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CITY CLERK DEPT. Ordinance No. 016668

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AN ORDINANCE OF THE CITY OF EL PASO, TEXAS, ESTABLISHING A MUNICIPAL DRAINAGE UTILITY SYSTEM AND RESOLVING MATTERS RELATED THERETO.

WHEREAS, the creation of a drainage utility system within the City of El Paso ("City") is necessary and essential to ensure that the collection of storm water runoff and management and control of storm water runoff adequately protects the health, safety, and welfare of the citizens of the City including, but not limited to, protection from loss of life and property caused by surface water overflows and surface water stagnation; and

WHEREAS, Chapter 402, Subchapter C of the Texas Local Government Code, as amended (the "Municipal Drainage Utility Systems Act" or the "Act"), authorizes the City to establish a municipal drainage utility system within the boundaries of the City and its extraterritorial jurisdiction; and

WHEREAS, through this Ordinance, the City desires to adopt the Act and declare the drainage system of the City to be a public utility; and

WHEREAS, the City has adopted an Open Space Master Plan which emphasizes open spaces and natural areas as a possible method to help manage storm water, reduce flooding risk and improve water quality; and

WHEREAS, notice of the time and place of the public hearing to consider this Ordinance (including the full text of this Ordinance) has been published in the El Paso Times three times, with the date of first publication occurring on or before the 30th date before the date of such hearing, all in accordance with the Act; and

WHEREAS, the City intends to fund a storm water drainage system that fairly and equitably allocates the cost of storm water control to properties in proportion to storm water runoff potential for each type of property.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

SECTION I.
FINDINGS REQUIRED BY LAW

The City hereby adopts the Municipal Drainage Utility Systems Act and finds that the City will, and hereby directs the El Paso Water Utilities Public Service Board of the City ("Board"), on behalf of the City, to:

(i) Establish a schedule of drainage charges against all real property in the proposed service area subject to charges;

(ii) Provide drainage service for all real property in the proposed area upon payment of drainage charges (except real property that is exempt from such charges); and

(iii) Offer and provide drainage service on nondiscriminatory, reasonable, and equitable terms in accordance with Rules and Regulations as promulgated by the Board.

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SECTION II.
DEFINITIONS

In this Ordinance, the following capitalized terms shall have the meanings specified below:

"Benefited property" means an improved lot or tract to which drainage service is made available under the Act and this Ordinance and in accordance with applicable Rules and Regulations.

"Board" means that certain board of trustees known as the "Public Service Board" established by the City pursuant to Section 1502.070 of the Texas Government Code and charged with having complete authority and control of the management and operation of the water and wastewater system of the City, as represented by the various persons appointed to such board from time to time.

"City" means the City of El Paso, Texas, a Texas Home Rule Municipality.

"Municipal Drainage Utility Systems Act" or the "Act" means Section 402.041, et seq., as it may be amended by the Texas Legislature from time to time to include, but not by way of limitation, the applicable definitions in the Act. .

"Service Area" means all that area of land located within the city limits of the City 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 to 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. The Service Area may be extended by written resolution of the Board, to the extent permitted by the Act at the time of adoption of such resolution, to include other land areas outside the city limits of the City which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the System provided, however, in no event may the Service Area extend farther than the boundaries of the City's then current extraterritorial jurisdiction, nor, except as expressly provided by the Act, may the Service Area extend into the boundaries of another municipality.

"Storm 2006 Projects" means those projects set forth under Priority I and Priority II in the Storm 2006 Update dated May 7, 2007 (the "Update") given by the Acting City Engineer to the City Council and the Board and on file with the City Clerk.

"System" means the Municipal Drainage Utility System established by this Ordinance and encompasses the complete drainage system of the City as it now exists and may be improved, added to, or extended hereafter, there being included in such term all drainage facilities now or hereafter owned or operated by the City, lying within and without the boundaries of the City, and including all real estate and real and personal property of every kind and nature comprising any part of or used or useful in the operation of the System but excluding parks, roads, streets and bridges.

"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.

All other words unless specifically defined shall have their usual and customary meaning.

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SECTION III.
ESTABLISHMENT AND MANAGEMENT OF THE SYSTEM

A. The System is hereby established as a municipal drainage utility system and declared to be a public utility.

B. The Board shall cause to be prepared a Master Stormwater Management Plan ("Stormwater Plan") which shall be approved by the City Council. In developing the Stormwater Plan, the Board shall take into account the use of open space as natural drainage and to extent reasonably possible preserve the City's open spaces, greenways, arroyos and wilderness areas in their natural state as a means to assist in the management of storm water and in accordance with the City's Open Space Master Plan.

C. Notwithstanding anything herein to the contrary and even to the extent such operation may constitute storm water maintenance, the City shall continue to be responsible for (i) zoning and floodplain regulation, including floodplain administrator duties, floodplain mapping, FEMA and community rating system; (ii) road, street and bridge construction and maintenance; (iii) subdivision plans and building permits; (iv) parks; and (v) certain administration and support services, such as human resources, as agreed to by the City Manager and the General Manager of the El Paso Water Utilities (the "General Manager") in accordance with the transition provisions of Section X hereof.

D. Except as otherwise expressly provided in this Ordinance or under applicable law, the Board shall have complete authority and control of the management and operation of the System on behalf of the City. The Board shall approve an annual budget for the System and shall approve such fees or charges as recommended by the General Manager. The Board shall appoint the General Manager as general manager of the System. The General Manager shall establish an organizational structure for management of the System which may be changed from time to time with Board approval.

The General Manager shall bring to the Board annually a Stormwater Capital Improvement Plan (the "Capital Plan") for its approval which shall include both short and long term objectives. To assure compliance with the Stormwater Plan, the City's Flood Plain Administrator shall review the proposed Capital Plan prior to its presentation to the Board. The Capital Plan shall, to the extent reasonably possible, include the use and maintenance of arroyos and other natural drainage systems as a means to manage stormwater and otherwise take into account environmental best practices in the construction of any stormwater infrastructure. The Capital Plan shall identify stormwater infrastructure projects (including land acquisitions) which have the potential dual purposes of stormwater management and preservation of the City's open spaces, greenways, arroyos and wilderness areas in their natural state in accordance with the City's Open Space Master Plan and the City's Parks and Recreation Master Plan ("Green Projects"). The Board shall allocate an amount equal to ten percent (10%) of the System's annual drainage utility fee revenues for such Green Projects.

E. A drainage utility fee shall be imposed on each improved parcel within the City for services and facilities provided by the System, except as to exemptions provided for by law or by this Ordinance. For purposes of imposing the drainage utility fee, all eligible parcels within the Service Area shall be classified into categories assigned by Rules and Regulations of the Board to be hereafter set by the Board. Such classifications of the eligible parcels shall distinguish between residential and non-residential use, take into account estimated impervious area or surface and be nondiscriminatory, equitable and reasonable, in accordance with the Act. In evaluating drainage utility fee structures, the Board shall consider alternatives that group or establish sub-categories of residential uses based on parcel size, impervious area or other reasonable criteria.

F. At least once a year beginning with the Fiscal Year ending August 31, 2009, the General Manager, on behalf of the Board, shall present to the City Council a report on the status of the System.

SECTION IV.
ADMINISTRATIVE PROVISIONS

A. No Assumed Liability City. By the passage of this Ordinance, the City makes no representation that all of the City's drainage problems will be immediately remedied and the City Council is given full discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The passage of this Ordinance shall not be construed to relieve private landowners, developers or other individuals or entities from providing drainage improvements pursuant to the ordinances of the City and the laws of this State which relate to drainage, storm water or storm water improvements. The City itself shall be responsible for the funding and construction of the Storm 2006 Projects (regardless of final cost of completion). Neither the Board nor the System shall be responsible for the funding and construction of the Storm 2006 projects. The Board shall be responsible for those projects listed as "Priority III" work in the Update as part of the System. Nothing in this Ordinance shall be deemed to waive the City's immunity under State law.

B. No Assumed Liability Board. The Board makes no representation that all of the City's drainage problems will be immediately remedied and the Board recognizes the City Council's governmental budgeting discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The City and the Board recognize that the Board is undertaking a governmental function in accepting the delegation of the rights, duties and responsibilities of a municipal drainage utility system pursuant to the Act and the authority of the City acting as a Texas Home Rule Municipality. The effective date of this Ordinance provides the effective date for the beginning of the actions and responsibilities of the Board in this matter.

C. Exemptions from Civil Service. The General Manager shall be responsible to appoint officers and employees that directly report to the General Manager, including, an attorney or attorneys, Assistant General Manager(s) of the System and such other officers or personnel that directly report to the General Manager in his capacity as general manager of the System. All other officers and employees, except members of the Board, the General Manager, attorneys, Assistant General Manager(s) and persons directly reporting to the Assistant General Manager(s) shall serve under the City Civil Service provisions as are or may be established by the Charter of the City or the laws of Texas, and the Board shall have the same authority with respect to such officers and employees as that of the City Council with respect to other officers and other employees of the City.

D. Insurance. The Board will obtain overall property insurance on the assets of the Municipal Drainage Utility System in a form and amount as the Board may determine to be reasonable and prudent. Such insurance may take the form of general liability insurance or an umbrella insurance policy.

SECTION V.
DRAINAGE UTILITY FUND

A. Drainage Utility Fund. The Board shall establish a drainage utility fund. All drainage utility fees shall be deposited as collected and received into this fund, and shall be used exclusively for the drainage services set forth under the Act, including but not limited to those services referenced in Local Government Code Section 402.044(2).

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B. Drainage Fund Accounting. The revenues collected from drainage utility fees must be segregated and completely identifiable from other City or Board accounts.

SECTION VI.
EXEMPTIONS

The following entities or persons shall be exempt from this Ordinance:

A. Any property to which a mandatory exemption under Chapter 402.053 of the Local Government Code applies, including without limitation:

1. Property with proper construction and maintenance of a wholly sufficient and privately owned storm water system that does not discharge under any storm frequency events or conditions to waterways controlled or maintained by the City or the Board;

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 City or Board for maintenance; and

3. A subdivided parcel or lot, until a structure has been built on the lot and a certificate of occupancy has issued, or the City has taken another official action to release the property for occupancy.

B. Any property to which a mandatory exemption under Chapter 430.003 of the Local Government Code applies or which is exempt under applicable federal law, including without limitation:

1. A federal or state agency; and

2. A public institution of higher education.

SECTION VII.
CUMULATIVE

This Ordinance shall be cumulative of all provisions of ordinances and of the El Paso City Code, as amended. To the greatest extent reasonably possible, this Ordinance and such prior ordinances and City Code shall be interpreted on a consistent basis and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof are in direct conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed with respect to the subject matter of this Ordinance only.

SECTION VIII.
SEVERABILITY CLAUSE

The phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, phrase, paragraph or section.

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SECTION IX.
EFFECTIVE DATE

This Ordinance shall take effect upon its adoption.

SECTION X.
TRANSITION

The City Manager and the General Manager shall provide for a transition process for the organization and transfer to the System personnel, physical assets and real property currently dedicated by the City to its storm water management program.

It is intended that the transfers provided for in the transition process shall be completed by March 1, 2008, but in no event later than June 1, 2008. The City Manager is hereby authorized to take whatever action, including but not limited to, budget transfers to accomplish the intent of this Ordinance.

APPROVED AND ADOPTED this 19th of June, 2007.

CITY OF EL PASO, TEXAS

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:

Edmund G. Archuleta, P. E.
General Manager, El Paso Water Utilities

APPROVED AS TO CONTENT:

Joyce A. Wilson
City Manager, City of El Paso

APPROVED AS TO FORM:

Robert D. Andron
General Counsel, El Paso Water Utilities

APPROVED AS TO FORM:

Charles F. McNabb, City Attorney

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