

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 50 "UTILITIES", OF THE CODE OF ORDINANCES OF THE CITY OF KYLE, TEXAS, BY THE ADDITION OF ARTICLE X, "STORM DRAINAGE AND FLOOD RISK MITIGATION" TO ESTABLISH A MUNICIPAL DRAINAGE UTILITY SYSTEM; PROVIDING FOR DRAINAGE SERVICE, BILLING, EXEMPTIONS, DRAINAGE CHARGES AND APPEALS; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) PER DAY PER OFFENSE (or VIOLATION); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Kyle, 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 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 hereby adopts 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 real property in the proposed service area(s) which includes the entire City limits subject to charges under this Article; and

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

SECTION 1. Article X, Storm Drainage and Flood Risk Mitigation Utility, Sections 50-500 to 50-518 are hereby added to Chapter 50 "Utilities" of the Code of Ordinances, and is hereby amended to read and be as follows:

ARTICLE X. STORM DRAINAGE AND FLOOD RISK MITIGATION UTILITY

Sec. 50-500. - Purpose.

The Storm Drainage and Flood Risk Mitigation Utility is established in order to:

- (a) Maintain the public health and safety, within the city limits, by protecting the community from the loss of life and property caused by surface water overflows, surface water stagnation and pollution arising from point source and nonpoint source runoff within the boundaries of the service area of the utility, as established in this ordinance; and
- (b) Offer and provide drainage service on nondiscriminatory, reasonable and equitable terms within the service area.

Sec. 50-501. - Definitions.

The following definitions shall apply to terms within this ordinance:

Act means the Municipal Drainage Utility Systems Act of the Texas Local Government Code.

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

Commercial property means buildings or land intended to generate a profit, either from capital gain or rental income, including multi-family residential; any lot or parcel of land used for any purpose other than single family residential.

Cost of service as applied to a drainage 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 draining the benefitted property;
- (2) the prorated cost of the acquisition, construction, repair and maintenance of structures, equipment and facilities used in draining the benefitted property;
- (3) the 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 incidental to planning, providing or determining the feasibility and practicability of structures, equipment and facilities used in draining the benefitted property;
- (4) the prorated cost of all machinery, equipment, furniture and facilities necessary or incidental to the provision and operation of 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 drainage facility used in 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 drainage revenue-pledge securities or obligations issued by the city; and
- (7) the administrative costs of operating the Storm Drainage and Flood Risk Mitigation Utility.

Drainage means bridges, 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.

Drainage area means the land area from which water drains to a given point.

Drainage easement means a delineated portion of land set aside for the overland or underground transfer or storage of stormwater. This area shall not have any permanent structures, fences, or other obstacles hindering the safe transfer of water through the easement.

Drainage charge means:

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

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

Drainage utility means a drainage service that is regularly provided by the city, through city 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 determined by the City Council.

Drainage utility charge means the drainage charge, including any interest and penalties paid by the owner or tenant of a benefitted property for drainage services provided by the Storm Drainage and Flood Risk Mitigation Utility including, but not limited to, the items described as "cost of service" in the Act.

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

Impervious area, impervious surface or impervious cover means covering of the land surface by any means that would prevent penetration or percolation by water including but not limited to all parking areas, buildings, patios, sheds, private sidewalks and driveways within the land, tract, parcel or lot and any other impermeable construction covering the natural land surface.

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.

Municipal Drainage Utility Systems Act or the "Act" means TEX. LOCAL GOV'T CODE Section 552.041, et seq., as it may be amended by Texas Legislature from time to time to include, but not by way of limitation, the applicable definitions in the Act.

Nonpoint source runoff means runoff that occurs on surfaces before reaching a channel, river or drainage system.

Runoff means the water from rain, snowmelt or irrigation that flows over the land surface and is not absorbed into the ground, and that instead flows into streams or other surface waters or land depressions.

Service area means any area of land located within the City of Kyle city limits and any other land areas in the City's extraterritorial jurisdiction as provided by the Municipal Drainage Utility Systems Act which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of the City. Upon the effective dates of completed annexation of additional lands into the City, each such annexed additional land shall become part of the service area. Land annexed for limited purposes shall become a part of the service area upon annexation for full purposes.

Single family residential means the use of a lot with one building designed for and containing not more than two separate units with facilities for living, sleeping, cooking, and eating therein.

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

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. 50-502. - Establishment of drainage utility and dedication of assets.

The City of Kyle Storm Drainage and Flood Risk Mitigation Utility is hereby established as a drainage utility. The city dedicates all city-owned property, facilities, materials and supplies constituting the city's drainage system as of the effective date. All future acquisitions of real or

personal property related to drainage shall be maintained as a part of the Storm Drainage and Flood Risk Mitigation Utility.

Sec. 50-503. – Storm drainage and flood risk mitigation utility service area.

The service area for the Storm Drainage and Flood Risk Mitigation Utility shall include all property within the city limits, as amended from time to time.

Sec. 50-504. - Storm drainage and flood risk mitigation utility fund.

A separate fund shall be created, as of the effective date, known as the Storm Drainage and Flood Risk Mitigation Utility Fund, for the purpose of identifying and controlling all revenues and expenses attributable to the drainage utility. All drainage charges collected by the city and such other moneys as may be available to the city for the purpose of drainage shall be deposited in the Storm Drainage and Flood Risk Mitigation Utility Fund. Such utility revenues shall be used for the purpose 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 Storm Drainage and Flood Risk Mitigation Utility for the city.

Sec. 50-505. - Drainage benefitted property.

It is not required that the revenue from Storm Drainage and Flood Risk Mitigation Utility charges imposed and collected from any property be used specifically to benefit the same property; rather, any revenue collected from Storm Drainage and Flood Risk Mitigation Utility charges may be used for any qualified purpose of the Storm Drainage and Flood Risk Mitigation Utility that is in the best interest of the city.

Sec. 50-506. - Administration of the drainage utility.

The City Manager or designee shall be responsible for the administration of this ordinance, including, but not limited to, enacting any procedures necessary for the administration of the drainage charges and the consideration of variances, developing maintenance programs, and establishing drainage criteria and standards for operation of the drainage system.

Sec. 50-507. - Liability for floods and nonpoint source pollution.

Floods from drainage and stormwater runoff may occasionally occur, which exceed the capacity of the drainage system maintained and financed with the drainage charges. In addition, surface water stagnation and pollution arising from nonpoint source runoff may occasionally occur, which exceed the capacity of the drainage system maintained and financed with drainage charges. This ordinance does not imply that properties subject to charges shall always be free from flooding or flood damage, surface water stagnation or nonpoint source pollution or that all flood control and water treatment projects to control the quantity and quality of runoff can be constructed effectively. Nothing whatsoever in this ordinance should be construed as or be deemed to create additional duties, on the part of the city, to hold the city liable for any damages incurred in a flood or from adverse water quality, due to drainage runoff. Nothing in this ordinance shall be deemed to waive the city's immunity under State law or reduce the need or necessity for flood insurance.

Sec. 50-508. Incorporation of existing facilities.

The city may incorporate existing drainage facilities, materials, and supplies into the drainage system. Existing drainage facilities may be in areas on public and/or private property and may include bridges, 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.

Sec. 50-509. – Maintenance.

- (a) Public drainage improvements conveyed by dedication to the city as right-of-way and/or dedicated drainage easements accepted by the city for drainage maintenance shall be under the jurisdiction and maintenance of the city. All drainage improvements which accept stormwater runoff from an area greater than 300-acres shall be considered serving a public purpose and shall be dedicated to the city as right-of-way and/or drainage easement.
- (b) Private drainage improvements not conveyed by dedication to the city as right-of-way or drainage easement shall be maintained by the user. A maintenance schedule and maintenance plan shall be submitted to the city prior to approval of construction plans. Existing drainage facilities will have 180 calendar days after the effective date of this ordinance to submit a maintenance plan to the city. The city has the right to do periodic inspections of privately owned and maintained drainage improvements to ensure that the maintenance schedule is being implemented. Failure to adhere to a maintenance plan will be a violation of this ordinance.

Sec. 50-510. – Access.

Employees of the Storm Drainage and Flood Risk Mitigation Utility, established in accordance with Municipal Drainage Utility Systems Act as set forth in Chapter 552, Subchapter C, Texas Local Government Code, shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection, repair or for the enforcement of the provisions of this ordinance.

Sec. 50-511 - Storm Drainage and Flood Risk Mitigation Utility charges.

- (a) A Storm Drainage and Flood Risk Mitigation Utility charge is imposed upon each improved lot or tract for services and facilities provided by the Storm Drainage and Flood Risk Mitigation Utility. For purposes of imposing the Storm Drainage and Flood Risk Mitigation Utility charge, all improved lots or tracts are classified into the following three customer categories:
 - (1) single-family residential property;
 - (2) commercial property; or
 - (3) exempt property.
- (b) Subject to the provisions of this ordinance, there is hereby imposed on each benefitted property within the city jurisdiction, and the owners thereof, a Storm Drainage and Flood Risk Mitigation Utility charge. This charge must be directly related to drainage and

the terms of the levy, and any classification of the benefited properties in the city must be nondiscriminatory, equitable, and reasonable. All of the proceeds of this charge are deemed to be in payment for use of the city drainage system.

- (1) The drainage utility charge established herein shall be based upon the land use of a benefited property, as follows:
 - (A) improved single family residential lots or parcels of land; and
 - (B) all other improved lots or parcels of land.
- (2) The initial monthly Storm Drainage and Flood Risk Mitigation Utility Charge will be effective with the adoption of this ordinance. The following fee structure will be applicable and charged on a monthly basis to all non-exempt residential and commercial properties. Thereafter, effective October 1, 2017, the City's annual budget will include any changes or adjustments to the said fee structure in the Rates, Fees and Charges Schedule.
 - (A) Single-Family Residential Properties: \$5.00 per month
 - (B) Commercial Properties: The City will calculate the monthly fee based on the following formula:
Monthly Fee = Monthly Base Rate x Impervious Cover (sq. ft.) x Adjustment Factor
Monthly Base Rate = \$0.0021 per sq. ft. of impervious cover
Adjustment Factor = The adjustment factor is unique to each commercial property and is based on the percent of impervious cover. It is calculated using the following formula: $(1.5425 \times \% \text{ of impervious cover}) + 0.5064$

Sec. 50-512. - Determination of impervious area.

The City Manager or his/her designee shall be responsible for determining impervious area for commercial property based on data obtained from geographic information systems (GIS) and/or site plans for the location approved by the city.

Sec. 50-513. - Responsible parties and billing.

- (a) Single family residential property.
 - (1) Drainage charges for single family residential property shall be billed with the city's other utility charges and shall be identified separately on the bill as a drainage charge.
 - (2) Payment of the Storm Drainage and Flood Risk Mitigation Utility charge imposed on single family residential property is the responsibility of the person or entity under whose name the utility account is established for the said property.
 - (3) Single family residential properties that have all other city utilities disconnected will not be billed a Storm Drainage and Flood Risk Mitigation Utility charge.
- (b) Commercial Property.
 - (1) Drainage charges for commercial property shall be billed with the city's other utility charges and shall be identified separately on the bill as a drainage charge.

- (2) Payment of a Storm Drainage and Flood Risk Mitigation Utility charge imposed on commercial property is the responsibility of the person or entity under whose name the utility account is established for the said property.
 - (3) Commercial properties that have all other city utilities disconnected, the owner of the property shall be responsible for paying the monthly Storm Drainage and Flood Risk Mitigation Utility charge.
- (c) Delinquent Charges.
- (1) In addition to any other remedies or penalties provided by law or in this Ordinance, failure to pay the drainage charge shall result in the discontinuance of all utility services, including water, wastewater and trash services, at the location provided by the city and/or placement of a lien against the property.
 - (2) If drainage is the only utility provided by the city at a location, utilities provided by other providers may be disconnected pursuant to an interlocal agreement.

Sec. 50-514. - Penalties.

- (a) Criminal Penalty – 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 deemed guilty of a misdemeanor and, upon conviction, shall be punished by a penalty or fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.
- (b) Civil Penalty – The City may file suit to recover any charges due hereunder, together with maximum interest, attorney fees and other costs and charges that may be allowed by the Act or other law, which is not paid when due. Nothing herein shall prevent the City from taking such lawful action as is necessary to prevent or remedy any violation.

Sec. 50-515. - Adjustment of charges and appeal process.

- (a) Any user who disputes the category of land use, size of commercially developed property, or any other factor upon which the drainage charge is based may petition the Building Official or his/her designee, in writing, for a decision on the validity of the requested revision or adjustment of the drainage charge and shall set forth in detail the grounds upon which relief is sought.
- (b) The property owner shall submit a certified “as-built” survey and/or a foundation survey, at the owner's cost, to assist in determining impervious area. In order to make a determination, additional information may be required, including but not limited to, survey data approved by a Texas registered professional land survey or a detailed development plan approved by the City of Kyle. Failure to provide requested information may result in the denial of the appeal or adjustment request.
- (c) No request for an appeal will be addressed if the rate per billing unit is the only factor disputed.
- (d) The adjustment of billing units as part of an appeals process will stand as the user's basis for future billings, whether higher or lower than the original determination, until such

time as future changes in land use cover or customer status may warrant further adjustments.

- (e) A decision shall be rendered in writing within 30 days of the receipt of the written request.

Sec. 50-516. - Program responsibility.

It shall be the duty of the City Manager or his/her designee to administer the Storm Drainage and Flood Risk Mitigation Utility. The City Manager shall keep an accurate record of all properties benefitted or served by the services and facilities of the Storm Drainage and Flood Risk Mitigation Utility of the city and to make changes in accordance with the rules and charges established in this ordinance.

Sec. 50-517. - Drainage utility fund.

- (a) The Storm Drainage and Flood Risk Mitigation Utility fund may consist of one or more accounts. All Storm Drainage and Flood Risk Mitigation Utility charges shall be deposited, as collected and received, into this fund and shall be used exclusively for the drainage services as stated in the Act, which includes, but is not limited to, the following:
 - (1) operation and maintenance of the Storm Drainage and Flood Risk Mitigation Utility;
 - (2) funding of pollution abatement and peak flow attenuation devices constructed on stormwater systems discharging to the surface water of the city;
 - (3) administrative costs associated with the management of the Storm Drainage and Flood Risk Mitigation Utility;
 - (4) payment of the debt service requirements on any outstanding drainage revenue bonds, including any fees and expenses incidental thereto;
 - (5) engineering consultant fees.
- (b) The income derived from the operation of the Storm Drainage and Flood Risk Mitigation Utility must be segregated and completely identifiable from other city accounts.

Sec. 50-518. – Exempt properties.

- (a) The following users shall be exempt from payment of the charges established by this ordinance:
 - (1) Any property to which a mandatory exemption under Section 552.053 of the Local Government Code applies, including without limitation:
 - (A) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system that does not discharge under any storm frequency events or conditions to waterways controlled or maintained by the City;
 - (B) Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the City for maintenance;

- (C) A subdivided parcel or lot, until a structure has been built on the lot and a certificate of occupancy has been issued, or the City has taken other official action to release the property for occupancy;
- (2) Any property to which a mandatory exemption under Section 580.003 of the Local Government Code applies or which is exempt under applicable federal law, including without such limitation:
 - (A) A federal or state agency; and
 - (B) A public institution of higher education.
- (b) Proof of Exemption. If a user asserts their property is exempt pursuant to this section or any other applicable law, such user has the burden to assert such exemption by filing notice of eligibility for such exemption, and sufficient evidence of entitlement to such exemption, using the procedures for appeal provided in Sec. 50-515 above.

SECTION 2. SEVERABILITY CLAUSE: If any section, subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be stricken from the ordinance, and such holding shall not affect the validity of the remaining portions thereof. The balance of the ordinance shall be construed as one instrument and as if the offending portion had not been included.

SECTION 3. SAVINGS CLAUSE: All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 4. EFFECTIVE DATE: Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the provisions of this ordinance will apply within the City of Kyle, Texas.

PASSED AND ADOPTED this ____ day of _____, 2016.

R. Todd Webster, Mayor

ATTEST:

Jennifer Vetrano, City Secretary

APPROVED AS TO LEGAL FORM:

Frank J. Garza, City Attorney