



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Victoria J. Li, P.E., Director  
Watershed Protection Department

**DATE:** April 30, 2015

**SUBJECT:** Proposed amendments to City Code Chapter 15-2 relating to the drainage charge

At the April 15, 2015 meeting of the Public Utilities Committee of Council, the Watershed Protection Department (WPD) provided a briefing (<http://www.austintexas.gov/department/city-council/2015/20150415-puc.htm>, item PUC005) on proposed amendments to City Code Chapter 15-2 relating to the drainage charge. The department is proposing to restructure the monthly drainage charge to enhance the equity and reasonableness using improved data and technology. At the briefing, requests were made for additional information and options for moving forward with the fee restructuring. Responses to these requests are provided below.

### **1. Provide a history of the drainage charge and what it accomplishes.**

The Memorial Day Flood of 1981 killed 13 people and caused over \$30 million in damages across the City. In response, City Council requested an evaluation of the stormwater management program to identify comprehensive needs for both flood control and stormwater runoff quality management through a coordinated program. One of the major findings of this assessment was that the program was not adequately funded through reliance on the General Fund which had been the sole funding source for the stormwater management program. System maintenance, stormwater quantity and quality monitoring, engineering and planning for system improvements, design standards development, floodplain mapping and management, and infrastructure construction were not providing adequate levels of service to meet the needs of the community. The report included a rate analysis and implementation plan for a user fee based funding mechanism to provide a stable long-term funding source to allow the City to proactively provide increased levels of stormwater management services. City Council adopted the drainage charge in October 1982.

The table below presents a history of the drainage charge beginning in FY 1983.

**Table 1: Drainage Charge History Table**

<b>Fiscal Year</b>	<b>Residential</b>	<b>Residential (7+ stories)</b>	<b>Non-Residential</b>
1983	\$ 0.68 / month	N/A	\$ 7.34 / acre / month
1984	\$ 0.78 / month	N/A	\$ 8.42 / acre / month
1985	\$ 1.00 / month	N/A	\$ 10.80 / acre / month
1986	\$ 1.05 / month	N/A	\$ 11.34 / acre / month
1991	\$ 1.30 / month	N/A	\$ 14.04 / acre / month
1992	\$ 3.32 / month	N/A	\$ 35.83 / acre / month
1993	\$ 3.82 / month	N/A	\$ 41.23 / acre / month
1994	\$3.82 / month	N/A	\$41.23 / acre / month
1995	\$3.82 / month	N/A	\$41.23 / acre / month
1996	\$3.30 / month	N/A	\$35.66 / acre / month
1997	\$3.67 / month	N/A	\$39.59 / acre / month
1998	\$3.67 / month	N/A	\$39.59 / acre / month
1999	\$4.45 / month	N/A	\$48.00/ acre / month
2000	\$4.75 / month	N/A	\$51.12 / acre / month
2001	\$5.21 / month	N/A	\$56.23 / acre / month
2002	\$5.21 / month	N/A	\$70.73 / acre / month
2003	\$5.79 / month	N/A	\$94.62 / acre / month
2004	\$6.30 / month	N/A	\$120.41 / acre / month
2005	\$6.75 / month	N/A	\$147.92 / acre / month
2006	\$7.15 / month	N/A	\$176.66 / acre / month
2007	\$7.15 / month	N/A	\$176.66 / acre / month
2008	\$7.15 / month	N/A	\$176.66 / acre / month
2009	\$7.15 / month	N/A	\$176.66 / acre / month
2010	\$7.75 / month	\$3.88/ month	\$191.50 / acre / month
2011	\$7.75 / month	\$3.88/ month	\$191.50 / acre / month
2012	\$7.75 / month	\$3.88/ month	\$191.50 / acre / month
2013	\$8.35 / month	\$4.18/ month	\$206.33 / acre / month
2014	\$9.20 / month	\$4.60/ month	\$227.33 / acre / month
2015	\$9.80 / month	\$4.90/ month	\$242.16 / acre / month

Since its inception in 1982, Council has enacted several notable increases in the charge to fund stormwater initiatives. The FY 1992 increase provided additional revenue to facilitate full funding of all stormwater related expenditures, including various water quality related City functions that were previously supported by the General Fund. Also, the FY1992 increase was in response to the City passing the Urban Watersheds Program to focus on water quality and erosion control projects, primarily in urban watersheds. In 2001, City Council adopted the Watershed Protection Master Plan that identified significant drainage related capital project needs across the City. Drainage charge increases since FY 2002 have primarily provided additional funding for the capital projects identified in the Master Plan and helped reduce reliance on general obligation bond funding.

Year after year, a considerable part of the drainage charge (about 70%) is used for ongoing department operations and maintenance of the City's many stormwater infrastructure assets. In addition, the City uses a large portion (about 30%) of the annual drainage charge on capital improvement projects such as storm drains, regional ponds, creek restoration, and water quality facilities. The table below quantifies some of the primary components of the City's drainage system.

**Table 2: Stormwater Asset Summary Table**

Inlets / Manholes	34,100
Storm Drain Pipes	1,000 Miles
Dams / Ponds	1,100
Creek Crossings & Culverts	4,300
Creek Reaches	393 Miles

Most recently, drainage charge increases have been used to help fund WPD's response to the October 2013 floods including Onion and Williamson Creek buyouts, additional floodplain studies and evaluations, and upgrades to the Flood Early Warning System (including [www.ATXfloods.com](http://www.ATXfloods.com)). Increases have also helped fund the Waller Creek Restoration and Tunnel O&M efforts.

**2. What is driving the change to the drainage charge?**

WPD has been contemplating a restructuring of the drainage charge for several years. With continually improving geospatial data and technology, customer charges can now be calculated more precisely based on each parcel/tract's stormwater impact to the City's drainage systems, thus allowing a more equitable distribution of charges among the customer base. Such a change will also address issues raised in a recent court ruling and moot the pending appeal of the lawsuit.

**3. How does the WPD budget relate to the drainage charge restructuring?**

The proposed drainage charge restructuring is separate from the setting of the WPD budget. The proposed drainage rate methodology (i.e., the equation used to calculate the drainage charge) only defines how charges are applied to benefitted properties. This rate restructuring effort can produce the same, more, or less total revenue as the current rate method. The total revenue derived from the drainage charge will be determined by the department's planned expenditures, and adoption of the annual budget by City Council.

The WPD budget is adopted by City Council in conjunction with the overall City budget approval process. Budget approval includes the setting of revenue requirements to fund planned expenditures. A fee schedule ordinance is adopted as part of the budget process and will establish the drainage charge rate (i.e., the amount to be charged).

**4. Provide examples of how this change impacts various types of customers.**

Every customer's charge may be different since the equation used to calculate the fee is now directly based on the amount and percentage of impervious cover on each parcel. It is important to note that ALL customers will be charged in the same way, thus making this proposed change land-use neutral. Several category comparisons are shown below to help illustrate the impact of the changes. All comparisons shown below are for FY15 (Oct 1, 2014 to Sep 30, 2015) and relate the current monthly \$9.80/ERU charge to the approximately equivalent monthly charge of \$0.0045/sq.ft. of impervious cover. The acronym "ERU" stands for Equivalent Residential Unit and has been one of the most common ways to allocate charges for stormwater funding. Single Family properties are currently charged one ERU, as are multi-family residences in buildings less than 7 stories tall. For multi-family residences in buildings 7 stories or greater, they are charged ½ of an ERU (for FY15, \$4.90). The current \$9.80 charge and the proposed \$0.0045 rate are based on the current FY15 revenue requirements of about \$77M for the Drainage Utility Fund (DUF). To simplify

comparisons, only the FY15 values are depicted, however, additional comparisons showing proposed FY16 rates will be provided upon request. The proposed rate is approximate and subject to change pending a more complete quality control review of the new dataset to be used for the new billing system through the summer of 2015. For a broad comparison, the following table shows how various land use classes are affected by the charge. Billable parcels make up about 63% of the City's impervious cover, whereas the remaining 37% are exempted from the drainage charge. The State Code specifically allows, and the City has chosen by ordinance, to exempt property owned and occupied by the State, County, ISDs, and public or private institutes of higher education. The City also exempts all public ROW (streets) and allows tax exempt religious organizations to provide offsetting costs for housing for the homeless.

**Table 3: Share of Total Drainage Charge by Land Use Type**

Categories of Billable Parcels	Percent Share of Drainage Charge	
	Current Method: ERU	Proposed Method: Amount and % of Impervious Cover
Single Family	22%	29%
Multi-Family	27%	18%
Non-Residential (Green/Low Density)	4%	2%
Non-Residential (Commercial/Other)	47%	51%
Total Billable Parcels	100%	100%

The Single Family category includes traditional single family as well as mobile home properties. The Multi-Family category includes duplexes, apartments/condos, group quarters, and retirement housing. The Non-Residential Green/Low Density category includes such land uses as agriculture, golf courses, parks, and common areas. The Non-Residential Commercial/Other category includes such land uses as commercial, hospitals, educational, manufacturing/ industrial, offices, transportation/ aviation, and warehousing.

More detailed comparisons are provided below and show comparisons for the four major land use types described above.

**Table 4: Single Family Comparison by Parcel Impervious Area**

Parcel Impervious Area (sq.ft.)	# of Parcels	% of Parcels	Current ERU Charge	Average Proposed Charge
0-2000	13,000	8%	\$9.80	\$4.80
2000-3000	60,000	38%	\$9.80	\$8.70
3000-4000	50,000	32%	\$9.80	\$12.70
>4000	34,000	22%	\$9.80	\$20.00
Total	157,000	100%	\$9.80	\$12.10

Note that within each category, not only does the amount of the impervious cover affect the charge, the percentage of impervious cover can also increase or decrease the specific charge. Another way to view the impact to the Single Family category is to show a parcel count with ranges of increases or decreases.

**Table 5: Single Family Comparison by Parcel Count**

% Increase or Decrease in DUF charge	# of Parcels	% of Parcels	Average Proposed Charge
Increase >100%	14,100	9%	\$26.50
Increase 20-100%	51,800	33%	\$14.70
Increase 0-20%	25,700	16%	\$10.80
Decrease 0-20%	26,600	17%	\$8.80
Decrease >20%	39,700	25%	\$5.90
Total	157,900	100%	

For multi-family comparisons, only partial comparisons can be made right now due to limitations of the current dataset. However, as an entire category charges to multi-family residents will be reduced from about 27% to 18% of the total drainage utility fund share. So, while complete unit counts are not currently available, the vast majority of tenant drainage charges are expected to significantly decrease. For duplexes and three/fourplexes, a more complete comparison is available.

**Table 6: Multi Family Parcel Comparisons  
(Apartments/Condos, Duplex, Three/Fourplex)**

Subcategory	# of Parcels	Average Current Charge	Average Proposed Charge
Apartments / Condos (6 stories or less)	*	\$9.80	6.30
Apartments / Condos (7+ stories)	*	\$4.90	\$1.90
Duplex	10,200	\$9.80	\$7.70
Three / Fourplex	1,300	\$9.80	\$6.70

\* This is derived based on a limited amount of sample data.

Green or low density non-residential parcels will generally see a substantial reduction in charges due to their very low % imperviousness. However, if any of these parcels do not currently have electric or water meters they may not be currently getting a drainage bill, though they are not explicitly exempt. The proposed changes to the drainage fee include adding the ability to bill parcels with no meter, allowing a more complete recovery of revenue and thus allowing the rate for all customers to be decreased accordingly.

**Table 7: Non-Residential (Green/Low Density) Parcel Comparisons**

Subcategories	# of Parcels	% of Parcels	Average Current Charge	Average Proposed Charge
Parks, Preserves, Common Areas	3,600	74%	\$50.20	\$17.40
Agriculture, Golf Course, Landfill, Mining	1,200	25%	\$27.50	\$6.90
Cemetery	60	1%	\$147	\$67.90
Total	4,860	100%	\$45.80	\$15.40

Commercial and other non-residential land uses vary in terms of impacts. Since these areas were already being charged by their amount of impervious cover, whether any specific parcel is charged more or less will depend on their percent of impervious area. While averages for broad groups are shown below, specific sites will vary significantly by size and amount/percent of impervious cover. Attached to this memo are specific examples of varying sizes of properties shows how the charge can vary.

**Table 8: Non-Residential (Commercial/Other) Parcel Comparisons**

Subcategories	# of Parcels	% of Parcels	Average Current Charge	Average Proposed Charge
Transportation/Aviation	500	4.5%	\$645	\$395
Commercial/Services	8,000	73%	\$252	\$288
Industrial	1,700	15.5%	\$465	\$490
Cultural/Educational	750	7%	\$175	\$128
Total	10,950	100%	\$298	\$313

## **5. Provide options for allocating this charge among multiple tenants.**

There are two fundamental methods for allocating the charge among commercial and residential multiple tenant situations. Either the property owner/manager takes responsibility for it, or the City may be able to do it with additional administration cost and significant building data assistance from property owners and managers. The following discussion presents important considerations related to each.

### Option 1 (Recommended Option) – City bills property owner/manager who then allocates charge to tenants

First, it is important to recognize that the majority of drainage utilities in the State of Texas that bill multifamily properties based on impervious cover (as proposed herein) apply the charge to the property and leave it up to the property owner or manager to allocate the bill among the tenants. This same method is currently used for Austin apartment complexes that are “master metered” (i.e.; the all-bills-paid scenario where the tenants do not have their own individual electric meter). This is a relatively small subset of the current multifamily tenant count, but nevertheless has been working for years. Going forward, applying this approach to all multiple tenant situations makes a lot of sense, given it is the property owner/manager who controls the information needed to properly allocate the charge, such as dwelling unit size, common area square footage and parking area allocation. As a comparative example, when the City bills the owner/manager for drainage services such as for the common area lighting and power, common area irrigation, and for water used to fill a swimming pool (if one exists), the property owner/manager presumably uses an existing allocation model or spreadsheet to parse out charges to different units within the building. While water and electric may be metered at the property, the owner/manager distributes these common charges. There are also unmetered property-wide charges such as solid waste collection. The drainage charge is another such unmetered bill to the property, and by simply adding an extra column to the owner/manager’s allocation spreadsheet, the charge could then be allocated to tenants accordingly. In general, the City provides the drainage services to each benefited property as a whole, and the property owner is expected to pay for the services.

Option 1 is by far the City staff’s preferred method for managing properties with multiple tenants. It is believed current staffing levels should be able to handle the workload. While the workload will increase significantly for multi-family because the charges will all vary, the increased workload is expected to be offset by a decrease in commercial customer workload under this approach. Further, Option 1 is preferred because

Option 2, which basically mirrors our current billing method for the non-residential (commercial) class, causes significant operation problems. This will be explained in the discussion under Option 2.

Option 2 – City temporarily (for up to one year) bills multi-family tenants directly with required input from owner/manager

Under the current ERU billing method for multiple tenant situations such as apartment complexes, if the units are individually metered, the City bills the tenant directly. It is relatively straightforward given the drainage ERU charge is the same for every unit in the entire city regardless of their living areas, the one exception being residential “vertical construction” (7+ stories), which currently is charged ½ ERU per unit. For multi-tenant commercial properties, our current practice is to bill individual tenants if they have their own electric meter. In order to do this as equitably as possible, we try to secure rent-roll information from the owner/manager in order to pro-rate the bill to each tenant. However, it is not working well for many reasons.

1. Rent rolls become obsolete very quickly, meaning the allocation accuracy diminishes over time.
2. Oftentimes, building owner/managers are hesitant to provide rent roll information at all to the City.
3. Because the rent roll information is often inaccurate (or simply disputed), the tenants call City staff complaining that their charge does not properly reflect their pro-rata share of the bill. City staff then gets caught between the landlord and the tenant because it is the landlord’s information (or lack thereof) that is often causing the problem, something the City has no control over.
4. When City staff cannot secure the rent roll information at all, the only way to allocate the bill is to simply divide the total charge by the number of units. However, in a commercial strip center where one end might be a large grocery store and the other end might be a barber shop, this numerical distribution method can be very inequitable.
5. The building is causing runoff to the drainage system whether the building is fully occupied or not. Yet, under our current approach for these commercial customers, when a unit is not occupied and the electric meter is turned off, there is no revenue coming in from that unit. Since the City’s cost of service doesn’t change, that loss in revenue has to be made up by other customers citywide, which presents an issue of fairness.

Finally, since this approach is not working well for the 15,000 or so commercial parcels of which many have multiple tenants, the difficulties would only be greatly magnified by the addition of up to ten times more multi-family residential accounts. To estimate the administrative burden associated with this approach, a baseline can be found in the amount of staff that currently administers the commercial customer base. WPD has two FTEs plus management oversight for a total of 2.25 FTEs dedicated to commercial customer billing. Adding approximately ten times more customers with individual unique charges (not a constant ERU charge) for the multifamily properties would increase staff needs significantly. This proportional increase in accounts could result in the need for an additional 22.5 FTEs. However, due to likely work efficiencies coupled with existing effort that is already expended under our current ERU charge for multi-family customers, it is estimated the net increase in staff would be in the range of another 7 to 10 FTEs in the first year of the new rate structure implementation. This assumes very strict rules noted in the recommendations below are fully implemented should Option 2 be chosen.

### Summary and Recommendations:

In summary, City staff recommends that billing the master meter is best in most circumstances, but there may be exceptions where the City may want or need to bill the tenants. The ordinance should allow both and language can be added to promote a fair allocation of the charge for either case. In addition, the administrative rules will further refine the billing process. Recognizing there were concerns raised about ensuring equitable treatment of tenants, City Code already addresses a landlord's resale of utilities. Chapter 15-9 applies to the drainage utility and includes the following.

#### § 15-9-121 - REMETERING AND RESALE OF SERVICE.

(A) A customer shall comply with the regulations adopted by the Texas Public Utility Commission and the Texas Commission on Environmental Quality if the customer resells utility services.

(B) A customer may not remeter or resell utility service provided by the City except as authorized by the City.

(C) A retail customer may not remeter or resell utility service provided by the City at a higher price than the price charged to the customer by the City.

(D) After notice, the City may disconnect utility service to a customer who is remetering or reselling utility service in violation of this section.

Although 15-9-121 applies to the drainage utility now, additional language could be added to 15-2 that clarifies the applicability of section 15-9-121 to ensure tenants are treated equitably, reasonably and in a non-discriminatory manner with respect to the owner's distribution of the drainage charge to the property. Further guidance could be provided to assist building managers through an educational outreach program, and code or administrative rule language could be added regarding the use of best practices such as distributing the property drainage charge by pro-rating it by the rented square footage share per unit. In addition, the building manager may already have a more detailed allocation model for distributing common area utilities that is more appropriate. Regardless, since it is the owner/manager's information that must be used to distribute the drainage charge, it should be the responsibility of the owner/manager to do so reasonably and equitably.

If individual tenant billing by the City is still a desired option, it is recommended that Option 2 only be implemented as a temporary measure for the first year. As previously mentioned, this temporary measure would still require in the range of 7-10 additional temporary staff to implement. It is further recommended that strict rules be put in place to ensure fairness to the greatest degree possible by mandating the following:

1. Each building owner/manager must provide the City a certified allocation spreadsheet that indicates the percent allocation for each and every unit on the property. The total allocation must add up to 100%.
2. Each building owner/manager must provide the City a certified count of the number of units to be billed. In the event the percent allocation cannot be used due to incomplete or inaccurate data, the City will default to dividing the total charge to the property by the number of units to determine the charge for each tenant.
3. Each building owner/manager must execute a continuing service agreement that automatically transfers the drainage charge to the owner/manager's bill when a unit is vacant. Unlike other metered utilities, stormwater service cannot be "turned off".



4. Each building owner/manager must acknowledge that all calls received by the City pertaining to an individual tenant's charge will be referred to the building owner/manager or their designee. Contact information must be provided and kept current at all times. This is not ideal customer service because the customer will have to make at least two phone calls to get to the party that can help address the concern.
5. If any of the above information is deemed incomplete by the specified deadline (currently contemplated for July 2015), the City will apply the drainage charge for the entire property to the owner/manager.

#### **6. What is the timeline and impact of postponing this change?**

The drainage charge is a component of Austin Energy's (AE's) overall bill and AE works together with WPD to administer the billing system for the drainage charge. For structural rate changes (such as this proposed drainage charge revision), Austin Energy requires 90 to 120 days to implement them into the billing system. Decisions affecting billing must be made by June 1 in order to implement by October 1. The timeline also requires that we begin loading impervious area data into the Austin Energy Customer Care & Billing system in June. If continued billing to tenants is desired as an option moving forward, then owners/managers will need to submit complete rent roll / allocations by July in order to be resolved and worked into the system by August.

The goal of a smooth transition to the new billing structure is best served if the new charge coincides with the City's fiscal year (October 1). The complexity of implementing the change is greatly increased if the rate is set in October based on the old system, and then must be re-set sometime later in the fiscal year to work with the billing structure. Customers would see two rate changes in one fiscal year, which can lead to confusion.

The pending lawsuit regarding the drainage charge is on hold until October 22, 2015 in anticipation of action by the City Council on the re-structured calculation method. If this does not occur, the appeal will continue.

Please contact Victoria Li, Director, Watershed Protection Department, should you have any detailed questions or issues at (512) 974-9195 or via e-mail at [Victoria.Li@austintexas.gov](mailto:Victoria.Li@austintexas.gov).

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