

Late Backup

Initiated by Law

Item #21

June 25, 2015

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CITY CODE CHAPTERS 15-2 AND 15-9
RELATING TO THE DRAINAGE UTILITY.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 15-2-1 (*Definitions*) is amended to read:

§ 15-2-1 DEFINITIONS.

- (A) Except as provided by Subsection (B), words and phrases in this chapter have the same meaning they have in Chapter 552 [402] (*Municipal Utilities*), Subchapter C (*Municipal Drainage Utility Systems Act*), of the Texas Local Government Code.
- (B) In this chapter:
 - (1) ADJUSTMENT FACTOR means a number established by ordinance to be used in the drainage charge calculation to account for the percent of impervious cover on a benefitted property.
 - (2) DIRECTOR means the director of the Watershed Protection [and Development Review] Department.
 - (3) BASE RATE means an annual dollar amount per square foot of impervious cover established by ordinance to be used in the drainage charge calculation before application of the adjustment factor.
 - (4) IMPERVIOUS COVER means the total area, in square feet, of any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete, and buildings.
 - (5) UTILITY CUSTOMER means the person or entity receiving the benefit of, or responsible for payment for, City utility service, such as drainage, consistent with Chapter 15-9 (*Utility Service Regulations*).
 - ~~(2) DWELLING UNIT means a residential unit providing independent living facilities.~~
 - ~~(3) EQUIVALENT RESIDENTIAL UNIT or ERU means 1,763 square feet of impervious cover.~~
 - ~~(4) NON-RESIDENTIAL USER means all or a portion of a benefitted property that is not a dwelling unit.~~
 - ~~(5) RESIDENTIAL USER means all or a portion of a benefitted property that is a single dwelling unit.~~

AS APPROVED ON 1ST AND 2ND READINGS ON MAY 21, 2015

~~(6) USER means the person or entity who owns or occupies a benefitted property.~~

~~[(7) VERTICAL CONSTRUCTION means a structure with seven or more stories of residential development.]~~

PART 2. City Code Section 15-2-2 (*Findings; Adoption of State Law*) is amended to read:

§ 15-2-2 FINDINGS; ADOPTION OF STATE LAW.

- (A) The Council finds that notice has been given, and hearings held as required by Section 552.045(c) ~~[402.045(e)]~~ (*Adoption of System; Rules*) of the Texas Local Government Code.
- (B) The Council makes the findings required by Section 552.045(b) ~~[402.045(b)]~~ (*Adoption of System; Rules*) of the Texas Local Government Code.
- (C) Chapter 552 ~~[402]~~ (*Municipal Utilities*), Subchapter C (*Municipal Drainage Utility Systems*), of the Texas Local Government Code is adopted, and this chapter shall be administered in accordance with its provisions.
- (D) The drainage of the City is declared to be a public utility. Existing facilities are incorporated in the drainage utility as permitted by Section 552.046 ~~[402.046]~~ (*Incorporation of Existing Facilities*) of the Texas Local Government Code.
- ~~[(E) The drainage utility shall be known as the Watershed Protection and Development Review Department.]~~

PART 3. City Code Section 15-2-4 (*Drainage Charge Established*) is amended to read:

§ 15-2-4 DRAINAGE CHARGE ESTABLISHED.

- (A) A drainage charge is established.
- (B) Subject to Section 15-2-9 (*Billing*), the City shall bill the~~[The]~~ drainage charge to [paid by the] every utility customer for ~~[user of]~~ each benefitted property in the service area.
- (C) The drainage charge is based on:
 - (1) ~~[the developed use of the benefitted property;~~
 - ~~(2) the amount that development increases runoff and associated pollutants; and~~
 - (3) the amount of impervious cover on the benefitted property, and
 - (2) the percentage of impervious cover on the benefitted property.

PART 4. City Code Section 15-2-5 (*Categories of Developed Use*) is deleted in its entirety; a new Section 15-2-5 is added to read:

§ 15-2-5 IMPERVIOUS COVER CALCULATION.

- (A) Impervious cover shall be calculated in accordance with the Environmental Criteria Manual and City Code Section 25-8-63 (*Impervious Cover Calculations*). For the purpose of impervious cover calculation for drainage utility purposes, impervious cover shall exclude gravel railroad track ballasts.
- (B) The percentage of impervious cover on a benefitted property shall be calculated using the total area of the benefitted property as the denominator and the total impervious cover as the numerator, then converting the fraction to a percentage.

PART 5. City Code Section 15-2-6 (*Findings Related to Calculation of the Drainage Charge*) is amended to read:

§ 15-2-6 FINDINGS RELATED TO CALCULATION OF THE DRAINAGE CHARGE.

- (A) The Council makes the findings listed in this Section. [~~finds that:~~]
- (B) [(1)—impervious] Impervious cover increases storm-water runoff and associated pollutants and is directly related to drainage. [; and]
- (C) [(2)]The total square feet of impervious cover and the percentage of impervious cover on a benefitted property affect both storm-water runoff and associated pollutants from a benefitted property.
- (D) It [it] is non-discriminatory, reasonable, and equitable to assess the drainage charge for [to] each benefitted property [non-residential user] based on the amount and percentage of impervious cover.

~~[(B)]The Council finds that:~~

- ~~(1)the drainage attributable to a residential user is relatively uniform;~~
- ~~(2)it is equitable to assess the drainage charge to each residential user assuming impervious cover of 1,763 square feet per residence, or one ERU; and~~
- ~~(3)it is equitable to assess a reduced drainage charge to residential users in vertical construction.]~~

PART 6. City Code Section 15-2- 7 (*Monthly Drainage Charge for Residential Properties*) is amended to read:

§ 15-2-7 MONTHLY DRAINAGE CHARGE [FOR RESIDENTIAL PROPERTIES].

- (A) The monthly drainage charge for each benefitted property shall be calculated by applying the base rate to the total impervious cover on the benefitted property and applying an adjustment factor to account for the percentage of impervious cover on the benefitted property.
- (B) The formula for computing the monthly drainage charge is:

$$\text{MDC} = \text{BR} \times \text{IC} \times \text{AF} \div 12$$

MDC = monthly drainage charge

BR = base rate

IC = square feet of impervious cover on benefitted property

AF = adjustment factor

~~[(A) The monthly residential drainage charge per ERU shall be set by ordinance and shall be known as the residential ERU charge.]~~

~~[(B) Each month residential user shall pay to the City an amount equal to one residential ERU charge.]~~

~~[(C) Each month each residential user in vertical construction shall pay to the City an amount equal to one half of one residential ERU charge.]~~

PART 7. City Code Sections 15-2-8 (*Monthly Drainage Charge for Non Residential Properties*), 15-2-9 (*Utility Meters*), and 15-2-10 (*Billing*) are deleted in their entirety; a new Section 15-2-8 is added to read:

§ 15-2-8 BILLING.

- (A) The drainage charge shall be shown as a separate listing on the monthly utility bill from the City. Bills become due in accordance with Chapter 15-9 (*Utility Service Regulations*).
- (B) If no utility meter serves the benefitted property, the City may establish a non-metered utility account using the utility billing system and shall bill the drainage charge to the utility customer for the non-metered utility account.

- (C) If more than one utility customer is associated with a benefitted property, the City shall bill the drainage charge to the owner of the benefitted property unless:

(1) the benefitted property is a single family, duplex, triplex, or fourplex residence, in which case the City shall divide the drainage charge equally among the utility customers and bill the utility customers accordingly; or

(2) the owner of the benefitted property cannot reasonably be determined or located, in which case the City shall determine an equitable method to allocate the drainage charges among the utility customers based upon information available and bill the utility customers accordingly.

PART 8. City Code Section 15-2-11 (*Drainage Utility Fund*) is amended to read:

§ 15-2-~~9~~[11] DRAINAGE UTILITY FUND.

- (A) A drainage utility fund is created.
- (B) The drainage utility fund shall be administered in accordance with Section 552.049 [~~402.049~~] (*Segregation of Income*) of the Texas Local Government Code.

PART 9. City Code Section 15-2-12 (*Annual Report*) is amended to read:

§ 15-2-~~10~~[12] ANNUAL REPORT.

The director shall provide an annual report of the drainage utility [~~Watershed Protection and Development Review Department~~] revenues, expenses, and programs to the city council.

PART 10. City Code Section 15-8-13 (*Administration; Rules*) is renumbered as City Code Section 15-8-11.

PART 11. City Code Section 15-8-14 (*Adjustments*) is amended to read:

§ 15-2-~~12~~[14] BILLING ADJUSTMENTS.

- (A) A utility customer may request administrative review by the director of the customer's drainage charge. Subject to Subsection (B), the director shall adjust a utility customer's account and issue a corrected bill if the director determines that the utility customer was over-billed or under-billed for drainage utility service based upon:
- (1) an error in calculating the amount or percentage of imperious cover on the benefitted property;
- (2) an error in calculating the area of the benefitted property;

(3) an error in calculating the drainage charge; or

(4) an error in assessing the drainage charge.

(B) Billing adjustments under this Section are subject to the time limitations in City Code Section 15-9-140 (B) (Billing Adjustments).

(C) The administrative review under this Section shall comply with City Code Section 15-9-191 (Administrative Review).

(D) After the administrative review is complete, a utility customer may request an administrative hearing as outlined in City Code Chapter 15-9, Article 12 (Administrative Review and Hearing).

~~[(A) A user may apply to the director for an adjustment in the user's drainage charge if:~~

~~(1) the user believes that the drainage charge schedule as applied to the user's benefitted property does not fairly reflect the cost of service to the user's benefitted property;~~

~~(2) the user disputes the category of developed use or another factor used in calculating the drainage charge for the user's benefitted property; or~~

~~(3) the user's drainage charge has been assessed in error.~~

~~(B) The director may adjust the drainage charge of a user who applies for an adjustment under Subsection (A).~~

~~(C) A user who disagrees with a determination of the director under this section may apply for a hearing. The director shall assign a hearing officer to consider the user's request for an adjustment. The user requesting the hearing shall have the burden of proof. On completion of the hearing, the hearing officer shall recommend a disposition of the matter to the director who may revise or reinstate the original determination.~~

~~(D) After a hearing, a user may appeal the director's decision to the city council. An appeal must be filed in writing with the city clerk no later than the 15th day after the effective date of the director's decision.~~

~~(E) If the city council fails to take action on the appeal by the 45th day after the day the appeal is filed with the city clerk, the director's decision is final.~~

~~(F) A user entitled to an adjustment under this section must apply for the adjustment.~~

~~(G) A user may not receive a refund resulting from an adjustment under this section except for a drainage charge paid during the two years immediately preceding the date the user applied for the adjustment. This subsection does not apply to an adjustment applied for on or before May 22, 2000.]~~

PART 12. City Code Section 15-2-15 (*Exemptions*) is amended to read:

§ 15-2-13 [15] EXEMPTIONS.

(A) A benefitted property described in [In addition to property exempt under] Section 552.053(c) [402.053(e)] (Exemptions) of the Texas Local Government Code [a property] is exempt from the drainage charge established by this chapter.

(B) A benefitted property is exempt from the drainage charge established by this chapter if:

~~(1)}~~ the property is owned and occupied by:

(1) ~~(a)}~~ the State of Texas;

(2) ~~(b)}~~ a county;

(3) the City, if the property is publicly maintained right-of-way;

(4) ~~(c)}~~ an independent school district; or

(5) ~~(d)}~~ a public or private institution of higher education. ~~[; or]~~

(C) ~~(2)}~~ A benefitted property is exempt from the drainage charge established by this chapter if the property is owned and occupied by an organization that is exempt from taxation under Section 11.20 (Religious Organizations) of the Texas Tax Code, and the organization submits to the director:

(1) ~~(a)}~~ a request for an exemption from the drainage charge;

(2) ~~(b)}~~ a copy of the organization's tax exemption certificate; and

(3) ~~(c)}~~ an affidavit executed by a person authorized to contract for the organization stating that the organization participates in a program ~~[that is approved by the city manager and]~~ that provides housing for the homeless, at a monetary amount at least equal to the drainage charge.

(D) ~~(B)}~~ The city manager shall review the effectiveness of the exemption under Subsection(C) ~~[(A)(2)]~~ and report the manager's findings and recommendations to council annually.

PART 13. City Code Section 15-2-16 (*Reduced Charge with Pond Registration*) is deleted in its entirety.

PART 14. City Code Section 15-1-17 (*Reduced Charge Based on Need*) is amended to read:

§ 15-2-14 [17] REDUCED CHARGE BASED ON NEED.

(A) A utility customer who qualifies for assistance under Austin Energy's Customer Assistance Program [The user of residential benefitted property] may request a reduced drainage charge based on financial need. [A request must be in writing and be provided to the director.]

(B) ~~[The user of residential benefitted property is eligible for the reduced charge if the user or a person residing in the household of the user:~~

AS APPROVED ON 1ST AND 2ND READINGS ON MAY 21, 2015

~~(1) is a certified recipient of Supplemental Security Income;~~
~~(2) is an aged, blind, or disabled Medicaid recipient; or~~
~~(3) has been receiving, within the twelve months immediately preceding the request, assistance under one of the Travis County Energy Assistance Programs or the Austin/Travis County Medical Assistance Program.~~

~~(C)~~ The reduced charge is available annually on the utility customer's ~~[user's]~~ submission of proof of continuing eligibility.

~~(C)~~~~(D)~~ The reduced charge is prospective only and must be requested by the utility customer ~~[user]~~. The director may not refund any drainage charges under this section.

~~(D)~~~~(E)~~ The reduced charge under this Section ~~[section]~~ shall be set by ordinance. A utility customer ~~[user]~~ may receive only the most recently authorized reduction.

PART 15. City Code Section 15-2-18 (*No Waiver of Immunity*) is renumbered as City Code Section 15-2-15.

PART 16. City Code Section 15-9-193 (*Administrative Hearing*) Subsection (A) is amended to read:

§ 15-9- 193 ADMINISTRATIVE HEARING.

(A) A ~~[Except as provided in Section 15-2-14 (Adjustment), a]~~ hearing under this article shall be held by a hearings officer appointed by the city manager. A hearings officer may not be an employee of a utility.

PART 17. This ordinance takes effect on October 1, 2015.

PASSED AND APPROVED

AS APPROVED ON 1ST AND 2ND READINGS ON MAY 21, 2015

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_____, 2015

Steve Adler
Mayor

APPROVED: _____

Anne L. Morgan
Interim City Attorney

ATTEST: _____

Jannette Goodall
City Clerk