



CITY OF MARSHALL

COMMISSION AGENDA INFORMATION SHEET:

MEETING DATE: December 15, 2016

PROJECT: SECOND READING - Consider and act on a proposed City Ordinance creating a new Chapter in the Marshall Code of Ordinances titled Municipal Drainage Utility System of the City of Marshall, establishing a Municipal Storm Water Utility System and Fee Schedule, and providing for exemptions and credits. (Director of Public Services)

DESCRIPTION: During the City Commission meeting on August 25, 2016, the City Commission adopted a Twenty-Year Capital Improvements Plan (CIP) related to drainage and flood control measures needed to improve storm water runoff within Marshall. In order to address the drainage projects and maintenance, a fee schedule needs to be put in place that is both logical and fair to all concerned and that develops sufficient funds to support the needed improvements.

During the City Commission meeting on October 27, 2016, the City Commission acted on findings that a Municipal Drainage Utility System would be beneficial in protecting the health and safety of citizens from loss of life and property, and approved a recommendation to adopt a fee schedule in support of a Municipal Drainage Utility System based on the previously approved Twenty-Year Drainage Capital Improvements Plan.

During the City Commission meeting on December 8, 2016, a Public Hearing was held in accordance with Chapter 522 of the Texas Local Government Code. In accordance with the Local Government Code, the City of Marshall has published the attached Ordinance three times over the past 30 days in our local newspaper and the City Commission may take action on the attached Ordinance creating a Municipal Drainage Utility System. **The fee schedule shown in the Proposed Ordinance cannot be considered effective until the proposed rate Ordinance is advertised three times, over 30 days, prior to a Public Hearing on the rate schedule set for January 26, 2017.*

Under the Municipal Drainage Utility Systems Act, Chapter 522 of the Local Government Code, the City Commission has an obligation to set Municipal Drainage Utility System rates based on the cost of

service, which will be shown as a separate monthly fee on each water bill to fund needed drainage improvements and maintenance.

The City Commission recently adopted a Drainage CIP, so the next step in developing a fee schedule is determining an appropriate levy to support costs listed in the Twenty-Year CIP. We have been reviewing other cities across Texas and the methods and schedules used to support their drainage and maintenance costs. The latest detailed statewide survey of Municipal Drainage Utilities by Espey Consultants of Austin, Texas was updated in September 2013 and includes 98 existing drainage utilities. The 2013 survey has an average monthly residential fee of \$4.24, with a highest levy of \$14.00/month and a lowest levy of \$1.00/month.

The sole purpose of the levy is recovering the cost of services provided by the City of Marshall in furnishing drainage benefits as outlined in the Twenty-Year Drainage CIP. Revenue from the levy can only be used for drainage related maintenance activities or drainage related projects. The recently approved CIP has an estimated average annual cost, over twenty years, of \$435,250. An initial flat fee per residential or commercial unit of \$3.50 per unit will generate approximately \$429,240 based on a \$3.50 fee per unit ($\$3.50 \times 10,220 \text{ units} \times 12 \text{ months}$) in revenue to begin seriously addressing long-standing drainage issues in Marshall. As noted in the Drainage CIP, funding from the levy may be used for projects, personnel, and equipment to maintain our right-of-ways, associated drainage, drainage ditches and creeks.

Attached is 1) a copy of the recently approved Twenty-Year CIP, 2) a copy of Subchapter C of Section 552 of the Texas Local Government Code, and 3) a "Proposed" version of the Municipal Drainage Utility System Ordinance that must be fully published in the local newspaper, in accordance with Subsection C of the Section 552 and then presented during a Public Hearing. After the Public Hearing, the City Commission may vote on the "proposed" Ordinance and hold another Public Hearing on the levy, in accordance with Subsection C of the Section 552. If the City Commission desires to move forward in creating the Municipal Drainage Utility System, our next steps are:

- 1) **(October 27th Meeting)** Drainage CIP was adopted on August 25th. We now need to determine an appropriate drainage fee, based on the number of active water meters and a uniform method for determining the fee based system, such as impermeable area. - **ACCOMPLISHED**
- 2) **(November 6th, 20th, and December 4th Notices)** A Public Hearing must be held prior to adoption of an Ordinance creating the Drainage Utility and three notices must be publicized before adoption of the Ordinance; first notice must be on or 30 days before the Public Hearing (Notices must be published in the newspaper, with full copy of the Ordinance in the Notices, on November 6th, 20th, and December 4th.) - **PUBLISHED**
- 3) **(December 8th Meeting)** Public Hearing date and Ordinance consideration. - **SCHEDULED**
- 4) **(December Meeting)** 2nd Reading of Drainage Utility Ordinance if approved on 1st Reading. - **DATE TO BE DETERMINED**
- 5) **(December 18th – January 1st – January 15th Notices)** A second Public Hearing must be held regarding the fee schedule prior to levying the Drainage Utility Fee charges and three notices must be publicized before levying the fees; first notice must be on or 30 days before the Public Hearing (Notices must be published in the newspaper, with full copy of the Ordinance and rates in the Notices, on December 18th, and January 1st and 15th.)
- 6) **(January 26th Meeting)** Public Hearing date and Ordinance consideration on fees to be levied; consideration and approval of fee schedule.
- 7) **(February 9th Meeting)** 2nd Reading of Drainage Utility Fee Ordinance if approved on 1st Reading.

- 8) **(February 2017)** Begin billing the drainage utility fee in late February 2017 (after Public Hearing on January 26th).
- 9) One of the first actions to take is to fund a drainage utility Master Plan by issuance of a Request for Qualifications, which will be funded from the drainage utility fee. **(approval to advertise Drainage RFO in March 2017, award a contract in June/July 2017).**

Under Chapter 552 of the Local Government Code, the following may be exempted from a drainage utility levy:

- 1) State agencies
- 2) Counties
- 3) Cities
- 4) School districts
- 5) Private businesses with their own privately owned drainage
- 6) Property held in its natural state
- 7) Unimproved subdivided lots
- 8) Religious institutions

This Ordinance was previously approved by vote of the City Commission on its First Reading on Thursday, November 10, 2016.

COST: N/A

FUNDING:	<u>Acct. Name & No</u> To Be Determined	<u>Original Budget</u> To Be Determined
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RECOMMENDED

ACTION:

SECOND READING - Consider and act on a proposed City Ordinance creating a new Chapter in the Marshall Code of Ordinances titled Municipal Drainage Utility System of the City of Marshall, establishing a Municipal Storm Water Utility System and Fee Schedule, and providing for exemptions and credits. (Director of Public Services)

CITY CONTACT: J. C. Hughes, Public Services Director 903-503-4503

ATTACHMENTS: Proposed Municipal Drainage Utility Ordinance

ORDINANCE _____

AN ORDINANCE OF THE CITY OF MARSHALL, TEXAS, CREATING A NEW CHAPTER TITLED MUNICIPAL DRAINAGE UTILITY SYSTEM OF THE CITY OF MARSHALL CODE OF ORDINANCES; ESTABLISHING A MUNICIPAL STORM WATER UTILITY SYSTEM FEE SCHEDULE; PROVIDING FOR EXEMPTIONS AND CREDITS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF:

WHEREAS, the City Commission of the City of Marshall, Texas (“City Commission”) has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Marshall, Texas (“City”) in promoting the public health, safety and welfare of the citizens by adopting a Municipal Drainage Utility System; and

WHEREAS, the City Commission desires to establish a Municipal Drainage Utility System, pursuant to 552.041, Subsection C, Municipal Drainage Utility Systems of the Texas Local Government Code; the City Commission has investigated and determined that a uniform schedule of drainage fees shall be applied against all real property in the proposed service area(s); and

WHEREAS, the City Commission further finds that it would be in the best interest of its citizens to provide for exemptions or credits to the drainage fees, pursuant to 552.041, Subsection C, Municipal Drainage Utility Systems of the Texas Local Government Code; as set forth herein below.

NOW, BE IT ORDAINED BY THE CITY COMMISSION OF MARSHALL, TEXAS, THAT:

SECTION 1. FINDINGS

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. CODE AMENDED

The Code of Ordinances of the City of Marshall, Texas is amended to establish a new Article to be titled Municipal Drainage Utility System.

SECTION 3. DRAINAGE UTILITY SYSTEM ESTABLISHED

A Municipal Drainage Utility System is hereby adopted and shall be implemented as provided by 552.041, Subsection C, Municipal Drainage Utility Systems of the Texas Local Government Code, and the Drainage Utility System is hereby found to be a municipal public utility.

SECTION 4. DRAINAGE SERVICE

The City of Marshall shall provide drainage systems for real property within its boundaries upon payment of determined drainage charges, exclude certain exempted real property as outlined by state statutes, and those fees, assessments, and charges will be based on nondiscriminatory, reasonable, and equitable terms.

SECTION 5. AUTHORITY TO LEVY CHARGES

The City of Marshall is hereby authorized to levy and bill drainage charges through the City of Marshall Water Utility Billing System, which will be separately identified from other the other utility billings.

SECTION 6. INCOME USES

The income from the Municipal Drainage Utility System shall be segregated and completely identifiable in the accounting system; funds received shall only be used for purposes that are directly and indirectly related to the Municipal Drainage Utility System as outlined in 552.041, Subsection C, Municipal Drainage Utility Systems of the Texas Local Government Code.

SECTION 7. RATES

System Fee Schedule – a separate deposit will not be required for drainage charges.

(A) The following fees are hereby established and shall be collected through the existing City water billing system for public utilities, pursuant other applicable law.

(B) Impervious Area.

(1) Rates shall be charged based on a property's contribution to the public storm water utility system. The contribution shall be based on the impervious area for the property.

(2) The storm water utility fee shall be established according to the following schedule on a monthly basis. The number of equivalent residential units (ERU) on a non-single family, non-exempt property shall be determined by the City Public Services Director or designee;

Property Type Rate

(a) Single-Family Residential \$3.50 per ERU

(b) Multiplexes and Apartments \$3.50 per ERU

(c) A minimum charge equivalent to \$3.50 shall be applied to all other non-exempt developed property, regardless of classification.

(3) Exemptions. The following shall not be assessed a Municipal Drainage Utility System Fee:

(a) 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 in which the property is located for maintenance.

(b) A subdivided lot, until a structure has been built on the lot and a Certificate of Occupancy has been issued by the City.

(c) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system.

(d) State property.

(e) Harrison County.

(f) Marshall Independent School District.

(g) City of Marshall.

(h) Property owned by public or private institutions of higher education.

- (i) Property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Texas Tax Code, as amended.
- (j) The rates established above apply to the accounts maintained by the City for public utility services.
- (k) All billings, credits, exemptions and other procedures relating to this fee shall be subject to the provisions of the Act.

SECTION 8. APPEALS

- (A) Billing and payment disputes for administrative issues shall be subject to appeal procedures for other utility disputes.
- (B) Appeals for the following other reasons listed herein below, shall be directed to the City Public Services Director or designee, who shall render a written decision on such appeal within 30 days after receipt of a written notice of appeal from the property owner.
 - (a) Exemption has been assessed a drainage fee.
 - (b) Fee assessed is based on an incorrect determination of contribution to the drainage system.
 - (c) Fee is based on an incorrect determination of equivalent residential units.
 - (d) Fee is assessed on more than one utility account on an individual property.
- (C) Any property owner who disagrees with the decision of the Public Services Director or designee, may appeal the decision to the City Commission and whose decision shall be final.

SECTION 9. PENALTIES FOR NON-PAYMENT

All drainage fees charged hereunder are a part of the City of Marshall billing utility and shall be subject to the same penalties and remedies as allowed by ordinances and law.

SECTION 10. SAVINGS

All provisions of any Ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said Ordinances shall remain in full force and effect.

SECTION 11. SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City of Marshall hereby declares that it would have passed this Ordinance, and each section, paragraph, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 12. OPEN MEETINGS

That the meetings at which this Ordinance was passed and were conducted in strict compliance with the Texas Open Meetings Act (Texas Government Code Chapter 551).

SECTION 13. EFFECTIVE DATE

This Ordinance shall become effective from and after its adoption and publication as required by law; the fee schedule shall become effective December, 2017.

PASSED, APPROVED this 8th day of December, 2016.

AYES: - 7 -

NOES: - 0 -

ABSTAINED: - 0 -

PASSED, APPROVED AND ADOPTED this 15th day of December, 2016.

AYES: _____

NOES: _____

ABSTAINED: _____

APPROVED:

CHAIRMAN OF THE CITY COMMISSION
MARSHALL, TEXAS

ATTEST:

CITY SECRETARY