Rule No: R161-15.22e

NOTICE OF EMERGENCY RULE ADOPTION **ADOPTION DATE:**

AUSTIN CITY CLERK
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By: Marc A. Ott, City Manager

The City Manager has adopted the following emergency rule. This notice is issued under Chapter 1-2 of the City Code.

EFFECTIVE DATE OF EMERGENCY RULE

The rule adopted by this notice is effective on October 30, 2015 and expires on February 28, 2016 (not later than the 121st day after the effective date) The rule may be renewed one time after the expiration date. If the rule is renewed, it will expire on the 61st day after the renewal date.

TEXT OF EMERGENCY RULE

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Watershed Protection Department, located at 505 Barton Springs Rd., Ste. 1200, Austin, TX 78704 and

Office of the City Clerk, City Hall, located at 302 West 2nd Street, Austin, Texas.

SUMMARY OF EMERGENCY RULE

The following items are needed to assist with explanation and enforcement of the newly approved revisions to City Code Chapters 15-2 (*Drainage Utility*) and 15-9 (*Utility Service Regulations*) in Ordinance No. 20150625-21. The rule adds a new Section 9 to the Drainage Criteria Manual and provides the following:

- Information regarding calculation of the drainage charge under City Code Section 15-2-5(*Impervious Cover Calculation*) and 15-2-7 (*Monthly Drainage Charge*).
  - Section 9.5.4 - How the total area of a property is initially determined and what sources may be used to correct the initial determination.
  - Section 9.5.5 - How the impervious area is measured and what sources may be used to correct the impervious area calculation.
  - Section 9.5.6 - What properties may calculate impervious cover on a composite basis, documentation required, and examples.
- Information regarding billing of the drainage charge under City Code Section 15-2-8 (*Billing*).
  - Section 9.6.5 - How various land uses are billed.

- Section 9.7.0 - How the single-family residential phase-in is calculated.

- Information regarding public right-of-way exemption from the drainage charge under City Code Section15-2-13 (*Exemptions*).
  - Section 9.8.1

- Information regarding review of the drainage charge for alleged errors under City Code Section 15-2-12 (*Billing Adjustments*).
  - Section 9.9.2 - Administrative review process
  - Section 9.9.3 - Administrative hearing process

NATURE OF EMERGENCY

The adoption of this emergency rule is necessary to implement and administer Ordinance No. 20150625-21, passed by the Austin City Council and effective October 1, 2015.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of City Code is established in Chapter 1-2 of the City Code. The authority to regulate the Drainage Utility is established in Chapters 15-2 and 15-9 of the City Code.

CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Emergency Rule Adoption (Rule 161-15.22e), the City Attorney certifies that the City Attorney has reviewed the rule and finds adoption of the rule to be a valid exercise of the City Manager's authority.

REVIEWED AND APPROVED

Marc A. Ott, City Manager

Anne L. Morgan, Acting City Attorney

Joseph G. Pantalion, P.E., Acting Director
Watershed Protection Department

This NOTICE OF THE EMERGENCY RULE ADOPTION was posted on a central bulletin board at City Hall by the City Clerk. You may find the time and date stamp on the front of the notice.

SECTION 9 – DRAINAGE CHARGE ADMINISTRATION

9.1.0 GENERAL

The following rules have been promulgated by the City of Austin Watershed Protection Department (WPD) to address the administration of Chapter 15-2 of the Austin City Code.

9.2.0 APPLICABILITY

These rules apply to all customers within the service area of the Drainage Utility, which is the area within the city limits as defined in Section 15-2-3 of the Austin City Code, further clarified herein as full-purpose jurisdiction. These rules replace all previously approved Drainage Charge Administrative Billing Rules. These rules are intended to supplement and add clarity to, but at no time supersede, requirements outlined in the Drainage Utility Regulations in Chapter 15-2 of the Austin City Code, which is administered in accordance with the provisions of Chapter 552 (*Municipal Utilities*), Subchapter C (*Municipal Drainage Utility Systems*), of the Texas Local Government Code.

9.3.0 DEFINITIONS

Terms in this document are defined in the Austin City Code Sections 15-2-1 (Definitions), 15-9-1 (Definitions) and 25-1-21 (Definitions). The term "parcel" in Section 9 means the Travis Central Appraisal District (TCAD) properties and/or Williamson and Hays Appraisal District properties.

9.4.0 BASIS FOR THE DRAINAGE CHARGE

The drainage charge is based on the criteria identified in Sections 15-2-4 (B) and 15-2-4 (C) of the Austin City Code.

9.5.0 CALCULATION OF THE DRAINAGE CHARGE

9.5.1 Sections 15-2-5 and 15-2-7 of the Austin City Code define how impervious cover and the monthly drainage charge shall be calculated.

9.5.2 Base Rate - The annual base rate shall be in the fee schedule approved by City Council for each fiscal year. The monthly base rate is determined by dividing the annual base rate by 12.

9.5.3 Adjustment Factor - The adjustment factor formula shall be in the fee schedule approved by City Council for each fiscal year.

9.5.4 Total Area of a benefitted property - The total area of a property shall be initially determined by the City's Geographic Information System (GIS) which uses parcel data from Travis Central Appraisal District (TCAD), Williamson County Appraisal District

(WCAD), and Hays County Appraisal District (HCAD). The total area of a property may be corrected by the following sources:

A. A survey that is signed and sealed by a State of Texas Professional Land Surveyor,
B. The dimensions on an approved site development plan,
C. The dimensions on an approved subdivision plat,
D. The dimensions shown on an as-built plan, or
E. The dimensions obtained from tax records of the County Appraisal District in which the property is located.

If numbers from different sources are inconsistent, City staff may use the latest and most accurate source to make the determination.

9.5.5 Impervious Area - Impervious area (also called impervious cover) for purposes of the drainage charge is defined by City Code Sections 15-2-1 (B) (4), 15-2-5, 25-8-63, and Environmental Criteria Manual Section 1.8.1.

A. Measurement - Impervious area shall be measured by the City's Geographic Information System (GIS) when calculated from the City's latest planimetric maps. Measurement of impervious area for the purpose of calculating the drainage fee shall conform to the methods and standards specified in the City's Environmental Criteria Manual, the City's Drainage Criteria Manual, and the City's Land Development Code as it is interpreted by the City's Development Services Department (or successor department) staff.
B. Additional Detail
    a. Structures - The impervious area for structures shall be determined by whichever of the following is larger - the roof area, the foundation area, or exterior wall area. Consequently, horizontal projections of the overhang of a house (eaves for example) are considered impervious area.
    b. Sidewalks/Trails - Sidewalks and trails that are accessible by the general public and are located on public property or on public easements shall not be counted as impervious cover.
C. Corrections - The impervious area of a property may be corrected by the following sources:
    a. Latest available aerial photographs or planimetric data.
    b. An up-to-date survey that is signed and sealed by a State of Texas Professional Land Surveyor.
    c. A site plan or similar development documents that accurately reflect the development currently on the property.
    d. Measurements and observations from a field check by City staff.

e. Photographs that show conditions different from those on which the original calculations were based (e.g., uncovered wood decks, wheelchair ramps, removed structures, misinterpreted features).

f. More detailed information provided by requestor after review and approval by staff.

9.5.6 Calculating Properties on a Composite Basis - Under Section 15-2-5(C), the percentage impervious cover may be calculated on a composite basis under certain circumstances, as prescribed in this Section.

A. A "condominium regime" as defined by City and State Codes.

B. The properties are subject to a unified development agreement or City site plan that specifies the properties will be reviewed as one site.

C. The customer provides documentation acceptable to the Director indicating that the properties were legally developed together.

D. If a building spans one or more parcel boundaries, initial billing assignments may assume these parcels were legally developed together.

1. Same Owner – In addition to combining the charge, the bill will also be combined.
2. Different Owners (e.g. townhomes) – The calculation of the charge may be combined. The charge should be assessed to the home owners association (HOA) if the HOA has an account; otherwise the charge may be divided equally among the owners.

E. Examples:

1. Adjacent Parcels, Same Owner – Unless legally developed together or as noted below, if two or more parcels are adjacent and have the same owner, the charge is calculated and assessed separately for each parcel.
   a) Even though separate charges may be assessed for multiple parcels of the same owner, that same owner may have those separate parcel charges placed on a single bill.
2. Adjacent Parcels, Multiple Owners, One Address – When there are multiple parcels with multiple owners, but all at one address, the charge is calculated and assessed separately for each parcel. City will attempt to place additional address points, if appropriate.
3. Multiple Parcels, legally developed together, different owners, and one existing Drainage Utility Fee (DUF) account - WPD will maintain one account unless requested by all the owners to change.
4. Duplexes, Triplexes, and Fourplexes – If there are 2-lot duplexes or other multi-lot examples up to fourplexes, they shall be combined together into one parcel for calculating the charge.

5. Non-adjacent Parcels – These shall not be combined for the purpose of calculating the drainage charge unless the parcels were legally developed together as one site and subsequently separated by public right-of-way. Subdivision of undeveloped parcels retained by the same owner does not constitute development together as one site.
6. Parcels within a Parcel – Parcels that are wholly enveloped by another parcel may be calculated on a composite basis.
7. Private Drives/Streets – These are not exempt like public ROW and will receive a drainage charge. If the private drives are separate parcels, they will not be combined with other parcels.

9.6.0 ASSESSMENT OF THE DRAINAGE CHARGE

9.6.1 City Code Section 15-2-8 defines how the drainage charge will be billed.

9.6.2 The fee will be assessed beginning when the Department confirms that a Certificate of Occupancy or Certificate of Completion has been issued for the property.

9.6.3 If there is an existing drainage charge, and additional development or redevelopment on that property occurs, the existing impervious area prior to construction activities beginning will be the basis for the impervious cover amount to generate a charge during construction. Once construction activities are complete and a Certificate of Occupancy/Completion is issued for the new improvement, the new impervious cover area shall be the basis for the impervious cover amount to generate a charge.

9.6.4 Any account billing for fewer than 17 days will not be assessed the drainage charge. This ensures that users will not be charged twice in one month if they move within the city limits.

9.6.5 Other clarifications for Section 15-2-8:

A. Single Account - The drainage charge shall be assessed to the utility account associated with either residential or nonresidential properties with only one account (one service point).

B. Garage Apartment - For residential property with more than one utility customer that contains an accessory unit or garage apartment, the charge shall be divided equally by the number of utility customers. If utilities have been discontinued and a unit is determined to have been vacant, then the City may move the unbilled vacant charges to the primary residence.

C. Duplex, Triplex, Fourplex - For duplex residential properties, the drainage charge shall be divided equally between the two accounts regardless of the size of either unit. For triplex and fourplex residential properties, the drainage charge shall be divided equally among the 3 or 4 units, regardless of relative size. If one or more of the units is vacant and/or the utilities have been discontinued, the denominator of

2, 3, or 4 will remain the same. If a unit is determined to have been vacant, then the City may move the unbilled vacant charges to the property owner.

D. Condominiums - If the common area has a utility account, the drainage charge for condominium properties shall be calculated for the total property and billed to the common area utility account. If it proves to be unresponsive in paying the charge, the total charge may be divided equally among the accounts associated with the property and billed accordingly.

E. Multi-family residential (5+ units) - The drainage charge shall be calculated for entire multifamily residential properties (with more than four units) and billed to the property owner, property manager or the entity associated with the master meter account. If the City cannot reasonably determine or locate a single entity to bill, the City shall determine an equitable method to allocate the drainage charge among utility customers. Equitable methods may include – equal division, approximate ratio estimates, apportionment of impervious cover, or other methods.

F. Mobile Homes
    1. Multiple - Properties containing multiple mobile homes shall be billed in the same way as multifamily (5+ units) residential properties.
    2. Single - A property that contains a single mobile home shall be billed in the same way as a single family residential property.

G. For properties with only one active utility account, the charge shall be billed to that account even though it may contain multiple units or structures.

H. In any situation where the owner of a multi-tenant property (residential, non-residential or mixed use) cannot reasonably be determined or located, or if the owner proves to be unresponsive in paying the charge , the total charge may be divided equally among the utility customers associated with the property and billed accordingly.
    1. For initial billing assignments, property owners without existing utility accounts may be considered as "cannot reasonably be determined or located" until a separate drainage utility account is established.
    2. In situations where the non-owner utility customers may be billed and those customers do not occupy the entire property, the City may determine an equitable method for allocation which may include billing those customers up to 100% of the property until the owner has established a utility account.

I. For properties that are partially inside and partially outside the City limits, the service point should be located on the main structure. If the service point is located outside the City limits, the drainage charge will not be assessed on the property. If the service point is located within the City limits, then the drainage charge shall be

assessed, but the fee will be calculated using only that portion of the total property and that portion of the impervious cover that lie within the City limits.

9.7.0 REDUCED CHARGES

9.7.1 Single Family Residential Phase-in - After the monthly charge has been computed, it may be adjusted for single family residential property in accordance with Section 15-2-7 of the Austin City Code for the period between October 1, 2015 and October 1, 2016. When the calculated monthly fee for a single family property exceeds $9.80, the increase over $9.80 shall be determined and then reduced by 50%. An example would be a calculated fee of $19.80. The $10 increase (over $9.80) would be reduced by 50% to a $5 increase and the resulting fee for the first year would be $14.80. The reduced charge shall be allowed for properties that are designated as single family in the City's billing system. This includes garage apartments, but does not include duplexes, townhouses/condos, or mobile homes.

9.8.0 EXEMPTIONS

9.8.1 Public Rights-of-Way (ROW) - All public ROW inside the City, whether owned and/or maintained by the City, the State of Texas, or a county are exempt from the drainage fee. Private streets, alleys and drives are not exempt. When identified and located, the owners of the properties that contain non-public streets, alleys and drives shall be assessed the drainage charge. Streets, alleys and drives within the common area of a condominium or Planned Unit Development shall be included in the calculation of the drainage charge for that development.

9.9.0 BILLING ADJUSTMENTS

9.9.1 Adjustments to customer drainage charges shall be made in accordance with Section 15-2-12 of the Austin City Code. The billing adjustment process may involve two steps in progression.

9.9.2 Administrative Review

A. The methods to request and initiate an Administrative Review will be available on the City's website or directly through the Watershed Protection Department (WPD).

B. An administrative review shall address only the four potential errors listed in Section 15-2-12 (A).

C. Data sources to be used in checking and correcting a potential error in calculating the area of a benefited property are listed in 9.5.4 above.

D. Data sources to be used in checking and correcting a potential error in calculating the amount of impervious cover are listed in 9.5.5 above.

E. A customer requesting a review must submit information and documentation to support the claim that an error was made.
F. Refunds for overbilling and backbills for underbilling shall be done in accordance with Section 15-9-140 of the Austin City Code.
G. Refunds for overbilling based on the new fee structure effective October 1, 2015 shall not extend to any period prior to that date when the fee was determined by a different methodology.
H. Any refund for a period prior to October 1, 2015 must be based solely on the fee structure and rates in place at that time.

9.9.3 Administrative Hearing - Customers who are not satisfied with the outcome of the administrative review shall be informed of the administrative hearing process described in City Code Chapter 15-9, Article 12.

9.9.4 This section of the administrative billing rules, together with the sections of the City Code referenced herein, form the Appeals Rules and Procedures referenced in Section 15-9-191 of the City Code.