

RULE NO.: R161-20.13

ADOPTION DATE: November 18, 2020

NOTICE OF RULE ADOPTION

By: Jorge L. Morales, P.E., CFM, Director
Watershed Protection Department

The Director of the Watershed Protection Department has adopted the following rule. Notice of the proposed rule was posted on October 7, 2020. Public comment on the proposed rule was solicited in the October 7, 2020 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 attached to this notice.

EFFECTIVE DATE OF ADOPTED RULE

A rule adopted by this notice is effective on November 18, 2020.

TEXT OF ADOPTED RULE

R161-20.13: Deletes and replace ECM Appendix T, *Request for Payment in Lieu of Water Quality Controls in the Urban Watersheds*. The site impervious cover component rates have been updated to current costs and the method of calculating the site area component is now tied to the assessed value of the land on a given property.

COMMENTS AND CHANGES FROM PROPOSED RULE

No comments were received, and no changes were made.

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 the City Code is established in Chapter 1-2 of the City Code. The authority to regulate water quality is established in Chapter 25-8 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identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

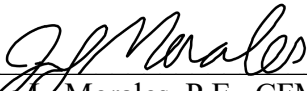
Notice that an appeal was filed and will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act 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

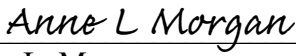
By signing this Notice of Rule Adoption (R161-20.13), the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED



Jorge L. Morales, P.E., CFM, Director
Watershed Protection Department

Date: 11/13/2020



Anne L. Morgan
City Attorney

Date: 11/16/2020

This Notice of Rule Adoption was posted on the City website by the City Clerk. The date and time stamp are on the front of the notice.

REMOVE AND REPLACE

APPENDIX T - REQUEST FOR FEE IN LIEU OF OR COST RECOVERY FOR WATER QUALITY CONTROLS IN THE URBAN WATERSHEDS

APPENDIX T
REQUEST FOR FEE IN LIEU OF OR COST RECOVERY FOR WATER QUALITY
CONTROLS IN THE URBAN WATERSHEDS

A. OWNER /AGENT INFORMATION: Name: _____
Company: _____ Telephone: _____
Fax: _____

B. PROJECT INFORMATION: Name: _____
Location or Address: _____
Permit Number: _____
Case Manager: _____

Redeveloped Impervious Cover _____ (ac.) + New Impervious Cover _____ (ac.)
= Total Impervious Cover _____ (ac.)
Redeveloped IC = _____ / Total IC _____ = _____ (R/T)

C. PAYMENT CALCULATION:

1. Site Impervious Cover Component: \$32,000 x (A1) _____ = \$ _____
\$18,000 x (A2) _____ = \$ _____
\$11,000 x (A3) _____ = \$ _____
\$8,000 x (A4) _____ = \$ _____
\$6,000 x (A5) _____ = \$ _____

Impervious Cover Component Subtotal (ICCS) _____ = \$ _____

Annual Adjustment Factor (E) _____ = _____

ICCS x E _____ = \$ _____ (Fee 1)

If subject property drains to a proposed or existing Regional Water Quality facility, then City Portion is:
City Portion = (R/T) _____ x (FEE 1) _____ x 0.75 = \$ _____ (CP1);
Otherwise CP1=0

2. Building Component: \$0.10 x (B) _____ (sf) = \$ _____ (FEE 2)
[Note: City Portion = \$0.00]

3. Site Area Component:
Commercial/Multifamily Site: \$6,000 x (C) _____ (ac.) = \$ _____ (FEE 3)
Single Family or Duplex Site: \$4,000 x (C) _____ (ac.) = \$ _____ (FEE 3)

If subject property drains to a proposed or existing Regional Water Quality facility, then City Portion is:
City Portion = (R/T) _____ x (FEE 3) _____ x 0.75 = \$ _____ (CP3);
Otherwise CP3=0.

4. Payment Amounts:

TOTAL FEE = (FEE 1)	+ (FEE 2)	+ (FEE 3)	= \$
CITY PORTION = (CP1)	+ (CP3)	= \$	
APPLICANT FEE = (TOTAL FEE)	-(CITY PORTION)	= \$	

D. CO RECOVERY:

Constru "on Cost = \$ (attach an itemized Engineer's estimate of cost)

City Portion = R/T) X (COST) x 0.75 = \$

Applicant Portion - Cost) - (City Portion) = \$

E. AUTHORIZATION:

Owner/Agent Date

Reviewed by Date
For the Director of the Watershed otection and Development Review Dep rtment

APPENDIX T - REQUEST FOR FEE IN LIEU OF OR COST RECOVERY FOR WATER QUALITY CONTROLS IN THE URBAN WATERSHEDS

**INSTRUCTIONS FOR COMPLETING
REQUEST FOR FEE IN LIEU OF WATER
QUALITY CONTROLS IN THE URBAN WATERSHEDS**

PART A. OWNER/AGENT INFORMATION:

Provide the name of the owner or agent for the project, name of company, and telephone and fax number.

PART B. PROJECT INFORMATION:

Provide the name of the project, location or address, site development or site plan number, and the name of the case manager in the Watershed Protection and Development Review Department.

Provide the area of impervious cover in acres that is considered redevelopment - i.e. the amount of impervious cover being constructed by this project in areas which currently have impervious cover. Provide the area of impervious cover in acres that is considered new - i.e. the amount of impervious cover being constructed by this project in areas which currently do not have impervious cover. Impervious cover shall be measured to the nearest 0.01 acre.

Calculate the total impervious cover by summing the two figures determined above.

Calculate the ratio of redeveloped impervious cover to total impervious cover in this project by dividing the redevelopment impervious cover by the total impervious cover. This ratio is called R/T on the form. If R/T is zero (0), the project is not considered redevelopment and the City will not pay a portion of the fee in lieu of water quality controls or a portion of the Cost Recovery if water quality controls are built on-site.

PART C. PAYMENT CALCULATION:

1. Site Impervious Cover Component: Calculate the portion of the payment related to site impervious cover. The total impervious cover being constructed by this project should be divided into the following increments:

Area of IC 1 (A1) = 0 to 1.00 acres
Area of IC 2 (A2) = 1.01 to 2.00 acres
Area of IC 3 (A3) = 2.01 to 10.00 acres
Area of IC 3 (A4) = 10.01 to 20.00 acres
Area of IC 4 (A5) = 20.01 acres or greater

Insert these areas into the fee formula and calculate the individual parts of the fee and then sum these to calculate the unadjusted total fee associated with site impervious cover – Impervious Cover Component Subtotal (ICCS).

Calculate FEE 1 by multiplying the ICCS by the construction cost adjustment factor (E). The construction cost adjustment factor must be calculated annually using the Engineering News Record (ENR) 20 city average Construction Cost index with the base index being the ENR construction cost index of October 2002 (6597). For each fiscal year, the construction cost adjustment factor shall be recalculated in October as the ratio of the then current September ENR Construction Cost index divided by the October 2002 Construction Cost index. This new construction cost adjustment factor shall be applied to all fees collected during that fiscal year.

If the site drains to a proposed or existing Regional Water Quality Facility, the applicant qualifies for a 75% Cost Recovery of the fee. Calculate the City's portion of this component of the fee by multiplying FEE 1 by the ratio R/T and by 0.75 (0.75 is the cost share ratio established by City Council for water quality controls associated with redevelopment in the Urban Watersheds).

Building Component. Calculate the portion of the payment related to building size. Determine the gross square footage of the building, excluding the area of the first or ground floor (B). Subgrade floors (basement floors) shall be included. Multiply this by \$0.10 per square foot to determine this portion of the payment (FEE 2). The City does not pay a proportionate share of the fee associated with multi-story buildings.

3. Site Area Component. Calculate the portion of the payment related to size of the site area being developed or redeveloped. Determine the area of the site in acres which is within the limits of construction for the project (). To calculate the portion of the payment associated with the site area, multiply the site area by \$6,000 for commercial or multifamily development or \$4,000 for single family and duplex development (FEE 3).

If the site drains to a proposed or existing Regional Water Quality Facility, the applicant qualifies for a 75% Cost Recovery of the fee. Calculate the City's portion of this part of the fee by multiplying FEE 3 by the ratio R/T and by 0.75 (0.75 the cost share ratio established by City Council for water quality controls associated with redevelopment in the Urban Watersheds).

4. Payment Amounts. Calculate the total fees owed by the applicant and the City. The total fee is calculated by summing the individual portions of the fee calculated under 1, 2 and 3 above (— FEE 1 + FEE 2 + FEE 3).. The City's portion of the fee payment is calculated by adding the City's portion calculated under 1 and 2 above (= City Portion FEE CP1 + City Portion FEE P3). The applicant's share of the fee payment is calculated by subtracting the City's portion from the total fee.

PART D. COST RECOVERY FOR ON-SITE CONTROLS

This portion of the form shall be used if the applicant proposes or the City requires construction of water quality control on-site and the site is undergoing redevelopment. (See ECM 1.9.2 for criteria for Cost Recovery)

Provide the engineer's estimate of the cost of constructing a water quality control, excluding the cost of land. A detailed estimate of costs shall be attached to the form and sealed by the engineer. The Cost Recovery payment is calculated by multiplying the construction cost by the ratio R/T and 0.75.

Upon completion of construction at the site, the owner or agent shall notify the Environmental Site Inspector that the water quality control is complete. In addition, the engineer's concurrence letter shall be provided which includes a statement that the water quality controls have been built in accordance with approved plans.

The City shall inspect the controls to ensure that it is built in compliance with the approved plans and is operating properly. If deficiencies are noted during this inspection, the City shall notify the Owner in writing within 30 days of the specific deficiencies. The owner shall remedy any such deficiencies and notify Environmental Site Inspector that the controls are ready for reinspection. When the controls are determined by the City to be in compliance with the approved plans, the City shall issue a check to the owner for the approved amount.

PART E. AUTHORIZATION

The owner or agent for the project must sign and date the Request Form. Upon review and approval of the fee payment or cost recovery amount, the Director of the Watershed Protection and Development Review Department or his designee will sign and date the form indicating approval of the proposed fee. A copy of the approved form will be given to the fiscal staff for processing.

NEW**APPENDIX T: REQUEST FOR PAYMENT IN LIEU OF WATER QUALITY CONTROLS IN THE URBAN WATERSHEDS**

Please refer to instructions before completing this form. An electronic form is available on the Watershed Protection website.

A. OWNER/AGENT INFORMATION:

Company: _____ Owner/Agent Name: _____

Phone Number: _____ Email: _____

B. PROJECT INFORMATION:

Project name: _____

Location or Address: _____

Development Case Number: _____

Case Manager: _____

Redeveloped Impervious Cover (R) _____ + New Impervious Cover _____ = Total Impervious Cover (T) _____ ac.

R/T Ratio = Redeveloped IC/ Total IC: _____

C. PAYMENT CALCULATIONS:

1. SITE IMPERVIOUS COVER COMPONENT (SICC)	Rate (\$) x	Acreage (ac.) =	Total (\$)
0 to 1.0 acre	114,000	A1	
1.01 to 2.0 acres	58,000	A2	
2.01 to 5.0 acres	34,000	A3	
5.01 to 10.0 acres	21,000	A4	
10.01 to 20.0 acres	14,000	A5	
20.01 acres or greater	8,000	A6	

SICC SUBTOTAL _____

CONSTRUCTION COST ADJUSTMENT FACTOR (ENR CCI AF) _____

SICC TOTAL (PAYMENT 1) _____ SICX ENR CCI AF = (PAYMENT 1) _____

2. BUILDING COMPONENT (PAYMENT 2) \$0.10 X (B) _____ sf = (PAYMENT 2) _____

(NOTE: CITY PORTION = \$0)

3. SITE AREA COMPONENT (SAC = PAYMENT 3)

LAND VALUE (CURRENT TCAD OR MOST RECENT APPRAISAL) \$ _____

LAND AREA (CURRENT TCAD OR MOST RECENT APPRAISAL) _____ ac.

LAND VALUE/ LAND AREA (\$/ac.) _____ X Site Acreage _____ X 80% X 3% = (PAYMENT 3) _____

4. PAYMENT AMOUNTS

TOTAL PAYMENTS (1 + 2 + 3) = _____

CITY PORTION (CP): IF SUBJECT PROPERTY DRAINS TO PROPOSED OR EXISTING REGIONAL SCM

OTHERWISE CP = 0

CP = (PAYMENT 1 + PAYMENT 3) X R/T X 75% = _____

APPLICANT PAYMENT:

TOTAL PAYMENTS - CP = _____

D. COST RECOVERY:

PARTICIPATION MUST BE APPROVED BY A WATERSHED PROTECTION - STORMWATER TREATMENT SECTION REPRESENTATIVE.

APPROVED CONSTRUCTION COST = \$ _____ ATTACH 300U STANDARD BID DOCUMENT WITH ENGINEER'S COST ESTIMATE.

CITY PORTION (CONSTRUCTION COST X R/T X 75%) = _____

E. AUTHORIZATION:

OWNER/AGENT: _____ SIGNATURE _____

DATE: _____

REVIEWED BY: _____ SIGNATURE FOR THE DIRECTOR, DEVELOPMENT SERVICES _____

DATE: _____

DEPARTMENT

INSTRUCTIONS FOR COMPLETING REQUEST FOR PAYMENT IN LIEU OF WATER QUALITY CONTROLS IN THE URBAN WATERSHEDS (LDC 25-8-214)

PART A. OWNER/AGENT INFORMATION:

Provide the name of the company, owner or agent for the project, phone number, and email address.

PART B. PROJECT INFORMATION:

Provide the name of the project, location or address, site development or site plan number, and the name of the case manager in the Development Services Department.

Provide the area of impervious cover, in acres, that is considered new and redevelopment (R) per ECM 1.9.2.A, Criteria for Urban Watersheds. Impervious cover shall be measured to the nearest 0.01 acre.

Calculate the total impervious cover (T) by summing the two acreages determined above.

Calculate the ratio of redeveloped impervious cover (R) to total impervious cover (T) for this project by dividing the redeveloped impervious cover by the total impervious cover. This ratio is called R/T on the form. If the R/T is zero (0), the project is not considered redevelopment.

PART C. PAYMENT CALCULATION

1. **Site Impervious Cover Component (SICC):** Calculate the portion of the payment related to site impervious cover. The total impervious cover constructed by this project should be divided into the following increments.

A1: Area of IC = 0 to 1.0 acres

A2: Area of IC = 1.01 to 2.0 acres

A3: Area of IC = 2.01 to 5.0 acres

A4: Area of IC = 5.01 to 10.0 acres

A5: Area of IC = 10.01 to 20.0 acres

A6: Area of IC = 20.01 or greater

Insert these areas into the payment formula and calculate the individual parts of the payment. Sum these to calculate the unadjusted total payment associated with the site impervious cover (SICC subtotal).

Calculate PAYMENT 1 by multiplying the SICC subtotal by the Engineering News Record Construction Cost Index Adjustment Factor (ENR CCI AF). This construction cost index adjustment factor must be calculated annually using the Engineering News Record (ENR) 20 city average Construction Cost Index (CCI) with the base index being the ENR CCI of September 2018 (11170.28). For each fiscal year, the ENR CCI AF shall be recalculated in October as the ratio of the current September ENR CCI divided by the September 2018 CCI. Multiplying the new ENR CCI AF to the SICC subtotal will provide the SICC portion of the payment (PAYMENT 1) adjusted for the current fiscal year.

2. **Building Component:** Calculate the portion of the payment related to building size. Determine the gross square footage of the building, excluding the area of the first or ground floor (B). Subgrade floors (subsurface parking, basements, etc.) shall be included. Multiply this by \$0.10 per square foot to determine the building component portion of the payment (PAYMENT 2). The City does not include this payment in the cost recovery calculation.

3. **Site Area Component (SAC):** Calculate the portion of the payment related to size of the site area under development. Determine the SAC by providing a current applicable appraisal district land value or the land value from a certified appraisal. For requests that involve multiple lots, the total land value and acreage of all lots shall be used. Certified appraisals must have been performed within six (6) months of the project submittal date. Calculate PAYMENT 3 by the dividing the current applicable appraisal district land value (or the land value from a certified appraisal) by the land area associated with that appraisal to achieve a land value per land acre rate. Multiply this rate by the development application site acreage, then multiply by 80% (0.8), and finally multiply by 3% (0.03). This will provide the SAC portion of the payment (PAYMENT 3).

$$\text{(Land Value / Land Area) X Site Acreage X 0.8 X 0.03 = SAC}$$

4. **Payment Amounts:** Calculate the total payment owed by the applicant and the City. The total payment is calculated by summing the individual portions of the payment calculated under 1, 2, and 3 above (Payment 1 + Payment 2 + Payment 3).

If the site drains to a proposed or existing regional water quality control, the applicant qualifies for up to 75% cost recovery of portions of this payment (75% is the cost share ratio established by City Council for water quality controls associated with redevelopment in Urban watersheds). Calculate the City's Portion (CP) of this component by summing PAYMENT 1 and 3 and then multiplying that sum by the R/T ratio and by 0.75 (75%). Verification that the site drains to a proposed or existing regional water quality control must be provided by a Watershed Protection – Stormwater Treatment section representative. The applicant's share of the payment is calculated by subtracting the CP from the total payment.

PART D. COST RECOVERY FOR ON-SITE CONTROLS (LDC 25-8-215)

This portion of the form shall be used if the applicant proposes or the City requires construction of a water quality control on-site and the site is undergoing redevelopment (see ECM 1.6.2.A and 1.9.2.A for cost recovery participation criteria).

Provide the engineer's estimate of the cost of constructing the water quality control, excluding the cost of the land. A detailed estimate of costs (300U Unit Price Bid form) shall be attached to the form and sealed by the engineer. The cost recovery payment is calculated by multiplying the construction cost by the R/T ratio and then by 0.75 (75%).

Upon completion of construction at the site, the owner or agent shall notify the Environmental Site Inspector and a representative of the Watershed Protection Stormwater Treatment section that the water quality control is complete. In addition, the engineer's concurrence letter shall be provided which includes a statement that the water quality control has been built in accordance with the approved plans.

The City shall inspect the control to ensure that it is built in compliance with the approved plans and is operating properly. If deficiencies are noted during the inspection, the City shall notify the Owner in writing within 30 days of the specific deficiencies. The owner shall remedy any such deficiencies and notify the Environmental Site Inspector that the controls are ready for inspection. When the controls are determined by the City to be in conformance with the approved plans and the control has been accepted by Watershed Protection, per ECM 1.6.3.A, the City will issue a check to the owner for the approved amount.

PART E. AUTHORIZATION

The owner or agent for the project must sign and date the Request form. Upon review and approval of the payment or cost recovery amount, the Director of the Watershed Protection Department or designee will

sign and date the form indicating approval of the payment. A copy of the approved form will be given to the fiscal staff for processing. In conjunction with the payment, the agreement shown in Appendix T shall be signed and act as a binding agreement between the applicant and the City per ECM 1.6.4.B.1.c.