

ORDINANCE NO. 18-2391

An ordinance of the City of Hoover to modify Chapter 15, Utilities and to repeal all ordinances and parts of the ordinances of the City of Hoover in conflict therewith.

WHEREAS, the City of Hoover (“City” or “Hoover”) presently owns and operates its storm water management system and facility, which have been developed over many years, within the incorporated areas of the City. The future usefulness and operational function of the existing storm water management system and facility owned and operated by the City, and the additions and improvements thereto, rests on the ability of the City to effectively manage, protect, control, regulate, use, and enhance its storm water systems and facilities within the City in concert with the management of other water resources within the City. In order to do so, the City must have both a comprehensive storm water management program as well as an adequate and stable funding source for implementation of its comprehensive storm water management program and drainage-related capital improvement needs. A storm water management system and service area encompassing all lands and water bodies within the incorporated areas of the City is appropriate and in accordance with specific regulatory requirements imposed on the City.

WHEREAS, the City is subject to Act #2014-439 (“the Act”) codified in the *Code of Alabama* as §11-89C-1, *et seq.*

WHEREAS, the Council finds that it is in the best interests of the City to iterate its storm water management program by ordinance in accordance with applicable state law so as to enhance its storm water management system and facilities and storm water management services.

WHEREAS, the City Council for the City of Hoover, Alabama (the “Council”) also finds that it is in the interest of the City to modify its storm water user fee charges in order to maintain the municipal separate storm sewer system and facilities (“MS4”) owned and maintained by the City.

WHEREAS, it is the intention of the City to (i) implement and comply with applicable state and federal storm water laws; (ii) utilize policies, procedures, resolutions and/or ordinances, as necessary, pertaining to the City’s stormwater permit and to assert the enforcement authority needed in order to satisfy the requirements of storm water laws, as authorized and appropriate; and (iii) limit the jurisdictional scope of its storm water management program to include only those sites discharging into the MS4 owned and maintained by the City and, because the federal stormwater initiative is an unfunded mandate, to limit the expenses of program compliance with said permit by setting strict limitations on the substantive scope of the City’s storm water program to include only those rules, regulations, and/or aspects that are absolutely required to satisfy the Clean Water Act, as specifically set out in the Code of Federal Regulations.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Hoover, in regular meeting duly assembled, a quorum being present, as follows:

Section 1. Modification of Chapter 15, Utilities, Section 15-3 Storm water fees.

- A. Chapter 15 of the *Municipal Code of the City of Hoover, Alabama* is hereby amended by deleting Section 15-3 in its entirety and replacing it with the following:

CHAPTER 15 – UTILITIES

Sec. 15-3. – Storm Water Management Program.

(a) **Definitions.** The following definitions shall apply to this section.

- a. “Commercial Property” shall mean any real property that is (i) not residential property, as defined in this section and in Alabama Code § 11-89C-2 or (ii) has not specifically been exempted from the fee provisions set out in Alabama Code § 11-89C-9(d)(1).
- b. “Greenfield” shall mean any real property not previously developed.
- c. “Municipal separate storm sewer system” (“MS4”) shall mean a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains that are:
 - i. owned or operated by a city, town, county, association, or other public body that discharges to waters of the U.S.,
 - ii. designed or used to collect or convey stormwater (e.g., storm drains, pipes, ditches),
 - iii. not a combined sewer, and
 - iv. not part of a sewage treatment plant, or publicly owned treatment works (“POTW” as defined in 40 C.F.R. §122.2); oras otherwise defined in Alabama Code §11-89C-2 and 40 CFR 122.26(b)(8).
- d. “Residential Property” shall mean any single-family owner-occupied residential property, historic buildings, or sites classified or assessed as Class III property, pursuant to Section 217 of Article XI of the *Constitution of Alabama of 1901*.
- e. “SWMP” shall mean a storm water management plan.

(b) **Findings of Fact.**

- a. The City Council finds and declares that it is in the public interest and the health, safety, and welfare of the citizens of this city to promote effective and efficient compliance with federal and state laws, rules, regulations, and permits relating to storm water discharges into and from the City’s MS4 and to promote and authorize the discovery, control, and elimination, wherever practicable, of that discharge.
- b. The City is required under federal and state regulations (i.e. the federal Clean Water Act and the City’s state MS4 permit) to implement a SWMP to address pollutants which may be discharged from the City’s MS4 into downstream waterways to the “maximum extent practicable” as required by applicable laws.

- c. This section provides a funding mechanism to aid the City in meeting the financial obligations imposed by the MS4 permit and the required SWMP, an unfunded federal mandate, and to limit the expenses of compliance with said permit by setting the strict limitations on the scope of the compliance program to include only those rules, regulations, and/or aspects that are absolutely required to satisfy the Clean Water Act, as specifically set out in the *Code of Federal Regulations*.
- d. The storm water management services rendered by the City under the SWMP may differ depending on many factors and considerations, including but not limited to, location, demands and impacts imposed on the City's storm water management system and its risk exposure.
- e. The SWMP needs in the City include, but are not limited to protection of the public health, safety, and welfare of the community. Provision of storm water management services under the SWMP renders and/or results in both a service and a benefit to all properties, property owners, business, citizens, and residents of the City in a variety of ways even though the benefits may be indirect or immeasurable.
- f. It is imperative that the proceeds from all storm water fee charges be dedicated solely to those purposes, and such fee proceeds shall therefore be deposited into the City of Hoover Storm Water Fund and shall remain in that fund and be dispersed only for storm water management capital, operating and non-operating costs for storm water management purposes in accordance with applicable laws.

(c) **City Storm Water Management Program.**

- a. **Program Responsibility.** The overall responsibility for the operation, maintenance and regulation of the City's Storm Water Management Program ("Program") and the services performed on the storm water drainage owned and operated or maintained by the City and other related assets, including, but not limited to properties, other than road rights-of-way, upon which such City owned storm water management systems and facilities are located (including easements, rights-of-entry and access, and certain equipment used solely for storm water management) shall rest with the City Engineer and/or his designee. The City Engineer and/or his designee is further charged with overall responsibility for the efficient and equitable administration of the storm water user fee charges authorized by this Section, including, but not limited to, the delineation of impervious surfaces and other pertinent factors as may be needed for the fair, reasonable and cost effective calculation, assessment and collection of said fees.
- b. **Storm Water Management Program Service Area.** There shall be one (1) Program service area which shall encompass the municipal boundaries of the City. Developed parcels within the defined service area will receive a storm water user fee charge in accordance with applicable provisions of this section and the Act because such parcels: (1) contribute storm water runoff to the City's MS4; (2) are directly or indirectly connected to the City's MS4; and/or (3) receive storm water management services from the City to varying

service levels from which they derive some degree of benefit even though the benefit may be indirect or immeasurable.

c. Storm Water Management Program Scope of Responsibility and Extent of Service.

- i. The Program shall provide storm water services for existing and proposed public storm water management systems and facilities (i.e., the City's MS4), subject to funding availability and to policy determinations made in the best interest of the public health, welfare and safety and the environment. Additionally, the City may accept the responsibility for providing storm water management services to private storm water management systems and facilities, acceptance of which conforms to policies established by the Mayor and City Council or those persons or entities designated by the Mayor and City Council to set such policies.
- ii. The City owns or has rights established by written agreements which allow it to operate, maintain, improve and access those storm water management systems and facilities which are located:
 1. Within public road rights-of-way;
 2. On private property, but within legally dedicated easements granted to, and accepted by, the City for maintenance;
 3. On private property where the City has been granted, by written agreements, specific rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for the operation, maintenance, improvement and access to the storm water management system facilities located thereon;
 4. On land dedicated to, and accepted by, the City solely for the operation, maintenance, improvement and access to the storm water management systems and facilities located thereon; or
 5. On public land which is owned by the City and/or land of another governmental entity upon which the City has agreements providing for the operation, maintenance, improvement and access to the storm water management systems and facilities located thereon.
- iii. Operation, maintenance and/or improvement of storm water management systems and facilities which are located on private or public property not owned and/or maintained by the City, and for which there has been no acceptance by the City and/or written agreement granting easements, rights-of-entry, rights-of-access, rights-of-use or other permanent provisions to the City for operation, maintenance, improvement and access of such storm water management systems and facilities shall be and remain the legal responsibility of the property owner, except as otherwise provided for by the state and federal laws and regulations.
- iv. The City may provide storm water management services to privately owned storm water management systems and facilities to ascertain that said facilities are functioning as designed and approved. The City may provide for remedial maintenance of said private facilities based upon the severity of storm water problems and potential hazard to the public health,

safety, and welfare and the environment, and in cases where such remedial maintenance is required the City reserves the right to bill the owner or owners of said private facility for the costs of such maintenance.

- v. It is City's express intent to protect the public health, safety and welfare of people and property in general, but not to create any special duty or relationship with any individual person, or to any specific property within or outside the municipal boundaries of the City. The City expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon the City, its elected officials, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.
- vi. If any permit, plan approval, inspection or similar act is required by the City as a condition precedent to any activity or change upon property not owned by the City pursuant to this or any other regulatory ordinance, regulation or rule of the City, or under federal or state law, the issuance of such permit, plan approval or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit, negligent issuance of a permit, negligent plan approval, or negligent maintenance of any permitted storm water management system or facility not expressly dedicated to and accepted by the City for further maintenance in an action seeking the imposition of money damages or equitable remedies against the City, its Council members, the Mayor, and/or its officers, employees and/or agents.

(d) Storm water fee.

- a. Fee imposed. Under the authority of Alabama Code §11-89C-9, the City hereby levies upon each parcel of real property or portion thereof located in the corporate limits of the city a fee to be determined as follows for the purposes of funding the city's storm water management program and to comply with the requirements of any NPDES permit held by the city:
 - i. Residential Property. The city shall levy an annual flat fee of ten dollars (\$10.00) to owners of Residential Property.
 - ii. Commercial Property. The city shall levy an annual fee to owners of commercial property of one-half (1/2) of one cent (\$0.005) per square foot of commercial space on or within the property, provided that, regardless of the actual square footage of commercial space on or within the property, no such annual fee, charge or assessment shall exceed the maximum of three thousand dollars (\$3,000.00) or such other amount as allowed per Alabama Code §11-89C-9(d)(3).

For the purpose of this subsection (d)a.ii., "commercial space" is defined as the total area of all impervious surfaces (i.e., surfaces which prevent or impede the natural filtration of rainfall) associated with and located on commercial property including but not necessarily limited to base building area plus the paved area within a parcel. The total area of

commercial space may be determined by the city through any data collection methods reasonably calculated to provide current and precise measurements of the area of impervious surface on a parcel.

- b. Placement in Storm Water Fund. All revenues received from the storm water fees shall be placed in the Storm Water Fund in trust and shall be utilized only for the management, maintenance, protection, control, regulation, and use of the storm water management systems and facilities and storm water management services owned and/or maintained by the City or as otherwise allowed by law.
- (e) **Storm water fee exemptions.** There shall be no exemptions for this fee on any parcel, except as set forth below:
- a. Publicly owned, developed properties, if exempted by law;
 - b. Entities regulated by the Alabama Public Service Commission, owners of greenfields, and/or owners of agricultural land, as per Alabama Code § 11-89C-9(d)(1);
 - c. Those parcels designated by the applicable county tax assessor's office as schools, churches, and cemeteries, as well as common elements of condominiums;
 - d. Owners of real property (1) who are (i) permanently and totally disabled, (ii) blind, or (iii) sixty-five (65) years of age or older; (2) who occupy the residence on which the exemption is sought as a homestead; and (3) who have been exempted from ad valorem taxation by the tax assessor's office of the county in which the real property is located;
 - e. Owners or operators of lands or facilities exempted from regulation under any local storm water management program as set out in Alabama Code §11-89C-9(a); and
 - f. Other persons or entities exempted from any such fees under Alabama Code §11-89C-1 *et seq.* and/or by federal law.
- (f) **Assessment and Collection.** The fees authorized by this section shall be assessed and collected in conformity with Alabama Code §§11-89C-9 and 11-89C-10 by the appropriate county tax assessor and collector's offices.
- (g) **Enforcement and Inspections.**
- a. All property owners of improved property within the incorporated areas of the City shall provide, manage, maintain, and operate on-site storm water management systems sufficient to collect, convey, detain, and discharge storm water runoff in a safe manner consistent with applicable City development regulations, ordinances, as well as state and federal laws. Any failure to meet this obligation shall constitute a violation of the City's municipal code and be subject to citation and prosecution in the City's

municipal court in accordance with Section 1-5 or 1-6. Each day such violation exists shall constitute a separate offense.

- b. The City may institute a civil suit for damages or injunctive relief, except as limited by Alabama Code §§11-89C-11 and 11-89C-12 of the *Code of Alabama*, in any district or circuit court having jurisdiction for a violation of this section. Damages may include all costs, expenses, or other losses resulting directly or indirectly from a violation of any rule, regulation, resolution, ordinance, order, or other provision authorized by this chapter, and may include attorney's fees, court costs, and trial expenses.
- c. The City may do any and all things, whether or not specifically or expressly authorized in the Act and/or this section and not otherwise prohibited by law, that are necessary to aid in carrying out the storm water laws and the purposes and intent of this section.

Section 2. **REPEAL.** All ordinances, parts of ordinances, and resolutions in conflict herewith are hereby repealed.

Section 3. **SEVERABILITY.** That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City of Hoover hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 4. **LEGAL RIGHTS NOT IMPAIRED.** That nothing in this ordinance or in the Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 5. **ORDINANCE CUMULATIVE; COMPATIBILITY WITH OTHER REGULATIONS.** This Ordinance shall not be construed to modify or to repeal any other ordinance, rule, regulation, or other provision of law except as set forth herein. The requirements of this Ordinance are in addition to and cumulative to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 6. **PUBLICATION OF ORDINANCE.** That the City Clerk of the City of Hoover is hereby ordered and directed to cause this ordinance to be published and that a copy of this Ordinance be entered upon the minutes of the meeting of the City Council.

Section 7. **EFFECTIVE DATE OF ORDINANCE.** That this Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall be in full force and effect upon adoption and shall continue in full force and effect from month to month and year to year from its effective date until repealed.

THEREFORE, BE IT RESOLVED, that the City Council of the City of Hoover does hereby ordain, resolve, and enact the foregoing Ordinance for the City of Hoover.

Done this the 16th day of July, 2018.

Gene Smith, President of the City Council

APPROVED:

ATTESTED:

Frank V. Brocato, Mayor

Margie Handley, City Clerk