

ORDINANCE NO. 3523

AN ORDINANCE OF THE CITY OF DEER PARK ENTITLED “MUNICIPAL STORM WATER DRAINAGE UTILITY SYSTEM”; ESTABLISHING A MUNICIPAL STORM WATER DRAINAGE UTILITY SYSTEM, CHAPTER 106, ARTICLE X; SETTING FORTH DEFINITIONS; ESTABLISHING AND CALCULATING DRAINAGE UTILITY CHARGES AND CATEGORIES AND MONTHLY DRAINAGE UTILITY FEES; ESTABLISHING THE BILLING AND PAYMENT OF DRAINAGE UTILITY FEES; PROVIDING FOR AN APPEAL AND HEARING PROCESS; PROVIDING PENALTIES AND REMEDIES FOR FAILURE TO PAY FEES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, within the City of Deer Park (“City”) there is an existing drainage system which has been developed over a number of years for the purpose of collecting and disposing of storm water runoff; and

WHEREAS, it will be necessary and essential to ensure that the collection of storm water runoff and control of storm water within the City limits adequately protects the health, safety, and welfare of the citizens of the City including, but not limited to, the protection from loss of life and damage to property caused by surface water overflows and surface water stagnation; and

WHEREAS, the City Council finds that impervious cover increases and alters runoff and associated pollutants, making it is necessary and essential that the City address the various environmental issues that may further burden its storm water infrastructure requirements; and

WHEREAS, the City Council directs the City to provide storm water service for all real property in the proposed service area in a nondiscriminatory, reasonable, and equitable terms; and

WHEREAS, Chapter 552, Subchapter C of the Texas Local Government Code (the “Act”), as amended, authorizes the City to establish a municipal drainage utility system within the boundaries of the City; and

WHEREAS, the Act authorizes the City to provide rules for the use, operation and financing of the drainage utility system; and

WHEREAS, the Act authorizes the City to prescribe basis upon which to fund the municipal drainage utility system and to assess the fees and charges to support the municipal drainage utility system; and

WHEREAS, the Act authorizes the City to provide exemptions of certain governmental and other entities or persons from the payment of these charges; and

WHEREAS, through the adoption of this ordinance, the City desires to establish rules to support the City's adoption of the Act and the City's declaration that the drainage utility system of the City to be a public utility; and

WHEREAS, in setting the schedule of charges for drainage utility service, the calculations are based on an inventory of the parcels within the City and the development on the benefited properties; and

WHEREAS, it is the intent of the City to fund a drainage utility system that fairly and equitably allocates the cost of storm water control to properties in proportion to storm water runoff potential for each type of property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEER PARK, TEXAS:

SECTION I

Article X – Municipal Storm Water Drainage System

DEFINITIONS

Sec. 106.601

The following definitions apply to the establishment and the operation of the Drainage Utility System:

- (1) **Act** means Chapter 552, Subchapter C of the Texas Local Government Code.
- (2) **Benefited Property** means an improved or developed parcel, lot or tract to which storm water service is made available.
- (3) **Customer** means the person(s) or entity(ies) that is recorded as the customer, or user of utility services for a parcel as recorded in the records of the City's utility or tax billing system.

(4) **Developed Property** means a lot or tract that has been improved with impervious surface and/or drainage infrastructure. Improved refers to a lot or parcel that has been changed from its natural state.

(5) **Director** means the Public Works Director or the designated representative.

(6) **Drainage Infrastructure** means the property, real, personal or mixed, that is used in providing storm water capabilities and capacity to manage and control storm water runoff for the Drainage Utility System, including, but not limited to, bridges, catch basins, channels, conduits, creeks, culverts, swales, detention ponds, retention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(7) **Drainage Utility Fee** means the charge, including interest and penalties paid by the Customer/Owner of a Benefited Property for services provided by the Drainage Utility System including, but not limited to, the items described in “cost-of-service” in Section 552.044(2) of the Act and any charges for future funding of the Drainage Utility System construction as described in Section 552.044(4).

(8) **Drainage Utility System** means the Drainage Utility System owned, controlled or maintained, in whole or in part by the City, including the City’s existing storm water and drainage facilities, materials, and supplies, and dedicated to the service of Benefited Properties, and including provision for additions, extensions, and improvements thereto and replacements thereof.

(9) **Drainage Utility Only Account** means a utility billing account that is established for the sole purpose of billing applicable Drainage Utility Fees where no other utility services are provided through the City, or as deemed appropriate by the Director.

(10) **Equivalent Residential Unit (ERU) or Billing Unit** means the unit of measure used to calculate the Drainage Utility Fee for Non-residential property. One (1) ERU is equal to the average horizontal Impervious Area for single-family residential property within the City.

(11) **Impervious Area or Impervious Surface** means a hard surface are which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface are which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to

development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas which are paved, graveled or made of packed or oiled earthen materials or other surfaces which similarly impede the natural infiltration of surface and storm water. Open, uncovered flow control or water quality treatment facilities shall not be considered as impervious surfaces.

(12) **Non Residential Property** means all Developed Properties within the City other than residential property, including, but not limited to, commercial, industrial, institutional, multi-family and commercial mobile-home park.

(13) **Owner** means the person(s) or entity(ies) recorded as the owner of a lot or parcel as recorded in the records of the Harris County Appraisal District.

(14) **Parcel** means one (1) or more lots or tracts, or portions of lots or tracts.

(15) **Residential Property** means any property platted, zoned or used for single or two (2) family residential development upon which a single or two (2) family home has been constructed or placed, including manufactured homes.

(16) **Storm Water Runoff Potential** means relative potential for causing storm water runoff quantities or velocities from a parcel based on the type of development or land use on the parcel.

(17) **Wholly Sufficient and Privately Owned Drainage System** means land and facilities owned and operated by a person or entity other than the City's Drainage Utility System, the storm water from which does not discharge under any storm frequency event or conditions into a creek, river, slough, culvert, channel, other infrastructure or facility that is part of the City's Drainage Utility System.

SECTION II

ESTABLISHMENT OF STORM WATER UTILITY

Sec. 106.602

(a) The City Council finds, as required by Section 552.045(b), Adoption of System; Rules, of the Texas Local Government Code, that the City shall:

(1) Establish a schedule of drainage charges against all real property in the proposed service area subject to charges;

(2) Provide drainage service for all real property in the proposed area upon payment of drainage charges (except real property that is exempt from such charges); and

(3) Offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(b) Chapter 552, Municipal Utilities, Subchapter C, Municipal Drainage Utility Systems, of the Texas Local Government Code is adopted, and this ordinance shall be administered in accordance with its provisions.

(c) The Drainage Utility System of the City is declared to be a public utility. Existing facilities are incorporated in the Drainage Utility as permitted by Section 552.046, Incorporation of Existing Facilities, of the Texas Local Government Code.

SECTION III

SERVICE AREA

Sec. 106.603

The Drainage Utility service area is the area of land located within the city limits of the City of Deer Park except as provided in Section XI. Upon the effective dates of completed annexation of additional lands into the City of Deer Park, each such annexed additional land shall become part of the service area. Land annexed for limited purposes shall become part of the service area upon annexation for full purposes.

SECTION IV

ESTABLISHMENT OF A DRAINAGE UTILITY FEE

Sec. 106.604

(a) A Drainage Utility Fee is hereby established. The first Drainage Utility Charge shall be billed after September 30, 2012. Like Drainage Utility charges shall be billed on a monthly basis thereafter for the duration of the Drainage Utility.

(b) For purposes of imposing the Drainage Utility Charge, all lots and parcels within the City are classified into the following categories: (1) Residential Property and (2) Non-Residential Property.

(c) The Drainage Utility Fee shall be paid by the user or owner of each Benefited Property in the service area as deemed appropriate by the Director.

- (d) The ERU value for the City is determined through an Impervious Area inventory of all improved single-family residential parcels in the City. Evaluation of these data determined that the Equivalent Residential Unit Impervious Area value for assigning charges to Non-Residential properties is four thousand two hundred fifty (4,250) square feet. This ERU value may be adjusted from time to time as more accurate Impervious Area data becomes available.
- (e) The Drainage Utility Fee rates are as follows:
- (1) Residential property shall be charged at a rate of one (1) ERU per month, regardless of the Impervious Area on the property.
 - (2) Non-Residential property shall be charged at a rate based on an Impervious Area determination for each parcel:
$$\text{Total ERUs} = (\text{Impervious Area} / \text{ERU}), \text{ minimum } 1 \text{ ERU.}$$

The Total ERU shall be rounded up to the nearest whole ERU.
- (f) The monthly Drainage Utility Charge for properties shall be calculated by multiplying the total number of ERUs for the parcel by the ERU monthly billing rate.
- (g) The Director, or his designee, shall be responsible for determining Impervious Area of property based on reliable data, including the Appraisal District Roll, geographic information system technology, aerial photography, or other reliable means of determining Impervious Area. The Director may require additional information from the property owner, tenant, manager or developer to make the determination. The amount of charge may be revised by the Director based on any additions to the Impervious Area through the City approved building permit process.
- (h) No Drainage Utility Charge credit shall be given for the installation of drainage facilities required by the Code or state law.

SECTION V

CATEGORIES OF DRAINAGE UTILITY RATES

Sec. 106.605

- (a) The City Council finds that impervious cover increases runoff and associated pollutants. Each Benefited Property shall be categorized as one of the following:
 - (1) Residential Property. Residential Property shall be determined based on the most recent Harris County Appraisal District property data or by the City's utility billing authority.
 - (2) Non Residential Property. Fees for Non Residential Benefited Properties shall be based on the billing units.
- (b) The City Council finds that it is equitable to assess the Drainage Utility Fee to each Residential user on a flat rate basis.
- (c) The City Council finds that it is equitable to assess the Drainage Utility Fee to each Non Residential user on the basis of the number of billing units in a parcel.
- (d) The City Council may review the schedule of rates and billing units at any time and may, by ordinance, increase or decrease said rates and/or billing units within the schedule, upon a reasonable determination that said increase or decrease is warranted.

SECTION VI

BILLING FOR DRAINAGE UTILITY FEE

Sec. 106.606

- (a) The Drainage Utility Fee shall be shown as a separate listing on the monthly water utility bill from the City.
- (b) The Drainage Utility Fee for Residential Property will be charged to the Customer/Owner currently established as the responsible party for City's water utility service. The Drainage Utility Fee for Non-Residential Property will be charged to the parcel Owner.
- (c) For a parcel that is not occupied by a customer that may use water, wastewater, solid waste or other utility service and considered by the City to be vacant, either on a temporary or permanent basis, the City may bill the owner of the parcel for the Drainage Utility Fee.

(d) Where the City does not bill water, sewer or solid waste to a Customer/Owner, the City is hereby authorized to establish a “Drainage Utility Only Account” and to bill the Drainage Utility Fee to either the Customer/Owner.

(e) Any charge due hereunder which is not paid when due may be recovered in an action at law by the City. In accordance with Chapter 402.050 of the Texas Local Government Code failure of a user of the Drainage Utility System to pay the charges promptly when due shall subject such user to any remedy or penalty provided by law or in this Section, including discontinuance of any utility services provided by the City and placement of a lien against the property.

SECTION VII

DRAINAGE UTILITY FUND

Sec. 106.607

(a) A Drainage Utility fund is created.

(b) The Drainage Utility fund shall be administered in accordance with Section 552.049, Segregation of Income, of the Texas Local Government Code.

SECTION VIII

ADMINISTRATION; RULES

Sec. 106.608

(a) The Director shall administer this ordinance.

(b) The Director shall promulgate rules necessary to administer this ordinance.

SECTION IX

APPEALS

Sec. 106.609

(a) Subject to the restrictions set forth in this Section, any Customer/Owner who believes the calculation or determination of the Drainage Utility Fee assessed against them to be incorrect may appeal the fees to the City Manager; and the City Manager shall evaluate the appeal based on the methodologies for calculating the Drainage Utility Fee set forth in this Ordinance.

(b) The appeal shall be in writing and set forth, in detail, the relief sought, the grounds upon which relief is sought and whether the petitioner requests a hearing on its appeal.

(c) The appeal shall be filed with the City Manager within fifteen (15) business days of the Customer/Owner receiving the billing statement from the City. The billing statement shall be deemed received five (5) days after it is placed in a mail receptacle of the United States Postal Service.

(d) Failure to submit a timely written appeal for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or reviews on such billing statement.

(e) The Customer/Owner requesting an adjustment may be required, at the Customer/Owner's cost, to provide supplemental information to the City Manager, including but not limited to survey data approved by a Texas licensed professional land surveyor, engineering reports approved by a Texas licensed professional engineer, or other documentation the City Manager deems necessary. Failure to provide requested information in a timely manner may result in the denial of the adjustment request.

(f) Within a reasonable time of the submittal of an appeal, the City Manager shall either grant the petition and modify the Drainage Utility Fee assessed; deny the petition if no adjustment is warranted; or a hearing is deemed necessary by the City Manager, set a hearing on the petition for appeal.

SECTION X

HEARINGS

Sec. 106.610

(a) If a hearing is deemed necessary by the City Manager, then the City Manager shall set a hearing to determine if an adjustment should be made to the Drainage Utility Fee assessed to the Customer/Owner.

(b) Written notice of the hearing shall be served on the petitioner at least fifteen (15) days prior to the hearing. Notice shall be served in person or by certified mail, return receipt requested.

(c) Notice shall specify the date, time and place of the hearing.

(d) Notice shall be deemed received five (5) days after it is placed in a mail receptacle of the United States Postal Service.

(e) For purposes of this Section, the City Manager shall be empowered to administer oaths and to promulgate procedural rules for the conduct of the hearing.

(f) Decisions shall be based on a preponderance of the evidence and the petitioner shall have the burden of proof to demonstrate that the Drainage Utility Fee is not applicable, that the petitioner's property is exempt from the charge, that the Drainage Utility Fee was calculated incorrectly or that the determination of the value of the Drainage Utility Fee was not calculated according to the applicable Drainage Utility Fee schedule or the guidelines established in this ordinance.

(g) The City Manager shall act as the hearing officer.

(h) After the conclusion of the hearing, the City Manager shall make written findings and shall issue a written decision without undue delay.

(I) The decision of the City Manager shall be final.

SECTION XI

EXEMPTIONS

Sec. 106.611

(a) Pursuant to the Texas Local Government Code, Section 552.053 and Section 580.003, the following shall be exempt from the provisions of this chapter:

1. property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
2. property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the municipality in which the property is located for maintenance;
3. a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the City;
4. state agencies;
5. public or private institutions of higher education
6. property owned and operated by a state recognized Independent School District
7. City-owned property, including rights-of-way.

8. property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code.

SECTION XII

NO WAIVER OF IMMUNITY

This Ordinance does not imply or warrant that a benefitted property will be free from flooding, storm water pollution, or stream erosion. The City makes no representation that all drainage problems will be remedied. This article does not create additional duties on the part of the City or create new liability or remedies for any flooding, stream erosion, deterioration of water quality, or other damages. Nothing in this article shall be deemed to waive the City's immunity under law or reduce the need or necessity for flood insurance.

SECTION XIII

CUMULATIVE PROVISIONS

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Deer Park, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION XIV

SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrase, clause, sentence, paragraph or section of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION XV

PENALTY CLAUSE

Sec. 106.615

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than two thousand dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION XVI

RIGHTS AND REMEDIES

All rights and remedies of the City of Deer Park, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

NOTICE

The City Secretary of the City of Deer Park, Texas, hereby acknowledges that she published the caption of this ordinance for three (3) separate days in the official newspaper of the City of Deer Park, Texas, as required by Section 552.013, Texas Local Government Code.

SECTION XVII

The City Council finds that this Ordinance relates to the immediate preservation of the public peace, health, safety and welfare in that the establishment of a municipal storm water drainage utility system be adopted at the earliest possible moment to comply with State Law, and to provide protection for persons within the City, thereby creating an emergency, for which the Charter requirement providing for the reading of ordinances on three (3) several days should be dispensed with, and this Ordinance be passed finally on its introduction; and accordingly, such requirement is dispensed with, and this Ordinance shall take effect upon its passage and approval by the Mayor.

SECTION XVIII

EFFECTIVE DATE

In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Deer Park, Texas, on the 18 day of September, 2012.

PASSED, APPROVED and ADOPTED on this the 18 day of Sept., 2012.



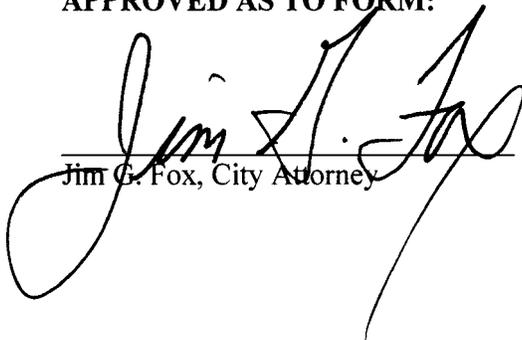
Wayne Riddle, Mayor

ATTEST:



Sandra Watkins, City Secretary

APPROVED AS TO FORM:



Jim G. Fox, City Attorney