

ORDINANCE NO. 9753

**AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", CHAPTER 13, "MUNICIPAL DRAINAGE UTILITY" OF THE CITY CODE OF MIDLAND, TEXAS, BY ADDING ARTICLE II, "ADMINISTRATION OF DRAINAGE UTILITY", SO AS TO ESTABLISH RULES FOR THE CITY OF MIDLAND DRAINAGE UTILITY; ESTABLISHING A DRAINAGE UTILITY FUND; LEVYING A SCHEDULE OF DRAINAGE CHARGES THAT SHALL BE BILLED AFTER OCTOBER 1, 2018; PROVIDING AN APPEAL PROCEDURE; NEGATING AND DISPENSING WITH THE CULPABLE MENTAL STATE REQUIREMENT; PROVIDING FOR CRIMINAL ENFORCEMENT AND A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION**

**WHEREAS**, the City Council passed an ordinance adopting Texas Local Government Code, Chapter 552, Subchapter C and declaring the drainage of the City of Midland to be a public utility; and

**WHEREAS**, the City Council must establish rules related to the drainage utility system, including rules pertaining to use, operation and financing; and

**WHEREAS**, the City Council finds that this ordinance:

- (A) establishes a schedule of drainage charges against all real property in the service area subject to charges under Subchapter C;
- (B) provides for drainage for all real property in the service area on payment of drainage charges, except real property exempted under Subchapter C; and
- (C) provides for drainage service on nondiscriminatory, reasonable, and equitable terms; and

**WHEREAS**, the City Council finds that the public health, safety, and general welfare will be best served by this ordinance; and

**WHEREAS**, the City Council finds that notices were published in a newspaper of general circulation in the City of Midland stating the time and place of a public hearing to

consider this ordinance in accordance with Section 552.045 of the Texas Local Government Code; and

**WHEREAS**, the City Council finds that a public hearing to consider this ordinance was held during the regular meeting of the City Council at 10:00 a.m. on March 27, 2018, in the Council Chamber at City Hall, 300 North Loraine Street, Midland, Texas 79701;

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

**SECTION ONE.** That the Midland City Code Title XI, "Planning and Development", Chapter 13, "Municipal Drainage Utility" shall be amended by adding Article II, "Administration of Drainage Utility", which shall read in its entirety as follows:

**ARTICLE II. ADMINISTRATION OF DRAINAGE UTILITY**

**11-13-11. Drainage Utility Fund.**

A separate fund known as the Drainage Utility Fund is hereby created for the purpose of segregating, identifying, and controlling all revenues and expenses attributable to the Drainage Utility. All Drainage Charges shall be deposited as collected and received into this fund and shall be used exclusively for Cost of Service. Such revenues may be used for the operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration, debt issuance cost and debt service, and other reasonable and customary expenses associated with the operation of a utility system. It shall not be necessary that the expenditures from the Drainage Utility Fund for any authorized purpose specifically relate to or benefit any particular Benefitted Property from which the revenues were collected.

**11-13-12. Administration.**

The Engineering Services Director shall be responsible for the administration of the Drainage Utility, including, but not limited to, enacting any procedures necessary for the administration of the Drainage Charge, consideration of requests for adjustment of Drainage Charges, development and implementation of maintenance and Facilities improvement programs, state and federal regulatory compliance, and establishing drainage criteria and standards for the Drainage System. The Engineering Services Director shall keep an accurate record of all Benefitted Properties and Facilities of the Drainage Utility.

**11-13-13. Drainage Charge.**

(A) A Drainage Charge is hereby imposed upon each Benefitted Property within the Service Area. The first Drainage Charge shall be billed after October 1,

2018. Like Drainage Charges shall be billed on a monthly basis thereafter for the duration of the Drainage Utility until September 30, 2028.

- (B) For purposes of imposing the Drainage Charge, a Benefitted Property is classified as either a Residential Property or a Commercial Property.
- (C) A Residential Property shall be assigned an ERU value for the purpose of establishing the monthly Drainage Charge as follows:
  - (1) A Tier 1 Residential Property has an Impervious Area, as represented by the area of the footprint of each building on the Residential Property, less than or equal to 1,399 square feet and is assigned a value of 0.60 ERU.
  - (2) A Tier 2 Residential Property has an Impervious Area, as represented by the area of the footprint of each building on the Residential Property, greater than 1,399 square feet and not greater than 2,424 square feet and is assigned a value of 1.00 ERU.
  - (3) A Tier 3 Residential Property has an Impervious Area, as represented by the area of the footprint of each building on the Residential Property, greater than 2,424 square feet and is assigned a value of 1.70 ERU.
- (D) A Commercial Property shall be assigned an ERU value for the purpose of establishing the monthly Drainage Charge as follows:
  - (1) A Tier 1 Commercial Property has an Impervious Area less than or equal to 8,339 square feet and is assigned a value of 2.90 ERU.
  - (2) A Tier 2 Commercial Property has an Impervious Area greater than 8,339 square feet and not greater than 18,702 square feet and is assigned a value of 6.50 ERU.
  - (3) A Tier 3 Commercial Property has an Impervious Area greater than 18,702 square feet and not greater than 47,853 square feet and is assigned a value of 15.00 ERU.
  - (4) A Tier 4 Commercial Property has an Impervious Area greater than 47,853 square feet and not greater than 92,740 square feet and is assigned a value of 34.20 ERU.
  - (5) A Tier 5 Commercial Property has an Impervious Area greater than 92,740 square feet and not greater than 261,475 square feet and is assigned a value of 77.00 ERU.
  - (6) A Tier 6 Commercial Property has an Impervious Area greater than 261,475 square feet and is assigned a value of 110.00 ERU.
- (E) A monthly billing rate of **\$2.00** is hereby established.
- (F) The monthly Drainage Charge for a Benefitted Property shall be calculated by multiplying the Benefitted Property's ERU value by the monthly billing rate.

- (G) The Engineering Services Director shall be responsible for determining the Impervious Area of each Benefitted Property based on reliable data including, but not limited to, MCAD data, GIS Database data, aerial photography, information received by the City through the building permit process, or other reliable means for determining Impervious Area. The Engineering Services Director may request additional information from the property owner, tenant, manager or developer to make the determination. The Engineering Services Director may revise the amount of a Drainage Charge based on a change to the Impervious Area.
- (H) No Drainage Charge credit shall be given for the installation of drainage facilities required by the Municipal Code or state law.

**11-13-14. Billing; payments; penalties.**

- (A) A bill or statement for the City's other public utility charges under Title III, Chapter 1 of the Midland Municipal Code associated with a Benefitted Property shall include the Drainage Charge which shall be identified separately on the bill or statement as a "Drainage Charge." Each Drainage Charge on such bill or statement shall be for the previous month's service.
- (B) Each public utility account in the Service Area shall be presumed to serve one or more Users of a Benefitted Property, and the Drainage Charge therefor shall be assessed to the person responsible for payment of the utility account.
- (C) The Drainage Charge identified in a bill or statement is due and shall be paid as prescribed for water, sewer, and garbage collection charges in Title III, Chapter 1 of the Midland Municipal Code.
- (D) Except as otherwise provided in this Chapter, Drainage Charges are subject to the billing procedures, termination procedures, penalties, disconnection, reconnection, hearings, and other rules of Title III, Chapter 1 of the Municipal Code.
- (E) A Drainage Charge due hereunder which is not paid when due will subject Users of the Benefitted Property to discontinuance of all utility services provided by the City and may be recovered in an action at law or in equity by the City including fixture of a lien against the property, as allowed by law.

**11-13-15. Requests for adjustment; appeals.**

- (A) Requests for adjustment of a Drainage Charge must be submitted to the Engineering Services Director. A User may request an adjustment if:
  - (1) The User reasonably believes that the Drainage Charge schedule, as applied to the User's Benefitted Property, does not fairly reflect the Cost of Service to the User's Benefitted Property or is otherwise not in accordance with applicable state law;
  - (2) The User disputes the ERU value assigned to the User's Benefitted Property used to calculate the Drainage Charge; or

- (3) The User's Drainage Charge has been assessed in error.
- (B) The following rules and procedures shall apply to all requests for adjustment of a Drainage Charge:
- (1) The User shall have the burden of proof.
  - (2) A User who requests an adjustment of a Drainage Charge shall make the request in writing and shall set forth in detail the grounds upon which relief is sought.
  - (3) A request for an adjustment will be reviewed by the Engineering Services Director within thirty (30) days from the date of receipt of the request.
  - (4) A User requesting an adjustment may be required to provide, at the User's expense, supplemental information to the Engineering Services Director, including, but not limited to, survey data certified by a Texas Registered Professional Land Surveyor (R.P.L.S.), or other documentation of Impervious Area. Failure to provide requested information may result in the denial of the adjustment request.
  - (5) The Engineering Services Director will provide to the User a written notice of the Engineering Services Director's decision concerning the request for adjustment within ten (10) business days following the Engineering Services Director's review of the request for adjustment or within ten (10) business days following the Engineering Services Director's receipt of any additional information submitted in accordance with this Section, whichever is later.
- (C) If the Engineering Services Director approves a request for an adjustment, the adjustment to the Drainage Charge will be made. Such an adjustment shall be prospective, but the Engineering Services Director may make the adjustment retroactive for no greater time period than three (3) monthly billings prior to the receipt of the request.
- (D) If the Engineering Services Director denies a request for an adjustment, or if the User otherwise disagrees with the Engineering Services Director's decision, the User may submit to the City Manager, within ten (10) days following the date of the User's receipt of the notice of the Engineering Services Director's decision, a written notice of appeal. A written notice of appeal must contain a succinct and clear statement of the User's argument and requested remedy. Following the City Manager's receipt of a User's notice of appeal, the City Manager shall convene a panel consisting of the City Manager, the Finance Director, and the Development Services Director to review the appeal. The panel will, within fifteen (15) business days following the City Manager's receipt of the notice of appeal, review the appeal. If a member of the panel is unavailable to review the appeal during the review period, the unavailable member may designate an individual to temporarily take his or her place on the panel for the purpose of reviewing the appeal. The panel will provide to the User a written notice of the panel's decision

concerning within ten (10) business days following the panel's review of the appeal.

- (E) If the panel affirms the decision of the Engineering Services Director, or if the User otherwise disagrees with the panel's decision, the User may submit to the City Secretary, within five (5) business days following the date of the User's receipt of the notice of the panel's decision, a written notice of appeal to the City Council. A written notice of appeal to the City Council must contain a succinct and clear statement of the User's argument and requested remedy. Within sixty (60) days following the date of the City Secretary's receipt of the notice of appeal to the City Council, the City Council shall hold a hearing to consider the appeal. The City Council's decision shall be final.
- (F) A User who submits a request for adjustment shall continue to pay the Drainage Charge in the amount that appears on the User's public utility bill or statement unless the Engineering Services Director, the panel, or the City Council, as provided herein, decides that the Drainage Charge should be adjusted, in which case the User shall pay the Drainage Charge as adjusted. If the Drainage Charge as adjusted is less than the Drainage Charge paid during the pendency of the request for adjustment and appeals, the City will refund to the User, or apply as a credit to the User's public utility account, the difference between the Drainage Charge paid during the pendency of the request for adjustment and appeals and the Drainage Charge as adjusted.
- (G) A User who has received a written notice of the Engineering Services Director's decision concerning a request for adjustment of the Drainage Charge for a Benefitted Property, regardless of whether the User appealed the Engineering Services Director's decision, is not entitled to receive a review of a subsequent request for adjustment of the Drainage Charge for the same Benefitted Property unless the User submits with the subsequent request an affidavit sworn to and signed by the User that contains a statement of facts indicating that a material change occurred after the date on which the previous request for adjustment was submitted. For purposes of this Subsection, a material change is:
  - (1) A reduction of the Benefitted Property's Impervious Area in an amount sufficient to reduce the Benefitted Property's assigned ERU value;
  - (2) A change to the status of the Benefitted Property or the User such that the Benefitted Property or the User is exempt from the provisions of this Chapter; or
  - (3) An increase in the Drainage Charge for the Benefitted Property if the User reasonably believes that the Drainage Charge schedule, as applied to the Benefitted Property, does not fairly reflect the Cost of Service to the Benefitted Property or is otherwise not in accordance with applicable state law.

If the User properly submits a subsequent request for adjustment and an affidavit as described in this Subsection, the procedures of this Section concerning the review of a request for adjustment and appeals shall govern the subsequent request for adjustment.

**11-13-16. Offense; criminal penalty.**

- (A) A User shall not use the Drainage System for Benefitted Property owned or occupied by the User unless the User or another User has paid in full each monthly Drainage Charge for the Benefitted Property.
- (B) It is an exception to the application of this Section that the Benefitted Property or the User is exempted under this Chapter.
- (C) Evidence of a culpable mental state is not required to prove a criminal offense under this Section. It is hereby declared that, for all offenses under this Section, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
- (D) A person who violates this Section shall be guilty of a misdemeanor and fined in a sum not to exceed \$500.00. A person commits a separate and distinct offense for each day during which a violation of this Section is committed, permitted, or continued.
- (E) The criminal penalty in this Section shall be in addition to any other remedies that the City may have under City ordinance or state law.

**SECTION TWO.** The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

**SECTION THREE.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION FOUR.** The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to State law. The definition of all offenses under this ordinance does not require a culpable mental state. The definition of all offenses under this ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared,

that for all offenses under this ordinance, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

**SECTION FIVE.** The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 27th day of March, A.D., 2018; and passed to second reading on motion of Council member Robnett, seconded by Council member Lacy, by the following vote:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

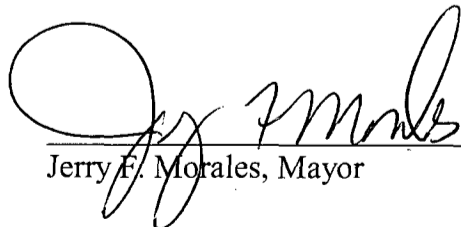
Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Love, seconded by Council member Lacy, on the 10th day of April, A.D., 2018, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

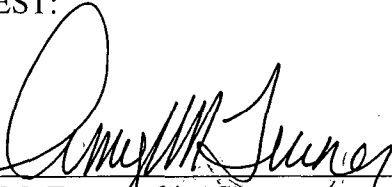
Council members voting "NAY": None

PASSED AND APPROVED THIS 10th day of April, A.D., 2018.

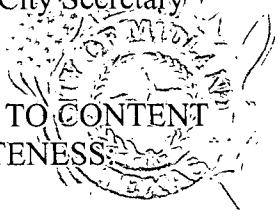
  
Jerry F. Morales, Mayor

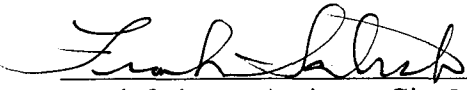


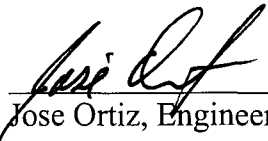
ATTEST:

  
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Amy M. Turner, City Secretary

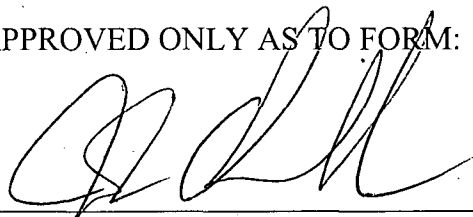
APPROVED AS TO CONTENT  
AND COMPLETENESS:



  
\_\_\_\_\_  
Frank Salvato, Assistant City Manager

  
\_\_\_\_\_  
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

  
\_\_\_\_\_  
John Ohnemiller, City Attorney