

**ORDINANCE NO. 2022-586**

**AN ORDINANCE OF THE CITY OF WACO, TEXAS, AMENDING ARTICLE X “MUNICIPAL DRAINAGE UTILITY SYSTEM” OF CHAPTER 26 “UTILITIES” OF THE CODE OF ORDINANCES OF THE CITY OF WACO, TEXAS, TO CLARIFY BILLING FOR “RESIDENTIAL” AND “NON-RESIDENTIAL” PROPERTIES, AND FOR PROPERTIES WITH MULTIPLE CUSTOMERS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR PENALTIES; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City Council desired to establish a Municipal Drainage Utility System, as authorized by the Texas Local Government Code Chapter 552, Subchapter C “Municipal Drainage Utility Systems,” (“the Act”) within the City’s municipal boundaries; and

**WHEREAS**, after setting a public hearing date (by Resolution No. 2020-626) and publishing the required notices, on October 20, 2020, the City Council conducted a public hearing to establish a Municipal Drainage Utility System and take further actions as required by the Act; and

**WHEREAS**, in accordance with the Act, on November 3, 2020, by Ordinance No. 2020-768, the City established a Municipal Drainage Utility System service area; provided rules for the use, operation, and financing of the system; declared (after a public hearing) the City’s drainage to be a “public utility” (as defined in the Act); prescribed bases upon which to fund a Drainage Utility System and to assess the fees and charges to support the system; and required certain exemptions along with other mandatory exemptions contained in Texas Local Government Code Sections 552.053 and 580.003; and

**WHEREAS**, the City desires to amend Article X “Municipal Drainage Utility System” of Chapter 26 “Utilities” of the Waco Code of Ordinances (the “Code”) to clarify billing for “residential” and “non-residential” property and for properties with multiple customers; and

**WHEREAS**, before Article X of Chapter 26 of the Code can be revised, a public hearing must be held and notice of the hearing must be given as required by Section 552.045€ of the Texas Local Government Code; and

**WHEREAS**, on July 5, 2022, per Resolution No. 2022-430, the City Council set a public hearing for August 16, 2022, at 6:00 p.m., to receive comments on a proposed ordinance (which proposed to amend Article X of Chapter 26 of the Code to clarify billing for “residential” and “non-residential” property, and for properties with multiple customers), and, on August 16, 2022, the City Council conducted a public hearing on said ordinance; and

**WHEREAS**, notices of the public hearing on August 16, 2022, were published in accordance with Section 552.045 of the Texas Local Government Code; and

**WHEREAS**, proper notice has been given and a public hearing has been held regarding the adoption of this Ordinance, as required by law; and

**WHEREAS**, City Council finds that, as required by Section 552.045 of the Texas Local Government Code, the City has already established a schedule of drainage charges against all real property in the proposed service area subject to charges, provided 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 offered drainage service on nondiscriminatory, reasonable, and equitable terms; and

**WHEREAS**, the current amendments do not affect the establishment of a schedule of drainage charges and do not affect providing drainage service for all real property in the proposed area; and

**WHEREAS**, with these amendments, City Council finds that the City is continuing to offer drainage service on nondiscriminatory, reasonable, and equitable terms,

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

**Section 1.** That Article X (“Municipal Drainage Utility System”) in Chapter 26 “Utilities” of the Code of Ordinances of the City of Waco, Texas, Section 26-360 “Definitions” is hereby amended to read as follows (~~deletions~~ / additions):

**Sec. 26-360. – Definitions.**

For the purposes of this Article X, the following definitions shall apply:

*Act* shall mean Texas Local Government Code Chapter 552, Subchapter C.

*Benefitted property* shall mean a developed parcel to which drainage service is made available.

*Customer/owner* shall mean the person(s) or entity(ies) that is recorded as the customer or user of utility services for a benefitted property as recorded in the records of the city’s utility or the property owner as shown on the property tax roll as established by the McLennan County Appraisal District.

*Developed property* shall mean a lot or tract that has been improved with impervious surface.

*Director* shall mean the director of public works or the director’s authorized designee.

*Drainage infrastructure* shall mean the property, real, personal or mixed, that is used in providing stormwater capabilities and capacity to manage and control stormwater runoff for the drainage utility system, including bridges, catch basins, channels, conduits, creeks, culverts, 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.

*Drainage utility fee* shall mean the charge, including interest and penalties paid by the customer/owner of a benefitted 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) of the Act.

*Drainage utility system* shall mean the drainage utility system owned or controlled, in whole or in part by the city, including the city’s existing stormwater and drainage facilities, materials and supplies, and dedicated to the service of benefitted properties, and including provision for additions, extensions and improvements thereto and replacements thereof.

*Drainage utility only account* shall mean 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.

*Equivalent residential unit or ERU* shall mean 2,633 square feet of impervious area or surface.

*Impervious area or impervious surface* shall mean a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Impervious areas or surfaces include, but are not limited to, compacted soils with a surface treatment, buildings, pavement, parking lots, driveways, sidewalks and other human-made structure or surface that is built or laid on the natural surface of the land which has the effect of increasing, concentrating, or otherwise altering stormwater runoff so that flows are increased.

*Improved lot or tract* shall mean 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.

~~*Non-single family*~~ *residential property* shall mean all developed properties within the city that do not meet the definition of ~~single family~~ residential property.

*Parcel* shall mean one or more lots or tracts, or portions of lots or tracts.

~~*Single family*~~ *Residential property* shall mean any property platted, zoned or used for single or two-family residential development upon which a single or two-family home has been constructed or placed, including manufactured homes.

*Stormwater runoff potential* shall mean relative potential for causing stormwater runoff quantities or velocities from a parcel based on the type of development on the parcel.

*Wholly sufficient and privately owned drainage system* shall mean land and facilities owned and operated by a person or entity other than the city's drainage utility system, the stormwater from which does not discharge under any storm frequency event or conditions into a creek, river, slough, culvert or other channel or facility that is part of the city's drainage utility system

**Section 2.** That Article X "Municipal Drainage Utility System" in Chapter 26 "Utilities" of the Code of Ordinances of the City of Waco, Texas, Section 26-365 "Categories of drainage utility rates" is hereby amended to read as follows (~~deletions~~/ additions):

**Sec. 26-365. – Categories of drainage utility rates.**

- (a) The city council finds that impervious cover increases runoff and associated pollutants. For the purposes of calculating the drainage utility fee, an ERU shall be the established standard billing unit. Each benefitted property shall be categorized as one of the following:
- (1) ~~Single family~~ Residential property. ~~Single family~~ Residential property shall be placed in one of three billing tiers based on the total estimated impervious area on each parcel residential square footage, with building permits, ~~or~~ the most recent appraisal district data, aerial photography, or actual measurement used as a means of estimating the total amount of impervious area on the property. The median single family residential parcel in Waco has been determined to have approximately 2,633 square feet of impervious area or surface or one ERU.
  - (2) ~~Non-single family~~ residential property. Fees for ~~non-single family~~ residential properties shall be based on the total estimated impervious area on each parcel, with building permit information, the most recent appraisal district data, aerial photography, or actual measurement used as a means of estimating the total amount of impervious area on the property, divided by 2,633 square feet to determine the number of ERUs or billing units.
- (b) The city council finds that it is equitable to assess the drainage utility fee to each ~~Single family~~ Residential customer/owner on the basis of three ~~Single family~~ Residential billing tiers.

Billing Tier	Billing Unit – Equivalent Residential Units (ERU)	Billing Basis
<del>Single Family</del> Residential – Tier 1	0.57 ERU	Up to 1,960 square feet
<del>Single Family</del> Residential – Tier 2	1.0 ERU	1,961 to 3,399 square feet
<del>Single Family</del> Residential – Tier 3	1.74 ERU	3,400 or more square feet

- (c) The city council finds that it is equitable to assess the drainage utility fee to each nonresidential customer/owner on the basis of the number of ERU's in a parcel, which shall be obtained by dividing the estimated impervious area or surface by 2,633 square feet. The calculated number of ERU's will be rounded to the nearest whole integer other than zero, to determine the monthly fee.
- ~~(d) The city council finds that it is equitable to assess the drainage utility fee to each multifamily residential customer/owner on the basis of the number of ERU's in a parcel, which shall be obtained by dividing the estimated impervious area or surface by 2,633 square feet. The calculated number of ERU's will be rounded to the nearest whole integer other than zero, to determine the monthly fee.~~
- (8) € The city council finds it equitable to provide for all or a portion of the funding of future construction of the drainage utility system through a contribution from the drainage utility fee.
- (8) ~~€~~ The city council shall adopt, by resolution, the schedule of drainage charges (fee amounts) and will provide for the inclusion of the schedule of drainage charges in the city's operating budget fee schedule. Before adopting the schedule of drainage charges, a public hearing must be held and notice of the hearing must be given as required by Section 552.045(d) of the Texas Local Government Code.
- (8) ~~€~~ The city council may review the schedule of drainage charges at any time and may, by resolution, increase or decrease said charges within the schedule, upon a reasonable determination that said increase or decrease is warranted. Any change in the schedule of drainage charges will be subject to the public hearing and notice requirements in Section 552.045(d) of the Texas Local Government Code.

**Section 3.** That Article X "Municipal Drainage Utility System" in Chapter 26 "Utilities" of the Code of Ordinances of the City of Waco, Texas, Section 26-366 "Billing for drainage utility fee" is hereby amended to read as follows (~~deletions/~~ additions):

**Sec. 26-366. Billing for drainage utility fee.**

- (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 will be charged to the customer/owner currently established as the responsible party for city's water utility service.
- (c) 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 the customer/owner.
- (8) If more than one utility customer is associated with a benefitted property, the City shall bill the drainage charge to the owner of the benefitted property unless:
- (1) the benefitted property is a duplex in which case the City shall divide the drainage charge 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 drainage charges 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 drainage charges among the other utility customers based upon information available and bill the utility customers accordingly.
- (8) Where a customer is exempt under this chapter or state law, the property owner, if not otherwise exempt, shall be billed.
- (8) Any charge due hereunder which is not paid when due may be recovered in an action at law by the city. In accordance with Section 552.050 of the Texas Local Government Code, failure of a customer/user of the drainage utility system to pay the charges promptly when due shall subject such customer/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, unless it is a homestead as protected by the Texas Constitution or unless the lien is otherwise prohibited as set forth in Section 552.0025 of the Texas Local Government Code.

**Section 4.** That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 5.** That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**Section 6.** That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

**Section 7.** That a violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-14 of the Code of Ordinances of the City of Waco, Texas, which shall be a fine of not less than \$1.00 and no more than \$500.00, and each day a violation exists shall be a separate offense.

**Section 8.** That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

**PASSED AND APPROVED:**

**First Reading:** this 16<sup>th</sup> day of August 2022.

**Second Reading:** this 30<sup>th</sup> day of August 2022.

DocuSigned by:

*Dillon Meek*

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Dillon Meek, Mayor  
City of Waco, Texas

**ATTEST:**

DocuSigned by:

*Michelle Hicks*

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Michelle Hicks, City Secretary

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**APPROVED AS TO FORM & LEGALITY:**

DocuSigned by:

*Jennifer Richie* ACA FOR

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Jennifer Richie, City Attorney