

ORDINANCE NO. 742

AN ORDINANCE OF THE CITY OF MANOR, TEXAS AMENDING CHAPTER 13, UTILITIES, OF THE CODE OF ORDINANCES OF THE CITY OF MANOR, TEXAS, BY AMENDING THE TITLE FOR ARTICLE 13.02; ADDING DIVISION 6 TO ARTICLE 13.02; AMENDING DEFINITIONS; DECLARING STORMWATER DRAINAGE TO BE A PUBLIC UTILITY; ESTABLISHING A MUNICIPAL STORMWATER UTILITY SYSTEM; PROVIDING FOR THE ESTABLISHMENT AND CALCULATIONS OF STORMWATER DRAINAGE UTILITY CHARGES AND CREDITS; PROVIDING PENALTIES AND APPEALS; PROVIDING A SEVERABILITY CLAUSE, PROVIDING SAVINGS, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES, AND PROVIDING FOR RELATED MATTERS.

Whereas, the City of Manor, Texas (the “City”) is a home rule municipality having the full power of local self-government pursuant to its Charter, Article XI, Section 5 of the Texas Constitution, and Chapter 9 of the Texas Local Government Code; and

Whereas, the City manages stormwater runoff through the provision of public works services related to street maintenance and drainage, and service provision previously have been insufficient, at times allowing flooding on streets and private properties, and threatening public health and safety; and

Whereas, inadequate management of accelerated runoff of stormwater resulting from development throughout a watershed increases flows and velocities, threatens public health and safety, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, greatly increases the cost of public facilities to carry and control stormwater, undermines floodplain management and flood control efforts in downstream communities, reduces groundwater recharge, and increases non-point source pollution of water resources; and

Whereas, a comprehensive program of stormwater management, including reasonable regulation of development and activities causing accelerated runoff, is fundamental to the public health, safety and welfare and the protection of people of the state, their resources and the environment; and

Whereas, stormwater is an important water resource, which provides groundwater recharge for water supplies and base flow of streams, which also protects and maintains surface water quality; and

Whereas, federal and state regulations require jurisdictions to implement a program of stormwater controls, and these jurisdictions are required to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES); and

Whereas, the City Council of the City of Manor (the “City Council”) finds that an adequate, sustainable source of revenue for stormwater management is needed to protect the general health, safety, and welfare of the residents of the City; and further, the City Council finds that higher amounts of impervious surface area contribute to greater amounts of stormwater and associated pollutants to the stormwater management system; and

Whereas, the City is authorized by Texas Local Government Code Chapter 552, Subchapter C, “Municipal Drainage Utility Systems,” as amended, (the “Act”) to impose a drainage charge with the established service area; and

Whereas, in accordance with the Act, notices of a public hearing regarding the ordinance were published and a public hearing on this ordinance held concerning matters set forth herein; and

Whereas, as set forth herein, the City Council declares that the stormwater drainage infrastructure and services of the City is a public utility within the meaning of the Act and imposes a charge for such services that allocates stormwater management program costs to benefitted properties based on impervious surface area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS, THAT;

SECTION 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and incorporated herein for all purposes as findings of fact.

SECTION 2. Amendment of Code of Ordinances. The City Council hereby amends Chapter 13, Utilities of the Manor Code of Ordinances to amend the title for Article 13.02, add Division 6 to Article 13.02, amend definitions, declare stormwater drainage to be a public utility, establish a municipal stormwater utility system, provide the establishment and calculations of stormwater drainage utility charges and credits, and provide penalties and appeals as provided for in Sections 3 through 5 of this Ordinance.

SECTION 3. Amendment of Article 13.02 title. The title for Article 13.02 is hereby amended in its entirety to read as follows:

“Article 13.02 – Water, Wastewater, Solid Waste, and Stormwater Rates and Services Policies”.

SECTION 4. Amendment of Section 13.02.003 Definitions. Section 13.02.003 of Article 13.02 is hereby amended as follows:

(a) The following definitions are hereby added in alphabetical order to read as follows:

“*Adjustment Factor* means a number established by ordinance to be used in the drainage charge calculation to account for the percent of impervious cover on a benefitted property.

Benefitted property or *property* means a lot or tract of real property to which drainage service is made available under this article and which is located within the service area.

Cost of service as applied to stormwater utility system service to any benefitted property, means:

- (1) 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 stormwater quality treatment and draining the benefitted property;
- (2) The prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in stormwater quality treatment and draining the benefitted property;
- (3) 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 stormwater quality treatment and draining the benefitted property;
- (4) The prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of stormwater quality treatment and draining the benefitted property;
- (5) The prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a stormwater facility used in stormwater quality treatment and draining the benefitted property;
- (6) The prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other stormwater utility revenue-pledge securities or obligations issued by the city; and
- (7) The prorated administrative costs of a stormwater utility system.

Customer class means the land use, single family residential (SFR) or non-single family residential (NSFR), that the property is assigned to be based on the predominant use of the parcel.

Drainage means 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.

Director means the director of the Public Works Department, or their designees.

Equivalent residential unit (ERU) means the basic billing unit for the stormwater charge.

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

Impervious cover means roads, streets, parking areas, buildings, sidewalks and other construction covering the natural land surface that is impenetrable to stormwater. Compacted dirt or gravel used for vehicular traffic, parking, and other uses is considered impervious cover for the purposes of this section.

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.

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

- (1) An established schedule of charges;
- (2) The use of the police power to implement the service; and
- (3) Nondiscriminatory, reasonable, and equitable terms as declared under this chapter.

Service area means the geographic area that will be served by the city's stormwater utility, established in section 13.02.302.

Stormwater charge means:

- (1) The levy imposed to recover the cost of service to the city in furnishing stormwater service for any benefitted property; and
- (2) If specifically provided by ordinance, an amount made in contribution to funding of future stormwater system construction by the city.

Stormwater Code means the specific stormwater code applied to any benefitted property within the service area. The codes are as follows: Single Family Residential (SFR), Non-Single Family Residential (NSFR), and Exempt (EX).

Stormwater facilities means 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.

Stormwater system means the stormwater utility system owned or controlled, in whole or in part by the city, including the city's existing stormwater facilities, materials, and supplies and any stormwater facilities, materials, and supplies hereafter constructed or utilized, and dedicated to the service of benefitted property, and including provision for additions to the system. The drainage system is also known as a municipal separate storm sewer system, or MS4, meaning that the storm sewers are a separate system not connected with the sanitary sewer system.

Utility Customer means the person or entity receiving the benefit of, or responsible for payment for, City utility service, such as water, wastewater, solid waste, and drainage.

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

Wholly sufficient and privately owned stormwater system means land owned and operated by a person other than a municipal stormwater utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal stormwater utility system.”

(b) the definition for “Customer” is deleted in its entirety.

SECTION 5. Amendment of Article 13.02 – Water, Wastewater, Solid Waste, and Stormwater Rates and Services Policies. Article 13.02 is hereby amended to add Division 6. – Stormwater Utility as follows:

“Division 6. – Stormwater Utility

Sec. 13.02.300 Establishment and dedication of utility assets.

The city council establishes the city stormwater utility as a public utility and dedicates to the utility all city-owned property, real and personal, facilities, materials and supplies constituting the city's drainage system as constituted on the effective date of this article and as may be acquired in the future, to be used for the purpose of the stormwater utility.

Sec. 13.02.301. Establishment and revisions to stormwater utility service area.

- (a) The city council establishes the stormwater utility service area as the city limits of the city, as presently configured and as the same may be amended from time to time.
- (b) Except as affected by amendments to the city limits, revisions to the service area will be made only after the publication of notice and a public hearing as required by state law.

Sec. 13.02.302. Establishment and revision of stormwater charges; credits.

- (a) The city council establishes stormwater charges to be paid by users of benefitted property in the service area. The determination of the stormwater charges is deemed nondiscriminatory, reasonable and equitable to provide for the creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction and administration of the stormwater utility.
- (b) The stormwater charges will be set by separate ordinance based on the following factors:
 - (1) The amount of impervious cover on the benefitted property;
 - (2) The predominant developed use of the benefitted property; and
 - (3) The number of equivalent residential units (ERUs) on the benefitted property.
- (c) The category that applies to each benefitted property will be determined within the guidelines set forth herein and set the charge in accordance with the category of use and the following factors:
 - (1) *Customer class.* Each benefitted property will be placed in a specific category of land use, also known as customer class, based upon the actual use of the property. These customer class categories will include single family residential, non-single family residential, and exempt. The stormwater codes associated with these customer classes are single family residential (SFR), non- single family residential (NSFR), and

exempt (EX). The single family residential customer class is billed based impervious cover it falls within, the non-single family residential customer class is billed based on calculated impervious cover on the site, and exempt customer class is a use that falls into an exempt category per V.T.C.A., Local Government Code, § 552.053 and sec. 13.02.309.

- (2) *Impervious cover.* The amount of impervious cover existing on each benefitted property. Impervious area for parcels shall be inventoried from information established by the Travis County Appraisal District, from geographic information system records, from aerial photography and from site plans or plats available for properties within the city. The impervious area measured in square feet as obtained from these database sources, site plans or other survey or engineering calculations shall be used to establish the relative stormwater runoff potential for each customer class and among parcels within each customer class.
- (3) *Residential units.* The number of residential units existing on a particular benefitted property. For the purposes of the drainage utility, residential structures with one to four residential units are in the single family residential customer class and residential structures with more than four units are in the non-single family residential customer class.
- (4) *Stormwater Code.* Based on the customer class and impervious cover on a benefitted property, a stormwater code is assigned to the account.
 - (A) Residential class accounts are all Single Family Residential (SFR) units. (1 ERU)
 - (B) Non-single family residential properties (NSFR) are all remaining non-residential properties such as commercial, industrial, retail, government, multi-family with more than four units, religious, non-profit, and the like.
 - (C) Exempt properties (EX) are those that are exempted from paying a drainage fee based on the criteria outlined in this division.
- (d) The monthly charge for each lot or parcel will be calculated equitably and proportionally using an ERU impervious-based billing structure. One ERU is established as 2,730 square feet based on a review of all existing single-family residential properties within the service area. Each residential account is billed according to its stormwater code. A non-single family residential property is billed based on the total amount of impervious cover associated with the non-single family residential use divided by the ERU value of 2,730 square feet. (i.e. NSFR bill charge = total impervious cover/2,730* current stormwater utility fee).

- (e) The monthly charge per ERU is established in a separate ordinance and is based on the revenue required to support the stormwater utility divided by the total number of ERUs to be billed.
- (f) The city council reserves the right to adjust the stormwater charges by separate ordinance from time to time.
- (g) Billing of the stormwater charge against each benefitted property within the service area will be accomplished by a stormwater utility charge listing in the monthly city utility bill. Multi-family properties with more than four units on a single parcel will have a stormwater utility bill mailed to the owner of record. These bills will become due and payable, and will be subject to late payment penalties, in accordance with the rules and regulations of the city pertaining to the collection of water and wastewater fees and charges.
- (h) No utility deposit will be required as a precondition to accepting surface flow from a benefitted property in the drainage utility.
- (i) Billing of stormwater charges will occur even when other utilities are disconnected to reflect the on-going discharge from the impervious cover of the benefitted property to the stormwater system.

Sec. 13.02.303 Billing

- (a) The stormwater fee shall be shown as a separate listing on the monthly utility bill from the City. Bills become due in accordance with the provisions of this chapter. If no utility meter serves the benefitted property, the City may establish a non-metered utility account using the utility billing system and shall bill the drainage charge to the utility customer for the non-metered utility account.
- (b) *Order of Billing.* If more than one utility customer is associated with a benefitted property, the City shall bill the fee to the owner of the benefitted property unless:
 - (1) The benefitted property is a single family, duplex, triplex, or fourplex residence, in which case the City shall divide the fee equally among the utility customers and bill the utility customers accordingly;
 - (2) The benefitted property includes a utility customer at a secondary residence, in which case the City shall bill the utility customer associated with the primary residence;
 - (3) The owner of the benefitted property cannot reasonably be determined or located, in which case the City shall determine an equitable method to allocate the fee among the utility customers based upon information available and bill the utility customers accordingly; or

- (4) The owner of the benefitted property is exempt under this chapter or state law, in which case the City shall determine an equitable method to allocate the fee among the other utility customers based upon information available and bill the utility customers accordingly.

Sec. 13.02.304. Stormwater Utility Fund.

- (a) A separate fund is established, known as the stormwater utility fund, for the purpose of identifying and controlling all revenues and expenses attributable to the stormwater utility. All drainage charges collected by the city and other monies available to the city for the purpose of drainage will be deposited in the stormwater utility fund. The revenues will be used for the purposes of the creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration and other reasonable and customary charges associated with the operation of the stormwater utility. It is not necessary that the expenses from the stormwater utility fund, for any authorized purpose, specifically relate to any particular benefitted property from which the revenues were collected.
- (b) All drainage charges collected under this article will be used solely for creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration and other reasonable and customary charges associated with the operation of the stormwater utility. In the event a portion of the drainage revenues is pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve or amount in any contribution for future construction, repair or extension or maintenance of the utility assets, then the pledged portion of revenues may not be transferred to the general fund.
- (c) The city manager, or their designee, will provide an annual report of the stormwater utility's revenues, expenses and programs to the city council.

Sec. 13.02.305. Delinquent stormwater charges; enforcement.

Any stormwater charge which is not paid when due may be recovered in an action at law by the city. In addition to other remedies or penalties provided by this chapter, article, or state law, failure of a user of any utility within the service area to pay the stormwater charges when due will subject the user to discontinuance of any other utility services provided by the city. In the event an owner does not pay the charge, a lien can be placed on the property. Furthermore, property that is developed but vacant does not qualify for an exemption and the burden of stormwater utility fees ultimately lies with the property owner, whether a tenant is in place or not. In the event a stormwater utility fee is assessed to a tenant and the tenant moves out, the stormwater utility fee will be assessed to the property owner. In the event a property has no other utilities turned on or is presently vacant but qualifies as a benefitted property, the stormwater utility fee will be assessed to the property owner.

Sec. 13.02.306. Administration; rules and regulations

- (a) The Director of Public Works will be responsible for the administration of this article. The director will develop rules, regulations and procedures for the administration of stormwater charges, develop maintenance programs, and establish criteria and standards for operation of the stormwater utility system.

Sec. 13.02.307 Appeals.

- (a) *Appeal of stormwater utility fees to the director.* A utility customer or user who has been charged a stormwater utility fee and believes that the calculation or determination of the stormwater utility fee is incorrect may appeal the fee determination to the director. The director shall evaluate all appeals based on the methodologies for calculating the stormwater utility fee set forth in the stormwater utility fee ordinance.
- (b) *Process.*
 - (1) The appeal shall be in writing and set forth in detail the grounds upon which relief is sought. The director shall decide the appeal based upon a preponderance of the evidence. The director shall issue a written decision on the appeal within 30 days from the date that the director receives the appeal.
 - (2) An adjustment resulting from such a request shall be prospective and applied to future billings and may also be retroactive for no more than three months prior to the receipt of the appeal.
- (c) *Supporting information for appeal.* The person filing the appeal may be required, at the person's cost, to provide supplemental information to the director, including but not limited to survey data sealed by a Texas licensed professional land surveyor, engineering reports sealed by a Texas licensed professional engineer qualified in civil engineering, or other documentation that the director deems necessary to properly evaluate the appeal. Failure to provide requested information in a timely manner may result in the denial of the appeal.
- (d) *Appeal of stormwater utility fees to the city council.*
 - (1) A utility customer or user may appeal the following decisions of the director to the city council:
 - (A) The applicability of a stormwater utility fee to a parcel;
 - (B) The calculation of applicable stormwater runoff potential for a parcel;
 - (C) The calculation of the stormwater utility fee for a parcel; or
 - (D) The discontinuance of utility service, filing of a lien or other legal actions for non-payment of stormwater utility fees.
 - (2) The utility customer or user shall file a written appeal to the city council with the city secretary within 30 days following receipt of the director's decision. The city council shall hear the appeal within 60 days of receipt of the appeal by the city secretary. Notice of the hearing shall be mailed to the address given in the appeal form or, if no address is given, to the address on the utility billing statement at least 14 days prior to the hearing.

- (3) The burden of proof shall be on the utility customer or user to demonstrate that the fee is not applicable or that the determination of the value of the fee was not calculated according to the applicable stormwater fee schedule or the methodologies established in the stormwater utility fee ordinance. If applicable, and if not previously submitted to the director, the owner or customer shall submit, with the appeal, a report describing the basis for the appeal. The report shall be prepared by a Texas licensed professional engineer qualified in civil engineering. The failure to submit such a report shall be considered in determining whether the applicant has met the burden of proof.
- (4) If the appeal is accompanied by a bond or other sufficient security satisfactory to the city attorney in an amount equal to the original determination of the stormwater utility fee due, any discontinued utility services may be reinstated while the appeal is pending.
- (5) At the hearing, the city council shall allow testimony from the applicant, city employees and other interested persons relevant to the appeal. The hearing may be continued from time to time.
- (6) Following the hearing, the city council shall consider all evidence and determine whether the appeal should be granted (in whole or in part) or denied.
- (7) The city council shall complete its review and make a decision about the appeal within thirty (30) days of the hearing. The city council shall apply the standards and review criteria contained in this section.
- (8) The city council's decision shall be final.

Sec. 13.02.308. Exemptions.

- (a) The following properties will be exempt from the provisions of this article:
 - (1) A benefitted property described in Section 552.053 of the Texas Local Government Code is exempt from the drainage charge established by this chapter, including:
 - (A) A state agency and property owned by the state;
 - (B) Property owned by Travis County;
 - (C) Property owned by Manor Independent School District and open-enrollment charter schools;
 - (D) The city and property owned by the city; or
 - (E) Property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code.
 - (2) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
 - (3) Property held and maintained in its natural state, until the 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; or

- (4) A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located.
- (b) The user has the burden of proof when claiming an exemption under this article and must provide the director with information reasonably required by the director to make a determination. Failure to timely provide information requested by the director is a sufficient reason to deny a requested exemption.

Sec. 13.02.309. Flood; nonpoint source pollution control; liability.

Floods from drainage runoff may occur which exceed the drainage system's capacity. In addition, surface water stagnation and pollution arising from nonpoint source runoff may occasionally occur which exceeds the capacity of the drainage system. This article does not imply that benefitted properties will always be free from flooding or flood damage, surface water stagnation or nonpoint source pollution or that all possible flood control and water treatment projects to control the quantity and quality of runoff can be constructed cost-effectively. Nothing whatsoever in this article should be construed or be deemed to create additional duties or liability on the part of the city for any damage incurred in any flood or from adverse water quality due to drainage runoff. Nothing in this article should be deemed to waive the city's immunity under state law or affect the need for flood insurance.”

SECTION 6. Conflicting Ordinances. The Manor Code of Ordinances is amended as provided herein. All ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

SECTION 7. Savings Clause. All rights and remedies of the City of Manor are expressly saved as to any and all violations of the provisions of any ordinances affecting subdivision within the City 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.

SECTION 8. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Texas Local Government Code and the City Charter.

SECTION 9. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity 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 of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other

provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 10. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on this 15th day of May 2024.

THE CITY OF MANOR, TEXAS

Dr. Christopher Harvey, Mayor

ATTEST:

Lluvia T. Almaraz, City Secretary