



**NOTICE OF PROPOSED ADMINISTRATIVE RULEMAKING
Amending Stormwater Rate Credit Program**

Public Works		109-800-001
City Department		Administrative Rules Chapter Number
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Rules Coordinator	Address	Telephone

ADMINISTRATIVE RULE SUMMARY

The proposed administrative action to be taken is to amend Administrative Rule 109-800-001 Stormwater Rate Credit Program.

The Public Works Director is authorized by *Salem Revised Code* (SRC) Chapter 70 to implement and administer a program that allows customers who meet specific criteria to reduce their stormwater utility bill. Administrative Rule 109-800-001 established the policies and procedures for the stormwater rate credit program and includes:

- a. Definitions;
- b. Stormwater Rate Credit Policies;
- c. Criteria for Eligibility for a Stormwater Rate Credit;
- d. Methodology for Calculating Stormwater Rate Credits;
- e. Application Requirements for a Stormwater Rate Credit;
- f. Enforcement Policies for the Stormwater Rate Credit Program; and
- g. Procedures for Review and Reconsideration of a Stormwater Rate Credit.

Administrative Rule 109-800-001 currently applies to all ratepayers except for single-family residential (SFR) accounts. This amendment to Administrative Rule 109-800-001 establishes the following criteria for SFR ratepayers to be eligible for credit on their stormwater utility fee:

- (1) The property is zoned Residential Agriculture (RA) per *Salem Revised Code* Chapter 510;
- (2) The total area of the property is at least one acre (43,560 square feet);
- (3) The total amount of impervious surface area on the property is less than ten percent (10%) of the total area of the property;
- (4) The tree canopy on the property is at least ten percent (10%) of the total area of the property; and
- (5) The ratepayer has submitted a signed certification annually stating all the criteria are met and agreeing to inform the City within 30 days if one or more criterion no longer applies.

Alternatively, SFR ratepayers are eligible for credit on their stormwater fee if they submit an engineering study that shows no runoff leaves the property as a result of a 25-year, 24-hour rainfall event using procedures prescribed in Appendix D of Administrative Rule Chapter 109-004 (Stormwater Systems/Hydrologic Analysis).

The premise for the first set of criteria is the presumption that SFR properties with these characteristics are unlikely to have significant runoff leaving their property and entering the public stormwater system. The alternative eligibility option provides for an engineering analysis that is independent of property zoning, size, or tree canopy. The 24-hour/25-year storm event is based on City's design capacity for conveyance systems involving ditches and culverts for local streets. After eligibility has been determined, the ratepayer must submit a signed certification acknowledging that the criteria apply and accepting responsibility for notifying the City if the property no longer meets the criteria. Once the certification is received, a credit will be applied to the account equal to the stormwater impervious area fee for 12 months. The account will still receive a stormwater base fee. The ratepayer must renew the certification to receive credit in future years. Subsequent account holders must certify independently to receive the impervious area credit.

The draft amendment to Administrative Rule 109-800-01 is available for review online at:

<http://www.cityofsalem.net/Departments/PublicWorks/Pages/admin-rules.aspx>

A hard copy is available on request by contacting: Public Works Department, 555 Liberty Street SE, Room 325, Salem, Oregon 97301-3513, 503-588-6211

AUTHORITY

Ordinance Authority to Promulgate the Administrative Rule: SRC 20J.030

Ordinances Implemented by the Administrative Rule: SRC 70.310

DOCUMENTS, REPORTS, AND STUDIES

Oregon Revised Statutes can be found online at: https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx

Salem Revised Code can be found online at: <https://www.cityofsalem.net/salem-revised-code>

All documents, reports, or studies relied upon are available for public inspection by contacting:
Robert D. Chandler, PhD, PE, Assistant Public Works Director, at 555 Liberty Street SE, Room 325, Salem OR, 97301, 503-588-6008, rhandler@cityofsalem.net.

PUBLIC COMMENT

Interested Persons must submit written comments to Robert D. Chandler at 555 Liberty Street SE, Room 325, Salem, OR 97301 or via e-mail to rhandler@cityofsalem.net. ALL COMMENTS MUST BE RECEIVED NO LATER THAN Wednesday, December 02, 2020, TO BE CONSIDERED.



Peter Fernandez, Public Works Director

November 16, 2020

Department Head Signature

Printed Name

Date

CITY OF SALEM
DEPARTMENT OF PUBLIC WORKS
ADMINISTRATIVE RULE
CHAPTER 109
DIVISION 800-001
STORMWATER RATE CREDIT PROGRAM

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1.1 Introduction

The Director is authorized in *Salem Revised Code* 70.310 to implement and administer a program to allow stormwater utility customers who meet specific criteria for operating and maintaining stormwater facilities to reduce their stormwater utility fee. This rule establishes the procedures for the stormwater utility credit program.

1.2 Definitions

(a) Terms used in this rule are defined in the *Salem Revised Code* ~~71.005~~ 70.005.

(b) Words and phrases shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning. Words used in the present tense include the future, the singular number includes the plural, and the word "shall" is mandatory and not ~~directory~~ discretionary.

1.3 Impervious Area Adjustment

(a) The Director will adjust the stormwater utility fee of a customer by changing the total amount of impervious surface area on which the fee is based if the Director has determined:

(1) The amount of impervious surface on the ratepayer's property used to determine the stormwater utility fee is incorrect; or

(2) A portion of the stormwater runoff from the property is routed directly to the public wastewater system through a connection approved by the City in conformance with all applicable local, state, and federal regulations and permits.

1.4 Stormwater Utility Credit Policies

(a) Salem's stormwater utility credit program for ratepayers other than single-family residential (SFR) accounts will be conducted based on the following policies:

(1) A change in the impervious surface of a property will not qualify for a stormwater utility credit, but will result in a stormwater fee adjustment;

~~(2) Stormwater utility credits will be available to all stormwater ratepayers except for single-family residential accounts;~~

~~(23)~~ (23) The amount of the stormwater utility credit will be based on the type of stormwater facility and the amount of impervious surface area that is draining to the stormwater facility from the ratepayer's property;

~~(34)~~ (34) A performance value will be assigned for each type of approved stormwater facility for stormwater quantity and stormwater quality;

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(45) If two or more stormwater facilities are operated in series, the performance value will be the sum of the individual performance values, up to a maximum performance value of 95 percent;

(56) The full amount of eligible credit will be granted for each stormwater facility that has been designed and constructed in accordance with, or exceeding, City regulations, standards, and requirements that are in effect at the time of application;

(67) One-half the full amount of eligible credit will be granted for each stormwater facility that was designed and constructed in accordance with City regulations and standards that were in effect at the time of construction, but which no longer meet current requirements, provided the facility continues to control the flow rate, flow volume, or flow duration of drainage water, or to remove pollutants from drainage water;

(78) Stormwater utility credits will remain in effect ~~for~~ as long as the criteria for eligibility are met;

(89) The total amount of credit granted cannot result in a stormwater fee that is less than the stormwater fee for an average single-family residential ratepayer; and

(910) The utility credit will be applied to the direct stormwater program costs associated with the customer's impervious surface-based stormwater utility fee.

(b) The following policies will be applied to Salem's stormwater utility credit program for single-family residential (SFR) accounts:

(1) Eligibility for credit will be based on:

i. The property's zoning, lot size, impervious surface area, and tree canopy; or

ii. An engineering study showing that no runoff leaves the property as a result of a 25-year, 24-hour rainfall event using procedures prescribed in Appendix D of Administrative Rule Chapter 109-004 (Hydrologic Analysis).

(2) Customer may apply for the credit at any time.

(3) Stormwater utility credits will remain in effect until the end of the calendar year as long as the criteria for eligibility continue to be met.

(4) Stormwater utility credits will be applied beginning with the billing period following approval of eligibility.

(5) To be eligible for a continuation of the rate credit, a ratepayer must annually submit a document recertifying eligibility. This recertification must be received no earlier than August 15 and no later than October 15 for the credit to be applied for the following calendar

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year. If a ratepayer does not submit a recertification by the deadline, the credit will be removed at the end of the calendar year.

(6) Credit will not transfer to a subsequent customer account at the same address. A new certification is required in the event of a new customer account holder.

1.5 Criteria for Eligibility for Stormwater Utility Credit for Accounts other than Single-Family Residential

(a) To be eligible for a stormwater utility credit, the following eligibility criteria must be met for a ratepayer with an account other than single-family residential:

- (1) The stormwater facility must be operated and maintained by the ratepayer;
- (2) The stormwater facility must receive runoff from the ratepayer's property;
- (3) The stormwater facility must be properly sized for the runoff that it receives;
- (4) The stormwater facility must be operated and maintained in accordance with current City regulations and administrative rules;
- (5) The stormwater facility must have satisfactorily passed an inspection by Public Works staff that confirms the information provided by the applicant, including but not limited to: drainage characteristics; facility type and construction; and that the facility is being properly operated and maintained;
- (6) The ratepayer must have signed an agreement with the City allowing access by City staff for the purpose of inspecting the stormwater facility;
- (7) The ratepayer must have an active stormwater utility account and not be delinquent in any water, wastewater, ~~or~~ stormwater, streetlight, ~~service~~ or administrative fees charged to accounts with the City; and
- (8) A ratepayer must not have had a previous stormwater utility credit terminated by the Director in the previous 12 months.

1.6 Methodology for Calculating Stormwater Utility Credits for Accounts other than Single-Family Residential

(a) The stormwater utility credit amount for a ratepayer with an account other than single-family residential will be based on the following considerations:

- (1) The type of the stormwater facility;
- (2) The amount of the property's impervious surface area that is routed to the stormwater facility; and

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(3) The portion of the ratepayer’s impervious surface-based stormwater fee that directly supports the stormwater quantity-related programs, stormwater quality-related programs, or both, depending on the facility.

(b) Performance values have been assigned to each type of stormwater facility based on an assessment of the ability of the facility to remove pollutants and reduce stormwater discharge rates. The actual effectiveness of a facility depends on many factors, including the targeted performance standards, design and construction standards, status of ongoing maintenance, characteristics of individual storm events, and the influent pollutant concentrations during the event. Owing to the inherent difficulty and uncertainty in determining the effectiveness of stormwater facilities, performance values have been generalized. The performance values will range from 75 percent (highly effective) to 0 percent (not effective). The assessed classification is based on best professional judgment using information drawn from published literature and stormwater fee reduction programs used by other jurisdictions. Table 1 shows currently assigned performance values.

(c) The amount of credit will be based on the portion of the ratepayer’s impervious surface-based stormwater rate that directly supports the City’s stormwater quantity-related and/or stormwater quality-related programs. Figure 1 shows the relative portion of direct and indirect costs for stormwater quantity and stormwater quality cost centers. Indirect stormwater program costs include, for example, administrative services, planning and development services, contingency funding, insurance, and taxes. Direct costs include cleaning, inspection, maintenance, repair, monitoring, environmental services, and other activities. Figure 1 illustrates the relative portions of direct and indirect stormwater quantity and stormwater quality cost centers. The segment labeled “A” (approximately 43 percent in the example) shows the direct cost allocation for stormwater quantity. The segment labeled “C” (approximately 31 percent in the example) indicates the direct cost allocation for stormwater quality.

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Table 1 - Stormwater Facilities with Performance Values

Type of Facility	Assigned Performance Value	
	Stormwater Quantity	Stormwater Quality
Rain Garden/Bioretenion, Infiltration	75%	75%
Wetland, Constructed Stormwater Treatment	50%	75%
Stormwater Planters, Infiltration	75%	75%
Direct discharge to the Willamette River via a private stormwater conveyance system	50%	0%
Infiltration Trench without Underdrain	50%	50%
Dry Wells	50%	25%
Vegetated Swale	25%	50%
Rain Garden/Bioretenion, Filtration	25%	75%
Stormwater Planters, Filtration	25%	75%
Vegetated Filter Strip	25%	50%
Proprietary Treatment	0%	75%
Detention Vault/Pipe	25%	0%
Detention Pond/Basin	25%	0%
Wet Pond	25%	25%
Infiltration Trench with Underdrain	25%	50%
Hydrodynamic Separators (Pretreatment)	0%	10%

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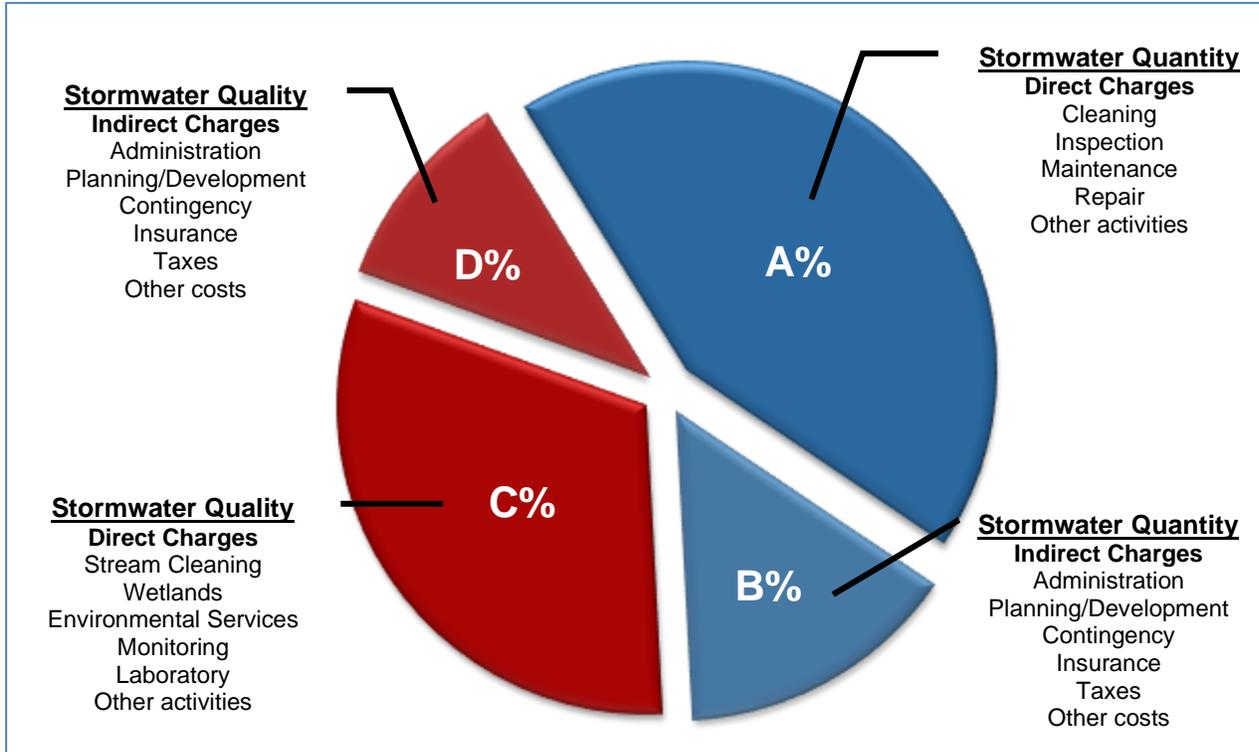


Figure 1 – Example Stormwater Quantity and Quality Rate Allocation

(d) Stormwater Utility Credit Calculation

For a ratepayer with an account other than single-family residential, the total stormwater rate credit to be applied to the ratepayer’s impervious surface-based stormwater fee will be the sum of the Stormwater Quantity Credit and Stormwater Quality Credit values, which will be determined as follows:

(1) Stormwater Quantity Credit (in square feet)

$$\text{Total Stormwater Quantity Credit} = [\text{Total eligible impervious surface area routed to facility}] \times [\text{Sum of all applicable Stormwater Quantity Performance Values}] \times A\%$$

(2) Stormwater Quality Credit (in square feet)

$$\text{Total Stormwater Quality Credit} = [\text{Total eligible impervious surface area routed to facility}] \times [\text{Sum of all applicable Stormwater Quality Performance Values}] \times C\%$$

1.7 Application Requirements for a Stormwater Utility Credit for Accounts other than Single-Family Residential

(a) Eligible ratepayers with accounts other than single-family residential may apply for a utility credit by providing, at a minimum, the following information to the Director.

- (1)** Ratepayer name;

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- (2) Account number;
- (3) Site address;
- (4) Mailing address;
- (5) Contact information (e-mail, phone, etc.);
- (6) Total impervious surface area;
- (7) Type of each stormwater facility;
- (8) Date of construction for each stormwater facility;
- (9) Size and other design characteristics of each stormwater facility;
- (10) Total impervious surface area flowing to each facility; and
- (11) A drawing of the property indicating impervious and non-impervious surfaces, the location(s) of the stormwater facility or facilities, and a delineation of the impervious surface areas flowing to each stormwater facility

(b) An application for stormwater utility credit will include a certification by the ratepayer that the stormwater facility or facilities are, and will continue to be, properly maintained in accordance with current regulations and rules.

(c) An application for a stormwater utility credit will not be considered complete until the ratepayer has signed an agreement allowing access by City staff for the purpose of periodically inspecting the stormwater facility or facilities.

(d) To determine the eligibility of a stormwater facility or the amount of credit to be granted, the Director may require the applicant provide additional information including, but not limited to: detailed plans, a report certified by a registered civil engineer, hydrologic and hydraulic modeling analysis, and stormwater quality monitoring data.

(e) The stormwater utility credit will not be applied until the Director has approved the application in writing.

(f) The Director may develop specific application forms for this purpose.

(g) The City Council may establish a review and application fee, which will be payable at the time the application is submitted.

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1.8 Enforcement Policies for the Stormwater Utility Credit Program for Accounts other than Single-Family Residential

(a) For accounts other than single-family residential, the Director will review the ratepayer application for stormwater utility credit and will have an on-site inspection conducted to determine compliance with the eligibility criteria set forth in Section 1.5.

(b) The stormwater utility credit may be terminated by the Director if:

- (1) The ratepayer fails to maintain the stormwater facility in proper working order;
- (2) The ratepayer is delinquent in any water, wastewater, or stormwater service accounts with the City;
- (3) There is a new ratepayer assigned to the account or property and the new ratepayer does not sign an agreement allowing access by City staff for the purpose of inspecting the stormwater facility or facilities;
- (4) The drainage characteristics of the property changes and the ratepayer fails to notify the Public Works Department;
- (5) The stormwater facility is modified such that its performance is degraded;
- (6) The property boundaries change and the ratepayer fails to notify the Public Works Department;
- (7) The ratepayer denies or obstructs an attempt to inspect by City staff following at least two oral attempts and two written attempts to set an appointment for an inspection; or
- (8) The application for the stormwater utility credit has been determined to contain major errors or fraudulent information.

(c) Prior to terminating the stormwater utility credit, the Director shall notify the ratepayer in writing of the pending termination and provide a period of time for the ratepayer to remedy the cause of the potential termination. If the ratepayer does not respond to the notice or remedy the cause of the potential termination within a reasonable time period determined by the Director, but in no case less than 20 days, the stormwater utility credit may be terminated without further notice to the ratepayer.

(d) A ratepayer whose stormwater utility credit has been terminated must complete a new application and is not eligible for consideration of a stormwater utility credit for 12 months after the most recent termination.

1.9 Stormwater Utility Credit for Single-Family Residential Accounts

(a) A ratepayer with a single-family residential account is eligible for a stormwater utility credit if the property meets all of the following criteria:

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(1) The property is zoned Residential Agriculture (RA) per Salem Revised Code Chapter 510 (RA-Residential Agriculture);

(2) The total area of the property is at least one acre (43,560 square feet);

(3) The total amount of impervious surface area on the property is less than ten percent (10%) of the total area of the property;

(4) The tree canopy on the property is at least ten percent (10%) of the total area of the property; and

(5) The ratepayer has submitted a signed certification stating all the criteria are met and agreeing to inform the City within 30 days if one or more criterion no longer applies; and

(6) The ratepayer has an active stormwater utility account and not be delinquent in any water, wastewater, stormwater, streetlight or administrative fees charged to accounts with the City.

(b) The stormwater utility credit may be terminated by the Director if:

(1) The ratepayer is delinquent in any water, wastewater, or stormwater service accounts with the City; or

(2) The property no longer meets any of the criterion identified in subsection 1.9(a) above; or

(3) There is a new ratepayer assigned to the customer account. Certification does not transfer with the property. Independent certification is required from each subsequent customer account holder.

(c) Prior to terminating the stormwater utility credit, the Director shall notify the ratepayer in writing of the pending termination and provide a period of time for the ratepayer to remedy the cause of the potential termination. If the ratepayer does not respond to the notice or remedy the cause of the potential termination within a reasonable time period determined by the Director, but in no case less than 20 days, the stormwater utility credit may be terminated without further notice to the ratepayer.

(d) A ratepayer whose stormwater utility credit has been terminated must complete a new application and is not eligible for consideration of a stormwater utility credit for 12 months after the most recent termination.

4.91.10 Procedures for Review and Reconsideration of a Stormwater Utility Credit

(a) A stormwater ratepayer may request an administrative review before any final action is taken by the Director to establish, deny, adjust, or terminate a utility credit.

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- (b) The ratepayer must request an administrative review in writing. The Director may develop specific reporting forms for this purpose.
- (c) The request must be received within 20 days of the date of the notice of the action generating the review request is mailed. If no request is received, the Director may take effect without further delay.
- (d) The request must state the proposed action to be reviewed, the specific objections to the action, information to support a claim that the proposed action violates City Code or administrative rules, or is otherwise inaccurate, and specific remedies sought to correct the proposed action.
- (e) The Director will review the request for administrative review and issue a final determination. The final determination will state the specific objections of the ratepayer, findings in support of the final determination, specific reference to the pertinent administrative rule(s), the specific interpretation of the rule, and specific remedies, as applicable. The Director will maintain a complete record of all determinations.