

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 16668, TO TRANSFER THE MANAGEMENT AND OPERATION OF THE MUNICIPAL UTILITY DRAINAGE SYSTEM FROM THE PUBLIC SERVICE BOARD TO THE CITY COUNCIL OF THE CITY OF EL PASO.

WHEREAS, the City of El Paso ("El Paso") previously established a Municipal Drainage Utility System via Ordinance No. 16668; and

WHEREAS, in 2008, citizens of El Paso had circulated an initiative petition requesting the adoption of an ordinance regarding the transfer of the management and operation of the Municipal Drainage Utility System to the City Council; and

WHEREAS, the City recognizes state law prohibits it from dissolving the Municipal Drainage Utility System until it has operated substantially continuously for five years; and

WHEREAS, most portions of City Ordinance No. 16668, are being amended to accomplish the transfer of the Municipal Drainage Utility System from the Public Service Board back to the City Council and to provide a transition process for such transfer.

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

Section 1. That SECTION I of Ordinance No. 16668, Findings Required by Law, be amended in its entirety to read as follows:

The City hereby adopts the Municipal Drainage Utility Systems Act and finds that the City will:

- (i) Establish a schedule of drainage charges against all real property in the proposed service area subject to charges;
- (ii) Provide drainage service for all real property in the proposed area upon payment of drainage charges (except real property that is exempt from such charges); and
- (iii) Offer and provide drainage service on nondiscriminatory, reasonable, and equitable terms in accordance with any resolutions or ordinances of the City, as are required by state law.

Section 2. That SECTION II of Ordinance No. 16668, Definitions, be amended to delete the following definition:

“Storm 2006 Projects”

Section 3. That SECTION II of Ordinance No. 16668, Definitions, be amended to provide that the following definitions shall read as follows:

“Benefited property” means an improved lot or tract to which drainage service is made available under the Act and this Ordinance and in accordance with any other applicable resolutions or ordinances as are required by state law.

“Service Area” means all that area of land located within the city limits of the City and any other land areas in the City’s extraterritorial jurisdiction as provided by the Municipal Drainage Utility Systems Act which, as a result of topography or hydraulics, contribute to overland flow into the watersheds served by the drainage system of the City. Upon the effective dates of completed annexation of additional lands into the City, each such annexed additional land shall become part of the service area. Land annexed for limited purposes shall become a part of the service area upon annexation for full purposes. The Service Area may be extended by written resolution or ordinance of the City Council as is required by state law, to the extent permitted by the Act at the time of such adoption, to include other land areas outside the city limits of the City which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the System provided, however, in no event may the Service Area extend farther than the boundaries of the City’s then current extraterritorial jurisdiction, nor, except as expressly provided by the Act, may the Service Area extend into the boundaries of another municipality.

Section 4. That SECTION III of Ordinance No. 16668, Establishment and Management of the System, be amended in its entirety to read as follows:

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

B. The City shall establish a Master Stormwater Management Plan (“Stormwater Plan”), by obtaining any such Stormwater Plan that has been prepared by the Public Service Board pursuant to Ordinance No. 16668, or in the event that no such Stormwater Plan exists, the City shall cause such Stormwater Plan to be prepared. In developing such Stormwater Plan, or amending or updating the Plan, the City shall take into account the use of open space as natural drainage and to the extent reasonably possible preserve the City’s open spaces, greenways, arroyos and wilderness areas in their natural state as a means to assist in the management of storm water and in accordance with the City’s Open Space Master Plan.

C. Reserved.

D. The City Council shall have complete authority and control of the management and operation of the System, and pursuant to City Charter, the City Manager shall direct and supervise the administration of the System in the same manner as all other City departments. The City Council shall approve such fees or charges as recommended by the City Manager.

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

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

F. The City shall bill for the drainage utility fees as provided by statute and as may otherwise be authorized by law, and the City Manager is authorized to take all action necessary to institute such billing processes.

G. At least once a year beginning with the Fiscal Year ending August 31, 2010, the City Manager shall present to the City Council a report on the status of the System.

Section 5. That SECTION IV of Ordinance No. 16668, Administrative Provisions, be amended in its entirety to read as follows:

A. No Assumed Liability City. By the passage of this Ordinance, the City makes no representation that all of the City's drainage problems will be immediately remedied and the City Council is given full discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The passage of this Ordinance shall not be construed to relieve private landowners, developers or other individuals or entities from providing drainage improvements pursuant to the ordinances of the City and the laws of this State which relate to drainage, storm water or storm water improvements.

B. No Assumed Liability Board. For such time that the Board has had authority and control of the management and operations of the System, the Board makes no representation that all of the City's drainage problems will be immediately remedied and the Board recognizes the City Council's governmental budgeting discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The City and the Board recognize that the Board has undertaken a governmental function when it had accepted the delegation of the rights, duties and responsibilities of a municipal drainage utility system pursuant to the Act and the authority of the City acting as a Texas Home Rule Municipality. The effective date of Ordinance No. 16668, June 19, 2007, was the effective date for the beginning of the actions and responsibilities of the Board in this matter.

C. Administrative Authorization. The City Manager is authorized to place the operations of the System within an existing City department, as he or she deems appropriate. The City Manager is authorized, within ninety days of the adoption of this ordinance, to create staffing positions that he or she determines to be necessary for the operation of the System, and to update the classification and compensation plan of the City regarding these positions within the department designated to operate the System. This direction and authorization shall constitute the Council's acceptance and authorization of such actions pursuant to Section 6.4-1 of the City Charter.

D. Insurance. The City may obtain overall property insurance on the assets of the Municipal Drainage Utility System in a form and amount as the City Council may determine to be reasonable and prudent. Such insurance may take the form of general liability insurance or an umbrella insurance policy. The transfer of the insurance policy obtained by the Board pursuant to Ordinance No. 16668, shall be addressed by the City Manager and the Board in the same manner as the transfer of all other assets and liabilities of the System from the Board to the City pursuant to this Ordinance.

Section 6. That SECTION V of Ordinance No. 16668, Drainage Utility Fund, be amended in its entirety to read as follows:

A. Drainage Utility Fund.

(i). The City shall establish a drainage utility fund. All drainage utility fees collected by the City shall be deposited as collected and received into this fund,

and shall be used exclusively for the drainage services set forth under the Act, including but not limited to those services referenced in Local Government Code Section 402.044(2).

(ii). The Board shall maintain the drainage utility fund it established pursuant to Ordinance No. 16668 during the time of transition established under this ordinance until the balance of such fund is expended pursuant to this subsection or the fund is transferred to the City. During the time of transition and as authorized by the City Manager, the General Manager shall utilize the fund to pay the obligated expenditures of the System that were incurred during the time that the Board operated the System. Upon the direction of the City Manager, the fund balance shall be transferred to sole control of the City no later than July 1, 2009, and such funds shall be incorporated into the City's drainage utility fund.

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

Section 7. That SECTION X of Ordinance No. 16668, Transition, be amended to read as follows:

A. The City Manager and the General Manager shall provide for a transition process and transfer to the City, the System personnel, physical assets and real property currently which had been transferred to the Public Service Board for the operation of the system, as well as all other assets that had been purchased with the fees that had been collected by the City.

B. On or before February 28, 2009, the Board shall provide a complete inventory of the assets and liabilities of the System to the City Manager. The Board and the City Manager shall develop an orderly process for the transfer of such assets and the assumption of such liabilities within the time frame and processes provided in this Ordinance.

C. The City Manager shall have the authority, in the reasonable, ordinary and lawful course of business, to direct the transfer of and assume the assets, liabilities and obligations of the System, on behalf of the City, and if necessary negotiate reimbursement to the Board in the event that the Board utilized funding outside of the System's funds to procure assets, such as equipment, that will be transferred to the City.

D. It is intended that the transfers provided for in the transition process shall be completed by June 1, 2009, but in no event later than July 1, 2009. The City Manager is hereby authorized to take whatever action, including but not limited to, budget transfers to accomplish the intent of this Ordinance.

Section 8. Except as herein amended, the provisions in Ordinance No. 16668 shall remain in full force and effect.

Section 9. That, in order to allow for the orderly transition of the System back to the authority and control of the City Council, the amendments contained herein which place the authority and control of the System in the City Council shall take effect on March 1, 2009. In the interim, the responsibilities of the Board to operate the System shall continue through February 28, 2009, and the responsibilities of the Board and its General Manager to employ appropriate and necessary personnel, take action and cooperate with the transition of the System to the City shall continue to July 1, 2009.

The remaining provisions of this ordinance shall be effective on January 19, 2009. On and after January 19, 2009, the City Manager and his or her designees are authorized to administratively set up and create appropriate administrative processes for the implementation of the System, to include establishing the appropriate budget within the appropriate city department. The City Manager and his or her designees are authorized to make appropriate budget transfers, and in addition to the authorization in SECTION IV C as amended herein, to take the necessary steps for the hiring and compensation of all necessary personnel, so as to enable the start of the transition process set forth herein for City controlled operations no later than March 1, 2009.

Section 10. At the first regular City Council meeting held after March 1, 2009, the City Council shall consider, as provided in Section 402.047(c), Texas Local Government Code, whether the rates for drainage charges (fees) previously determined and established by the Board should remain in place or be changed, adjusted or readjusted and take action as appropriate.

APPROVED AND ADOPTED this 13th day of January 2009.

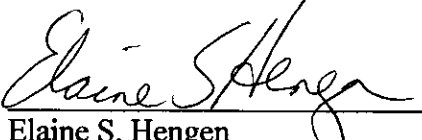
CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Elaine S. Hengen
Senior Assistant City Attorney