

STATE OF TEXAS

AN ORDINANCE AMENDING THE SEGUIN CODE OF ORDINANCES, CHAPTER 102, UTILITIES, ARTICLE V, MUNICIPAL STORMWATER UTILITY SYSTEM; TO AMEND LANGUAGE CONSISTENT WITH THE ESTABLISHMENT OF THE STORMWATER UTILITY FEE; PROVIDING FOR A SEVERABILITY CLAUSE; AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE AS A SUPPLEMENT TO THE CITY CODE OF ORDINANCES; AND DECLARING AN EFFECTIVE DATE

WHEREAS, last year the City Council adopted a municipal stormwater utility system along with governing ordinances; and

WHEREAS, the City will begin assessing the stormwater fee in January 2023; and

WHEREAS, some of the terminology and language in the Municipal Stormwater Utility System Ordinance needs to be updated to align with recent developments over the last year; and

WHEREAS, for clarity and consistency, city staff recommends the following changes.

NOW THEREFORE BE IT ORDAINED by the City Council of Seguin, Texas:

SECTION ONE. The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal Stormwater Utility System, Section 102-256, Establishment of Drainage Utility Service Area; Exceptions, and Dedication of Assets, is amended to read as follows (underlining indicates added text, ~~strikethrough~~ indicates deleted text):

- (a) In accordance with the provisions of the Texas Local Government Code, Chapter 552, Subchapter C, a stormwater utility for the city is created and is hereby declared to be a public utility.
- (b) The service area for the stormwater utility shall include all real property within the corporate limits of the City of Seguin as now existing and the real property in any area that may be annexed hereafter from time to time.
- (c) The city council finds that:
 - (1) Impervious cover increases runoff and associated pollutants; and
 - (2) It is equitable to assess the ~~drainage charge~~ stormwater fee to each user based impervious cover.
- (d) Pursuant to the Texas Local Government Code, Section 552.053 and Section 580.003, the following shall be exempt from the provisions of this chapter:
 - (1) Property with proper construction and maintenance of a wholly sufficient and privately-owned drainage system as determined by the city engineer;
 - (2) 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 municipality in which the property is located for maintenance;
 - (3) A subdivided lot until a structure has been built on the lot and a certificate of occupancy has been issued by the city;

- (4) State agencies; and
- (5) Public or private institutions of higher education.
- (e) The city incorporates into the stormwater utility system all existing property, facilities, materials, and supplies constituting the city's drainage system in existence on the effective date of this article upon adoption. All future acquisitions by the City of real or personal property used in the city's drainage system shall be maintained as a part of the stormwater utility.

SECTION TWO. The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal Stormwater Utility System, Section 102-259, Administration of stormwater utility - Definitions, is amended to read as follows (underlining indicates added text, ~~strikethrough~~ indicates deleted text):

Terms defined herein are specific to this chapter and shall not be construed as conflicting with similar terms in other parts of this code, terms not otherwise defined herein shall be given the definitions contained in the Texas Local Government Code, Subchapter C.

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

Benefitted property shall mean an improved lot or tract to which drainage service is made available under this chapter.

~~Commercial property shall mean all improved properties within the City other than residential property, including, but not limited to, commercial, industrial, institutional, government, multi-family, mobile home park, and religious organization land uses.~~

Cost of service shall mean the costs for drainage system service to a benefitted property, which shall be the total of:

- (1) 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) Prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;
- (3) Prorated cost of architectural, engineering, legal and related ser, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;
- (4) Prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;
- (5) 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) 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) Administrative costs of operating and maintaining a stormwater utility system.

Drainage shall mean bridges, catch 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 system shall mean the drainage system owned or controlled in whole or in part by the city and dedicated to the service of benefitted property, including any future additions, extensions, and improvements thereto and replacement thereof.

ERU (Equivalent residential unit) shall mean the unit of measure used to calculate the stormwater utility ~~fee charge~~ for residential and non-residential commercial property.

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

Impervious area or impervious surface shall mean a surface which has become compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Impervious areas include, but are not limited to, compacted soils, graveled surfaces subject to motorized vehicular traffic, walkways, buildings, parking lots, pavement, and ingress/egress driveways. "Impervious area" or "impervious surface" does not include sidewalks located in the public right-of-way and as further defined in this Code. For purposes of this definition a "walkway" is a pedestrian way in the interior of a lot or tract that is not located in the public right-of-way.

Improved lot or tract shall mean a lot or tract that has a structure, or as further defined in this Code, or other improvement on it that causes an impervious surface or area.

Non-residential property shall mean all improved properties within the City other than residential property, including, but not limited to, commercial, industrial, institutional, government, multi-family, mobile home park, and religious organization land uses.

Parcel shall mean one or more lots or portions of lots that contiguous and under single ownership.

Public utility shall mean 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~~ fees;
- (2) Use of the police power to implement the service; and
- (3) Nondiscriminatory, reasonable, and equitable terms consistent with the Act.

Residential property shall mean any improved lot or tract with single-family home, duplex, triplex, quadplex, condominium, or mobile home.

Service area shall mean the municipal boundaries of the city.

Stormwater utility ~~charges~~ fee shall mean the levy imposed to recover the cost of service of the municipality in furnishing drainage for any benefitted property, including any interest and penalties; and amounts made in contribution to funding of future drainage system construction by the city.

User or customer shall mean the person or entity that owns or occupies a benefitted property.

Wholly sufficient and privately-owned drainage system shall mean drainage from an improved lot or tract which does not discharge into any natural or manmade waterway or drainage infrastructure including public streets, storm drains, culverts, drainage easements, or storm water ponds that are part of the drainage system.

SECTION THREE. The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal Stormwater Utility System, Section 102-260, Stormwater utility fund, is amended to read as follows

(underlining indicates added text, ~~strikethrough~~ indicates deleted text):

A separate fund is hereby created, known as the stormwater utility fund, for the purpose of segregating, identifying, and controlling all revenues and expenses attributable to the stormwater utility. All stormwater utility ~~charges~~ fees shall be accounted for as collected and received into this fund and shall be used exclusively for the stormwater utility. Such utility 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 stormwater utility fund for any authorized purpose specifically related to or benefit any particular benefitted property from which the revenues were collected.

SECTION FOUR The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal Stormwater Utility System, Section 102-261, Administration of stormwater utility, is amended to read as follows (underlining indicates added text, ~~strikethrough~~ indicates deleted text):

The city manager or ~~his~~ designee shall be responsible for the administration of the stormwater utility, including, but not limited to, enacting any procedures necessary for the administration of the drainage ~~charges~~ fees and the consideration of appeals, development, and implementation of maintenance and facility improvement programs, state, and federal regulator compliance, and establishing drainage criteria and standards for the drainage system. The city shall keep an accurate record of all properties benefitted by the services and facilities of the stormwater utility.

SECTION FIVE. The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal Stormwater Utility System, Section 102-262, Stormwater utility charge, is amended to read as follows (underlining indicates added text, ~~strikethrough~~ indicates deleted text):

Sec. 102-262. Stormwater utility ~~charge~~ fee.

- (a) A stormwater utility ~~charge~~ fee is hereby imposed upon each improved lot and parcel within the service area. Stormwater utility ~~charges~~ fees shall be billed on a monthly basis for the duration of the stormwater utility.
- (b) For purposes of imposing the stormwater utility ~~charge~~ fee, all lots and parcels within the city are classified into the following customer categories: (1) Residential property and (2) ~~Commercial/n~~ Non-residential single family property. ~~See Exhibit "A" [available for review in the offices of the city] for ERU residential and commercial tiers and rates.~~
- (c) The ERU value for the city is determined through an inventory of all improved single-family residential parcels in the city and determination of impervious area for each parcel. Evaluation of these data determined that the equivalent residential unit impervious area value for assigning ~~charges~~ fees to ~~commercial~~ non-residential properties is 2,500 square feet.
- (d) ~~Commercial~~ Non-residential rates shall be based on an impervious area determination for each parcel:

$$\text{Total ERU's} = (\text{Impervious Area}/2500 \text{ sq. ft.}), \text{ minimum } 1 \text{ ERU}$$

- (e) The monthly stormwater utility ~~charge~~ fee for non-residential properties shall be calculated by multiplying the total number of ERU's for the parcel by the ERU monthly billing rate.

- (f) The ERU monthly billing rate is hereby established and will be set forth in appendix C, chapter 102, article V, and shall be used to calculate the total monthly stormwater utility ~~charge fee~~ for all property located in the city, both residential and ~~commercial~~ non-residential, in accordance with the applicable formula established in this subsection.
- (g) The ~~utilities~~ capital projects/engineering department shall be responsible for determining impervious area of property based on reliable data, including the appraisal roll, geographic information system technology, aerial photography, or other reliable means for determining impervious area. The ~~utilities~~ capital projects/engineering department may require additional information from the property owner, tenant, manager, or developer to make the determination. The amount of a ~~charge fee~~ may be revised by the ~~utilities~~ capital projects/engineering department based on any additions to the impervious area through the city approved building permit process.
- (h) The city council may review the schedule of ~~charges fees~~ at any time and may increase or decrease ~~charges fees~~ upon a determination that an increase or decrease is warranted.
- (i) No stormwater utility ~~charge fee~~ credit shall be given for the installation of drainage facilities required by the code or state law.

SECTION SIX. The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal Stormwater Utility System, Section 102-263, Billing, payments, and penalties, is amended to read as follows (underlining indicates added text, ~~strike through~~ indicates deleted text):

- (a) Bills or statements for the stormwater utility ~~charge fee~~ shall be rendered by the city for all properties subject to the ~~charge fee~~. Bills shall be payable when rendered and shall be considered received by the customer, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the utility customer or sent via the city's electronic billing system. Bills shall be rendered monthly for the previous month's service.
- (b) The utilities department may assume that each utility account in the service area serves one or more users of a benefitted property and may assess the drainage ~~charges fees~~ to the person responsible for payment of the utility account. If there is more than one user of a benefitted property then the ~~charges fees~~ shall be assessed to the owner of the benefitted property, unless instructed by the owner of the ~~B~~-benefitted ~~P~~property, in writing, to bill users on a prorated basis.
- (c) Bills are due and payable on the date specified thereon and if full payment is not made by the date specified, the bill shall become delinquent.
- (d) Stormwater utility ~~charges fees~~ shall be billed with the city's other public utility billings and shall be identified separately on the bill as a stormwater utility ~~charge fee~~. Stormwater utility ~~charges fees~~ are subject to the billing procedures, penalties, discounts, interest, and other terms of the City of Seguin's rules and regulations related to billing.
- (e) Any ~~charge fee~~ due hereunder which is not paid when due will subject the user 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.
- (f) The city shall have access, at all reasonable times, to any benefitted property served by the stormwater utility for necessary inspection, repair of infrastructure or enforcement of this article.

(Ord. No. 2022-004 , § 2, 1-4-22)

SECTION SEVEN. The Seguin Code of Ordinances, Chapter 102, Utilities, Article V, Municipal

Stormwater Utility System, Section 102-264, Appeals, is amended to read as follows (underlining indicates added text, ~~strikethrough~~ indicates deleted text):

- (a) Requests for adjustment of a stormwater utility charge fee shall be submitted to the ~~city's customer service office~~ capital projects/engineering department. A user may apply for an adjustment if:
 - (1) The user believes that the drainage charge fee schedule, as applied to the user's benefitted property, does not fairly reflect the ~~cost of service to use of~~ use of the user's benefitted property;
 - (2) The user disputes the amount of impervious area used to calculate the drainage charge fee; or
 - (3) The user's drainage charge fee has been assessed in error.
- (b) The following procedures shall apply to all requests for adjustment of the stormwater utility charge fee:
 - (1) The user shall have the burden of proof.
 - (2) Any user who has paid stormwater utility charges fees and who believes the calculation or determination of the stormwater utility charge fee to be incorrect may, subject to the restrictions set forth in this chapter, submit an adjustment request to the ~~city's customer service office~~ capital projects/engineering department.
 - (3) Requests for adjustment of the stormwater utility charges fees paid by an owner, user or customer making the request shall be in writing and set forth in detail the grounds upon which relief is sought.
 - (4) Adjustment requests will be reviewed by the city within ~~ten~~ 30 business days from the date of receipt of an adjustment request. Adjustments, other than assessment made in error, resulting from such a request shall be prospective but may be made retroactive for no greater time period than three monthly billings prior to the receipt of the request. A determination of retroactive adjustments shall be made by the city engineer.
 - (5) The user requesting an adjustment may be required, at the user's cost, to provide supplemental information to the city, 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.
 - (6) The city's determination of the adjustment request shall be provided to the user, in writing, within ten business days of the later of receipt of the request for adjustment or receipt of any additional information submitted in accordance with this section. If the city engineer approves the request, the adjustment to the stormwater utility charge fee will be made.
- (c) If the city engineer denies the adjustment request, the user may, within ten business days from the date of notification, appeal the decision to the city manager in accordance with the City of Seguin's rules and regulations related to billing.
- (d) In accordance with the City of Seguin's rules and regulations related to billing, before imposing a lien for delinquent stormwater utility charges fees, the city shall send notice to the record owner of the benefitted property stating the amount of the charges fees owed, and of the owner's right to appeal the placement of the lien by producing evidence the delinquent charges fees are not rightfully owed, by providing such within ten business days from the date of notification to the utilities department. A lien shall not be filed if the owner shows that the

stormwater utility ~~charge fee~~ made the basis of the lien is not owed. When a person pays all of the ~~charges-fees~~, a lien filed pursuant to this chapter shall be released. The paying party shall be responsible for the filing costs of the release.

SECTION EIGHT. This Ordinance shall become effective beginning ten days after its publication.

SECTION NINE. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portions of the Ordinance, which shall continue to have full force and effect.

SECTION TEN. City Staff is hereby authorized to submit this Ordinance as a supplement to the Seguin Code of Ordinances.

PASSED UPON FIRST READING this 1st day of November 2022.

PASSED UPON SECOND READING this 15th day of November 2022.

DONNA DODGEN , Mayor

ATTEST:

Naomi Manski, City Secretary