

ORDINANCE NO. 2018- _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF McALLEN AT CHAPTER 106 (“UTILITIES”), TO ADD ARTICLE VI (“MUNICIPAL DRAINAGE UTILITY SYSTEM”) TO ESTABLISH A MUNICIPAL DRAINAGE UTILITY SYSTEM; PROVIDING FOR DRAINAGE SERVICE, BILLING, EXEMPTIONS, DRAINAGE FEES AND APPEALS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY, AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, the Board of Commissioners desires to protect the public health, safety, and welfare of the citizens of McAllen by reducing the risk of loss of life and property caused by surface water overflows and surface water stagnation and by reducing pollution arising from non-point source runoff; and,

WHEREAS, the Board of Commissioners has determined that all real property in the City, including property owned by the public and tax-exempt entities, contributes to stormwater runoff and either uses or benefits from the stormwater management system and therefore the system’s construction, operation, and maintenance are best funded by the users of said system; and

WHEREAS, the Board of Commissioners desires to establish a Municipal Drainage Utility System and 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 Board of Commissioners finds the drainage of the City is a public utility within the meaning of the Act; and

WHEREAS, the Board of Commissioners hereby adopts the Act and incorporates it

herein in its entirety for all purposes; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MCALLEN, TEXAS, THAT:

SECTION I: The Code of Ordinances, City of McAllen, Texas, Chapter 106 (“Utilities”), is hereby amended by adding Article VIII, Municipal Drainage Utility System, which shall read as follows:

ARTICLE VIII. - MUNICIPAL DRAINAGE UTILITY SYSTEM

Sec. 106-223. - Municipal drainage utility system established.

The Municipal Drainage Utility Systems Act, Texas Local Government Code Ch. 552, Subch. C, as amended (the "Act"), is hereby adopted and shall be fully implemented as provided by the Act and by the Board of Commissioners; and the drainage of the City is hereby found to be a public utility within the meaning of the Act.

Sec. 106-224. - Drainage service provided.

The service area shall include all real property within the corporate City limits. The City will provide stormwater drainage for all real property within the service area upon payment of the determined drainage fees, as defined in the Act, and excluding property exempt under the Act and certain exempted real property by the City, and that the fees and assessments, will be based on nondiscriminatory, reasonable and equitable terms. The drainage fees established herein shall be for all nonexempt benefitted property as defined in the Act within the service area.

Sec. 106-225. - Billing for drainage service.

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

Sec. 106-226. - Authority to levy drainage fees.

The City may levy a schedule of drainage fees upon satisfaction of the procedural requirements provided in the Act and this article. Prior to the levy of any drainage fees, the Board of Commissioners shall conduct a public hearing on the drainage fees pursuant to the Act. Prior to adoption of this article the Board of Commissioners found and determined that: The City will establish a schedule of drainage fees against all real property within the service area based on each parcel's contribution to stormwater runoff in accordance with the fees under the Act; the City will provide drainage for all real property in the service area upon payment of the drainage fees, except real property exempt under the Act; and the City will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

Sec. 106-227. - Exemptions authorized.

The City is authorized to exempt certain property, entities or persons from all ordinances, resolutions, and rules which the City may adopt from time to time in connection with the adoption of the Act and the establishment of its Municipal Drainage Utility System. Any exemptions to the drainage fees established herein other than the exemptions required by the Act shall be set forth in the drainage fee schedule.

Sec. 106-228. - Fees.

(a) The Board of Commissioners shall, following the adoption of this article, establish

a drainage fee schedule, by resolution of the Board of Commissioners, from time to time, for fees which shall be collected through the City's bill for public utilities pursuant to the Act and other applicable law. There shall be a drainage fee on each monthly public utility statement for the City drainage service as set forth in the drainage fee schedule. The City Manager, or designee, is authorized to collect such fees in a manner consistent with the City Charter, the Act and this article. The drainage fees shall be a separate line item on the public utility statement, and shall be clearly identified as a separate charge. Except, as otherwise provided herein, the billing, fees and collection procedures shall be consistent with City collection procedures for the water, sewer and solid waste collection.

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

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

Sec. 106-229. - Appeals.

(a) Billing and payment disputes for administrative issues relating to the drainage fees shall be subject to appeals procedures used by the City for other public utility billing disputes. A person or entity that owns or occupies a benefitted property may appeal the drainage fees established herein pursuant to this procedure set forth in this section.

(b) Appeals for the following reasons shall be directed to the Director of Engineering for evaluation and determination. An appeal shall be in writing and submitted to the Director of Engineering within 30 days after the public utility billing statement containing the matter to be disputed. During all periods of appeal the person or entity who owns or

occupies the benefitted property and/or the account holder shall be responsible for payment of the fees in full:

- (1) Exempt property has been assessed a drainage charge;
- (2) Drainage charge for an individual property is assessed on more than one public utility account; or
- (3) Drainage charge is assessed to individual property outside the City's jurisdictional area.

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

(d) Appeals for claims that the drainage fee for an individual property is based on an incorrect determination of the property's contribution to the drainage system, as established in the City drainage fee schedule shall be directed to the Director of Engineering for evaluation and determination. An appeal pursuant to this subsection shall be in writing and submitted to the Director of Engineering within 30 days after the public utility billing statement containing the matter to be disputed. Documentation submitted in support of said appeal shall include information on all impervious areas and any other features or conditions which influence the hydrologic response of the property. Information may consist of, but is not limited to, improvement surveys prepared by a

Professional Land Surveyor licensed to actively practice in the State of Texas, record drawings, exhibits illustrating actual field measurements and photos. Initiation of the formal appeal process shall also authorize the City's designated officers and employees to enter upon and inspect private and public property owned by entities other than the City, upon notice to the owner thereof. During all periods of appeal the person or entity who owns or occupies the benefitted property and/or the account holder shall be responsible for payment of the fees in full.

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

Sec. 106-230. - Penalties; enforcement.

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

Sec. 106-231. – No effect on landowner obligations; no waiver of immunity

(a) The establishment of a Drainage Utility by the City does not relieve private land owners, developers, other individuals and entities from responsibility for providing drainage improvements in connection with land development pursuant to the other ordinances of the City or laws of the State of Texas that relate to stormwater runoff,

drainage management, or drainage improvements.

(b) The establishment of a Drainage Utility System by the City does not imply or warrant that a benefitted property will be free from flooding, stormwater pollution, or stream erosion. The City makes no representation that all drainage problems will be remedied. This ordinance does not create additional duties on the part of the City or create new liability or remedies for any flooding, stream erosion, deterioration of water quality or other damages. Nothing in this ordinance shall be deemed to waive the City's immunity under law or reduce the need or necessity for flood insurance.

Secs. 106-231—106-250. - Reserved.

SECTION II: The City Secretary of the City of McAllen is hereby authorized and directed to cause the caption of this ordinance to be published in a newspaper having general circulation in McAllen, Hidalgo County, Texas in accordance with the Code of Ordinances of the City of McAllen, Section 2-56. Publication of ordinances.

SECTION III: The City Secretary of the City of McAllen is hereby authorized and directed to cause the language in Sections 106-223—106-250 of the McAllen Code of Ordinances, as amended by Section I, hereinabove, to be published in the appropriate location in the said Code of Ordinances.

SECTION IV: This Ordinance shall be and remain in full force and effect from and after its passage by the Board of Commissioners, and execution by the Mayor.

SECTION V: If any part or parts of this Ordinance are found to be invalid or unconstitutional by a court having competent jurisdiction, then such invalidity or unconstitutionality shall not affect the remaining parts hereof and such remaining parts

shall remain in full force and effect, and to that extent this Ordinance is considered severable.

CONSIDERED, PASSED and **APPROVED** this ____ day of _____, 2018, at a regular meeting of the Board of Commissioners of the City of McAllen, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code.

SIGNED this ____day _____, 2018.

CITY OF McALLEN

By: _____

James E. Darling, Mayor

Attest:

Perla Lara, TRMC, City Secretary

Approved as to form:

Austin W. Stevenson, Assistant City Attorney