

ORDINANCE NO. 2100

AN ORDINANCE ESTABLISHING A MUNICIPAL STORM DRAINAGE UTILITY SYSTEM IN ACCORDANCE WITH SUB-CHAPTER 402 OF THE LOCAL GOVERNMENT CODE

WHEREAS, the Municipal Drainage Utility Systems Act permits municipalities to establish a storm drainage utility system within an established service area and provides rules for the use, operation, and financing of the system; and

WHEREAS, the City must comply with unfunded federal regulations of Texas Pollutant Discharge Elimination System (TPDES) as a Phase 2 Community beginning in 2008 including the implementation of a Stormwater Management Plan (SWMP) approved by the TCEQ as the first step of the City's Municipal Separate Storm Sewer System (MS4) Permit and;

WHEREAS, the City researched but did not choose to implement an SDU fee in 1995 because the SWMP requirement for Phase 2 Communities was postponed by the EPA until 2008 and;

WHEREAS, the City now must comply with new regulations by increasing reporting, maintenance activities, tracking of engineering plan review, engineering land disturbance permits, engineering construction inspections, GIS mapping, work order management, and customer query tracking, which are all intended by Public Works to be integrated together using the City's GIS databases as an asset management program within additional software which will markedly increase GIS and engineering tasks and;

WHEREAS, the City desires to increase the amount of drainage capital improvement projects (CIP) completed annually to address critical areas of drainage control, which will markedly increase engineering project management and inspection, and;

WHEREAS, the City has complied with public notices, including the printing of this entire ordinance in a newspaper of general circulation, the notice being advertised three times, the first being at least 30 days prior to a public hearing; and

WHEREAS, a public hearing is to be held at 6:30 p.m. on February 24, 2009 at Hurst City Hall, 1505 Precinct Line Rd, Hurst, TX 76054

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

Section I: Definitions

The following definitions shall apply when used in this ordinance:

"Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

"BMP" means Best Management Practice as adopted within the City Design Standards.

"Construction Site" shall be considered exterior sites with active or previous construction activities greater than 0.10 acres. Construction or Redevelopment sites shall be required to submit plans for land disturbance permits for a minimum of erosion control measures.

"Cost of service" as applied to a drainage system service to any benefitted property means and can include any of the following:

- a. the 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 benefitted property;
- b. the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;
- c. the prorated cost of architectural, engineering, legal, and related services, plans 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 benefitted property;
- d. the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;
- e. the 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 benefitted property;
- f. the 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 municipality; and
- g. the administrative costs of a drainage utility system.

"Developed" means a parcel which has had improvements, structures, grading, or other construction which increased the natural impervious runoff value from an undeveloped or agricultural land.

"Drainage" means bridges, culverts, junction boxes both with and without inlets, streams including channels, flumes, and ditches, stormwater management facilities, pipes, outfalls, 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.

"Drainage charge" means:

- a. the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and
- b. if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

"Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

"Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the system.

"Impervious Surface" means land where water will not easily penetrate, such as parking lots, roads, building footprints, swimming pools, and other items defined by engineering judgment. Impervious surface runoff coefficients for land use types are listed within the current Engineering Design Manual.

"Inspector" means a buildings or construction inspector, project manager, Building Official, or City Engineer.

"Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:

- a. an established schedule of charges;
- b. the use of the police power to implement the service; and
- c. nondiscriminatory, reasonable, and equitable terms as declared under this ordinance.

"Private" means parts of a stormwater system located on land not owned by the City of Hurst outside of public easements. These partial systems connect to the public stormwater utility but are separate and distinct by ownership and maintenance responsibilities. This definition of "private" includes other government owned land in Hurst for the purposes of this ordinance, e.g. Tarrant County, Texas Department of Transportation, etc.

"Service area" means the municipal boundaries of the City.

"Stormwater Management Facility" means a drainage facility intended for one of the following purposes:

- a. naturally created pond
- b. manmade earthen detention pond, either dry or wet, for the purposes of flood protection of downstream properties and potentially the additional benefit of channel protection and water quality for a development
- c. underground detention system, which commonly consists of pipes and/or vaults for purposes of flood protection of down-stream properties and potentially the added benefit of channel protection and water quality for a development
- d. manmade earthen or structural water quality pond for the purpose of limited drainage controls with added environmental mitigation for a development

“Stream” means a storm water feature which can be defined as perennial, intermittent, or ephemeral.

“Undeveloped” means a parcel which has not had a building or structure located within its limits. Clearing of trees and grading activities, without a building or structure, for an area of 25 percent or more of a parcel shall be defined as minimally developed.

"User" means the person or entity who owns or occupies a benefitted property.

"Improved lot or tract" means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

Definitions not explicitly stated in this ordinance shall be defined first as within the current TPDES General Permit, then as within other sections of the Code of Ordinances. Where differences exist, the most stringent of the definitions shall apply.

Severability- In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this agreement, but this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

Section II: Adoption of System

As a prerequisite of adopting this ordinance, the City of Hurst City Council, based upon studies conducted by independent consultants in conjunction with and under the supervision of the city staff, finds that:

- a. the City of Hurst will establish a schedule of drainage charges against all real property in the proposed service area subject to charges under this subchapter, which will be approved as part of a separate public hearing;

- b. the City of Hurst will provide drainage for all real property in the proposed service area on payment of drainage charges, except real property exempted in Section VIII; and
- c. the City of Hurst will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

Section III: Declaration of Public Utility

By adoption of this ordinance by a majority vote of its entire membership, The City Council hereby declares the drainage system of the City of Hurst to be a public utility.

Section IV: Incorporation of Existing Facilities

- a. The City of Hurst hereby incorporates all of the existing drainage facilities with city easements or ownership, materials, and supplies owned and controlled by the City into the drainage utility system.
- b. All other private systems shall remain privately controlled.
- c. In order for a private system to be transferred to the public utility, the drainage structures shall meet current design standards, be inspected by the City Engineer or his/her designee, and be found to be in acceptable condition according to the current standards. Only then may an easement be filed for approval and acceptance by the City Council.

Section V: Adoption of Rules

1. The City Council must approve drainage fee changes and exception rules of Section VIII.
2. The City Manager or his designee(s) may, from time to time, adopt rules for the administration of the drainage charge by the Utility Billing staff other than those items listed in (1).
3. The City Engineer or her/his designee(s) may, from time to time, adopt rules for the drainage utility technical design and construction standards, policies, and permits.
4. It shall be unlawful for activities to violate the conditions of the TPDES General Permit passed by separate ordinance. Issuance of a permit shall not be taken as permission to violate any of the requirements of this article.
5. When a violation of the TPDES General Permit is found by an Inspector, the person responsible for the site shall:
 - a. be notified in writing and shall make any changes or repairs required, in the judgment of the inspector to place such construction site in safe condition.
 - b. If such work is not completed within the time specified by the inspector in such notice, the Inspector shall have the authority to stop work on the site.

6. In cases of emergency, when necessary for safety to persons or property, or for abandoned sites, the City Engineer shall have the authority to immediately repair the site and lien the property owner for such costs incurred.
7. Any person violating any of these provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed two thousand dollars (\$2,000) and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
8. The City shall itself be subject to the terms of the TPDES General Permit and shall follow all policies, design standards, BMP installation and maintenance, filing of state NOI (Notice of Intent) and city permits, shut-down procedures for violations, etc. This includes but is not limited to impervious area maximums, detention requirements, water quality requirements and all other items required of private developers.
9. Variances shall not be allowed to the TPDES General Permit requirements.
10. Variances shall not be allowed to utility engineering design standards.

Section VI: Drainage Charges

1. The City of Hurst shall charge all benefitted property, except those exempted in Section VIII for drainage service based on impervious area of land related to drainage and on classifications and individual calculations found to be nondiscriminatory, equitable, and reasonable. In accordance with state law, the City has based its methodology on data gathered from the Tarrant Appraisal District as well as the City's own Geographical Information System.
2. The City of Hurst hereby adopts the "Schedule of Drainage Charges" as referenced herein. The most current drainage fee charges shall be posted on the city website and available at the Utility Billing counter.
3. Drainage Charges shall be reasonably set in accordance with the Capital Improvement Plan (CIP) for the City and annual operating costs including the addition of the new Stormwater Management Plan requirements.
4. Billing, non-payment and Deposits.
 - a. The SDU fee shall be included on the monthly utility bill, along with water, wastewater and garbage charges.
 - b. Non-payment of the municipal drainage utility system fee shall be treated the same as non-payment of the water, wastewater and garbage bill with delinquent fees and current utility cut-off procedures applied as defined in Chapter 26.

- c. Water service may be cut off for non-payment of storm drainage fees
- d. The City of Hurst shall not require a deposit for drainage service as a precondition to accepting surface flow in the drainage utility system.

Section VII: Appeals Process

1. If an owner or a person legally authorized to represent a non-residential property owner wishes to appeal a storm drainage utility fee amount, they may do so by filing a notice of appeal with the City Engineer and paying a \$100 application fee. An appeal can be filed by completing a form that describes the basis for the claimant appealing the data, including the provision of independent engineering reports supporting a more accurate impervious area calculation. The information submitted to the City must be complete in order to conduct an evaluation of the appeal. A response will be provided within 10 days of the receipt of the completed appeal form and supporting material. Any utility billing adjustments made after June 1, 2009 shall be applied only to the next billing cycle following a decision made by the City of Hurst.
2. Residential properties shall not have an individual appeals process separate from that offered in the public hearing held February 24, 2009.
3. The Utility Billing office shall refer questions of impervious fee calculations to the City Engineer.
4. The City Engineer shall review and make determinations of impervious area appeals. Further appeals may be heard by the City Council.

Section VIII: Segregation of Income

The income of the drainage utility system shall be segregated and completely identifiable in municipal accounts.

Section IX: Exemptions

Exemptions shall be allowed as listed under the Schedule of Storm Drainage Fees as adopted herein.

Section X: Effective Date

This ordinance shall be affected upon second reading. The bills for the billing period that begins after the effective date shall reflect the new Municipal Drainage Utility System charges.

AND IT IS SO ORDERED.

Passed on the first reading on the 24th day of February, 2009, by a vote of 6 to 0.

Passed on the second reading on the 10th day of March, 2009, by a vote of _____ to _____.

CITY OF HURST

By: _____
Richard Ward, Mayor

ATTEST:

Rita Frick, City Secretary

Approved as to form and legality:

City Attorney