

RULE NO.: R161-15.22

ADOPTION DATE: April 27, 2016

NOTICE OF RULE ADOPTION

By: Joseph G. Pantalion, P.E., Director
Watershed Protection Department

The Director of the Watershed Protection Department has adopted the following rule. Notice of the proposed rule was posted on January 28, 2016. Public comment on the proposed rule was solicited in the January 28, 2016 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Watershed Protection Department, located at 505 Barton Springs Road, Suite 1200, Austin, TX, 78704; and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on April 27, 2016.

AUSTIN CITY CLERK
RECEIVED

2016 APR 27 PM 1 48

TEXT OF ADOPTED RULE

R161-15.22: This rule amends and replaces R161-15.22e, which created a new Section 9 to the Drainage Criteria Manual to enforce City Code Chapters 15-2 (*Drainage Utility*) and 15-9 (*Utility Service Regulations*).

COMMENTS AND CHANGES FROM PROPOSED RULE

Please see the attached redline version of DCM Section 9 to view changes from the emergency rule (underline) and the rule proposed January 28, 2016 (highlighted).

Please see attached Comments and Responses Spreadsheet for comments and responses to the proposed rule.

Please see Attachments A, B and C for comment letters from stakeholders.

Please see Attachment D for Common Responses to Comments.

AUTHORITY FOR ADOPTION OF RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of City Code is established in Chapter 1-2 of the City Code. The authority to regulate the Drainage Utility is established in Chapters 15-2 and 15-9 of the City Code.

APPEAL OF ADOPTED RULE TO CITY MANAGER

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

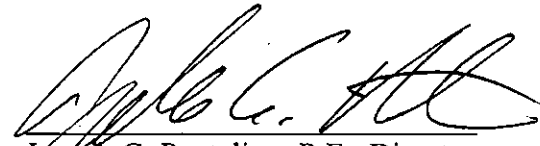
Notice that an appeal was filed and will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City manager shall make a decision.

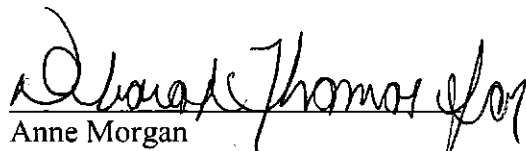
CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Rule Adoption (R161-15.22), the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED


Joseph G. Pantalione, P.E., Director
Watershed Protection Department

Date: 4-25-16


Anne Morgan
City Attorney

Date: 4/26/2016

SECTION 9 – DRAINAGE CHARGE ADMINISTRATION

9.1.0 GENERAL

The following rules have been promulgated by the City of Austin Watershed Protection Department (WPD) to address the administration of Chapter 15-2 of the Austin City Code.

9.2.0 APPLICABILITY

These rules apply to all customers within the service area of the Drainage Utility, which is the area within the city limits as defined in Section 15-2-3 of the Austin City Code, further clarified herein as full-purpose jurisdiction. These rules replace all previously approved Drainage Charge Administrative Billing Rules. These rules are intended to supplement and add clarity to, but at no time supersede, requirements outlined in the Drainage Utility Regulations in Chapter 15-2 of the Austin City Code, which is administered in accordance with the provisions of Chapter 552 (*Municipal Utilities*), Subchapter C (*Municipal Drainage Utility Systems*), of the Texas Local Government Code.

9.3.0 DEFINITIONS

Terms in this document are defined in the Austin City Code Sections 15-2-1 (Definitions), 15-9-1 (Definitions) and 25-1-21 (Definitions). The term “parcel” in Section 9 means the Travis Central Appraisal District (TCAD) properties and/or Williamson and Hays Appraisal District properties.

9.4.0 BASIS FOR THE DRAINAGE CHARGE

The drainage charge is based on the criteria identified in Sections 15-2-4 (B) and 15-2-4 (C) of the Austin City Code.

9.5.0 CALCULATION OF THE DRAINAGE CHARGE

- 9.5.1 Sections 15-2-5 and 15-2-7 of the Austin City Code define how impervious cover and the monthly drainage charge shall be calculated.
- 9.5.2 Base Rate - The annual base rate shall be in the fee schedule approved by City Council for each fiscal year. The monthly base rate is determined by dividing the annual base rate by 12.
- 9.5.3 Adjustment Factor - The adjustment factor formula shall be in the fee schedule approved by City Council for each fiscal year.
- 9.5.4 Total Area of a benefitted property - The total area of a property shall be initially determined by the City's Geographic Information System (GIS) which uses parcel data from Travis Central Appraisal District (TCAD), Williamson County Appraisal District

(WCAD), and Hays County Appraisal District (HCAD). The total area of a property may be corrected by the following sources:

- A. A survey that is signed and sealed by a State of Texas Professional Land Surveyor,
- B. The dimensions on an approved site development plan,
- C. The dimensions on an approved subdivision plat,
- D. The dimensions shown on an as-built plan, or
- E. The dimensions obtained from tax records of the County Appraisal District in which the property is located.

If numbers from different sources are inconsistent, City staff may use the latest and most accurate source to make the determination.

9.5.5 Impervious Area - Impervious area (also called impervious cover) is defined by City Code Sections 15-2-1 (B) (4), 15-2-5, 25-8-63, and Environmental Criteria Manual Section 1.8.1.

- A. **Measurement - Impervious area shall be measured by the City's Geographic Information System (GIS) when calculated from the City's latest planimetric maps. Measurement of impervious area for the purpose of calculating the drainage fee shall conform to the methods and standards specified in the City's Environmental Criteria Manual, the City's Drainage Criteria Manual, and the City's Land Development Code as it is interpreted by the City's Watershed Protection and Development Services Department (or successor department) staff.**
- B. **Additional Detail**
 - a. **Structures - The impervious area for structures shall be determined by whichever of the following is larger - the roof area, the foundation area, or exterior wall area. Consequently, horizontal projections of the overhang of a house (eaves for example) are considered impervious area.**
 - b. **Sidewalks/Trails - Sidewalks and trails that are accessible by the general public and are located on public property or on public easements shall not be counted as impervious cover.**
 - c. **Roads/Driveways/Parking Areas – Partially paved vehicular areas constructed with pervious areas (e.g. concrete strips with a pervious median) may have the pervious area removed from the impervious cover quantity if there is clear evidence of focused use on the paved areas. Unpaved vehicular areas compacted by vehicle use may have the uncompacted, pervious areas removed from the impervious cover quantity only if there is clear evidence of focused use on the wheel track area. In cases where ungrouted stones/bricks/pavers are placed adjacent to each other (gaps <1"), the requirements below for permeable pavers and porous pavement must be met to receive a reduction in impervious**

cover. For vehicular areas with both impervious and pervious features, City staff may assign the entire area as 50% impervious or specifically delineate the impervious areas.

- d. Pedestrian Patios/Walkways – For all pedestrian patio or walkway uses where there are bricks, stones, or other impervious features spread over an area, when the pervious space between the impervious features is greater than 50%, the entire area may be considered pervious. When the pervious space between the impervious features is less than 50%, the entire area may be considered as 50% impervious. In cases where ungrouted stones/bricks/pavers are placed adjacent to each other (gaps <1”), the requirements below for permeable pavers and porous pavement must be met to receive a reduction in impervious cover.
 - e. Permeable Pavers and Porous Pavement – In order to exclude permeable pavers or porous pavement from impervious cover, the customer will need to provide plans, specifications, details, or other information that clearly demonstrates the installation met City of Austin permeability requirements at the time of construction. If sufficient proof is provided, the area may be considered fully pervious for pedestrian applications and 50% pervious for vehicular applications.
- C. Corrections - The impervious area of a property may be corrected by the following sources, any of which may be collected and submitted by the utility customer at his/her initiative:
- a. Latest available aerial photographs or planimetric data.
 - b. An up-to-date survey that is signed and sealed by a State of Texas Professional Land Surveyor.
 - c. A site plan or similar development documents that accurately reflect the development currently on the property.
 - d. Measurements and observations from a field check by City staff.
 - e. Photographs that show conditions different from those on which the original calculations were based (e.g., uncovered wood decks, wheelchair ramps, removed structures, misinterpreted features).
 - f. More detailed information provided by requestor after review and approval by staff.
- 9.5.6 Calculating Properties on a Composite Basis - Under Section 15-2-5(C), the percentage impervious cover may be calculated on a composite basis under certain circumstances, as prescribed in this Section.
- A. A “condominium regime” as defined by City and State Codes.
 - B. The properties are subject to a unified development agreement or City site plan that specifies the properties will be reviewed as one site.

- C. The customer provides documentation acceptable to the Director indicating that the properties were legally developed together.
- D. If a building spans one or more parcel boundaries, initial billing assignments may assume these parcels were legally developed together.
 - 1. Same Owner – In addition to combining the charge, the bill will also be combined.
 - 2. Different Owners (e.g. townhomes) – The calculation of the charge may be combined. The charge should be assessed to the home owners association (HOA) if the HOA has an account; otherwise the charge may be divided equally among the owners.
- E. Examples:
 - 1. Adjacent Parcels, Same Owner – Unless legally developed together or as noted below, if two or more parcels are adjacent and have the same owner, the charge is calculated and assessed separately for each parcel.
 - a) Even though separate charges may be assessed for multiple parcels of the same owner, that same owner may have those separate parcel charges placed on a single bill.
 - 2. Adjacent Parcels, Multiple Owners, One Address – When there are multiple parcels with multiple owners, but all at one address, the charge is calculated and assessed separately for each parcel. City will attempt to place additional address points, if appropriate.
 - 3. Multiple Parcels, legally developed together, different owners, and one existing Drainage Utility Fee (DUF) account - WPD will maintain one account unless requested by all the owners to change.
 - 4. Duplexes, Triplexes, and Fourplexes – If there are 2-lot duplexes or other multi-lot examples up to fourplexes, they shall be combined together into one parcel for calculating the charge.
 - 5. Non-adjacent Parcels – These shall not be combined for the purpose of calculating the drainage charge unless the parcels were legally developed together as one site and subsequently separated by public right-of-way. Subdivision of undeveloped parcels retained by the same owner does not constitute development together as one site.
 - 6. Parcels within a Parcel – Parcels that are wholly enveloped by another parcel may be calculated on a composite basis.
 - 7. Private Drives/Streets – These are not exempt like public ROW and will receive a drainage charge. If the private drives are separate parcels, they will not be combined with other parcels, unless those parcels all have the same owner and were legally developed together.

9.6.0 ASSESSMENT OF THE DRAINAGE CHARGE

- 9.6.1 City Code Section 15-2-8 defines how the drainage charge will be billed.
- 9.6.2 The fee will be assessed beginning when the Department confirms that a Certificate of Occupancy or Certificate of Completion has been issued for the property.
- 9.6.3 If the property owner, or his designee, requests to pay the Drainage charge, WPD may accommodate customer request.
- 9.6.4 Redevelopment - If there is an existing drainage charge, and additional development or redevelopment on that property occurs, the existing impervious area prior to construction activities beginning will be the basis for the impervious cover amount to generate a charge during construction. Once construction activities are complete and a Certificate of Occupancy/Completion is issued for the new improvement, the new impervious cover area shall be the basis for the impervious cover amount to generate a charge.
- 9.6.5 Phased Construction - When new construction is phased on a property, and following occupancy or utility activation on part of the property, the drainage charge shall be assessed to the owner in proportion to the amount of impervious cover in the completed phase(s). The City shall determine an equitable method to estimate impervious cover for the completed phase(s).
- 9.6.6 Any account billing for fewer than 17 days will not be assessed the drainage charge. This ensures that users will not be charged twice in one month if they move within the city limits.
- 9.6.7 Other clarifications for Section 15-2-8:
- A. Single Account - The drainage charge shall be assessed to the utility account associated with either residential or nonresidential properties with only one account (one service point).
 - B. Garage Apartment - For residential property with more than one utility customer that contains an accessory unit or garage apartment, the charge shall be divided equally by the number of utility customers. If utilities have been discontinued and a unit is determined to have been vacant, then the City may move the unbilled vacant charges to the primary residence.
 - C. Duplex, Triplex, Fourplex - For duplex residential properties, the drainage charge shall be divided equally between the two accounts regardless of the size of either unit. For triplex and fourplex residential properties, the drainage charge shall be divided equally among the 3 or 4 units, regardless of relative size. If one or more of the units is vacant and/or the utilities have been discontinued, the denominator of 2, 3, or 4 will remain the same. If a unit is determined to have been vacant, then the City may move the unbilled vacant charges to the property owner.

- D. Condominiums - If the common area has a utility account, the drainage charge for condominium properties shall be calculated for the total property and billed to the common area utility account.
- E. Multi-family residential (5 or more units) - The drainage charge shall be calculated for entire multifamily residential properties and billed to the property owner, property manager or the entity associated with the master meter account. If the City cannot reasonably determine or locate a single entity to bill, the City shall determine an equitable method to allocate the drainage charge among utility customers. Equitable methods may include – equal division, approximate ratio estimates, apportionment of impervious cover, or other methods.
- F. Mobile Homes - Properties containing multiple mobile homes shall be billed in the same way as multifamily (5 or more units) residential properties.
- G. For entire multi-tenant non-residential properties and/or non-residential properties with more than one account the drainage charge shall be billed to the owner, property manager or entity associated with the master meter account and/or the drainage charge service point.
- H. For mixed-use properties with multiple tenants (residential and non-residential), the drainage charge shall be billed to the owner, property manager, or entity associated with the master meter account and/or the drainage charge service point.
- I. For properties with only one active utility account, the charge shall be billed to that account even though it may contain multiple units or structures.
- J. In any situation where the owner of a multi-tenant property (residential, non-residential or mixed use) cannot reasonably be determined or located, or if the owner proves to be unresponsive in paying the charge , the total charge may be divided equally among the utility customers associated with the property and billed accordingly.
 - 1. For initial billing assignments, property owners without existing utility accounts may be considered as “cannot reasonably be determined or located” until a separate drainage utility account is established.
 - 2. In situations where the non-owner utility customers may be billed and those customers do not occupy the entire property, the City may determine an equitable method for allocation which may include billing those customers up to 100% of the property until the owner has established a utility account.
- K. For properties that are partially inside and partially outside the City limits, the service point should be located on the main structure. If the service point is located outside the City limits, the drainage charge will not be assessed on the property. If the service point is located within the City limits, then the drainage charge shall be

assessed, but the fee will be calculated using only that portion of the total property and that portion of the impervious cover that lie within the City limits.

9.7.0 REDUCED CHARGES

- 9.7.1 Single Family Residential Phase-in - After the monthly charge has been computed, it may be adjusted for single family residential property in accordance with Section 15-2-7 of the Austin City Code for the period between October 1, 2015 and October 1, 2016. When the calculated monthly fee for a single family property exceeds \$9.80, the increase over \$9.80 shall be determined and then reduced by 50%. An example would be a calculated fee of \$19.80. The \$10 increase (over \$9.80) would be reduced by 50% to a \$5 increase and the resulting fee for the first year would be \$14.80. The reduced charge shall be allowed for properties that are designated as single family in the City's billing system. This includes garage apartments, but does not include duplexes, townhouses/condos, or mobile homes.
- 9.7.2 Customer Assistance Program (CAP) - Each year, Austin Energy's Customer Assistance Discount Program may select customers who qualify for the program to receive a discount on the drainage charge, up to the limit specified by the Director of the Watershed Protection Department (WPD). The Director of WPD shall specify the number of customers to receive the drainage charge discount, and may change the number at any time by notifying Austin Energy via a signed memo. The drainage charge discount percentage shall be set in the annual fee schedule.

9.8.0 EXEMPTIONS

- 9.8.1 Public Rights-of-Way (ROW) - All public ROW inside the City, whether owned and/or maintained by the City, the State of Texas, or a county are exempt from the drainage fee. Private streets, alleys and drives are not exempt.
- 9.8.2 State - Any agency of the State of Texas is exempt from the drainage fee per Texas Local Government Code 580.003. This applies whether that agency either owns or occupies the property.
- 9.8.3 Public or Private Institution of Higher Education - Any public or private institution of higher education is exempt from the drainage fee per Texas Local Government Code 580.003. This applies whether the institution either owns or occupies the property. All terms pertaining to institutions of higher education are defined in the Texas Education Code Section 61.003.
- 9.8.4 Religious Organizations - Property owned and occupied by a religious organization that is exempt from taxation under Section 11.20 of the Texas Tax Code may be exempt from the drainage charge, but only when the organization is enrolled in the Religious Coalition to Assist the Homeless (RCAH) and participates by paying RCAH an amount

each month equal to or greater than the drainage charge amount that would be paid to the City. The Department does not enroll religious organizations in RCAH, nor shall the Department accept applications for this exemption. RCAH shall notify the Department when a qualifying religious organization is participating in the program, and at that time the Department shall place a stop on the City's assessment of the fee for that organization. Conversely, RCAH shall notify the Department whenever an organization drops out of the program or is in arrears, and the Department shall immediately re-instate the drainage charge for that organization.

- 9.8.5 Exempt Ownership - For a benefited property that is owned by an agency of the State or an institution of higher education, but is occupied by another non-exempt entity, a charge shall be assessed for the property and assigned to the non-exempt utility customer(s) occupying the property.
- 9.8.6 Exempt Occupancy - For a benefited property that is occupied by an agency of the State or an institution of higher education, but is owned by another non-exempt entity, a charge shall be assessed for the property and assigned to the non-exempt property owner.

9.9.0 BILLING ADJUSTMENTS

- 9.9.1 Adjustments to customer drainage charges shall be made in accordance with Section 15-2-12 of the Austin City Code. The billing adjustment process may involve two steps in progression.
- 9.9.2 Administrative Review
 - A. The methods to request and initiate an Administrative Review will be available on the City's website or directly through the Watershed Protection Department (WPD).
 - B. An administrative review shall address only the four potential errors listed in Section 15-2-12 (A).
 - C. Data sources to be used in checking and correcting a potential error in calculating the area of a benefited property are listed in 9.5.4 above.
 - D. Data sources to be used in checking and correcting a potential error in calculating the amount of impervious cover are listed in 9.5.5 above.
 - E. A customer requesting a review must submit information and documentation to support the claim that an error was made.
 - F. Refunds for overbilling and backbills for underbilling shall be done in accordance with Section 15-9-140 of the Austin City Code.
 - G. Refunds for overbilling based on the new fee structure effective October 1, 2015 shall not extend to any period prior to that date when the fee was determined by a different methodology.

H. Any refund for a period prior to October 1, 2015 must be based solely on the fee structure and rates in place at that time.

- 9.9.3 Administrative Hearing - Customers who are not satisfied with the outcome of the administrative review shall be informed of the administrative hearing process described in City Code Chapter 15-9, Article 12.
- 9.9.4 This section of the administrative billing rules, together with the sections of the City Code referenced herein, form the Appeals Rules and Procedures referenced in Section 15-9-191 of the City Code.

SECTION 9 – DRAINAGE CHARGE ADMINISTRATION

9.1.0 GENERAL

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9.2.0 APPLICABILITY

These rules apply to all customers within the service area of the Drainage Utility, which is the area within the city limits as defined in Section 15-2-3 of the Austin City Code, further clarified herein as full-purpose jurisdiction. These rules replace all previously approved Drainage Charge Administrative Billing Rules. These rules are intended to supplement and add clarity to, but at no time supersede, requirements outlined in the Drainage Utility Regulations in Chapter 15-2 of the Austin City Code, which is administered in accordance with the provisions of Chapter 552 (*Municipal Utilities*), Subchapter C (*Municipal Drainage Utility Systems*), of the Texas Local Government Code.

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9.4.0 BASIS FOR THE DRAINAGE CHARGE

The drainage charge is based on the criteria identified in Sections 15-2-4 (B) and 15-2-4 (C) of the Austin City Code.

9.5.0 CALCULATION OF THE DRAINAGE CHARGE

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9.5.5 Impervious Area - Impervious area (also called impervious cover) ~~for purposes of the drainage charge~~ is defined by City Code Sections 15-2-1 (B) (4), 15-2-5, 25-8-63, and Environmental Criteria Manual Section 1.8.1.

- A. Measurement - Impervious area shall be measured by the City's Geographic Information System (GIS) when calculated from the City's latest planimetric maps. Measurement of impervious area for the purpose of calculating the drainage fee shall conform to the methods and standards specified in the City's Environmental Criteria Manual, the City's Drainage Criteria Manual, and the City's Land Development Code as it is interpreted by the City's Watershed Protection and Development Services Department (or successor department) staff.
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cover. For vehicular areas with both impervious and pervious features, City staff may assign the entire area as 50% impervious or specifically delineate the impervious areas.

Commented [SN1]: Addition responding to permeable pavers comment.

Commented [SN2]: Edits responding to driveway comment.

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Commented [SN3]: Addition responding to permeable pavers comment.

- b-e. Permeable Pavers and Porous Pavement – In order to exclude permeable pavers or porous pavement from impervious cover, the customer will need to provide plans, specifications, details, or other information that clearly demonstrates the installation met City of Austin permeability requirements at the time of construction. If sufficient proof is provided, the area may be considered fully pervious for pedestrian applications and 50% pervious for vehicular applications.

Commented [SN4]: Addition responding to permeable pavers comment.

- C. Corrections - The impervious area of a property may be corrected by the following sources, any of which may be collected and submitted by the utility customer at his/her initiative:

Commented [SN5]: Addition responding to property owner submitted information comment.

- a. Latest available aerial photographs or planimetric data.
- b. An up-to-date survey that is signed and sealed by a State of Texas Professional Land Surveyor.
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9.5.6 Calculating Properties on a Composite Basis - Under Section 15-2-5(C), the percentage impervious cover may be calculated on a composite basis under certain circumstances, as prescribed in this Section.

- A. A “condominium regime” as defined by City and State Codes.
- B. The properties are subject to a unified development agreement or City site plan that specifies the properties will be reviewed as one site.

- C. The customer provides documentation acceptable to the Director indicating that the properties were legally developed together.
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 4. Duplexes, Triplexes, and Fourplexes – If there are 2-lot duplexes or other multi-lot examples up to fourplexes, they shall be combined together into one parcel for calculating the charge.
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 6. Parcels within a Parcel – Parcels that are wholly enveloped by another parcel may be calculated on a composite basis.
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9.6.0 ASSESSMENT OF THE DRAINAGE CHARGE

9.6.1 City Code Section 15-2-8 defines how the drainage charge will be billed.

9.6.2 The fee will be assessed beginning when the Department confirms that a Certificate of Occupancy or Certificate of Completion has been issued for the property.

9.6.2.9.6.3 If the property owner, or his designee, requests to pay the Drainage charge, WPD may accommodate customer request.

9.6.4 Redevelopment - If there is an existing drainage charge, and additional development or redevelopment on that property occurs, the existing impervious area prior to construction activities beginning will be the basis for the impervious cover amount to generate a charge during construction. Once construction activities are complete and a Certificate of Occupancy/Completion is issued for the new improvement, the new impervious cover area shall be the basis for the impervious cover amount to generate a charge.

9.6.39.6.5 Phased Construction - When new construction is phased on a property, and following occupancy or utility activation on part of the property, the drainage charge shall be assessed to the owner in proportion to the amount of impervious cover in the completed phase(s). The City shall determine an equitable method to estimate impervious cover for the completed phase(s).

9.6.49.6.6 Any account billing for fewer than 17 days will not be assessed the drainage charge. This ensures that users will not be charged twice in one month if they move within the city limits.

9.6.59.6.7 Other clarifications for Section 15-2-8:

- A. Single Account - The drainage charge shall be assessed to the utility account associated with either residential or nonresidential properties with only one account (one service point).
- B. Garage Apartment - For residential property with more than one utility customer that contains an accessory unit or garage apartment, the charge shall be divided equally by the number of utility customers. If utilities have been discontinued and a unit is determined to have been vacant, then the City may move the unbilled vacant charges to the primary residence.
- C. Duplex, Triplex, Fourplex - For duplex residential properties, the drainage charge shall be divided equally between the two accounts regardless of the size of either unit. For triplex and fourplex residential properties, the drainage charge shall be divided equally among the 3 or 4 units, regardless of relative size. If one or more of the units is vacant and/or the utilities have been discontinued, the denominator of

2, 3, or 4 will remain the same. If a unit is determined to have been vacant, then the City may move the unbilled vacant charges to the property owner.

- D. Condominiums - If the common area has a utility account, the drainage charge for condominium properties shall be calculated for the total property and billed to the common area utility account. ~~If it proves to be unresponsive in paying the charge, the total charge may be divided equally among the accounts associated with the property and billed accordingly.~~
- E. Multi-family residential (5 or more+ units) - The drainage charge shall be calculated for entire multifamily residential properties ~~(with more than four units)~~ and billed to the property owner, property manager or the entity associated with the master meter account. If the City cannot reasonably determine or locate a single entity to bill, the City shall determine an equitable method to allocate the drainage charge among utility customers. Equitable methods may include – equal division, approximate ratio estimates, apportionment of impervious cover, or other methods.
- F. Mobile Homes -
1. ~~Multiple~~ - Properties containing multiple mobile homes shall be billed in the same way as multifamily (5 or more+ units) residential properties.
2. ~~F. Single~~ - ~~A property that contains a single mobile home shall be billed in the same way as a single family residential property.~~
- G. For entire multi-tenant non-residential properties and/or non-residential properties with more than one account the drainage charge shall be billed to the owner, property manager or entity associated with the master meter account and/or the drainage charge service point.
- H. For mixed-use properties with multiple tenants (residential and non-residential), the drainage charge shall be billed to the owner, property manager, or entity associated with the master meter account and/or the drainage charge service point.
- G-I. For properties with only one active utility account, the charge shall be billed to that account even though it may contain multiple units or structures.
- H-I. In any situation where the owner of a multi-tenant property (residential, non-residential or mixed use) cannot reasonably be determined or located, or if the owner proves to be unresponsive in paying the charge, the total charge may be divided equally among the utility customers associated with the property and billed accordingly.
1. For initial billing assignments, property owners without existing utility accounts may be considered as “cannot reasonably be determined or located” until a separate drainage utility account is established.
 2. In situations where the non-owner utility customers may be billed and those customers do not occupy the entire property, the City may determine an

equitable method for allocation which may include billing those customers up to 100% of the property until the owner has established a utility account.

~~H.K.~~ For properties that are partially inside and partially outside the City limits, the service point should be located on the main structure. If the service point is located outside the City limits, the drainage charge will not be assessed on the property. If the service point is located within the City limits, then the drainage charge shall be assessed, but the fee will be calculated using only that portion of the total property and that portion of the impervious cover that lie within the City limits.

9.7.0 REDUCED CHARGES

9.7.1 Single Family Residential Phase-in - After the monthly charge has been computed, it may be adjusted for single family residential property in accordance with Section 15-2-7 of the Austin City Code for the period between October 1, 2015 and October 1, 2016. When the calculated monthly fee for a single family property exceeds \$9.80, the increase over \$9.80 shall be determined and then reduced by 50%. An example would be a calculated fee of \$19.80. The \$10 increase (over \$9.80) would be reduced by 50% to a \$5 increase and the resulting fee for the first year would be \$14.80. The reduced charge shall be allowed for properties that are designated as single family in the City's billing system. This includes garage apartments, but does not include duplexes, townhouses/condos, or mobile homes.

~~9.7.19.7.2~~ Customer Assistance Program (CAP) - Each year, Austin Energy's Customer Assistance Discount Program may select customers who qualify for the program to receive a discount on the drainage charge, up to the limit specified by the Director of the Watershed Protection Department (WPD). The Director of WPD shall specify the number of customers to receive the drainage charge discount, and may change the number at any time by notifying Austin Energy via a signed memo. The drainage charge discount percentage shall be set in the annual fee schedule.

9.8.0 EXEMPTIONS

9.8.1 Public Rights-of-Way (ROW) - All public ROW inside the City, whether owned and/or maintained by the City, the State of Texas, or a county are exempt from the drainage fee. Private streets, alleys and drives are not exempt. ~~When identified and located, the owners of the properties that contain non-public streets, alleys and drives shall be assessed the drainage charge. Streets, alleys and drives within the common area of a condominium or Planned Unit Development shall be included in the calculation of the drainage charge for that development.~~

9.8.2 State - Any agency of the State of Texas is exempt from the drainage fee per Texas Local Government Code 580.003. This applies whether that agency either owns or occupies the property.

9.8.3 Public or Private Institution of Higher Education - Any public or private institution of higher education is exempt from the drainage fee per Texas Local Government Code 580.003. This applies whether the institution either owns or occupies the property. All terms pertaining to institutions of higher education are defined in the Texas Education Code Section 61.003.

9.8.4 Religious Organizations - Property owned and occupied by a religious organization that is exempt from taxation under Section 11.20 of the Texas Tax Code may be exempt from the drainage charge, but only when the organization is enrolled in the Religious Coalition to Assist the Homeless (RCAH) and participates by paying RCAH an amount each month equal to or greater than the drainage charge amount that would be paid to the City. The Department does not enroll religious organizations in RCAH, nor shall the Department accept applications for this exemption. RCAH shall notify the Department when a qualifying religious organization is participating in the program, and at that time the Department shall place a stop on the City's assessment of the fee for that organization. Conversely, RCAH shall notify the Department whenever an organization drops out of the program or is in arrears, and the Department shall immediately re-instate the drainage charge for that organization.

9.8.5 Exempt Ownership - For a benefited property that is owned by an agency of the State or an institution of higher education, but is occupied by another non-exempt entity, a charge shall be assessed for the property and assigned to the non-exempt utility customer(s) occupying the property.

9.8.19.8.6 Exempt Occupancy - For a benefited property that is occupied by an agency of the State or an institution of higher education, but is owned by another non-exempt entity, a charge shall be assessed for the property and assigned to the non-exempt property owner.

9.9.0 BILLING ADJUSTMENTS

9.9.1 Adjustments to customer drainage charges shall be made in accordance with Section 15-2-12 of the Austin City Code. The billing adjustment process may involve two steps in progression.

9.9.2 Administrative Review

- A. The methods to request and initiate an Administrative Review will be available on the City's website or directly through the Watershed Protection Department (WPD).

- B. An administrative review shall address only the four potential errors listed in Section 15-2-12 (A).
 - C. Data sources to be used in checking and correcting a potential error in calculating the area of a benefited property are listed in 9.5.4 above.
 - D. Data sources to be used in checking and correcting a potential error in calculating the amount of impervious cover are listed in 9.5.5 above.
 - E. A customer requesting a review must submit information and documentation to support the claim that an error was made.
 - F. Refunds for overbilling and backbills for underbilling shall be done in accordance with Section 15-9-140 of the Austin City Code.
 - G. Refunds for overbilling based on the new fee structure effective October 1, 2015 shall not extend to any period prior to that date when the fee was determined by a different methodology.
 - H. Any refund for a period prior to October 1, 2015 must be based solely on the fee structure and rates in place at that time.
- 9.9.3 Administrative Hearing - Customers who are not satisfied with the outcome of the administrative review shall be informed of the administrative hearing process described in City Code Chapter 15-9, Article 12.
- 9.9.4 This section of the administrative billing rules, together with the sections of the City Code referenced herein, form the Appeals Rules and Procedures referenced in Section 15-9-191 of the City Code.

Comments and Responses for City of Austin Proposed Drainage Charge Administrative Rules

Date	From	Contact	Comment	Category	Action	Staff Response	By	Date
2/29/2016	Andrei Lubomudrov	alubomudrov@abbor.com	See Attachment A: Comments on Proposed Amendments to Drainage Fee Rule (R161-15.22) from Austin Board of Realtors to Director Joseph Pantalion, P.E., February 28, 2016.	Rooftop eaves, rainwater harvesting, revenue neutrality, unpaved driveways, fee structure	Recommendation on rooftop eaves not accepted. Revisions to the Admin Rules to address potential credits for rainwater collection will be postponed pending further study and may require City Code changes. Recommendation pertaining to calculating impervious cover for unpaved driveways is accepted and has resulted in language changes.	Please see Attachment D: Common Responses for <u>Rooftop Eaves</u> and for <u>Fee Structure</u> , which also addresses the issue of "revenue neutrality." Revenue impacts of any reductions associated with green infrastructure, etc. would result in corresponding adjustments to the overall rate. No change in the rules are needed to achieve <u>revenue neutrality</u> . <u>Rainwater harvesting</u> : The drainage utility is required by City Code (Section 15-2-10) to provide an annual report this year that will address green infrastructure and recommend strategies that could allow customers to reduce the drainage charge. The report should be released in the summer of 2016. At that time, WPD will determine the amount and nature of fee reductions, if any. <u>Unpaved driveways</u> : Additional language has been added to 9.5.5.B to add clarity to how compacted wheel tracks on an unpaved driveway will be estimated, although conditions are too variable to set specific fixed standards.	CB/SN	4/14/2016
2/28/2016	Michael O'Brien	msobmsob22@gmail.com	I am dumbfounded by the impervious cover calculation being based on rooftop area instead of the actual ground that is occupied by the slab, porch and driveway of a residence. I don't believe I am the only person that has a problem with your new definition. I understand there is still time fix this problem, so I hope that something will be done to define impervious cover properly.	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/26/2016	Leanne Noskey	leannenoskey@gmail.com	I am an Onion Creek resident who has seen an increase in my drainage fee and am not happy about this. I am most concerned about rule 9.5.5 B.a.; altering the original ordinance definition of impervious ground cover area to calculate impervious ground cover by rooftop area, including the eaves on our homes. That calculation definition differs from any other county or municipal definition of impervious ground cover, and increases my fee assessment by an additional 5-20% over using only concrete on the ground, (e.g. slab size plus driveway, patio and sidewalks not in the easement) that is used by all other agencies. Also, in the "Notes from Shareholder Meetings About..." posting in the same section just below. These notes show that very few people bothered to attend the two public meetings on these draft rules (but four of the nine residents at the first meeting were from Onion Creek). However, attendees at both meetings made similar complaints, and the notes indicate very clearly what changes should have been considered but have not been adopted in the posted draft. I am interested in getting this fee reduced!!	Rooftop eaves, fee structure	Recommendation not accepted	Please see Attachment D: Common Responses for <u>Rooftop Eaves</u> and for <u>Fee Structure</u> .	CB/SN	4/14/2016
2/25/2016	Crystal King	crystalenn@gmail.com	I am writing to support the removal of roof eaves being calculated into the impervious ground cover area for taxation purposes. It is my understanding that other county and municipal districts do not calculate eaves into this fee.	Rooftop Eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/25/2016	Lenn King	lennking@gmail.com	I am writing to support the removal of roof eaves being calculated into the impervious ground cover area for taxation purposes. It is my understanding that other county and municipal districts do not calculate eaves into this fee. Thank you for your consideration. If you have any questions please email or call me anytime.	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/25/2016	J. Neel	jneel@austin.rr.com	Since when did roof tops/eaves fall under the definition of impervious cover? I can not find any other municipality that takes that into consideration. Surely some day and at some point the city will stop running over their citizens, many of whom like me are on fixed incomes. Please reconsider this and show us you care. I was born & raised in Austin and I never cease to be amazed at what is going on.	Rooftop Eaves, affordability	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> . <u>Affordability</u> is a major concern in Austin, and utility fees do contribute to the cost of housing. However, the new fee structure is designed to be more equitable than the previous fee. It achieves this by relating the amount of the fee to the best estimate of the property's impact on the drainage system. An increased fee for a property indicates that the previous fee was less equitable in its impacts. Many properties with low impacts have experienced lower fees with the new fee structure.	CB/SN	4/14/2016

2/25/2016	David Wilson	wilsonfdr@yahoo.com	Definition of impervious is "not permitting penetration or passage". How can Austin justify being the only city that considers the ground under the Eve's to be impervious? Do I need a new dictionary just for Austin. If taxes need to be raised, then the responsible parties should do so. Don't try to hide it by such a devious method. Appreciate your support	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/24/2016	Darcy Hansen	darcygreen14@netscape.net	We oppose the change to rule 9.5.5 B.a., altering the original ordinance definition of impervious ground cover area to calculate impervious ground cover by rooftop area, including the eaves on our homes. This calculation definition differs from any other county or municipal definition of impervious ground cover, and increases our fee assessment by an additional 5-20%. That is outrageous . Use the same calculation: i.e. slab-size plus driveway, patio and sidewalks not in the easement) that is used by all other agencies.	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/24/2016	James Alvis	jcalvis@austin.rr.com	A new definition of fee is just a way to hide an additional tax on the homeowner. There is no apparent evidence that these fees have ever provided any improvements to reduce flooding, other than the Waller Creek bypass. This bypass only benefits the CBD while their assessment is being reduced. In addition, calculation of the impervious cover to include roof overhangs over pervious areas is also just another way to gouge the Austin homeowner. This significant fee increase is just another way to take advantage of individual homeowners for the benefit of the Commercial Developer. You are forcing people to leave the City of Austin for suburban areas. Just look at the impact it is having on the AISD enrollment. It's time for all City departments to live within their budgets.	Fee structure, rooftop eaves, WPD programs, affordability	Recommendation not accepted	Please see Attachment D: Common Responses for <u>Fee Structure</u> , <u>WPD Programs</u> , and <u>Rooftop Eaves</u> . <u>Affordability</u> is a major concern in Austin, and utility fees do contribute to the cost of housing. However, the new fee structure is designed to be more equitable than the previous fee. It achieves this by relating the amount of the fee to the best estimate of the property's impact on the drainage system. An increased fee for a property indicates that the previous fee was less equitable in its impacts. Many properties with low impacts have experienced lower fees with the new fee structure.	CB/SN	4/14/2016
2/24/2016	Carole Hawkins	caroleahawkins@sbcglobal.net	I have lived in my home for 30 years and have taken water usage seriously. Through the years I have implemented landscaping that requires less water usage - and now I am being penalized for it. I am a widow on a fixed income and cannot afford the high utility bills, drainage fees and taxes for living in my home. You should grandfather us older folks or charge all the new developments for these fees. Austin is growing too fast and it is the cities fault for allowing it. Utilities are more a charity and giveaway program, we do not pay for our utilities only - this must stop! We need competition for utilities in Austin, not a monopoly where people like me have a hard time paying our bills.	Fee structure, affordability, Customer Assistance Program (CAP), grandfathering	Recommendation for grandfathering not accepted; pertains to City Code rather than Admin Rules. Revisions to the Admin Rules to address potential credits for rainwater collection will be postponed pending further study and may require City Code changes.	The goal of the new <u>fee structure</u> is to provide a drainage charge that is as equitable and reasonable as possible by basing it on each property's impact on the drainage system. (Please see Attachment D: Common Response for <u>Fee Structure</u>). While <u>affordability</u> is a major concern in Austin, the new fee structure is designed to be more equitable than the previous fee. Providing blanket discounts (<u>grandfathering</u>) in determining and assessing the drainage charge would require amendments to Chapter 15-2 of the City Code. Applying the current fee structure only to new development would deviate from an equitable assessment of the fee, and would leave in place an outdated fee structure that is considerably less fair. Special reductions in fees designed to provide greater affordability for one class of customer must be balanced by higher fees for other classes. However, City Code does allow fee discounts for specific customers who qualify for assistance under the City's <u>Customer Assistance Program (CAP)</u> . In addition, the drainage utility is required by City Code (Section 15-2-10) to provide an annual report this year that will address green infrastructure and recommend strategies that could allow customers to reduce the drainage charge by reducing their property's impact on drainage.	CB/SN	4/14/2016
2/23/2016	Sandra Kornfuehrer	srkornfuehrer@austin.rr.com	I just moved into Austin last April from Hays County and was shocked to find out that the City of Austin is basing their impervious cover on rooftops. Why is Austin handling this differently than other counties or cities?? Are we not taxed enough as it is without adding rooftop areas and not actual concreted areas? I'm requesting the ordinance be changed to reflect only concreted areas.	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016

2/23/2016	Ron Thrower	ront@throwersign.com	I'm writing to respond to WPD proposed Drainage Utility Fee rules that are to be adopted soon. It is unfathomable to understand why the city worked hard to provide a property tax break for each and every homeowner in Austin that amounted to around \$50 per household and then WPD to whimsically create a new definition for impervious cover that takes most of this away. I strongly object to the overly aggressive approach that every eave counts as impervious cover because that is simply not the case. The WPD attempt to create confusion about what is and is not impervious cover is going to lead to untrustworthy situations for which your department will be to blame. Rather than knowingly and capriciously over-estimating the amount of impervious cover for every homeowner, is it not just as easy, and more fair, to apply an automatic allowance of eaves of every house by 600 s.f.? Would this not be the equitable approach to the situation rather than arbitrarily reaching into every homeowners pocket to take out what the City Council gave back. I'll be speaking to the Council members directly about this issue because it is plainly wrong and approaches illegality to make a rule based on something that is factually and empirically incorrect. WPD should strongly reconsider their approach on this issue before it is made a hard and fast rule.	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/23/2016	Mike Rodriguez	lmiker@msn.com	Inclusion of the eaves of a home is unfair in that it increase the square footage considered impervious cover by as much as 20%. This penalizes single story homes much greater since these have the greatest sq ft of eaves and these houses are already paying the highest rates. Most of the area of my eaves is round and therefore not impervious. Other city and county agencies do not include eaves, but concrete on the ground. WPD should do likewise, rather than accept the easy GIS answer without subtracting eaves. The difference might well increase the adjustment factor, further penalizing the resident(s).	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016
2/21/2016	Robert Price	bobcom@sbcglobal.net	Driveways and walkways constructed of pervious pavement (concrete or asphalt) are not impervious cover, and should be considered pervious cover for the purpose of calculating the City of Austin Drainage charge. As aerial surveys cannot distinguish between impervious and pervious pavement, it would be up to the building owner or homeowner to provide evidence that the driveway is constructed of pervious pavement and to request an adjustment. The rationale for this requested revision is as follows: 1) Volume Reduction & Flood Control: Because water flows through porous pavement, the volume of runoff generated during a storm event is significantly decreased or eliminated altogether. This reduction in volume results in flood control and reduces the need for traditional stormwater infrastructure (piping, catch basins, stormwater ponds, curbing, etc.). 2) Water Quality: Pollutants are captured during infiltration, reducing pollutant load to local waterways. Infiltrated runoff recharges groundwater supplies, improves flow in streams, and reduces the need for landscaping irrigation. 3) Incentive: If one purpose of the Drainage charge is to reduce run-off pollution into waterways, the City should encourage and incentivize the use of pervious pavement rather than traditional pavement. It is unfair to the building owner or homeowner who has invested in more expensive pervious pavement to be charged the same drainage fee as an owner with traditional pavement. If the city considered the driveway and walkway to be pervious at the time of construction, it should not change the rules when calculating a drainage fee that is based upon the amount of impervious cover. I have a survey that documents the use of pervious concrete on our driveway and walkway. When tested by pouring water on the driveway, water absorbs more quickly and with less runoff than water poured directly on our lawn. If needed, I have many research and municipal citations to support this requested revision.	Permeable pavers and porous pavement	Recommendation accepted	Subsection e is added to Section 9.5.5.B of the Admin Rules and Subsections c and d been amended. These changes will allow <u>permeable pavers and porous pavement</u> not to be counted as impervious cover for pedestrian areas, and 50% impervious for vehicular areas, provided that it met City of Austin requirements at time of construction.	CB/SN	4/14/2016
2/15/2016	Bob Thompson	jrt3308@aol.com	See Attachment B: Comments on Drainage Utility Fee Administrative Rules by Bob Thompson, Ph. D., February 15, 2016	Rooftop eaves	Recommendation not accepted	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> .	CB/SN	4/14/2016

2/26/2016	Paul Cauduro	paul@austinapt assoc.com	See Attachment C: Comments from Austin Apartment Association to Dana McGehee, City of Austin Watershed Protection Department, February 26, 2016	Rooftop eaves, rainwater harvesting, initiating corrections to impervious cover calculations, initiating rule changes	Recommendation on rooftop eaves not accepted. Revisions to the Admin Rules to address potential credits for rainwater collection will be postponed pending further study and would require City Code changes. Recommendation on property owner submission accepted. Recommendation for citizen-initiated rules changes not accepted and would require a City Code change.	Please see Attachment D: Common Response for <u>Rooftop Eaves</u> . <u>Rainwater harvesting</u> : The drainage utility is required by City Code (Section 15-2-10) to provide an annual report this year that will address green infrastructure and recommend strategies that could allow customers to reduce the drainage charge. The report should be released in the summer of 2016. At that time, WPD will determine the amount and nature of fee reductions, if any. It has been the City's intent that <u>corrections to the impervious cover calculations</u> can be made on evidence submitted by the property owner or his/her agent. Language is added to Section 9.5.5.C to reflect that. City Code Section 15-2-11 states that "The director shall promulgate rules necessary to administer this chapter." While the City will entertain any recommendation for a rules change from citizens, the authority to <u>initiate rules changes</u> rest with the director. An ordinance amendment would be required to allow citizen-initiated rules changes.	CB/SN	4/14/2016
2/25/2016	Rebecca Hernandez	rebe37@hotmail.com	This message is to voice my complaint about the proposed increase in drainage fee.	Fee structure	Comment does not request specific changes	Please see Attachment D: Common Response for <u>Fee Structure</u> .	CB/SN	4/14/2016
2/24/2016	James Synnott	jamesisworkingh ard@gmail.com	I am sending a message regarding the proposed drainage fee and want to convey that I oppose it and the grounds that it is an unjust way of raising additional revenue.	Fee structure	Comment does not request specific changes	Please see Attachment D: Common Response for <u>Fee Structure</u> .	CB/SN	4/14/2016
2/24/2016	Mary Lou Bledsoe	mlbledsoe@aust in.rr.com	Why the raise in cost of Drainage Fee?	Fee structure	Comment does not request specific changes	Please see Attachment D: Common Response for <u>Fee Structure</u> . The current fee structure is designed to be "revenue neutral," producing only the amount of revenue required by the approved budget.	CB/SN	4/14/2016
2/24/2016	Paul Serff	pstex@aol.com	I think this is just another way to extract fees without addressing the cause of the problem. not holding the line on variances, not using existing fees to mitigate the run off problem, not doing anything meaningful rather than study, study study. building is still going on that will cause more run off un-abated. do the right thing	Fee structure, WPD programs, Development Standards	Comment does not request specific changes	Please see Attachment D: Common Responses for <u>Fee Structure</u> , and for <u>WPD Programs</u> . Among the City activities that the drainage fee supports is development review for watershed protection. <u>Development standards</u> have changed over the decades -- they are now more stringent and employ more accurate floodplain mapping. Development standards are undergoing a comprehensive review with the City's CodeNEXT program.	CB/SN	4/14/2016
2/23/2016	Barbara Thomas	barbaracthomas @yahoo.com	I hope that you will strive to keep assessments and charges fair, equitable, and in accordance with best practice of other communities. Thank you for your service.	Fee structure	Comment does not request specific changes	The goal of the new fee structure is to provide a drainage charge that is as equitable and reasonable as possible by basing it on each property's impact on the drainage system. (Please see Attachment D: Common Response for <u>Fee Structure</u>). The method selected represents one of the best methods found among other major cities in the US.	CB/SN	4/14/2016
2/27/2016	Yaksha Thakrar	ydthakrar@yaho o.com	Please remove the Drainage fee based on the impervious areas of a home. Thanks.	Fee structure	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Response for <u>Fee Structure</u> . Changing the method used to calculate the drainage charge would require amendments to Chapter 15-2 of the City Code.	CB/SN	4/14/2016
2/27/2016	Jim Ashley	ashleywb5@aol.com	I am writing to you regarding the drainage fees. I serve as president of Windrock Villas, an HOA of 26 units in Onion Creek Subdivision and we have been hit hard by the drainage fee increase. Since the drainage fee had been on the residents electric bill of \$9.80 a month, the individual owners had been paying this fee. However, in November, when the city approved to charge the drainage fee on the water bill, the monthly fee of approx \$630 was sent to the HOA. Not only did the city reassign how this was collected, but essentially tripped the fee per unit. This has been a huge shock to everyone. As you know, there are many folks in Onion Creek who are on fixed incomes. Not only has this increase burdened our HOA, but individual owners as well. We strongly disagree with this change because it is inappropriate to have our drainage fee tripled and the small HOA groups of Onion Creek to burden our members with these costs. Please re-assess the equity of this decision to restructure the drainage fees and provide some financial relief to our residents. Thank you for your consideration.	Condo/townhouse assessment, fee structure	Recommendation not accepted; pertains to City Code rather than Admin Rules	One of the primary reasons that the drainage charge <u>assessment</u> may increase in <u>condominium and townhouse</u> developments is that they often have private streets that add to the impervious cover. The goal of the new <u>fee structure</u> is to correlate the amount of the drainage charge for each property to the actual impact that property exerts on the drainage system. That should produce the most equitable and rational fee. To change the fee structure would require amendments to Chapter 15-2 of the City Code. The fact that the fee increases for a specific property indicates that it has previously enjoyed an unfair benefit at the expense of other properties. To reduce the fee for one class of properties to make the fee more affordable to that class would introduce an inequitable bias in the fee structure. (Also please see Attachment D: Common Response for <u>Fee Structure</u> .) Finally, the City now combines the calculation and <u>assessment</u> of the fee for most <u>condominium and townhouse</u> developments. Because it incorporates common open space into the calculation of the impervious cover percentage, it tends to reduce the overall amount of the fee. In some circumstances, the Admin Rules (Sec. 9.5.6 & 9.6.0) would allow calculation and assessment of the fee for each individual property.	CB/SN	4/14/2016

2/26/2016	Myrna Petty	mylope@att.net	This is my official notice that we are not happy with the new drainage fees and particularly not happy the City decided to bill the HOA for condos vs individual billing. Our budget cannot handle that hit every month and had to increase monthly dues. We prefer to have any increase billed to individual units instead of HOA having to collect. We would appreciate your assistance in going back to the increase billed on individual statements. Would help us tremendously. Thanks for your every consideration	Condo assessment	Recommendation not accepted	The current fee structure no longer calculates the drainage charge by residential unit. The fee is instead calculated for each property. All features on the property, including private streets, drives and parking, are included in the fee calculation. The City Code, Section 15-2-8, stipulates that "If more than one utility customer is associated with a benefitted property, the City shall bill the drainage charge to the owner of the benefitted property unless: ...the benefitted property is a single family, duplex, triplex, or fourplex residence...." or unless the owner cannot be determined or located. Consequently, the combined bill is sent to the master utility account, which is associated with the home owners association (HOA). In some circumstances, however, the Admin Rules (Sec. 9.5.6 & 9.6.0) would allow calculation and assessment of the fee for each individual property.	CB/SN	4/14/2016
2/25/2016	Roberta Sue Green	spitumfire@hotmail.com	1) Is it lawful to charge a fee on someone else's property? The impervious footage is not a tenants responsibility. It is the person who owns the property. I cannot modify the land, only the owner can. I am not invested in this property, I lease it and do not enjoy in the monetary profit. 2) An apartment tenant does not pay this charge, so any other tenant in Austin should be treated the same and not discriminated against because they are leasing another type of dwelling. We should all be treated the same. 3) How can the city council believe that a tenant is responsible for another mans charge of \$250.32? Ref the 2015 lawsuit 'The plaintiffs in the lawsuit contend the drainage fee penalizes people with low incomes in small housing units who can least afford to pay.' I think the judge needs to review this again. In closing, I believe this is unlawful and that the city council needs to use Common Sense in this town instead of looking for every penny they can get. Would like to know if the city council thinks this would hold up in court?	Tenant, appeals	Recommendation not accepted	It is consistent with state law and the City Code to assess the drainage charge to any utility account associated with a property. City Code does now stipulate that in the case of residential apartment properties, the property owner is the first choice for billing. However, these charges are expected to be passed on to the <u>tenants</u> in accordance with City Code and rental agreements. City Code now stipulates that tenants of duplexes, triplexes and fourplexes are to be billed directly, and commercial tenants are more likely to be billed in some circumstances. The district court in 2014 addressed issues of equitableness and reasonableness of the previous fee structure, but not issues of affordability and economic justice. However, the rules provide an <u>appeals</u> process. Anyone who feels that the drainage charge for his/her property is incorrectly calculated or assessed should call the Customer Care number at 512-494-9400 and request an administrative review.	CB/SN	4/14/2016
2/24/2016	Russell Donaldson	info@mywineboyy.com	The new impervious cover charges for the drainage fee are draconian and unprecedented in most if not all other municipalities. At the least the existing customers should be grandfathered in and charges changed when the house changes hands as well as new construction. I am against the new fee structure.	Fee structure; grandfathering	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Response for <u>Fee Structure</u> . It has become very common for municipal drainage utilities to base the drainage fee on the amount, or the amount and percentage, of impervious cover. This is consistent with state law intent to relate the fee directly to drainage impacts and for the fee to be equitable and reasonable. Applying the current fee structure only to new development would deviate from an equitable assessment of the fee, and would leave in place an outdated fee structure that is considerably less fair. Special reductions in fees for one class of customer must be balanced by higher fees for other classes. Providing blanket discounts (grandfathering) in determining and assessing the drainage charge would require amendments to Chapter 15-2 of the City Code.	CB/SN	4/14/2016
2/24/2016	Richard Eubank	rockyeub@austin.rr.com	The proposed change to the way of computing area should not go into effect. The current way is just fine. Leave it alone. There is no need to increase our "taxes".	Fee structure	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Response for <u>Fee Structure</u> . The current fee structure, being based on good science and the best estimates of the impact each property has on the drainage system, is more equitable and reasonable than the previous, outdated fee structure. Changing the method used to calculate the drainage charge back to the way it was prior to October 2015 would require amendments to Chapter 15-2 of the City Code.	CB/SN	4/14/2016
2/24/2016	Robert Thomas	rthomas65@austintin.rr.com	I want to complain about the increase in the drainage fee. My fee will be \$31.15. Impervious cover of 7116 sq. ft. My neighbor has 7274 sq. ft. and my charge is \$31.15, and his is \$19.08. The water dept. has problems. They fail to use common sense. The larger the impervious cover the more drainage, not less. Who can help me with this inequity?	Fee structure; appeals	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Response for <u>Fee Structure</u> . The current fees are now proportional to the estimated impact that each property has on the drainage system. If one property has more impervious cover than another, but a lower fee, then that property must be significantly greater in size. The percentage impervious cover adjusts the fee. In general, the more landscaping and undeveloped area a lot has, the lower the fee will be adjusted. Removing the adjustment factor from the calculation of the fee would require amendments to Chapter 15-2 of the City Code, and specifically Section 15-2-7. <u>Appeals</u> : Anyone who feels that the drainage charge for his/her property is incorrectly calculated should call the Customer Care number at 512-494-9400 and request an administrative review.	CB/SN	4/14/2016

2/24/2016	Yaksha Thakrar	ydthakrar@yahoo.com	A new definition of fee is just a way to hide an additional tax on the homeowner. There is no apparent evidence that these fees have ever provided any improvements to reduce flooding, other than the Waller Creek bypass. This bypass only benefits the CBD while their assessment is being reduced. In addition, calculation of the impervious cover to include roof overhangs over pervious areas is also just another way to gouge the Austin homeowner. This significant fee increase is just another way to take advantage of individual homeowners for the benefit of the Commercial Developer. You are forcing people to leave the City of Austin for suburban areas. Just look at the impact it is having on the AISD enrollment. It's time for all City departments to live within their budgets.	Fee structure; affordability; rooftop eaves; expenditure of fee revenue	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Responses for <u>Fee Structure</u> and for <u>Rooftop Eaves</u> . Changing the method used to calculate the drainage charge would require amendments to Chapter 15-2 of the City Code. The drainage charge provides revenue that is totally dedicated to programs that repair and maintain virtually all drainage features in the city, addressing problems pertaining to flooding, erosion and water pollution. (Please see Attachment D: Common Response for <u>WPD Programs</u> for an explanation of the <u>expenditure of fee revenue</u> .) The drainage charge rate is designed to produce only the revenue required by the budget. While the fee has been re-allocated among properties to better reflect actual impact, the overall fee is "revenue neutral." <u>Affordability</u> is a major concern in Austin, and utility fees do contribute to the cost of housing. However, the new fee structure is designed to be more equitable than the previous fee. Properties with greater estimated impacts on the drainage system have higher fees. Many properties with low impacts have experienced lower fees with the new fee structure.	CB/SN	4/14/2016
2/24/2016	Stephen Northcutt	swnorthcutt@yahoo.com	It just don't make sense that someone with a small garden home will pay a larger drainage fee than the mega mansions in Austin. We have these small homes for many reasons but mine is affordability. I'm being forced to leave this beautiful city because of the wasteful spending by our city leaders that never met a spending opportunity they didn't love. They simply add on another tax disguised as a fee.	Fee structure; affordability	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Response for <u>Fee Structure</u> . Changing the method used to calculate the drainage charge would require amendments to Chapter 15-2 of the City Code, and specifically Sections 15-2-5 through 15-2-7. The drainage charge cannot be based on property value. It is instead determined by the amount and percentage of impervious cover, both being indicators of impacts on the drainage system. Consequently, large houses tend to have higher fees than smaller houses. However, impervious cover percentage can adjust the fee up or down. Two factors may increase the drainage fee for "small garden" townhomes: (1) small lots may have higher IC percentages than larger lots, and (2) townhome developments often have private streets that are not exempt from the fee in the manner that public right-of-way is exempt. While <u>affordability</u> is a major concern in Austin, the new fee structure is designed to be more equitable than the previous fee.	CB/SN	4/14/2016
2/8/2016	Lisa Jardine	Lisa@jardinecyrus.com	I am president of a 13 unit condo association in Davenport Ranch, 14 Belmont Park HOA. Recently we have had our drainage fee increase to a very high amount. In the past each home owner paid \$9.80 per month. That equates to about \$127.00 per year. Now the amount is \$441.82 per month since December. This results in a yearly fee of more than \$5300 per year. It is our feeling that this fee increase is way too high. There has to be a better way to calculate these fees. I would also like to know how we can lower these fees.	Condo assessment; fee structure; reduce fees	Recommendation not accepted; pertains to City Code rather than Admin Rules	Please see Attachment D: Common Response for <u>Fee Structure</u> . Changing the method used to calculate the drainage charge (to achieve a <u>fee reduction</u>) would require amendments to Chapter 15-2 of the City Code, and specifically Sections 15-2-5 through 15-2-7. The current fee structure is designed to be more equitable and reasonable than the previous flat residential fee. Many residential properties - those with high amounts and percentages of impervious cover - tend to have higher fees. Small houses and apartments pay less. High impervious cover percentages and private drives/parking tend to increase the <u>assessed</u> fees for <u>condominiums</u> . Since the fee is assessed on the property, it can no longer be readily allocated to each unit in condominium developments. The fee for the entire property is now billed to the HOA rather than to the individual homes.	CB/SN	4/14/2016
2/8/2016	Sharon (via phone call)	sharon@ilovesalads.com	Removing impervious cover on the site, looking for info on how to have IC reassessed after removal.	Site-specific appeal	Sent the number for Customer Care and instructions to request a reassessment after IC changes.	The City wants to maintain accurate and up-to-date information on impervious cover. <u>Appeals</u> : If modifications to a property change the amount of impervious cover, you may call the Customer Care number 512-494-9400 and request an administrative review.	DM	2/8/2016



Attachment A to Comments and
Responses for City of Austin Proposed
Drainage Charge Administrative Rules

To: Director Joseph Pantalione, P.E.
City of Austin Watershed Protection Department

Re: Comments on Proposed Amendments to Drainage Fee Rule
(R161-15.22)

Date: February 28, 2016

The Austin Board of REALTORS® welcomes the opportunity to comment on the proposed drainage fee rule cited by the Director of the Watershed Protection Department posed on January 28, 2016. ABoR offers the following comments for consideration.

Rainwater collection system discount. ABoR asks the Director to consider amendments to the proposed rule to provide a discount for certified rainwater collections systems. The City of Austin offers rebate incentives for rainwater collection systems to promote conservation long-term. ABoR believes this incentive structure should be extended to drainage fee calculations through an appropriate discount amount, as determined by the Director.

ABoR further requests the process for obtaining a rainwater collection discount to be administratively simplified so as not to discourage property owners from seeking credit for installing a certified system. A certified system could be defined as any system that received City rebates or was confirmed by a rainwater collection installation professional.

Discount on eaves for residential properties

ABoR also asks the Director to consider applying a discount for residential roof eaves to reflect similar practices used in the City of Austin in the course of development review calculations. This calculation should be possible

through a standardized reduction based on the footprint of the residential structure, as indicated via planimetric maps.

Revenue Neutrality

ABoR recommends the Director pursue structuring both discounts to be revenue neutral by adjusting the drainage fee coefficient to make up for any projected fiscal impact.

Driveways. The Proposed Rule states, “unpaved driveways compacted by vehicle use may have the pervious median area removed from the impervious cover quantity only if there is clear evidence of focused use on the wheel track area.” ABoR has questions about how the Director is proposing to determine the area to be considered as unpaved driveway.

Attachment B to Comments and Responses for City of Austin Proposed Drainage Charge Administrative Rules

COMMENTS ON DRAINAGE UTILITY FEE ADMINISTRATIVE RULES

By

Bob Thompson, Ph. D.

February 15, 2016

Rule 9.5.5(B)(a) states that “The impervious area for structures shall be determined by whichever is larger—the roof area, the foundation area, or exterior wall area. Consequently, horizontal projections of the overhang of a house (eaves for example) are considered impervious area.” I believe that this rule should be revised to exclude from the definition of impervious area, for purposes of the Drainage Utility Fee (DUF), incidental roof overhangs of up to two feet, above pervious ground cover below. This revision should be made effective at the beginning of the next fiscal year. Revenues lost due to this revision, primarily from single family property owners who possess such incidental overhangs, may be recovered by a very small increase in the overall DUF rate coefficient. Reasons for this recommended revision are listed below.

- (1) Impervious cover has been defined elsewhere in Austin City Codes, as well as in the Ordinance No. 20150625-021 directing a revised DUF, as “any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete, and buildings.” (Underlining added for emphasis.) Although “buildings “ are mentioned, rooftop overhangs are not. Likewise, City Code Section 25-8-63(B) makes reference to “impermeable construction covering the natural land surface.” (Underlining added.) For decades, Austin has enforced limitations on the amount of impervious cover permitted on a lot when it is developed, in the context of zoning districts and building permits. (For example, within the common SF3 zoning district for most houses and duplexes, impervious cover must be no more than 45%.) The purpose of this prior limitation of the amount of impervious cover has also been to restrain the amount of runoff water from the developed lots. However, during all of this lengthy development history of limiting impervious cover, incidental rooftop overhangs have been excluded from the definition of impervious cover. (For example, City of Austin Residential Permit Application “C” contains the instruction that for impervious cover, “Roof overhangs which do not exceed two feet or which are used for solar screening are not included in building coverage or impervious cover.” (Underlining added for emphasis.) Similarly, and consistently, Section 25-2-513 (B) of the COA Code regarding “required yards” (i.e., setbacks) states that “A window sill, belt course, cornice, flue, chimney, eave, box window, or cantilevered bay window may project two feet into a required yard....” [without violating the required setback]. Therefore, the proposed Rule 9.5.5(B)(a) amounts to a redefinition of incidental rooftop overhangs as impervious cover for purposes of the DUF, which is inconsistent and contradictory to the treatment of the same overhangs elsewhere in the codes. My proposed revision is to rectify this inconsistency, by treating incidental rooftop overhangs for the DUF the same as they are treated in the zoning and building permit limitations of impervious cover: as excluded from IC treatment.

- (2) This historical treatment of impervious cover under the zoning district and building permit limitations, which exclude incidental rooftop overhangs as IC, is very well known among the development community, neighborhood associations, and those members of the public who have been involved with the development of a lot. The 45% IC limitation for single family house lots is similarly well known. (For example, it was mentioned in the 2-11-16 American Statesman article on the development rules for “tiny lots”.) These IC limitations are a significant factor limiting the density achievable in the development of a new lot, and so the details of the definitions are well understood, and frequently discussed in negotiation of zoning cases before the city. (Only two dimensional development plats are employed in these negotiations about IC.) Many thousands of SF3 lots have been developed right up to the 45% limitation, throughout the city. (It was my surprised observation that many WPD sample calculations of percentage IC significantly exceeded 45% for SF3 property that initially led me to the realization that WPD was using a more stringent and inconsistent definition of IC for purposes of the DUF. I thought it very unusual that there would be so many “illegal lots” in existence!) I believe that using inconsistent definitions of impervious cover in different parts of the city codes and regulations, all within the same context of trying to limit runoff water, can only lead to unfortunate confusion for everyone. Such inconsistency is very poor policy!
- (3) Sample calculations have indicated that the inclusion of incidental rooftop overhangs as impervious cover may often increase the percentage impervious cover of a single family house by 15% (i.e., a factor of 1.15) or more, above what it would be if such overhangs were excluded. Because impervious cover enters twice in the computation of the DUF, the DUF may often be increased by 20% or more—although this will vary from property to property, depending upon the size of the house and lot and other impervious cover upon the lot. This is a fairly significant relative financial impact to the single family homeowner. Indeed, a pie chart distributed by the Watershed Protection Department (WPD) indicates that the share of DUF revenues borne by Single Family customers is projected to increase from 22% to 29%, as a result of the change from a flat rate DUF (e.g., \$9.80 per month for many SF customers) to the IC-based DUF with the redefinition of IC to include incidental roof overhangs. This increase of 7 absolute percentage points, equal to a relative increase of 32% (i.e., $29/22 = 1.32$), made these single family property owners the largest “losers” from this change in the method of calculation of the DUF. Indeed, some property owners have reported relative increases of more than 300% in their DUF. Using the rough estimate given above that the DUF may be increased by perhaps 20% due solely to the inclusion of incidental rooftop overhangs as IC, one may estimate that if such overhangs were excluded—consistent with the historical treatment under zoning and building permit restrictions—then the Single Family share of the DUF “pie” would only have increased from 22% to about 25%, rather than to 29%. (The missing 4% of the pie would be redistributed to other customers, with about 3% going to Non-residential Commercial property and 1% to Multifamily property.)

- (4) However, it has not been widely appreciated that the majority of the increase in the DUF falling upon Single Family property owners actually results from this redefinition of impervious cover to include incidental rooftop overhangs as IC for the new DUF. In particular, City Council was not advised that this redefinition of IC would have this much financial impact, nor was the general public so advised. (Here, I am not alleging any duplicity; I do not think that WPD personnel themselves realized at the time the inconsistency of treatment, or the financial impact that it would have.) However, City Council was clearly sympathetic to the plight of SF homeowners facing such large DUF increases, since they authorized a one-year phase in of the new DUF. It is simply unfair to implement such a momentous redefinition of impervious cover in an administrative Rule, not subject to explicit and focused Council consideration and action.
- (5) Some WPD staff have objected that with the aerial photo methodology of assessing impervious cover, it would be difficult or inconvenient to subtract out the rooftop overhang area from the total building area including the overhangs, seen from above. However, the building rooftop dimensions are clearly and necessarily available, and as an engineering matter, it is fairly easy to subtract 2 feet from these dimensions to exclude the overhangs. The coding which has already been accomplished is far more difficult than the change required to implement the exclusion of incidental rooftop overhangs. "Inconvenience" is not an adequate excuse for refusing to maintain a consistent definition of impervious cover, and instead placing a large "extra burden" upon the backs of SF homeowners. This Rule 9.5.5(B)(a) is simply unfair and inequitable to single family homeowners.
- (6) Much has been made by WPD personnel about the fairness of a DUF based upon the impervious cover which causes the runoff whose control requires expenditures funded by the DUF. However, as many homeowners have testified, the pervious ground cover which they maintain beneath incidental rooftop overhangs clearly acts to retard the amount of runoff from their lot. The grass and vegetation maintained by the homeowners do not suffer from lack of rainfall. Wind, rain squalls, splashing, and permeation through the ground soil are completely adequate to spread the moisture to the pervious ground cover beneath incidental overhangs. This is particularly true during heavy rainfall events, which are most significant in motivating water runoff expenditures. Then the pervious cover beneath incidental overhangs will become saturated, and will have done all it can do and as much an uncovered ground can do to retard runoff. Single family homeowners who maintain such pervious ground cover beneath their roof overhangs think of themselves as being environmentally conscious and good citizens. It is unfair and inequitable for them to be given no credit, but to be financially penalized via an increased DUF, which effectively pretends that this pervious ground cover near the foundation is actually concrete.



Attachment C to Comments and Responses for
City of Austin Proposed Drainage Charge
Administrative Rules

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To: Dana McGehee
City of Austin Watershed Protection Department

From: Austin Apartment Association

Date: February 26, 2016

Re: Rules to amend and replace R161-155.22e, which created a new Section 9 to the Drainage Criteria Manual to enforce City Code Chapters 12-2 (*Drainage Utility*) and 15-9 (*Utility Service Regulations*)

The Austin Apartment Association was founded in 1964 and is composed of more than 1,000 diverse businesses that own, manage and service nearly 200,000 rental homes in the Greater Austin Area, and all of the members are committed to providing quality housing and wholesome living environments for all Texans.

The AAA fully understands the purpose of a Drainage Fee and how the funds collected are used to protect lives, property and the environment by reducing the impacts of flooding, erosion and water pollution. We also understand how difficult it was to overhaul the city's entire Drainage Fee Charge system and we respect and appreciate the work performed by staff in this endeavor.

Insofar as the final adoption of the rule to address the administration of Chapter 15-2 in the Austin City Code (Rules) that become effective by April 28, 2016 and that will replace the emergency rules currently in place to guide the staff's interpretation of the drainage charge ordinance, the AAA offers the following comments:

Eliminate eaves for residential properties

The AAA believes that the Rules should exclude from the definition of impervious area, for purposes of the Drainage Utility Fee (DUF), incidental roof overhangs on residential property of up to two feet above pervious ground cover below. In doing so, treatment of incidental rooftop overhangs for the DUF would be the same as in the rules used for zoning and building permits.

Since the city is using newly acquired planimetric maps that make building rooftop dimensions clearly and necessarily available, eliminating rooftop overhangs can be easily accomplished by subtracting two feet from these dimensions to account for the overhangs.

Moreover, we echo comments that have been submitted that call for this revision to be made effective at the beginning of the next fiscal year and that any revenues lost due to this revision be recovered by an increase in the overall DUF rate coefficient.

Rainwater Collection

The AAA suggests that the Rules include a method to provide reduced drainage fee charges for any property having a rainwater harvesting system certified as eligible for Austin Water's Rainwater Harvesting Rebate Program. Offering this reduction would offset the impervious cover that any rainwater harvesting cistern and related equipment may add on the property.

Property Owner Submitted Information

The Rules should make clear that the impervious area of a property may be corrected by sources such as photographs, surveys and measurements that are compiled and submitted by the property owner. As the Rules currently read, it seems that only city staff can initiate corrections and submit the information needed for verification.

Rules change process

The final Rules should include a procedure to initiate rule changes. Having a rule change procedure in place for citizens as an alternative to the lengthy ordinance approval process could save valuable time and resources for the City of Austin.

The Austin Apartment Association appreciates your careful consideration of these suggested rule changes, and asks that you consider our organization as a resource for information and ideas involving rental housing ownership and operations in the City of Austin.

For additional information regarding the comments submitted above or the Austin Apartment Association please contact Paul Cauduro, Director of Government Relations, 512-323-0990 or at paul@austinaaptassoc.com

Attachment D: Common Responses for Drainage Charge Administrative Rules Comments

1. Fee Structure

In previous years, the drainage charge for non-residential properties was determined by the amount of impervious cover alone. The current fee structure also incorporates an adjustment factor that takes into account the percentage of impervious cover for each property. In previous years, the residential fee was based on an average estimated impact for all residences in the City, from large houses to small apartments. Each unit paid the same fee, with the exception of high-rise apartments, which were given a 50% discount. The fee was assessed to each housing unit, regardless of the characteristics of the property on which it was located. Now that the fee is determined by the characteristics of each individual property, houses that are larger and/or that have large driveways or patios are no longer receiving the advantage that city-wide averaging previously afforded. Smaller residences, on the other hand, are being assessed lower and more equitable fees. The goal of the current fee structure is to achieve greater conformance with state law with respect to being more equitable and reasonable, and being directly related to impact on the City's drainage system. In addition, the drainage charge rate is designed to produce only the revenue required by the budget. In this sense, the fee structure is what we call "revenue neutral" -- it is designed to produce the exact same fee (the revenue requirements for the year) that the previous fee structure would have produced. The main difference is that this year the fee is allocated differently among properties to better reflect each property's actual impact.

2. WPD Programs

The Watershed Protection Department encompasses almost all City programs that address the flooding, erosion, and water quality of the City's waterways. The Department maintains more than 400 miles of creek and stream segments, providing erosion control, bank stabilization, vegetated swales and infiltration areas. It also designs, constructs, and maintains more than 1,000 miles of underground storm drain pipes that now have more than 34,000 inlets and manholes. It also maintains 1,100 City detention and water quality ponds and dams, and inspects 6,400 commercial ponds. It removes hundreds of tons of trash and debris from storm drains, waterways, and Lady Bird Lake. It has projects and programs that manage drainage and flooding, including flood monitoring and warning systems, ATXfloods.com, flood mapping and modeling, development review, adherence to the National Flood Insurance Program, and the removal of flood risks through purchase of flood-prone residential properties. It is responsible for water quality compliance, discharge permits, inspections and monitoring.

3. Roof Eaves and Austin's Drainage Charge

The Watershed Protection Department must adopt administrative rules by April 28, 2016, to administer the City of Austin's drainage charge. During the public comment period for the proposed administrative rules, the department received a number of comments about roof eaves. Eaves are the parts of a roof that project past the building and overhang the ground. The commenters asserted that the department

should stop considering roof eaves as impervious cover in the calculation of the drainage charge. Some commenters used the term “incidental eave,” defining it as a projecting overhang of 24 inches or less.

Watershed Protection Department staff have evaluated this suggestion, considering whether roof eaves act like impervious cover, whether the suggested change would make the drainage charge more accurate and how roof eaves could be deducted from the calculation of impervious cover. As a result of this evaluation, the department will continue to count eaves as impervious cover.

The following is a summary of the evaluation and the department’s response to comments on rooftop eaves.

Benchmarking

Watershed Protection staff reviewed whether other departments and cities consider eaves as impervious cover. The results were mixed with no standard treatment of eaves emerging from the research. Different cities vary on whether they consider eaves impervious. Even within each city, there tends to be variations in whether eaves are considered impervious cover, depending on whether information about impervious cover is needed for permitting and zoning, for engineering or to calculate a drainage charge.

The City of Austin is typical in this regard. For building permitting and zoning purposes, the City only counts roof eaves as impervious cover if the eaves are wider than 2ft or overhanging a porch, patio, driveway, sidewalk or another impervious surface. On the other hand, for commercial site plan permitting purposes, the City considers all roof eaves as impervious cover. Likewise, City of Austin engineers consider all roof eaves as impervious cover when they evaluate drainage systems and floodplains and design and construct drainage improvements.

Focusing on how different cities calculate the drainage charge, the treatment of eaves tends to correspond to the data source. There are typically three data sources used to determine impervious cover: tax plats, aerial imagery and site plans. Tax plats often report “living area” which is an interior wall area that does not include eaves. Both Fort Worth and El Paso drainage charges specifically reference “living area” as their data source for residential charges, whereas Dallas bases residential charges on lot size. However, both San Antonio and Houston use aerial imagery for impervious cover assessments, and both include rooftops and eaves in their measurement for impervious cover. With aerial photography, only the roof area of buildings can be seen, and the depth or even the presence of eaves cannot be seen.

A cursory review at the national level also showed variation between defining rooftops as impervious cover or not. The Environmental Protection Agency considers rooftops impervious, but cities across the country are mixed. Watershed Protection staff have not found a national source or study that evaluated and drew conclusions on whether eaves should be considered impervious cover.

Austin's Code of Ordinances

Impervious cover is defined by City Code Sections 15-2-1 (B) (4), 15-2-5 and 25-8-63 and Environmental Criteria Manual Section 1.8.1. Eaves are not mentioned in any of these sections. Eaves are mentioned in 25-1-21, which excludes "incidental projecting eaves" from the definition of "building coverage." But this section also excludes "ground level paving," which indicates building coverage is not defining impervious cover, but the limit of the building extent.

Common to all definitions of impervious cover in the City Code is the following language, "the total area of any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete, and buildings." (Underlining added.) The Environmental Criteria Manual states further that "Impervious cover calculations shall include all roads, driveways, parking areas, buildings, concrete, and other impermeable construction covering the natural land surface. Buildings or structures raised above the ground (e.g., pier and beam foundation) shall be considered impervious cover."

Watershed Protection has interpreted the City Code and the Environmental Criteria Manual to mean that the entire horizontal coverage of rooftops, including eaves, should be treated as impervious cover.

Impact of Eaves on Stormwater

Watershed Protection Department studies on stormwater flow and green infrastructure indicate that roof systems have such a strong impact on stormwater that the nature of the ground under an eave is somewhat irrelevant. In other words, the impact of whether the ground under an eave is absorbing water is negligible compared to the impact of the concentrated flow of water off a roof.

There is considerable variation in roof designs that affect the flow of water off the roof. Some are fully guttered and some partially guttered. Some roofs are simple, consisting of two sloping sides, meeting in the center and forming an upside-down "v." Most are more complex with intersecting sides, gables and other features. Physically, roof eaves extend the impervious roof area. Some eaves overhang natural, "pervious" areas. Other eaves overhang concrete driveways, patios, porches, walkways, etc. Eaves also vary in size and can extend from a few inches to a few feet.

When it rains, roofs cannot absorb water. The water hits the roof and flows down the sloping sides of the roof. If there are no gutters, and the roof is a simple inverted "v," the rain will drain over the edge of the roof. If the ground underneath is pervious, some stormwater will be absorbed along the edge. However, if roofs have gutters or a more complex design, the rain will not drain evenly over the whole roof. Instead the flow will be concentrated to a few specific spots. If there are no gutters, this creates waterfalls with considerable impact. If gutters are installed, the water is concentrated in the gutter, and this concentrated flow is released by the downspouts at the corners of the house.

As a result of the concentrated flow off of both guttered and unguttered rooftops, the ground is less able to absorb the rainfall. The stormwater reaches the storm drain system faster. According to Watershed Protection studies, how fast stormwater reaches the storm drain system, called "time of concentration," has the greatest impact on how high flood waters will rise. Steeper roofs will have more impact on the time of concentration and tend to increase peak flow.

The Watershed Protection Department recently completed comprehensive and detailed dynamic modeling of green stormwater infrastructure in the Brentwood area of Austin. The study found that even with a large number of green infrastructure components absorbing water such as rain gardens, rain barrels, cisterns, etc., floodwaters would still rise the same amount in a large storm. It is the size of drainage area and the area's time of concentration that predominantly determine the height of floodwaters. For most cases, the more impervious cover, the shorter the time of concentration.

Concentrated stormwater may wet the ground area under eaves, and some water infiltrates into soil under eaves. But, the fact that some water is absorbed under the eaves has less impact on flooding than the increased roof area, the concentrated flow over the roof and the decreased time of concentration.

Considering eaves, they act similarly to the rest of the roof area by increasing the time of concentration and peak flow. Their greatest impact on the storm drain system is the way they concentrate flow, allowing stormwater to reach the storm drain system faster. That natural areas underneath eaves may absorb some of the stormwater has a negligible impact in comparison.

Impact of Eaves on the Drainage Charge

When the drainage charge was revised in 2015, many residents of single-family homes saw an increase in their drainage charge. Single-family residents as a group are now paying a larger portion of the drainage charge than previously compared to commercial or multi-family residents as a group. Commenters have stated that counting eaves as impervious cover is a significant cause of this increase for single-family residents. City data, on the other hand, indicates that the increases were due to the previous drainage charge significantly underestimating the median impervious cover for a single-family residence. The previous drainage charge assumed 1,763 square feet of impervious cover as the median for a single-family home, and all single-family homes were charged for that amount in the past. Today, we understand that 3,100 square feet of impervious cover is the median. In addition, since 50% of single-family residential properties exceed the 3,100 square foot median, their drainage charge saw a correspondingly larger increase. Adjusting the charge for the percent of impervious cover has had a mitigating effect on the increased charges for single-family residences.

The Watershed Protection Department has calculated an estimated impact to rate payers of partially changing the treatment of eaves in the calculation of the drainage charge. If the Watershed Protection Department were to count eaves as 75% impervious cover, the department estimates it would save the resident of a median home about \$0.35 per month on their drainage charge. Assumptions used for this calculation are a median single-family property with 3,100 square feet of impervious cover, 45% impervious cover and 400 square feet of eaves.

Methods to Deduct Eaves from Impervious Cover

The Watershed Protection Department uses aerial photography and LIDAR to quantify the impervious cover on each property. This allows us to see rooftops, but not eaves or gutters. For this reason, the Watershed Protection Department considered the following possible mechanisms to account for eaves in the calculation of the drainage charge:

- Deduct a standard amount of impervious cover from each property to account for potential eaves. For example, Watershed Protection could subtract 100 square feet from every property's impervious cover.
- Deduct a percentage of each property's total impervious cover.
- Deduct a percentage of the impervious cover from buildings.
- Subtract an arbitrary amount, such as two feet, from the perimeter of each structure when calculating impervious cover.

These options would increase the cost to administer the drainage charge, requiring a fee increase. The fee increase to administer the change has the potential to negate the savings of \$0.35 for the median house. In addition, these options would provide the credit to all properties, even ones that do not have eaves, have eaves overhanging concrete, have roofs with gutters, etc. Some of these options would tend to cause fee increases to large houses and commercial properties.

Conclusion

After evaluating the impact of eaves and how they could be deducted from the impervious cover calculations, the Watershed Protection Department has concluded that eaves should continue to be considered impervious cover. There is minimal benefit to residents in treating them as partially impervious, it would not be cost-effective to implement the change and there is no clear scientific justification to change. Treating eaves as impervious is consistent with existing City Code and Environmental Criteria Manual Section 1.8.1 for decks and buildings. It maintains the drainage charge structure to be land-use neutral and nondiscriminatory.