 30%	2.0
Over 30%	3.0

12. **Measured Uses.** Properties that are not covered in 6.11(D)(5) through 6.11(D)(11), above, shall be “measured uses.” For such uses, the impervious surfaces of the property, as defined by rule, shall be measured. The area shall be estimated using one or more of the following: aerial photographs, assessment records, building permits, construction plans, site visits, ad valorem property tax records, storm and surface water system connection permits, field surveys or other sources deemed reliable by the City. The storm water management charge for measured uses shall be determined by dividing the gross parcel size (acres) of the property by 0.5. The whole number of the dividend shall then be multiplied by the applicable factor for the parcel as determined in 6.11(D)(10) through 6.11(D)(11), above, and then multiplied by the One (1) ESU.

13. **Seasonal Impervious Area.** Properties which have areas that are impervious for only a portion of the year shall constitute seasonal impervious area. For example, a greenhouse that is covered six months, and open with a pervious floor for six months. If an impervious area is in place for more than one month per year, it shall be included in the impervious area measurement, unless exempted under the policy for “Spreading of Runoff to Pervious Surfaces.”

**14. Exclusion from Impervious Surface Measurement.**

- a. Public Roads.** All roadways, whether dirt, gravel, or paved, shall be considered impervious, and unless a part of an exempted category of road, or a part of a flat rate use, shall be included in the impervious area measurement. A "roadway" is defined as an area intended for the purpose of providing access for motor vehicles. Roadways shall include such things as roads, streets, alleys and driveways. Public roads shall not be included in the measurement of impervious surfaces. All private roads are to be included in the measurement of impervious surface areas, except private roads that serve flat rate uses. Private roads are defined as all roads and driveways which have not been dedicated to the public and accepted for public use, and which are defined as an impervious surface under other city rules.
- b. Areas Not Accessed by Vehicles or Highly Compacted.** All parking and storage areas, whether dirt, gravel or paved, shall be deemed impervious. A parking area is defined as an area where motor vehicles are parked temporarily. This definition shall include such areas as public and private parking lots (regardless of frequency of use,) and storage areas. A dirt or gravel area that is not accessed by motor vehicles, or is not otherwise highly compacted, shall be considered pervious. This definition includes such uses as landscaping, and gravel or dirt area accessed only by foot traffic, or small vehicles, as defined above.
- c. Runoff Spread to Pervious Surfaces.** Impervious areas shall be excluded from measurement and charge if the runoff is spread to a pervious area that does not otherwise receive rainfall. For properties which meet the criteria of this subsection, all or part of the impervious area may be excluded from measurement and charge, as appropriate. For such property, the following criteria shall apply:

  - i.** It shall be the responsibility of the property owner to provide documentation as required by the city to demonstrate that the criteria are met.
  - ii.** The area of impervious area that can be exempted is limited to the area of the pervious area where the runoff is effectively spread.
  - iii.** To qualify, the runoff from an impervious area must not be concentrated but must remain as "sheet flow," or be spread so it is sheet flow; the runoff must pass through the pervious area before it is collected in a drain or channel system and carried away; and there cannot be any barriers such as a concrete foundation preventing the sheet flow runoff from passing through the impervious area.
- d. Quarry Property.** Permanent roadways, parking areas, and structures shall be included in the impervious area measurement. The actual excavated area from which material is being taken, and the temporary service roads in the excavation area shall be excluded as not being impervious.
- e. Railroad Facilities.** Railroad facilities shall be included in the measurement of impervious area, but the rail grade itself shall be excluded as being pervious.



- 15. Exemption from Stormwater Management Charges.** Users of properties for which all storm water is disposed of on-site, as defined by city standards, may request an exemption from storm water management system charges. The following shall apply:
- a.** No partial exemptions for disposal of only a portion of the storm and surface waters on-site, shall be allowed. In order to qualify for utility charge exemption, the user must design, construct and maintain an on-site facility that keeps all storm and surface water for the full range of storms during the year. This applicant for exemption must pay an initial inspection/review fee. For the purpose of this section, the term “property” means a parcel of land, or a group of adjacent parcels working in cooperation. The term “on-site disposal” means on the parcel, or on another parcel in the near vicinity of the parcel requesting the exemption.
  - b.** In order to qualify for the exemption, the on-site system must encompass the entire property (except for incidental impervious areas as defined below,) must be completely separated from the public system, and must provide adequate on-site disposal. Incidental area such as sidewalks, decks, and driveway aprons, shall not exceed 10 percent of the total impervious area.
  - c.** On-site disposal facilities that may qualify are dry wells, injection wells, retention basins with percolation/evaporation capacity, and retention basins with capacity large enough to accommodate the total of all storms through the year. Many of these may have a possible adverse effect on ground water, and some techniques may require approval of Federal, State, and other local agencies.
  - d.** To qualify, an applicant must submit a request to the city for a waiver of utility charges relating to the property. This request shall include a certification from an engineer, or other evidence acceptable to the city, that shows the system is separate and will dispose of the full range and volume of storm water through the year on-site. The applicant shall also submit a maintenance plan for assuring the system will function as designed. The application must be signed by the property owner.
  - e.** An inspection/review fee shall be paid at the time of application. If the application is denied, the inspection/review fee will be credited to the utility charges due. If the request for the waiver is made as part of the construction plans, this fee shall be waived.
  - f.** A decision denying an exemption may be appealed to the Board. If approved, the waiver will be effective for the next billing cycle.
  - g.** The City retains the right to inspect the on-site measures to assure they are functioning as designed. If at any time the measures are found to not be effective, the exemption shall cease.
- 16. Credits for Water Quantity Portion of the Stormwater Utility.** New developments that provide on-site retention, disposal, or detention, or provide off-site conveyance system enlargements are entitled to a credit in storm water management system charges. To be eligible, new development, or portions of new development, must include design and construction of a facility that meets one of the following standards:

- a. The retention facility sized to accommodate the full volume of storm water through the year with no overflow or release into the storm water management system. Eligible facilities shall be exempt from storm water management system charges.
- b. A disposal facility which keeps all storm and surface water separated from the public system, and disposes of it on-site for the full range of storms during the year, including the winter, through on-site disposal (dry wells, injection wells, percolation/evaporation basins.) Eligible facilities shall be exempt from storm water management system charges.
- c. A detention facility which meets or exceeds the standards defined in city rules for on-site storm water detention facilities. Eligible facilities shall be entitled to a reduction of one-half of the actual number of ESUs calculated. Upsizing of the downstream conveyance system. Credit shall be determined by the city on case by case basis. The term "on-site" means on the parcel, or on another parcel in the near vicinity of that for which the credit or reduction is requested. To be eligible for a credit (reduction) of storm water management system charges, the request must be submitted prior to, or as part of, the development process, but in all cases the request must be made prior to the payment of the storm water management system charges.
- d. To be eligible for a credit, the request can be made at any time, in accordance with the provisions of this ordinance. The request shall demonstrate the property meets one of the above conditions. For on-site facilities, the city reserves the right to inspect the facilities installed at any time. If it is found that the system no longer functions, then the storm water management system charges that were waived will become due and payable.

**17. Billing.** The City shall collect stormwater management charges for the service. Bills shall be sent by regular mail to every parcel owner in the City. Charges will be established in Title 1, Chapter 6, also known as the "Omnibus Rate, Charges, and Fees Ordinance". All delinquent accounts are subject to a late payment penalty in the amount of 10% of the fee due and further subject to a stoppage of service with a ten-day notice. Any service charge not paid, when due, shall constitute a lien upon the premises served and shall be collected as follows. In addition to remedies provided for collection of a debt, the city may seek a temporary or permanent injunction prohibiting continued occupancy of premises, may require disconnection of the premises from the public storm water utility system, may refuse to issue any permit to the user, and may terminate water and sewer service to the user's premises. The stormwater management charges shall be collected regardless of whether the parcel is otherwise served by water, sewer, or garbage services.

**18. Appeals.** All appeals must be filed in writing. The Board may adopt additional A fee may be established in Chapter 10 that must be filed at the time of each appeal. The following may be appealed to the Board:

- a. A determination that the person is obligated to pay the service charge imposed herein;

- b. A dispute as to the proper calculation of the amount due from the person. This shall not include, however, an objection to the overall establishment of the storm water utility charge or the amount per ESU.
- c. The appeal shall be filed in writing and must be actually received by the City no later than the thirtieth (30<sup>th</sup>) day after the billing statements have been mailed by the city.
- d. A fee may be established in Chapter 10 that must be paid at the time of the appeal request.

**6.13 Severability Clause.** If any subsection, provision, clause or paragraph of this Chapter, or rules adopted pursuant hereto, shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this section or such rules; and every other portion thereof shall remain in full force and effect. If the delegation of authority to any administrative agency is adjudged or declared invalid, the Council shall operate in place any administrative agency without affecting the validity of the remaining portions of this section or such rules.