



**Lewiston Public Works Advisory Commission
REGULAR MEETING AGENDA
May 10, 2023 - 12:00 PM
Lewiston City Library – Second Floor Event Space – 411 D Street
Lewiston, Idaho 83501**

Seating will be available on a first-come, first-served basis. All others who wish to observe this meeting may watch and listen to the livestream on their own device(s) by visiting the City of Lewiston's Facebook page or the City's website at cityoflewiston.org.

I. CALL TO ORDER

II. CITIZEN COMMENTS

This is an opportunity for citizens to address the Commission on agenda items or other items they wish to bring to the attention of the Commission or Staff. Comments may be made: (1) in-person, (2) by emailing publicworks@cityoflewiston.org, or (3) by calling 208-553-2662 and leaving a message. Comments submitted by email or phone will be forwarded to the Public Works Advisory Commission. If you would like your comment to be read out loud during the meeting, please so indicate in your message.

III. CONSENT AGENDA

All items on the Consent Agenda are considered routine and will be enacted by one motion. There will be no separate discussion on these issues unless a member so requests, in which case the item will be removed from the Consent Agenda and considered under Section IV - Items Moved from the Consent Agenda.

A. APPROVAL OF APRIL 12, 2023 MEETING MINUTES: - Action Item

B. APPROVAL OF THE LEWISTON ORCHARDS IRRIGATION DISTRICT (LOID) AS A FUTURE AGENDA ITEM: This item is to formalize approval of Commissioner Rehder's request that the Lewiston Orchards Irrigation District (LOID) be added as an agenda topic. Mr. Rehder's request came after the motion to approve during the April 12, 2023 meeting. - Action Item

IV. DIRECTOR'S REPORT

A. HIGH RESERVOIR UPDATE: Director Johnson provided a presentation to Council at the May 1, 2023 Work Session. Commission members are encouraged to watch the livestream recording from timestamp 2:30:15 to 3:10:22 at <https://livestream.com/lewiston/events/3725902/videos/236048077>.

V. DISCUSSION ITEMS

A. DRAFT ORDINANCE 4882 - STORMWATER DRAINAGE SYSTEM: Soliciting feedback on the draft Ordinance 4882 introduced at the May 1, 2023 Work Session. Commission members are encouraged to watch the livestream recording of the May 1, 2023 Work Session from timestamp

1:42:40 to 2:29:55 at <https://livestream.com/lewiston/events/3725902/videos/236048077>.

VI. ITEMS MOVED FROM THE CONSENT AGENDA - Action Item

VII. UPCOMING EVENTS/MEETINGS

A. REGULAR MEETING: JUNE 14, 2023

B. PUBLIC WORKS EXPO: MAY 25, 2023: The event will be held at the Nez Perce County Fairgrounds from 9am to 2pm and a *Notice of Possible Quorum* will be issued.

C. FISCAL YEAR 2024 BUDGET SESSION #2: MAY 22, 2023: This is the second in a series of budget sessions between City Council and City Department heads which will be held in-person and livestreamed at 3pm in the Bell Building 2nd Floor Meeting Room.

VIII. UNFINISHED AND NEW BUSINESS

A. BOARD MEMBER COMMENTS: Comments should not be related to an item currently before the Commission or an item that may come before the Commission in the foreseeable future, and should be limited to comments, not discussion.

B. STAFF LIAISON COMMENTS

C. FUTURE AGENDA ITEM: Per the April 12, 2023 meeting, future agenda topics include: Budget, Stormwater Utility, Streets/Roads, Design Standards (which would encompass right-of-way, engineering, stormwater, and development code), and regular High Reservoir updates. - Action Item

IX. ADJOURNMENT - Action Item

The City of Lewiston is committed to providing access and reasonable accommodation in its services, programs, and activities and encourages qualified persons with disabilities to participate. If you anticipate needing any type of accommodation or have questions about the physical access provided at this meeting, please contact Public Works Specialist Haley Kelley at least forty-eight (48) hours in advance of the meeting at 208-553-2662.

April 12, 2023

The PUBLIC WORKS ADVISORY COMMISSION met in the Bell Building 2nd Floor Meeting Room at 215 “D” Street. Director Dustin Johnson called the meeting to order at 12:01 p.m.

Public Works Advisory Commission meetings are recorded live. To view the full video, go to <https://livestream.com/lewiston/events/7428184/videos/235787922>.

I. CALL TO ORDER

COMMISSIONER PRESENT: Ryan Rehder; Laura Wright; Kevin Kelly; Kayleigh Philippi

CITY COUNCIL LIAISON PRESENT: Councilor Kathy Schroeder; Councilor Kasee Forsmann

STAFF MEMBERS PRESENT: Dustin Johnson, Public Works Director; Haley Kelley, Public Works Specialist; Aaron Butler, IT

II. CITIZEN COMMENTS

None.

III. ACTIVE AGENDA

A. ELECTION OF OFFICERS (ACTION ITEM)

Commissioners Wright and Kelly moved and seconded, respectively, the nomination of Councilor Kathy Schroeder as Chairperson. The motion was carried 5-0.

Chair Schroeder and Commissioner Philippi moved and seconded, respectively, the nomination of Commissioner Kevin Kelly as Vice-Chairperson. Public Works Specialist Kelley pointed out that Commissioner Philippi is a non-voting member.

Chair Schroeder and Commissioner Rehder moved and seconded, respectively, the nomination of Commissioner Kelly as Vice-Chairperson. The motion was carried 5-0.

B. ADOPTION OF PUBLIC WORKS ADVISORY COMMISSION BYLAWS (ACTION ITEM)

Commissioner Wright questioned the impact of holidays on regular meeting dates. Director Johnson explained that holidays falling on a regularly scheduled meeting will result in cancellation. He pointed out that meetings cannot occur without being publicly advertised and, should the group decide to hold a special meeting to handle business, said meetings would need to be advertised ahead of time. Mr. Johnson added that the commission was intended to be ad hoc but was formalized into a monthly meeting and hoped, for efficiency's sake, that the group would become familiar with Public Works documents to make the most of each meeting.

Chair Schroeder questioned whether the commission should meet biweekly. Mr. Johnson affirmed that it would be the commission's decision.

Commissioner Philippi requested clarification of the term limit in *Article III.B* of the bylaws. Commissioner Rehder clarified that the section in question is in reference to the officer term limits, not commission member term limits.

Commissioner Wright and Vice-Chair Kelly motioned and seconded, respectively, the approval of

the Public Works Advisory Commission bylaws. The motion carried 5-0.

C. DISCUSSION OF INITIAL FOCUS OF COMMISSION (ACTION ITEM)

Commissioner Rehder asked the group what the commission's purpose and function would be.

Director Johnson believed that the commission originated from the now defunct Stormwater Task Force which formed as a result of the previous stormwater utility. The now defunct group was composed of technical and non-technical people who reviewed existing stormwater regulations and master plans, met with staff, and vetted ideas with the public. These efforts culminated in a recommendation letter to Council which has since guided staff efforts on the new utility. Mr. Johnson requested that the members of this commission vet anything brought before them and provide feedback.

Chair Schroeder, Commissioner Philippi, and Councilor Forsmann expressed interest in increased focus on public outreach efforts.

Commissioner Wright shared her thoughts that the commission was an opportunity for the Director to present and vet ideas prior to Council.

Mr. Rehder offered a summary of the commission's purpose as an opportunity to conduct a deeper dive into Public Works efforts, proposals, and decisions.

Commissioner Wright and Vice-Chair Kelly moved and seconded, respectively, that the focus of the commission will be a combination of technical, financial, education and outreach in helping to prioritize various projects or needs within the Public Works Department as a recommendation to the Public Works Director which therefore goes to the City Council for direction. The motion carried 5-0.

IV. AGENDA TOPICS (ACTION ITEM)

Director Johnson stressed that commission housekeeping items would need to be completed up front but requested agenda topics now to keep momentum. Mr. Johnson personally added the topic of stormwater to the list of proposed agenda items in light of the City's formation of a stormwater utility. He shared that the draft ordinance which, once adopted, would serve as the guiding document for the formation of the utility and would be introduced during the May 1, 2023 Work Session. He clarified that the adoption of the ordinance would not include an adoption of any rate.

Commissioner Wright introduced the topic of budget and also requested clarification on the rate adoption process. Mr. Johnson clarified that utility rates are not required to be voted on by the public as it is a service provided and not a tax and is thus under Council's purview. Ms. Wright then asked whether the utility would be for flood mitigation and the control of stormwater or if it would be for maintenance. Mr. Johnson confirmed that the utility would be used to address all of these items.

Vice-Chair Kelly asked how the new utility relates to previous City efforts. Mr. Johnson expressed that the May 1, 2023 Work Session is geared towards addressing that very question. Mr. Kelly then asked if other Idaho municipalities with stormwater utilities also have Municipal Separate Storm Sewer System (MS4) permits. Mr. Johnson explained that the driving force for stormwater utilities in Idaho is due to the state now issuing and administering MS4 permits. The MS4 permit is a federal requirement which

requires monitoring, maintenance, public education, enforcement, etc. compliance requirements. Mr. Johnson reiterated that the stormwater utility is to meet these federal requirements.

Introducing the “Joe Hall Ford” project as an example for public education and outreach purposes, Mr. Kelly shared that he had been questioned in the past as to why the City didn’t save money for this project ahead of time. Mr. Kelly, calling out the Water Treatment Plant and Wastewater Treatment Plant as examples, explained that in the past, the City had not been planning for Capital improvements which is why a rate study was conducted and implemented. Mr. Johnson explained that the City has been saving for the Joe Hall Ford project for years and is merely one component of many long-standing drainage issues of the 21st Street corridor. He stressed that the cost of construction is outpacing the City’s ability to save for projects.

Ms. Wright asked that streets/roads be added to the list of agenda topics.

Mr. Kelly asked how stormwater could be tied into future planning and used the current update to the Comprehensive Plan as an example. Mr. Johnson stated that the Comprehensive Plan is being updated and that all engineering master plans speak to a comprehensive plan and vice versa. He explained that engineering master plans are typically on a five-year cycle which means that as the City adopts the Comprehensive Plan, Public Works will be using that plan to help dictate the master plans in the next few years. Mr. Johnson also explained that the City’s engineering design standards, stormwater design standards, development code, subdivision code, and right-of-way standards have been in review and that the upcoming update to the Comprehensive Plan will inform any updates to these standards.

Director Johnson and Vice Chair Kelly moved and seconded, respectively, that staff bring forward the following items for future agenda topics: budget, stormwater utility, streets/roads, design standards (which would encompass right-of-way, engineering, stormwater, and development code), and regular High Reservoir updates. The motion carried 5-0.

Director Johnson notified the group that an internal City staff budget kick-off meeting would take place that afternoon and that he also planned to present an update on the High Reservoir at every commission meeting. Mr. Johnson then provided the group with an update.

Commissioner Rehder requested that the Lewiston Orchards Irrigation District (LOID) be added as an agenda topic.

Chair Schroeder asked whether there was overlap in infrastructure between the City and LOID. Mr. Johnson clarified that the City and LOID do not have overlap in infrastructure but share one intertie which has been used to supplement water to the other in the past. He stated that staff have already considered LOID water in relation to the High Reservoir but that it was not a viable option.

V. COMMISSIONER COMMENTS

Commissioner Philippi stated that should the group amend the bylaws to biweekly meetings, she would need to attend remotely.

Director Johnson notified the group that an amendment to City Code would be presented to Council to increase the total number of voting members of the commission to seven. Mr. Johnson has received one more application and has received interest from two others who have yet to apply.

Commissioner Wright shared that Public Works Week is May 21st through May 27th with the Public Works Expo being held on May 25th and requested that Mr. Johnson provide an overview of the event. Mr. Johnson explained that the annual Public Works Expo is coordinated alongside other local agencies to provide education on water, wastewater, stormwater, engineering, GIS, traffic, etc. services and is geared towards children but that all are welcome. Ms. Wright expressed that seniors would be another favorable demographic to invite.

Councilor Forsmann said that she is excited to start this and is thankful to the other members for serving.

VI. STAFF LIAISON COMMENTS

All commission members confirmed that they would be attending the next regularly scheduled meeting for Wednesday, May 10th.

VII. ADJOURNMENT - Action Item

There being no further business, Vice-Chair Kelly and Commissioner Wright moved and seconded, respectively, to adjourn the meeting. The motion carried 5-0 and the Public Works Advisory Commission adjourned at approximately 1:11 p.m.

RESPECTFULLY SUBMITTED,

Haley Kelley,
Recording Secretary

Chairperson or Acting Chairperson
Public Works Advisory Commission

Approved this ____ day of _____, 2023

ORDINANCE NO. 4882

AN ORDINANCE OF THE CITY OF LEWISTON REPEALING CHAPTER 36, ARTICLE IV OF THE LEWISTON CITY CODE; ENACTING A NEW ARTICLE IV TO CHAPTER 36 OF THE LEWISTON CITY CODE, WHICH ARTICLE ESTABLISHES A SYSTEM OF STORMWATER DRAINAGE SYSTEM USER FEES TO FUND THE PROVISION OF PROPRIETARY STORMWATER SERVICES BY THE CITY TO PROPERTY OWNERS WITHIN THE CITY'S JURISDICTION, APPROVES ADMINISTRATION OF THE USER FEE SYSTEM, AUTHORIZES STORMWATER USER FEES AND ESTABLISHES A PROCESS FOR PROPERTY OWNERS TO APPEAL THE AMOUNT OF THE FEE, REQUIRES THAT STORMWATER USER FEE REVENUE BE KEPT SEPARATE FROM THE GENERAL FUND AND SPENT ONLY ON STORMWATER DRAINAGE SYSTEM COSTS, AND ESTABLISHES ENFORCEMENT PROVISIONS AND PENALTIES FOR NON-PAYMENT OF FEES; AMENDING VARIOUS SECTIONS OF CHAPTER 36.5 OF THE LEWISTON CITY CODE RELATED TO CITY SERVICES BILLING AND COLLECTION OF UTILITY CHARGES; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after a public hearing regarding the provisions of this ordinance held on

_____, 2023, the Mayor and City Council make the following findings:

A. Authority

The City of Lewiston ("City") has authority to:

1. Sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the City; acquire, hold, lease, and convey property, real and personal; have a common seal, which the City may change and alter at pleasure; erect buildings or structures of any kind, needful for the uses or purposes of the City; and exercise all powers and perform all functions of local self-government in City affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the State of Idaho, pursuant to Idaho Code § 50-301 (Corporate and local self-government powers).
2. Prevent the flooding of the City or secure its drainage, to assess the cost thereof to the property benefited, and for such purpose may make any improvement or perform any labor on any stream or waterway, either within or without the City limits, when necessary to protect the safety of life and property of the City; cause any parcel of land within its limits on which water may at any time become stagnant to be filled or drained in such manner as may be directed by a resolution of the Council, and such owner or his agent shall, after service of a copy of such resolution, comply with the directions of such resolution within the time therein specified; and, in case of failure or refusal to do so, it may be done by the City, and the amount of money

so expended shall be assessed against such property and the amount thereof collected as special assessments under Idaho Code § 50-1008, pursuant to Idaho Code § 50-333 (Flood prevention – drainage).

3. Impose and cause to be collected fees for those services provided by the City that would otherwise be funded by property tax revenues. The fees collected shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered, pursuant to Idaho Code § 63-1311 (Fees for services).
4. Operate the City Stormwater Drainage System (“System”) for the use and benefit of those served by such works, for the promotion of the welfare, and for the improvement of the health, safety, comfort, and convenience of the inhabitants of the City; acquire by gift or purchase, and construct, reconstruct, abandon, improve, better, or extend the System within any part or partially within City limits, or partially outside of City limits; issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of the System; prescribe and collect rates, fees, tolls, or charges, including the levy or assessment of such rates, fees, tolls, or charges, against governmental units, departments or agencies, including the State of Idaho and its subdivisions, for the services, facilities, and commodities furnished by the System; and prescribe and collect reasonable rates, fees, tolls, or charges for the services, facilities, and commodities furnished by the System, and revise such rates, fees, tolls, or charges from time to time, to provide that the System shall be and always remain self-supporting. The rates, fees, tolls, or charges prescribed shall be such as will produce revenue at least sufficient to pay all bonds and interest thereon and provide for all expenses of operation and maintenance of such works, including reserves therefore. The construction, acquisition, improvement, equipment, custody, operation, and maintenance of the System, and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the governing body of the City, pursuant to the Idaho Revenue Bond Act, Idaho Code §§ 50-1027 to 50-1042.
5. Clear, cleanse, alter, straighten, widen, pipe, wall, fill, or close any waterway, drain, or sewer, or any watercourse in the City when not declared, by law, to be navigable, and, as provided in Idaho Code § 50-1008, assess the expense thereof in whole or in part to the property specially benefited thereby, pursuant to Idaho Code § 50-332 (Control of sewers and drains).

B. MS4 Permit Compliance

1. To manage stormwater and protect people and property within the City, the City has constructed stormwater drainage components that, along with intertwined natural drainage courses, are part of the overall City Stormwater Drainage System. The System provides proprietary drainage services to public and private property whose stormwater runoff has been discharged into the System through direct manmade connections as well as through overland flows. Portions of the System discharge to the Snake River, Clearwater River, Lindsay Creek, Tammany Creek, and other associated Waters of the United States within the City. The majority of the System has been designated as a regulated Municipal Separate Storm Sewer System (MS4) by the United States Environmental Protection Agency (“EPA”).

2. The City has been issued a MS4 permit by the U.S. Environmental Protection Agency (EPA), administered by the Idaho Department of Environmental Quality (IDEQ), that authorizes the City to discharge stormwater from the MS4 into Waters of the United States, as long as such discharges are in compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, and as described by the MS4 permit conditions and requirements. These conditions and requirements impose a regulatory cost associated with the City's provision of drainage services to its customers.
3. The MS4 permit imposes mandatory requirements on the City in order to legally discharge stormwater from the MS4 into Waters of the United States, including:
 - a. Public education and outreach on stormwater impacts,
 - b. MS4 illicit discharge detection and elimination,
 - c. Construction site stormwater runoff control,
 - d. Post-construction stormwater management for new development and redevelopment projects,
 - e. Pollution prevention/good housekeeping for City operations,
 - f. Stormwater pollution related monitoring/assessment activities,
 - g. Stormwater pollutant reduction activities,
 - h. Stormwater system mapping and planning,
 - i. Keeping stormwater compliance records, and
 - j. Completing stormwater compliance reports.
4. Failure by the City to comply with MS4 permit requirements would subject the City to civil and criminal penalties under federal law, which would place the City's resources and staff at financial, civil, and criminal risk and subject the City's stormwater customers to additional financial and regulatory burdens.

C. Compliance with Idaho Statutes and Administrative Requirements for Discharging Stormwater to Groundwater

1. Portions of the City's Stormwater Drainage System receive stormwater from individual properties into a City system of curbs, gutters, ditches, swales, detention basins, open spaces, and other appurtenances that dispose of part of the drainage by infiltration into the ground over deep and shallow aquifers. In addition, the City's MS4 permit requires the City to promote, where feasible, the use of on-site retention and infiltration of stormwater runoff for new development and redevelopment projects.
2. The Idaho Department of Environmental Quality ("IDEQ") and Idaho Department of Water Resources ("IDWR") regulate stormwater drainage over aquifers. Uncontrolled discharges

from stormwater systems to groundwater can impact groundwater quality and protected beneficial uses.

3. Pursuant to IDAPA 58.01.11, IDEQ's Ground Water Quality Rule, activities with the potential to degrade aquifers shall be managed in a manner that maintains or improves existing ground water quality through the use of best management practices and best practical methods to the maximum extent practical, and no person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that: (a) causes a groundwater quality standard to be exceeded; (b) injures a beneficial use of groundwater; or (c) is not in accordance with a permit, consent order, or applicable best management practice, best available method, or best practical method.
4. Additionally, pursuant to IDAPA 37.03.03, IDWR's Rules and Minimum Standards for the Construction and Use of Injection Wells, IDWR regulates the use of drywells and other shallow injection systems used to dispose of stormwater below the ground surface. Use of a shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of surface or groundwater quality standards that would affect a beneficial use.
5. Failure by the City to comply with IDAPA Administrative Rules 58.01.11 and 37.03.03 would subject the City to enforcement actions, thereby subjecting the City's stormwater customers to additional financial and regulatory burdens.

D. Compliance with *Lewiston Independent School Dist. No. 1 v. City of Lewiston*

1. The City's original stormwater fee was judged to be an unlawful tax rather than a lawful regulatory fee or user fee by the Idaho District Court, whose decision was upheld by the Idaho Supreme Court upon appeal. *Lewiston Independent School Dist. No. 1 v. City of Lewiston*, 151 Idaho 800, 264 P.3d 907 (2011).
2. Key factors cited by the Court that led to the decision overturning the City's prior stormwater user fee included:
 - a. The Court did not perceive that the City's storm drains provided identifiable benefits and services to properties.
 - b. The Court concluded that the City's stormwater fee was not a fee for service, but was instead "a revenue generating tax created to benefit the general public by charging all property owners for the privilege of using the City's preexisting stormwater system, regardless of whether they are using the stormwater system or not."
 - c. The City determined that a portion of stormwater fee revenue would be used to pay for some activities that were not entirely stormwater related, such as street maintenance and rebuilding.
 - d. The Court concluded that "the Stormwater Utility has an ad hoc structure" under which the City made "ad hoc determination[s] as to what constituted...stormwater activities."

- e. The City charged fees to all owners of property with impervious surfaces with no exceptions for those “whose runoff does not enter the stormwater drain because they have their own stormwater systems or because their neighborhoods are not connected to the stormwater system.”
 - f. The Court concluded that “it is unclear whether the Council has adopted a distinct Stormwater Utility structure separate from the Street Maintenance Department.”
 - g. The Court found that, although the prior ordinance required that “all fees would be collected and separated from the general revenue,” the actual practice was different. “In practice, stormwater fees are commingled with the City’s general funds in the City’s primary checking account.”
 - h. According to the Court, “the City did not proceed under the Revenue Bond Act.”
 - i. Fees charged for a stormwater utility do not qualify as regulatory fees under the police power because the amount charged is not related to the cost of a regulatory or enforcement program.
3. To address the factors cited by the Court in *Lewiston Independent School Dist. No. 1 v. City of Lewiston*, the stormwater user fee authorized by this ordinance does the following:
- a. This ordinance recognizes that, like the provision of potable water and sanitary sewer services, the City’s Stormwater Drainage System serves a proprietary function, not a regulatory or governmental function. Fees associated with the provision of this service to property owners are user fees, not incidental regulatory fees.
 - b. This ordinance recognizes that the City Stormwater Drainage System provides tangible benefits and services to property owners who use the System and consume System capacity and services. The array of stormwater benefits and services to customers are described in the City’s Stormwater User Fee Basis, Rate Structure, and Policy Memorandum prepared by Aspect Consulting in 2018, which was adopted by the City Council through Resolution 2022-17.
 - c. The user fee authorized by this ordinance is used to recover, on a pro-rata basis, costs incurred by the City in providing stormwater drainage services, including the cost of maintaining the System and complying with all applicable regulations. The system of stormwater fees is not intended to generate revenues in excess of these costs.
 - d. This ordinance establishes a separate City Stormwater Division that, similar to the City’s Water and Sewer Divisions, is charged with: (1) properly planning, operating, maintaining, and constructing the Stormwater Drainage System; (2) updating the City’s stormwater ordinances, standards, and codes as required by state and federal laws; and (3) otherwise complying with applicable stormwater regulations.
 - e. Pursuant to this ordinance, fees will be charged only to properties actually receiving stormwater services; in other words, those properties discharging stormwater, whether directly or indirectly, to the City’s Stormwater Drainage System.

- f. This ordinance allows property owners to seek stormwater fee adjustments, or elimination of fees, through an application and appeal process to reflect their burden on, and services received from, the Stormwater Drainage System.
- g. This ordinance prohibits using stormwater user fee revenue to pay for non-stormwater related City costs.
- h. This ordinance places stormwater user fee revenue in a separate, dedicated stormwater enterprise fund and prohibits commingling such revenue with the City's general fund.
- i. This ordinance requires the City to adopt a detailed and transparent stormwater budget when setting stormwater fees and accounting for how stormwater fee revenue is spent.
- j. This ordinance relies on authority contained within the Idaho Revenue Bond Act and other sources of authority cited herein.

WHEREAS, based on the findings set forth above, it is deemed by the Mayor and City Council to be in the best interest of the City of Lewiston that the following stormwater user fee regulations be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: Article IV (Stormwater Utility Ordinance) of Chapter 36 of the Lewiston City Code is hereby repealed in its entirety.

SECTION 2: A new Article IV, "Stormwater User Fees," is hereby added to Chapter 36 of the Lewiston City Code as follows:

**ARTICLE IV.
STORMWATER USER FEES**

Sec. 36-251. Authority.

This article is enacted pursuant to the authority vested in the City by the Idaho Revenue Bond Act (I.C. §§ 50-1027 through 50-1042), Idaho Code § 50-301 (Corporate and local self-government powers), Idaho Code § 50-332 (Control of sewers and drains), Idaho Code § 50-333 (Flood prevention—drainage), and Idaho Code § 63-1311 (Fees for services).

Sec. 36-252. Purposes.

The purposes of this article are to:

- (1) Equitably allocate the operation, maintenance, improvement, and regulatory compliance expenses of the City's Stormwater Drainage System to the users of the System in proportion to the level and type of services received from the System.
- (2) Provide for the establishment of a system of stormwater user fees and provide that the fees collected are set aside and designated solely for use for the maintenance, operations, improvements, regulatory requirements, and program costs of the City's Stormwater Drainage System.
- (3) Establish standards and implement programs necessary and/or convenient to comply with the requirements of the City's NPDES or IPDES MS4 permit, as well as the rules governing collection, treatment, detention, and disposal of stormwater over the shallow and deep aquifers that underlie Lewiston.
- (4) Establish a City Stormwater Division to operate and maintain the City's Stormwater Drainage System and manage stormwater and drainage issues within the City.

Sec. 36-253. Definitions.

For purposes of this article, the following terms and acronyms shall have the meaning herein set forth unless the text of the use of the term clearly requires otherwise:

- (1) *Coordinator or Stormwater Coordinator.* The person serving under the direction of the Public Works Director who is charged with supervising and overseeing the City's Stormwater Division, the Stormwater Drainage System, and the City's system of stormwater user fees.
- (2) *Impervious Surface.* Material that resists or blocks the passage of water into soils as would occur under natural conditions. Examples include, but are not limited to, rooftops, roads, alleys, parking lots, sidewalks, patios, decks, graveled areas, and swimming pools.
- (3) *MS4 Permit:* (1) The national pollutant discharge elimination system (NPDES) permit issued to the City by the Environmental Protection Agency in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, as amended by the Water Quality Act of 1987, PL 100-4, for stormwater discharges from small municipal separate storm sewer systems (MS4); or, (2) upon assumption of primacy from EPA by the Idaho Department of Environmental Quality (IDEQ) for the Clean Water Act stormwater permitting program in Idaho, an Idaho pollutant discharge elimination system (IPDES) permit.
- (4) *Stormwater Drainage System:* The City-maintained system of ditches, channels, swales, culverts, basins, treatment systems, gutters, inlets, storm pipes, outfalls, ponds, creeks, rivers, wetlands, and any other appurtenances necessary, useful,

or convenient for the orderly collection, conveyance, treatment, and disposal of municipal stormwater runoff.

- (5) *Stormwater Fund*: A dedicated stormwater enterprise fund that is kept separate from the City's general fund and solely used to cover stormwater costs, such as, but not limited to, updating, administering, studying, planning, operating, maintaining, and constructing the Stormwater Drainage System; and complying with all applicable stormwater regulations.
- (6) *Stormwater User Fee*: A reasonably individualized fee charged to property owners or tenants for stormwater services provided by the City's Stormwater Drainage System.

Sec. 36-254. Applicability.

All real property within the corporate limits of the City containing impervious surface that drains stormwater runoff into the City's Stormwater Drainage System is subject to this article.

Sec. 36-255. Stormwater Division Created.

- (a) Stormwater Division Created. There is hereby created a Stormwater Division for the City. The Stormwater Division shall have regulatory authority and responsibility for planning, design, construction, maintenance, operation, and administration of the City's Stormwater Drainage System and the services provided to users of the System.
- (b) Stormwater Division's Regulatory Functions. The Stormwater Division is charged with administering and enforcing the City's existing stormwater ordinances, codes, and standards, as well as developing, administering, and enforcing future stormwater ordinances, codes, and standards necessary to comply with State and Federal regulations affecting the provision of stormwater services to customers within the City.

Sec. 36-256. Stormwater Division Administration.

- (a) Stormwater Division Administration. The Stormwater Division shall be administered within the Public Works Department. The Stormwater Division shall be administered in a manner similar to the City's existing public utilities.
- (b) Stormwater Coordinator. The Stormwater Division, Stormwater Drainage System, and City system of stormwater user fees shall be under the supervision of the Stormwater Coordinator, who shall serve in such capacity under the direction of the Public Works Director.
- (c) Annual Reports. In order for the City Council to exercise its authority under Idaho Code § 50-1031, the Stormwater Coordinator shall provide the City Council with an annual report of the activities funded by stormwater user fees during the preceding year and a projection of the upcoming year's expenditures.

Sec. 36-257. Policies and Procedures.

The Coordinator is authorized to establish and update, from time-to-time, written policies and procedures to implement the provisions of this article.

Sec. 36-258. Stormwater User Fee.

- (a) Stormwater User Fee. The City may establish stormwater user fees that are proportionate to the costs of providing proprietary stormwater services to customers within the City in accordance with the costs of the operation and maintenance of the City's Stormwater Drainage System, including all related stormwater administration, planning, repair, improvement, and regulatory compliance and enforcement costs, and for any redemption of bonds that are used to finance any system improvement.
- (b) Fee Established by Resolution. The fees authorized by this article shall be set by resolution of the City Council and may be amended by the City Council from time-to-time.
- (c) Nature and Purpose of User Fee. The fees authorized by this article are not a one-time impact fee, capitalization fee, or buy-in fee. Rather, the fees shall be charged to users on an ongoing, periodic basis. Revenue collected from such user fees may be used for ongoing and recurring stormwater expenses, such as the costs of the operation and maintenance of the City's Stormwater Drainage System, including all related stormwater administration, planning, repair, improvement, and regulatory compliance and enforcement costs, and for any redemption of bonds that are used to finance any system improvements, capital expenditures, and retirement of debt associated with capital expenditures.
- (d) Quantification of User Fee. The amount of a customer's stormwater user fee shall be based on the user's pro-rata share of the estimated cost of service a City stormwater customer receives from the City Stormwater Drainage System. The fee shall be reasonably determined based on the volume of runoff from a customer's real property (as reflected by the extent of impervious surface) into the City Stormwater Drainage System and the primary characteristics of the Stormwater Drainage System that serves a particular customer – piped drainage systems versus dispersed infiltration systems, which affects the type and cost of stormwater services. To better individualize user fees, the City shall establish two stormwater service areas that reflect the primary characteristics of the Stormwater Drainage System and the nature and cost of services provided to customers within each service area. Impervious surface area is well correlated with urban runoff volume; therefore, the volume of runoff into the City Stormwater Drainage System shall be based on the estimated amount of impervious surface on a customer's property that drains runoff to the City Stormwater Drainage System. In addition, to further individualize and correct user fees, customers may provide information to the City pursuant to subsections (f) and (i) of this section regarding on-site factors that affect the level

of the customer's stormwater services, such as practices that eliminate or reduce the volume of the customer's runoff or the pollution it contains.

- (e) Periodic Revisions to Fee Calculation. The City shall periodically review the stormwater fee structure and rate and make adjustments as necessary to account for the most recent information on anticipated stormwater costs, debt obligations, revenue on hand, and anticipated fees and other revenue. Stormwater rates shall be reviewed and adopted during the City's annual budgeting process.
- (f) System of User Fee Credits for Commercial Properties. User fee credits shall only be available for commercial properties, not residential properties. The City shall provide a written system of user fee credits to better individualize fees to reflect a commercial customer's burden on the Stormwater Drainage System and the value of services provided by such system to the customer. The written system of, and application for, user fee credits shall reasonably account for on-site practices or conditions that significantly: (1) affect the expected volume and pollution of runoff flowing from a customer's real property to the Stormwater Drainage System; or (2) otherwise affect the cost for the City to manage and dispose of the customer's runoff.

Stormwater customers may provide information to the Coordinator and apply for applicable user fee credits. The burden of proof for initial and ongoing credit eligibility shall lie with the customer. A decision regarding credit eligibility shall be made by the Coordinator within thirty (30) calendar days of receiving a complete application. The Coordinator's decision may be appealed as set forth in subsection (j) of this section.

The City may charge a credit application processing fee that reasonably reflects the administrative cost of reviewing and processing the application. Such fee shall be set by resolution of the City Council and may be amended by the City Council from time-to-time.

- (g) Exemption from User Fee. It is the City's policy to waive user fees for real property that does not use the City's Stormwater Drainage System because such real property: (1) does not have any impervious surface, (2) is served by its own stormwater system such that the real property's stormwater runoff does not discharge to the City's Stormwater Drainage System, or (3) is not directly or indirectly hydraulically connected to the City's Stormwater Drainage System. Customers may submit a request for an exemption under subsections (f) and (i) of this section.
- (h) Customer Database. The City shall use readily available information, such as aerial photographs or other data, to prepare a stormwater customer database containing reasonable estimates of impervious surface area on parcels within the City, along with parcel ownership and other information relevant to a customer's stormwater user fee. The City does not warrant that the customer database will

be free from errors, which is why it is important for customers to notify the City pursuant to subsections (f) and (i) of this section if they think their fees are incorrect. The City shall keep and maintain the customer database of impervious surface and fees in accordance with the City's record retention schedule. The City shall recalculate a customer's impervious surface and fee, including reviewing whether the real property is exempt, each time additional development occurs on the property that would significantly increase or decrease the amount of the fee as determined by the Coordinator. The recalculation of the fee shall be triggered by an application for a building or site development permit, or upon a customer's request pursuant to subsections (f) and (i) of this section.

- (i) Stormwater User Fee Corrections. The City shall provide a process for customers to submit information to the Coordinator to adjust or eliminate their stormwater user fee. A customer who thinks that his or her fee is based on an incorrect calculation of impervious surface; that the subject property, or portions thereof, does not receive any drainage services from the City Stormwater Drainage System for the reasons described in subsection (g) of this section; or that his or her stormwater user fee is otherwise incorrect shall submit a written recalculation application to the Coordinator. The application must identify the basis for disagreement with the user fee and be accompanied by relevant supporting documentation. The Coordinator shall determine whether the fee should be recalculated and, if so, recalculate the fee. The Coordinator shall notify the customer, in writing, within thirty (30) calendar days following receipt of the completed written request for recalculation of the Coordinator's decision. The Coordinator's decision may be appealed as set forth in subsection (j) of this section.

(j) Appeal of Stormwater User Fee Decisions.

- (1) Applicability. This subsection (j) shall apply to the Coordinator's written decisions regarding user fee credits, corrections, and exemptions made pursuant to subsections (f) and (i) of this section, respectively.
- (2) Service of Decision. Service of the Coordinator's written decision may be accomplished by hand-delivery or by mail. If such decision is hand-delivered, it shall be deemed received immediately. If such decision is served by mail, it shall be deemed received seventy-two (72) hours after depositing the same in the U.S. mail, first class, certified, or registered; postage prepaid; and addressed to the customer's last known post office address.
- (3) Notice of Appeal. A customer aggrieved by a written decision of the Coordinator pursuant to subsections (f) or (i) of this section may appeal such written decision to the Mayor. Written notice of the appeal, along with the appeal fee, as set by resolution of the City Council, which may be amended from time-to-time, shall be filed with and paid to the City Clerk

within thirty (30) calendar days from the date of receipt of the Coordinator's written decision. The notice of appeal shall specify the grounds for appeal and be accompanied by relevant supporting documentation. If a notice of appeal is not filed within thirty (30) calendar days of receipt of the Coordinator's written decision, then the Coordinator's decision shall be final.

- (4) Consideration of Appeal. The Mayor shall review the information submitted by the Coordinator and the appellant. The Mayor may request that additional information be provided by the Coordinator or appellant, and/or request the Coordinator and appellant attend an appeal hearing to present and review information and answer questions in person. If an appeal hearing is held, the appellant shall have the right to be represented by legal counsel at the hearing and rebut any evidence that is submitted. The formal rules of evidence shall not apply. The Mayor's review of the Coordinator's decision shall be based on an abuse of discretion standard.

The Mayor may affirm, reverse, or modify the Coordinator's decision. The Mayor shall issue a written decision within forty-five (45) calendar days from the date of receipt of the completed notice of appeal, and such decision shall be final.

- (5) User Fees During Appeal. During the appeal process set forth in this subsection (j), the appellant shall pay the user fees as determined appropriate by the Coordinator. If the Mayor reverses or modifies the Coordinator's decision to the benefit of the appellant, then the appellant shall be entitled to a refund, as set forth in subsection (k) of this section.

- (k) Refunds. Upon determination by the Coordinator or Mayor that a user fee was improperly calculated such that a customer paid more than what his or her fee should have been in accordance with this section, the City shall refund such amount to the customer in accordance with section 36.5-18(c) of this code.

Sec. 36-259. Billing and Enforcing Payment of Stormwater User Fees.

All billings for user fees charged under the provisions of this article shall be billed and collected in the same manner as the City's other public utilities as it relates to billing, payment, delinquency, and penalty provisions.

Sec. 36-260. Stormwater Fund and Expenditures.

- (a) Segregation of Funds. All fees and charges received and collected under authority of this article shall be deposited and credited to an enterprise fund to be designated as the Stormwater Fund. All revenue accruing to the Stormwater Fund shall be maintained in a separate bank or financial account from, and shall not be commingled with, the City's general revenue.

- (b) Accounting of Receipts and Expenditures. The accounts of the Stormwater Fund shall show all receipts and expenditures for the maintenance, construction, operation, and repair of the City's Stormwater Drainage System, including the payment of any System bonds issued by the City, which, from time-to-time, may be outstanding.
- (c) Other Revenue Sources. The City may deposit other monies in the Stormwater Fund, including, for example, revenue from grants, damages or penalties collected, or contributions of general revenue of the City.
- (d) Expenditure on System Expenses Only. All funds generated by the implementation of this article, as well as other deposits to the Stormwater Fund as provided in subsection (c) of this section, shall only be expended on the operation, maintenance, and other expenses, including regulatory compliance, of the Stormwater Drainage System. General street maintenance, repairs, or improvements, such as filling potholes, repaving, striping, winter sanding, removal of limbs and other large debris from streets, or other general fund expenditures shall not be charged to the Stormwater Fund; however, the Stormwater Fund may be used to repair and replace curbs and gutters and remove pollutants from the Stormwater Drainage System via sweeping or other methods in order to maintain the integrity of the Stormwater Drainage System and comply with applicable regulations. The Coordinator and the City Treasurer shall adopt additional policies and/or guidelines to ensure that monies in the Stormwater Fund are only spent on valid drainage system expenses in accordance with this article.
- (e) Availability of Deposited Funds. When budgeted and appropriated, the funds and credits to the account of the Stormwater Fund shall be available to pay for maintenance, operation, and repairs of the Stormwater Drainage System, to comply with the City's MS4 Permit, and to the extent legally available for payment into a sinking fund established for the payment of the principal and interest of any general obligation system bonds that shall from time-to-time be outstanding.
- (f) Independence from the General Fund. The Stormwater Division shall operate independently of the City's general fund and shall have the same relationship to the City as the other utilities provided by the City. Upon creation of the Stormwater Division, the City's drainage facilities and assets, other than streets, shall be transferred to the Stormwater Division in accordance with Governmental Accounting Standards Board (GASB) Financial Reporting Principles.

SECTION 3: Lewiston City Code § 36.5-1 is hereby amended as follows:

Sec. 36.5-1. Policy.

It is the policy of the city to operate the water, wastewater, stormwater, and solid waste utilities as business enterprises that benefit the community by providing clean water and

sanitary wastewater service, drainage service, and ~~by providing~~ solid waste management. User charges for service are set to cover the full costs of operation and maintenance and capital improvements of the utilities, as such, accuracy and timeliness in billing and collecting user charges is important. The city bills for all ~~three (3)~~ four (4) utilities on a single monthly bill, for other services requested by the customer, and other fees required by resolution. Rates for each service area are separately calculated but are combined and printed on a single bill to facilitate billing and payment processing. The city maintains separate funds to account for specific revenues and expenditures. Monies paid for water service are accounted for in the water fund; monies for wastewater service are accounted for in the wastewater fund; monies paid for stormwater service are accounted for in the stormwater fund; monies paid for solid waste are accounted for in the solid waste fund; and monies paid for other fees required by resolution are accounted for as described in the applicable provisions of the Lewiston City Code.

SECTION 4: Lewiston City Code § 36.5-2 is hereby amended as follows:

Sec. 36.5-2. Water, wastewater, stormwater, solid waste, and other utilities.

Service rates and other fees for all water, wastewater, stormwater, solid waste, and other utilities, as may be established in the future, shall be established by resolution adopted by the city council.

SECTION 5: Lewiston City Code § 36.5-4 is hereby amended as follows:

Sec. 36.5-4. Definitions.

...

(g) *Customer owner:* A person who is responsible for the water, wastewater, stormwater, and/or solid waste account. The owner is deemed to be responsible for all services billed on the city services bill.

...

(x) *User charge:* The fee levied on users of the water, wastewater, stormwater, and solid waste systems for their proportionate share of the costs of operation, maintenance, replacement, and capital facilities of the respective systems.

...

(z) *Utility charges:* Any combination of water, wastewater, stormwater, solid waste service charges, or other fees and charges which are imposed on users of utility services authorized by the city council.

(aa) *Utility service:* Water, wastewater, stormwater, or solid waste services provided by the city of Lewiston.

SECTION 6: Lewiston City Code § 36.5-16(a)(1) and (d) are hereby amended as

follows:

Sec. 36.5-16. Billing and payments.

(a) *Bills.*

(1) Bills for city services will be delivered monthly. Customers may be billed for any combination of the services authorized on each month's bill depending on which services are used.

a. Water service is considered to be used if the customer's property is connected to the water system. Consumption of water is based on the meter reading on the meter provided to the customer by the city.

b. Wastewater service is considered to be used if the customer's property is connected to the water system. Consumption for wastewater service is generally based on a flat fee or on the water used as measured on the water meter.

c. Stormwater service is considered to be used when stormwater-generating impervious surface on the property has been recorded in the stormwater billing database.

~~e~~d. Other city services are considered to be used if a utility services account is active.

...

...

(d) All payments for services rendered may be remitted on a single check or separate checks. The utility shall deposit monies equal to the billings for each service into the respective fund for the service rendered. Payment shall be applied first to administrative fees, then to stormwater charges, then to ~~solid waste~~ wastewater charges, then to ~~wastewater~~ solid waste charges, and finally to ~~the~~ water charges.

SECTION 7: Lewiston City Code § 36.5-18 is hereby amended as follows:

Sec. 36.5-18. Adjustments.

...

(d) *Adjustments for stormwater service.* Adjustments to a customer's stormwater service bill shall be made in accordance with article IV of chapter 36 of this code.

SECTION 8: Lewiston City Code § 36.5-22 is hereby amended as follows:

Sec. 36.5-22. Utility charges to continue as long as water is connected.

(a) When water has been turned on at any premises, in conformity with the city code, the utility charges shall continue to be charged against the premises for which the service was installed until the public works director or his/her designee is ~~ordered requested~~ by the owner or his authorized agent, in writing, to disconnect the service; provided, however, that stormwater charges shall apply, in accordance with article IV of chapter 36 of this code, regardless of whether water has been turned on at any premises.

(b) All accounts for water, wastewater, stormwater, solid waste, and/or any other utility shall be kept in the name of the owner of the premises for whom the service was installed until a subsequent owner shall take possession, and the city has been notified either by a title company or by Nez Perce County of the change in ownership.

(c) Utility charges may be billed to the occupant when the owner requests the ~~administrative services director/CFO~~ city treasurer or his/her designee to do so by completion of a non-owner-occupied real property utility billing agreement. However, as provided in said billing agreement, the property owner is not relieved of liability for any utility charges against the property.

SECTION 9: Lewiston City Code § 36.5-23 is hereby amended as follows:

Sec. 36.5-23. ~~Lien~~ Special assessments on property.

All delinquent charges for water and wastewater connections and service, stormwater service, solid waste charges and all service charges provided by this chapter, together with penalties and interest thereon, shall be a ~~utility tax~~ special assessment upon the property to which such connections are made or to which such wastewater service, ~~or~~ domestic water service, stormwater service, or solid waste service is rendered, superior to all other liens and encumbrances whatsoever, except for general taxes ~~and local special assessments.~~

SECTION 10: To the extent any provision of this ordinance is inconsistent with any other City ordinance or resolution enacted prior to the date of this ordinance, this ordinance shall control.

SECTION 11: The adoption of this ordinance shall not, in any manner, affect any prosecution for violation of any other ordinance committed prior to the effective date of this ordinance or be construed as a waiver of any license or penalty due under any other ordinance, or in any manner affect the validity of any action heretofore taken by the City Council, or the validity of any such action to be taken upon matters pending before the City Council on the effective date of this ordinance.

SECTION 12: The provisions of this ordinance shall be deemed severable and if any provision, clause, sentence, subsection, word, or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair the validity of any of the remaining provisions, clauses, sentences, subsections, words, or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word, or part had not been included therein, and if such person or circumstance to which this ordinance or part thereof is held inapplicable, had been specifically exempt therefrom.

SECTION 13: This ordinance shall take effect and be in full force from and after its passage and publication.

PASSED this _____ day of _____ 2023.

CITY OF LEWISTON

By: _____
Daniel G. Johnson, Mayor

ATTEST:

Kari J. Ravencroft, City Clerk