

ORDINANCE

AN ORDINANCE OF THE CITY OF BURLESON, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 82 “UTILITIES,” TO ADD ARTICLE VII “MUNICIPAL DRAINAGE UTILITY SYSTEM” DIVISION 1 “CREATION AND ADMINISTRATION” TO ESTABLISH A MUNICIPAL DRAINAGE UTILITY SYSTEM; PROVIDING FOR DRAINAGE SERVICE, BILLING, EXEMPTIONS, DRAINAGE CHARGES, AND APPEALS; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A CRIMINAL PENALTY OF A FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) AND, ADDITIONALLY, AUTHORIZING THE CITY TO DISCONTINUE ANY UTILITY SERVICES PROVIDED BY THE CITY IF A USER OF THE MUNICIPAL DRAINAGE UTILITY SYSTEM FAILS TO PAY THE DRAINAGE CHARGES PROMPTLY WHEN DUE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas (the “City”), is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Burleson, Texas, has investigated and determined that it would be advantageous and beneficial to the citizens of the City to promote the public health, safety and welfare of the citizens to adopt a Municipal Drainage Utility System; and

WHEREAS, the City Council further investigated and determined that it would be in the best interest of the citizens to adopt a municipal drainage utility in accordance with the Municipal Drainage Utility Systems Act as set forth in Chapter 552, Subchapter C, Texas Local Government Code, as amended (“Act”); and

WHEREAS, the City Council finds that it held a public hearing on a proposed ordinance adopting the Act prior to the adoption of this Ordinance; and

WHEREAS, prior to the public hearing, the City Council finds that the City published notice of the time and place of the public hearing on this Ordinance three separate times in the *Fort Worth Star-Telegram*, a newspaper of general circulation in the corporate boundaries of the City, with the first published notice occurring on or before the thirtieth day before the date of the public hearing, and such published notice included the terms of the proposed ordinance adopting the Act in full; and

WHEREAS, the City Council hereby adopts a municipal drainage utility in accordance with the Act and incorporates it herein in its entirety for all purposes; and

WHEREAS, the City Council finds that the drainage of the City is a public utility within the meaning of the Act; and

WHEREAS, the City Council further finds that the City will establish a schedule of drainage charges against all benefitted property in the proposed service area(s) which included the entire municipal boundaries of the City, as amended, subject to charges under this Ordinance; and

WHEREAS, the City Council further finds that the City will provide drainage for all benefitted property in the proposed service area(s) on payment of drainage charges, except benefitted property exempted under the Act or pursuant to this Ordinance; and

WHEREAS, the City Council further finds that the City, using approved tax plats and assessment rolls, conducted a comprehensive inventory of the lots and tracts in the service area of the Municipal Drainage Utility System, locating over eighteen thousand different parcels; and

WHEREAS, the City Council further finds that the City used this inventory to establish an Equivalent Residential Unit (“ERU”) as set forth in this Ordinance based on the median impervious area of residential properties, thereby creating a consistent and nondiscriminatory unit of measurement for comparing residential and non-residential properties; and

WHEREAS, the City Council further finds that the City further analyzed the distribution of impervious area across residential and non-residential parcels, reviewed land-use characteristics, and prepared classifications and tiers as set forth in this Ordinance that treat similar properties in a nondiscriminatory, equitable, and reasonable manner; and

WHEREAS, in setting the schedule of drainage charges, the City Council further finds and determines that the drainage charges set forth are not based on the value of the benefitted property, but on a basis directly related to drainage through the ERU for the charge; and

WHEREAS, in setting the schedule of drainage charges, the City Council further finds that the City completed a cost-of-service analysis to determine the appropriate level of funding by identifying existing stormwater system operations and maintenance needs, future service level demands, capital improvement needs, and regulatory compliance obligations; and

WHEREAS, the City Council further finds that the City will offer drainage service on nondiscriminatory, reasonable, and equitable terms;

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

SECTION 1. Chapter 82 “Utilities” of the Code of Ordinances of the City of Burleson, Texas, is amended by adding Article VII, “Municipal Drainage Utility System,” Division 1, “Creation and Administration” to read as follows:

“ARTICLE VII. Municipal Drainage Utility System

Division 1. Creation and Administration

Sec. 82-401. Municipal Drainage Utility System Established.

The Municipal Drainage Utility Systems Act, Chapter 552, Subchapter C, Texas Local Government Code, as amended, is hereby adopted and shall be fully implemented as provided by the Act and by the City Council; and the drainage of the City is hereby found to be a public utility within the meaning of the Act. The service area, as that term is defined in the Act, is hereby established to be the municipal boundaries of the City, as amended from time to time. The City hereby incorporates into the municipal drainage utility system all existing property, facilities, materials, and supplies constituting the City's drainage system on the effective date of this Article. All future acquisitions by the City of real or personal property used in the City's municipal drainage utility system shall be maintained as a part of the municipal drainage utility.

Sec. 82-402. Definitions

In this Article, the definitions in the Act shall apply except as otherwise defined below:

- (1) "Act" means the Municipal Drainage Utility Systems Act, Chapter 552, Subchapter C, Texas Local Government Code, as amended.
- (2) "City" means the City of Burleson, Texas.
- (3) "City Charter" means the home rule charter of the City.
- (4) "City Council" means the city council of the City.
- (5) "City Manager" means the city manager of the City or his or her designee.
- (6) "Director of Public Works" means the Director of Public Works of the City or his or her designee.
- (7) "Drainage Charge" means (i) the levy imposed to recover the cost of the service of the City in furnishing drainage for any benefitted property; and (ii) an amount made in contribution to funding of future drainage system construction by the City.
- (8) "Drainage utility system fee" means a drainage charge provided for in Sec. 82-405 and established in Sec. 82-421.
- (9) "Equivalent Residential Unit" or "ERU" means the typical amount of impervious area for a residential property in the service area.

- (10) “Impervious area” means surfaces that do not provide stormwater significant opportunity for infiltration into the soil and result in increased stormwater runoff to the municipal drainage utility system.
- (11) “Other public utilities” means one or more of the City’s public utilities other than the municipal drainage utility system, including, but not limited to, water, sewer/wastewater, and/or solid waste collection.
- (12) “Wholly sufficient and privately owned drainage system” means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal drainage utility system.

Sec. 82-403. Drainage Service Provided.

The City will provide drainage service for all benefitted property within its municipal boundaries, as amended, upon payment of the determined drainage charges, as defined in the Act, and excluding property exempt under the Act and certain benefitted property exempted pursuant to this Article, and the fees, assessments, and charges will be based on nondiscriminatory, reasonable, and equitable terms. The drainage charges established herein shall be for all non-exempt benefitted property as defined in the Act within the municipal drainage utility system.

Sec. 82-404. Billing for Drainage Service.

The City is hereby authorized to bill the drainage charges incurred as a result of the adoption of the Act and through the establishment of the municipal drainage utility system. The drainage charge shall be separately identified from other public utility billings. Drainage charges may only be expended for the costs of service as defined by the Act.

Sec. 82-405. Authority to Levy Drainage Charges; Findings.

The City may levy a schedule of drainage charges upon satisfaction of the procedural requirements provided in the Act and this Article. Prior to the levy of any drainage charges, the City Council shall conduct a public hearing on the drainage charges pursuant to the Act. Prior to adoption of this Article, the City Council found and determined:

- (1) The City will establish a schedule of drainage charges against all benefitted property in the proposed area which includes the entire municipal boundaries of the City, as amended, subject to the charges under the Act;
- (2) The City will provide drainage for all benefitted property in the proposed service area on payment of the drainage charges, except benefitted property exempt under the Act; and

(3) The City will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

Sec. 82-406. Exemptions Authorized.

The City is authorized to exempt certain property from drainage charges in accordance with the Act and the establishment of its municipal drainage utility system. Any exemptions to the drainage charges established herein other than the exemptions required by the Act shall be set forth in the schedule of drainage charges.

Sec. 82-407. Charges.

(a) The City Council shall, following the adoption of this Article, from time to time establish by ordinance a schedule of drainage charges which shall be collected through the City's bill for other public utilities pursuant to the Act and other applicable law. There shall be a drainage charge on each monthly statement for other public utilities for the municipal drainage utility system, as set forth in the schedule of drainage charges. The City Manager, or designee, is authorized to collect such charges in a manner consistent with the City Charter, the Act and this Article. The drainage charges shall be a separate line item on the statement for other public utilities, and shall be clearly identified as a separate charge. Except, as otherwise provided herein, the billing, charges and collection procedures shall be consistent with City collection procedures for other utility public utility service(s) provided by the City.

(b) The drainage charges established pursuant to this Article will apply to the accounts maintained by the City for other public utility services.

(c) All billings, credits, exemptions, and other procedures relating to drainage charges established pursuant to this Article shall be subject to the provisions of the Act and other applicable law.

(d) A deposit for the drainage services as a precondition to accepting surface flow from benefitted property into the municipal drainage utility system shall not be required. All benefitted property within the municipal boundaries of the City, as amended, will be provided with drainage utility system service on timely payment of drainage charges established herein.

Sec. 82-408. Appeals.

(a) A person or entity that owns or occupies a benefitted property may appeal the drainage charges or denial of an exemption established under this Article pursuant to this procedure set forth in this section.

(b) Appeals shall be directed to the Director of Public Works for evaluation and determination. An appeal shall be in writing and submitted to the Director of Public Works within thirty (30) days after the billing statement for other public utilities containing the

matter to be disputed. During all periods of appeal the person or entity that owns or occupies the benefitted property and/or the account holder shall be responsible for payment of the charges in full.

(c) The Director of Public Works shall render a written decision on such appeals within thirty (30) days after receiving a timely written notice of appeal from the person or entity that owns or occupies the benefitted property and/or the account holder. The Director of Public Works shall deliver a copy of the appeal decision to the person or entity that owns or occupies the benefitted property and/or the account holder by U.S. mail to the address of the landowner/account holder according to the most recent records in the possession of the City.

(d) Any person or entity who owns or occupies the benefitted property and/or the account holder who disagrees with the decision of the Director of Public Works may appeal such decision to the City Manager in writing within ten (10) days after receipt of the decision of the Director of Public Works. The decision of the City Manager shall render a written decision within thirty (30) days after receipt of a timely appeal. The decision of the City Manager shall be final.

Sec. 82-409. Penalties; Enforcement.

Failure to pay the drainage charges promptly when due shall subject such user to discontinuance of any public utility services provided by the City, in accordance with the procedures adopted by the city for discontinuance of any City public utility service including water and/or sewer service and other applicable laws.

Sec. 82-410. Other Laws.

To the extent this Article conflicts with any other Article in this code of ordinances or any other ordinance of the City, the provisions shall be harmonized when possible, however, this Article shall control and supersede any other provision regarding the municipal drainage utility system.

Sec. 82-411. No Effect on Landowner Obligations; No Waiver of Immunity.

(a) The establishment of the municipal drainage utility system by the City does not relieve private landowners, developers, other individuals, and entities from responsibility for providing drainage improvements in connection with land development pursuant to the other ordinances of the City or laws of the state that relate to stormwater runoff, drainage management, drainage improvements, and the like.

(b) The establishment of the municipal drainage utility system does not imply or warrant that a benefited property will be free from flooding, stormwater pollution, or stream erosion. The City makes no representation that all drainage issues 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 reduce the need or necessity for flood

insurance. Nothing in this Article shall be deemed to waive the City's immunity under law."

SECTION 2. The findings and recitals set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 3. This Ordinance shall be cumulative of all provisions of ordinances of the City, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 4. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable and if any phrase, clauses, 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 its ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 5. An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Code of Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. 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 \$2,000.00 for each offense in accordance with Section 1-14 of the Code of Ordinances of the City of Burleson. Each day that a violation is permitted to exist shall constitute a separate offense. Pursuant to Texas Local Gov't Code Sec. 54.017, the City may recover a civil penalty of not more than \$1,000.00 per day for each violation of any provision of this Ordinance. A civil penalty under this section may not exceed \$1,000 a day for a violation of this Ordinance, except that a civil penalty under this Section may not exceed \$5,000 a day for a violation of this Ordinance relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into the municipal drainage utility system. In addition to any other remedies or penalties provided at law, failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the City, and the City is empowered to enforce this provision against delinquent users.

SECTION 7. The City Secretary is hereby directed to publish the caption and penalty clause of this Ordinance as required by state law.

SECTION 8. This Ordinance shall become effective October 1, 2026, after its passage and the publication of the caption of said ordinance as the law and the City Charter in such cases provides.

AND IT IS SO ORDAINED.

First Reading: the _____ day of _____, 20____.

Final Reading: the _____ day of _____, 20____.

PASSED AND APPROVED this the _____ day of _____, 20____.

Chris Fletcher, Mayor

(Seal)

ATTEST:

APPROVED AS TO FORM:

Amanda Campos, City Secretary

E. Allen Taylor, Jr., City Attorney