

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF AMARILLO, TEXAS, AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 18-4, TO ADOPT RULES FOR THE CITY OF AMARILLO DRAINAGE UTILITY; LEVYING A SCHEDULE OF DRAINAGE CHARGES; PROVIDING FOR PENALTIES AND INTEREST; PROVIDING AN APPEALS PROCESS; AND PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEALER; AND AN EFFECTIVE DATE.

WHEREAS, the Amarillo City Commission has established a municipal drainage utility system in accordance with the Texas Local Government Code, Chapter 552, Subchapter C and the Charter of the City of Amarillo, Texas, Article II Sections 10 and 13; and

WHEREAS, the Commission must provide rules for use, operation and financing, and other rules related to the drainage utility system; and

WHEREAS, the Commission must prescribe bases on which the drainage utility system may be funded and charges in support of the system may be assessed, levied, and collected; and

WHEREAS the Commission finds that notice of the charges and the establishment of the charges of the drainage utility system complies with the requirements of the Texas Local Government Code, chapter 552, "Subchapter C.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF AMARILLO, TEXAS:

SECTION I. That the Amarillo Municipal Code, Title XVIII, Chapter 18-4 is amended to add Article II to read as follows:

Chapter 18-4 Drainage Utility

Article II. Administration of Drainage Utility.

Sec. 18-4-11. Definitions.

Terms defined herein are specific to this chapter and shall not be construed as conflicting with similar terms in other parts of this Code. Terms not otherwise defined herein shall be given the definitions contained in the Texas Local Government Code, Subchapter C

(a) "The Act" shall mean the Texas Local Government Code, Chapter 552, Subchapter C.

(b) "Benefited Property" shall mean an improved lot or tract to which drainage service is made available under this Chapter.

(c) "Commercial Property" shall mean all improved properties within the City other than residential property, including, but not limited to, commercial, industrial,

institutional, government, multi-family, mobile-home park, and religious organization land uses.

(d) “Cost of Service” shall mean the costs for drainage system service to a Benefited Property, which shall be the total of:

(1) prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the Benefited Property;

(2) prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the Benefited Property;

(3) prorated cost of architectural, engineering, legal and related services, plant and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the Benefited Property;

(4) prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the Benefited Property;

(5) prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the Benefited Property;

(6) prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the City; and

(7) administrative costs of operating and maintaining a drainage utility system.

(e) “Drainage” shall mean bridges, catch basins, channels, conduits, creeks, culverts, detention 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.

(f) “Drainage Utility Charges” shall mean the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any Benefitted Property, including any interest and penalties; and amounts made in contribution to funding of future drainage system construction by the City..

(g) “Drainage System” shall mean the drainage system owned or controlled in whole or in part by the City and dedicated to the service of Benefitted Property, including any future additions, extensions, and improvements thereto and replacement thereof.

(h) “ERU (Equivalent Residential Unit)” shall mean the unit of measure used to calculate the Drainage Utility Charge for commercial property. The ERU is the average horizontal Impervious Area for single-family property within the City.

(i) “Facilities” shall mean the real, personal, or mixed property that is used in providing drainage and included in the System.

(j) “Impervious Area” or “Impervious Surface” shall mean a surface which has become compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Impervious areas include, but are not limited to, compacted soils, graveled surfaces subject to motorized vehicular traffic, walkways, buildings, parking lots, pavement, and ingress/egress driveways. “Impervious Area” or “Impervious Surface” does not include sidewalks located in the public right-of-way and as further defined in Section 4-6-2 of this Code. For purposes of this definition a “walkway” is a pedestrian way in the interior of a lot or tract that is not located in the public right-of-way.

(k) “Improved Lot or Tract” shall mean a lot or tract that has a structure, as that term is defined in 4-10-3 of this code, or other improvement on it that causes an impervious surface or area.

(l) “Parcel” shall mean one (1) or more lots or portions of lots that are contiguous and under single ownership.

(m) “Public Utility” shall mean drainage service that is regularly provided by the City through City property dedicated to that service to the users of benefited property within the service area and that is based on:

- (1) an established schedule of charges;
- (2) use of the police power to implement the service; and

(3) nondiscriminatory, reasonable, and equitable terms consistent with the Act.

(n) “Residential Property” shall mean any improved lot or tract with single-family home, duplex, triplex, quadplex, condominium, or mobile home.

(o) “Service Area” shall mean the municipal boundaries of the City.

(p) “User” or “Customer” shall mean the person or entity that owns or occupies a Benefited Property.

(q) “Wholly Sufficient and Privately Owned Drainage System” shall mean drainage from an improved lot or tract which does not discharge into any natural or manmade waterway or drainage infrastructure including public streets, storm drains, culverts, drainage easements, or storm water ponds that are part of the Drainage System.

Sec. 18-4-12. Drainage Utility Fund.

A separate fund is hereby created, known as the Drainage Utility Fund, for the purpose of segregating, identifying, and controlling all revenues and expenses attributable to the Drainage Utility. All Drainage Utility Charges shall be deposited as collected and received into this fund and shall be used exclusively for drainage Cost of Service. Such utility revenues may be used for the operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration, debt issuance cost and debt service, and other reasonable and customary expenses associated with the operation of a utility system. It shall not be necessary that the expenditures from the Drainage Utility Fund for any authorized purpose specifically relate to or benefit any particular Benefited Property from which the revenues were collected.

Sec. 18-4-13. Administration of Drainage Utility.

The Director of Public Works or his designee shall be responsible for the administration of the Drainage Utility, including, but not limited to, enacting any procedures necessary for the administration of the drainage charges and the consideration of appeals, development, and implementation of maintenance and facility improvement programs, state and federal regulatory compliance, and establishing drainage criteria and standards for the drainage system. The Director of Public Works shall keep an accurate record of all properties benefited by the services and facilities of the Drainage Utility.

Sec. 18-4-14. Drainage Utility Charge.

(a) A Drainage Utility Charge is hereby imposed upon each improved lot and parcel within the Service Area. 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 customer categories: (1) Residential Property and (2) Commercial Property.

(c) The ERU value for the City is determined through an inventory of all improved single-family residential parcels in the City and determination of Impervious Area for each parcel. Evaluation of these data determined that the equivalent residential unit Impervious Area value for assigning charges to commercial properties is two thousand eight hundred (2,800) square feet.

(d) Residential Rates shall be based on statistical evaluation of land parcel Impervious Area for single-family properties. The following three rate tiers are established for assignment of charges:

1. Tier 1 "Small" 0.68 ERU, <2,072 square feet impervious area
2. Tier 2 "Typical" 1.00 ERU, 2,072-3236 square feet impervious area
3. Tier 3 "Large" 1.51 ERU, >3,236 square feet impervious area

(e) Commercial Rates shall be based on Impervious Area determination for each parcel:

Total ERU's = (Impervious Area/2,800 sq. ft.), minimum 1 ERU

The Total ERU shall be rounded to the nearest one-hundredth.

(f) The monthly Drainage Utility Charge for properties shall be calculated by multiplying the total number of ERU's for the parcel by the ERU monthly billing rate.

(g) The following ERU monthly billing rate is hereby established and shall be used to calculate the total monthly Drainage Utility Charge for all property located in the City, both residential and commercial, in accordance with the applicable formula established in this subsection:

ERU rate = \$2.51 per ERU per month

(h) The Director of Public Works, or his designee, shall be responsible for determining Impervious Area of property based on reliable data, including the Appraisal

Roll, geographic information system technology, aerial photography, or other reliable means for determining Impervious Area. The Director of Public Works may require additional information from the property owner, tenant, manager or developer to make the determination. The amount of a charge may be revised by the Director of Public Works based on any additions to the Impervious Area through the City approved building permit process.

(i) The City Commission may review the schedule of charges at any time and may increase or decrease charges upon a determination that an increase or decrease is warranted.

(j) No Drainage Utility Charge credit shall be given for the installation of drainage facilities required by the Code or state law.

Sec. 18-4-15. Billing, Payments, and Penalties.

(a) Bills or statements for the drainage utility charge shall be rendered by the City for all properties subject to the charge. Bills shall be payable when rendered and shall be considered received by the customer, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the utility customer. Bills shall be rendered monthly for the previous month's service.

(b) The Director of Public Works shall assume that each utility account in the service area serves one or more Users of a Benefitted Property, and shall assess the Drainage Charges to the person responsible for payment of the utility account. The Director of Public Works shall calculate the Drainage Charges for all Users and shall assess the Drainage Charges to the person responsible for payment of the utility account. If there is more than one User of a Benefitted Property (which is non-Residential), then the charges shall be assessed to the owner of the Benefitted Property, unless instructed by the owner of the Benefitted Property, in writing, to bill Users on a prorated basis.

(c) Bills are due and payable on the date specified thereon and if full payment is not made by the date specified, the bill shall become delinquent.

(d) Drainage Utility Charges shall be billed with the City's other public utility billings and shall be identified separately on the bill as a drainage utility charge. Drainage Utility Charges are subject to the billing procedures, penalties, discounts, interest, and other terms of Chapter 18-2, Article III.

(e) Any charge due hereunder which is not paid when due will subject the user to discontinuance of all utility services provided by the City and may be recovered in an action at law or in equity by the City including fixture of a lien against the property, as allowed by law.

(f) The City shall have access, at all reasonable times, to any Benefitted Property served by the drainage utility for necessary inspection, repair of infrastructure or enforcement of this Ordinance.

Sec. 18-4-16. Appeals.

(a) Requests for adjustment of a Drainage Utility Charge shall be submitted to the Director of Public Works or his designee. A User may apply for an adjustment 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 amount of Impervious Area used to calculate the drainage charge; or

(3) the User's Drainage Charge has been assessed in error.

(b) The following procedures shall apply to all requests for adjustment of the Drainage Utility Charge:

(1) The User shall have the burden of proof.

(2) Any User who has paid Drainage Utility Charges and who believes the calculation or determination of the Drainage Utility Charge to be incorrect may, subject to the restrictions set forth in this Chapter, submit an adjustment request to the Director of Public Works.

(3) Requests for adjustment of Drainage Utility Charges paid by an owner, user or customer making the request shall be in writing and set forth in detail the grounds upon which relief is sought.

(4) Adjustment requests will be reviewed by the Director of Public Works within twenty (20) days from the date of receipt of an adjustment request. Adjustments resulting from such a request shall be prospective, but may be made retroactive for no greater time period than three (3) monthly billings prior to the receipt of the request.

(5) The User requesting an adjustment may be required, at the User's cost, to provide supplemental information to the Director of Public Works, including, but not limited to, survey data certified by a Texas registered professional land surveyor (R.P.L.S.), or other documentation of Impervious Area. Failure to provide requested information may result in the denial of the adjustment request.

(6) The Director of Public Works' determination of the adjustment request shall be provided to the User, in writing, within ten (10) days of the later of receipt of the request for adjustment or receipt of any additional information submitted in accordance with this section. If the Director of Public Works approves the request, the adjustment to the Drainage Utility Charge will be made.

(b) If the Director of Public Works denies the adjustment request, the User may, within (10) ten days from the date of notification, appeal the decision to a panel consisting of the Building Official, Planning Director, and either an Assistant City Manager or the Deputy City Manager. The appeal shall be in writing, contain a succinct and clear statement of the User's argument and suggested remedy, and be filed with the Planning Director who shall convene the panel. The panel shall have ten (10) business days from the date the appeal is received to review the appeal, make a determination, and notify the User.

(c) If the panel denies the appeal, the User shall have five (5) business days from the date of notification to appeal the decision to the City Commission. The appeal shall be in writing, containing the information stated above in (b), and be filed with the City Secretary. The City Commission shall grant a public hearing within sixty (60) days of receipt of the request for review. The City Commission's decision shall be final.

(d) Before imposing a lien for delinquent Drainage Utility Charges, the City shall send notice to the record owner of the Benefitted Property stating the amount of the charges owed, and of the owner's right to appeal the placement of the lien by producing evidence the delinquent charges are not rightfully owed, by providing such within ten (10) business days from the date of notification to the Director of Utility Billing. The Director of Utility Billing shall not file the lien if the owner shows that the Drainage Utility Charge made the basis of the lien is not owed. When a person pays all of the

charges, a lien filed pursuant to this Chapter, shall be released. The paying party shall be responsible for the filing costs of the release.

SECTION 2. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Commission of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 3. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 4. Publishing and Effective Date. This ordinance shall be published and become effective according to law.

INTRODUCED AND PASSED by the City Commission of the City of Amarillo, Texas, on First Reading this the _____day of _____, 2012; and PASSED on Second and Final Reading the _____day of _____, 2012.

Paul Harpole, Mayor

ATTEST:

Donna DeRight, City Secretary