

CITY OF COCKRELL HILL, TEXAS

ORDINANCE NO. 2008 G

**AN ORDINANCE OF THE CITY OF COCKRELL HILL, TEXAS, AMENDING THE CITY OF COCKRELL HILL CODE OF ORDINANCES, BY ADOPTING A NEW CHAPTER 53 TO BE ENTITLED "DRAINAGE UTILITY"; DECLARING THE CITY'S DRAINAGE SYSTEM TO BE A PUBLIC UTILITY; ESTABLISHING DEFINITIONS; ADOPTING TEXAS LOCAL GOVERNMENT CODE CHAPTER 402; DEFINING THE SERVICE AREA; ESTABLISHING USAGE CATEGORIES; ADOPTING FINDINGS RELATIVE TO A DRAINAGE CHARGE; ESTABLISHING DRAINAGE CHARGES; PROVIDING FOR CERTAIN ASSUMPTIONS RELATIVE TO UTILITY METER LOCATIONS; CREATING A DRAINAGE UTILITY FUND; ADOPTING ADMINISTRATIVE REQUIREMENTS; CREATING EXEMPTIONS; PROVIDING FOR ADJUSTMENTS; PROVIDING FOR REDUCED FEES BASED UPON NEED; DECLARING NO WAIVER OF IMMUNITY; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council ("Council") of the City of Cockrell Hill, Texas ("City"), has authority under Chapter 402 of the Texas Local Government Code to establish drainage fees to cover the costs of providing infrastructure and facilities which permit the safe drainage of storm water, the prevention of surface water stagnation and the prevention of pollution arising from non-point runoff; and

**WHEREAS**, the Council desires to establish a drainage utility for the implementation of drainage fees; and

**WHEREAS**, the Council adopted certain findings at the February 12, 2008, City Council meeting in compliance with Section 402.045(See Appendix A) of the Texas Local Government Code; and

**WHEREAS**, the City Council of the City of Cockrell Hill published the first notice of a public hearing in the Oak Cliff Tribune on or about February 7, 2008, which is at least 30 days before the public hearing date of March 11, 2008, said public notice contained the complete text of this ordinance; and

**WHEREAS**, two subsequent public notices were published prior to March 11, 2008, and the public notices contained the complete text of this ordinance; and

**WHEREAS**, the City Council met on March 11, 2008 and held a public hearing at which all members of the public were given the opportunity to comment on this ordinance; and

**WHEREAS**, the drainage system of the City of Cockrell Hill is hereby declared to be a public utility; and

**WHEREAS**, the City Council hereby adopts Subchapter C, Section 402.043(See Appendix A) of the Texas Local Government Code (the Municipal Drainage Utility System Act).

**NOW, THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COCKRELL HILL, TEXAS:

Section 1. That all of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

Section 2. The Code of Ordinances of the Cockrell Hill is hereby amended by adopted a new Chapter 53, to read as follows:

**CHAPTER 53: DRAINAGE UTILITY**

**General Provisions**

- § 53.01 **PURPOSE**
- § 53.02 **DEFINITIONS.**
- § 53.03 **FINDINGS; ADOPTION OF STATE LAW**
- § 53.04 **SERVICE AREA.**
- § 53.05 **DRAINAGE CHARGE ESTABLISHED**
- § 53.06 **CATEGORIES OF DEVELOPED USE.**
- § 53.07 **FINDINGS RELATED TO CALCULATION OF THE DRAINAGE CHANGE**

**Residential and Non-Residential Properties.**

- § 53.08 **MONTHLY DRAINAGE CHARGE FOR RESIDENTIAL PROPERTIES.**
- § 53.09 **MONTHLY DRAINAGE CHARGE FOR NON-RESIDENTIAL PROPERTIES.**

**Meters and Billing**

- § 53.10 **UTILITY METERS**
- § 53.11 **BILLING.**

**Drainage Utility Fund**

- § 53.12 **DRAINAGE UTILITY FUND.**

**Reports and General Regulations**

- § 53.13 **ANNUAL REPORT**
- § 53.14 **ADMINISTRATION; RULES**

**Adjustments and Exemptions**

- § 53.15 **ADJUSTMENTS**
- § 53.16 **EXEMPTIONS**
- § 53.17 **REDUCED CHARGE BASED ON NEED.**
- § 53.18 **NO WAIVER OF IMMUNITY**

Appendix A

**“CHAPTER 53”:**    **DRAINAGE UTILITY**

**§ 53.01**        **PURPOSE**

(A)     The purpose of all funds derived from the storm water utility is to pay for all or part of the construction, reconstruction, repair, enlarge, improvement, acquisition, maintenance, operation, administration, and use of the storm water utility system as established by the City of Cockrell Hill. All revenues derived from the fee shall be credited to the dedicated storm water fund.

**§ 53.02**        **DEFINITIONS.**

(A)     Except as provided by Subsection (B), words and phrases in this chapter have the same meaning they have in Chapter 402 (Municipal Utilities), Subchapter C (Municipal Drainage Utility Systems), of the Texas Local Government Code.

(B)     In this chapter:

- (1)     *Council* means the City Council of the City of Cockrell Hill, Texas.
- (2)     *Director* means the Director of the Cockrell Hill Public Works Department.
- (3)     *Equivalent Residential Unit* or ERU means 3,000 square feet of impervious cover

**§ 53.03**        **FINDINGS; ADOPTION OF STATE LAW.**

(A)     The Council finds that notice has been given, and hearings held as required by Section 402.045(c) (Adoption of System; Rules) (See Appendix A) of the Texas Local Government Code.

(B)     The Council makes the findings required by Section 402.045(b) (Adoption of System; Rules)(See Appendix A)) of the Texas Local Government Code.

(C)     Chapter 402 (Municipal Utilities), Subchapter C (Municipal Drainage Utility Systems), of the Texas Local Government Code is adopted, and this chapter shall be administered in accordance with its provisions.

(D)     The drainage system of the City is declared to be a public utility. Existing facilities are incorporated in the drainage utility as permitted by Section 402.046 (Incorporation of Existing Facilities) (See Appendix A) of the Texas Local Government Code.

(E) The drainage utility shall be known as the Cockrell Hill Public Works Department.

**§ 53.04 SERVICE AREA.**

The drainage utility service area is the area within the city limits.

**§ 53.05 DRAINAGE CHARGE ESTABLISHED.**

(A) A drainage charge is established.

(B) The drainage charge shall be paid by the user of each benefited property in the service area.

(C) The drainage charge is based on:

- (1) the developed use of the benefited property;
- (2) the amount that development increases runoff and associated pollutants; and
- (3) the amount of impervious cover on the benefited property.

**§ 53.06 CATEGORIES OF DEVELOPED USE.**

The current zoning map shall categorize each benefited property as either residential or non-residential.

**§ 53.07 FINDINGS RELATED TO CALCULATION OF THE DRAINAGE CHARGE.**

(A) The Council finds that:

- (1) impervious cover increases runoff and associated pollutants; and
- (2) it is equitable to assess the drainage charge to each commercial user based on impervious cover.

(B) The Council finds that:

- (1) the drainage attributable to a residence, whether single-family or multi-family, is relatively uniform; and
- (2) it is equitable to assess the drainage charge to each residence assuming impervious cover of 3,000 square feet per residence, or one ERU.

(3) City Council from time to time shall determine and change the rates by resolution.

(C) The Council finds that it is reasonable and equitable to assume that each utility meter in the service area serves a user of a benefited property.

**§ 53.08 MONTHLY DRAINAGE CHARGE FOR RESIDENTIAL PROPERTIES.**

(A) The monthly residential drainage charge per ERU shall be set by ordinance and shall be known as the residential ERU charge.

(B) Each month the user of each residential benefited property shall pay to the City an amount equal to one residential ERU charge.

(C) The director shall determine the number of ERUs on residential benefited property if the impervious cover is over 3000 square feet. The director shall have the capacity to institute charges of more than 1 ERU.

**§ 53.09 MONTHLY DRAINAGE CHARGE FOR NON-RESIDENTIAL PROPERTIES.**

(A) The monthly non-residential drainage charge per ERU shall be set by ordinance and shall be known as the non-residential ERU charge.

(B) Each month the user of each non-residential benefited property shall pay to the City an amount equal to the greater of:

(1) the number of ERUs on the property multiplied by the non-residential ERU charge; or

(2) one residential ERU charge.

(C) The director shall determine the number of ERUs on a non-residential benefited property by calculating the square feet of impervious cover on the subject property, dividing that number by 3,000, and rounding to the nearest whole number.

**§ 53.10 UTILITY METERS.**

(A) The director shall assume that each domestic water meter in the service area serves a user of a benefited property, and shall assess the drainage charge to the person responsible for payment of the utility account for the meter.

(B) If more than one domestic water meter serves a benefited property, the director may determine the allocation of the drainage charge among the users using any reasonable method considering the relative contribution of each to drainage.

(C) In the absence of better information, the director may allocate the drainage charge equally among the users of a benefited property.

**§ 53.11 BILLING.**

The drainage charge shall be shown as a separate listing on the monthly utility bill from the City. Bills for the drainage charge become due in accordance with Section 51.73 of this Code. All proprietaries shall be notified annually charges and any changes in fees.

**§ 53.12 DRAINAGE UTILITY FUND.**

(A) A drainage utility fund is created.

(B) The drainage utility fund shall be administered in accordance with Section 402.049 (Segregation of Income)(See Appendix A) of the Texas Local Government Code. These drainage funds shall only be used for activities outlined in 53.01.

**§ 53.13 ANNUAL REPORT.**

The director shall provide an annual report of the Cockrell Hill Public Works Department revenues, expenses, and programs to the city council. The annual report shall be provided in a timely fashion so as to be reviewed in conjunction with the annual budget.

**§ 53.14 ADMINISTRATION; RULES.**

(A) The mayor shall administer this chapter.

(B) The mayor shall promulgate rules necessary to administer this chapter.

(C) Only the council may change an ordinance, and the director shall make known to the council why a change is needed.

**§ 53.15 ADJUSTMENTS.**

(A) A user may apply to the director for an adjustment in the user's drainage charge if:

(1) the user believes that the drainage charge schedule as applied to the user's benefited property does not fairly reflect the cost of service to the user's benefited property;

(2) the user disputes the category of developed use or another factor used in calculating the drainage charge for the user's benefited property; or

(3) the user's drainage charge has been assessed in error.

(B) The director may adjust the drainage charge of a user who applies for an adjustment under Subsection (A).

(C) A user who disagrees with a determination of the director under this section may apply for a hearing in writing within 5 days of a determination of the director. The Mayor, or his designee, shall act as the hearing officer to consider the user's request for an adjustment. The user requesting the hearing shall have the burden of proof. On completion of the hearing, the hearing officer shall recommend a disposition of the matter to the director who may revise or reinstate the original determination.

(D) After a hearing, a user may appeal the director's decision to the city council. An appeal must be filed in writing with the City Secretary no later than the 5th day after the effective date of the director's decision.

(E) If the city council fails to take action on the appeal by the 45th day after the day the appeal is filed with the City Secretary, the director's decision is final.

(F) A user entitled to an adjustment under this section must apply for the adjustment. Users shall be directed by city staff on how to apply for the adjustment.

(G) A user may not receive a refund resulting from an adjustment under this section except for a drainage charge paid during the two years immediately preceding the date the user applied for the adjustment.

(H) All decisions by the City Council are final.

**§ 53.16 EXEMPTIONS.**

(A) In addition to property exempt under Section 402.053(c) (Exemptions) (See Appendix A) of the Texas Local Government Code, a property is exempt from the drainage charge established by this chapter if:

- (1) the property is owned and occupied by:
  - (a) the State of Texas;
  - (b) a county;
  - (c) an independent school district; or
  - (d) a public institution of higher education; or

**§ 53.17 REDUCED CHARGE BASED ON NEED.**

(A) The user of residential benefited property may request a reduced drainage charge based on financial need. A request must be in writing and be provided to the director.

(B) The user of residential benefited property is eligible for the reduced charge if the user or a person residing in the household of the user:

(1) is a certified recipient of Supplemental Security Income;

(2) is an aged, blind, or disabled Medicaid recipient; or

(3) has been receiving, within the twelve months immediately preceding the request, assistance under the Federal Aid to Families with Dependent Children Program.

(C) The reduced charge is available annually on the user's submission of proof of continuing eligibility. Residents must reapply annually to receive relief granted under this section.

(D) The reduced charge is prospective only and must be requested by the user. The director may not refund any drainage charges under this section.

(E) The reduced charge under this section shall be set by ordinance. A user may receive only the most recently authorized reduction.

**§ 53.18 NO WAIVER OF IMMUNITY.**

This chapter does not imply that a benefited property will be free from flooding or erosion, and does not create additional duties on the part of the City. This chapter does not waive the City's immunity under any law."

Section 3. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Cockrell Hill, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

Section 4. If any section, article, paragraph, sentence clause, phrase or word in this ordinance or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. This ordinance shall become effective, and be in full force and effect, from and after the date of its passage, and it is accordingly so ordained.

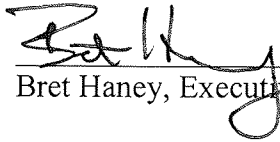
PASSED AND APPROVED the 25th day of March, 2008.





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Luis D. Carrera, Mayor

ATTEST:



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Bret Haney, Executive Assistant

APPROVED AS TO FORM:



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Robert F. Brown, City Attorney

## APPENDIX A

§ 402.043. APPLICATION OF SUBCHAPTER TO MUNICIPALITIES. This subchapter applies to any municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(c), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

§ 402.044. DEFINITIONS. In this subchapter:

(1)(A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1.18 million which is operating a drainage utility system under this chapter, means a lot or tract, but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 402.053(c)(2) and (c)(3) do not apply to a municipality described in this subdivision.

(2) "Cost of service" as applied to a drainage system service to any benefitted property means:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the municipality; and

(G) the administrative costs of a drainage utility system.

(3) "Drainage" means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or

gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(4) "Drainage charge" means:

(A) the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and

(B) if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

(5) "Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

(6) "Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the system.

(7) "Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:

(A) an established schedule of charges;

(B) the use of the police power to implement the service; and

(C) nondiscriminatory, reasonable, and equitable terms as declared under this subchapter.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 402.0451, may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 500,000 population located within 50 miles of an international border;

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or

(C) as provided by Section 402.0451.

(9) "User" means the person or entity who owns or occupies a benefitted property.

(10) "Improved lot or tract" means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

(11) "Wholly sufficient and privately owned drainage system" means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal drainage utility system.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, § 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, § 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 35, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, § 11.258, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, § 13.22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, § 108, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 520, § 1, eff. June 16, 2007.

Text of section effective until April 1, 2009

§ 402.045. ADOPTION OF SYSTEM; RULES. (a) Subject to the requirements in Subsections (b) and (c), the governing body of the municipality, by a majority vote of its entire membership, may adopt this subchapter by an ordinance that declares the adoption and that declares the drainage of the municipality to be a public utility.

(b) Before adopting the ordinance, the governing body must find that:

(1) the municipality will establish a schedule of drainage charges against all real property in the proposed service area subject to charges under this subchapter;

(2) the municipality will provide drainage for all real property in the proposed service area on payment of drainage charges, except real property exempted under this subchapter; and

(3) the municipality will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(c) Before adopting the ordinance, the governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing.

(d) After passage of the ordinance adopting this subchapter, the municipality may levy a schedule of drainage charges. The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Subsection (c). The proposed schedule of drainage charges, as originally adopted or as revised, must be published in the notice.

(e) The municipality by ordinance may adopt and enforce rules as it considers appropriate to operate the drainage utility system. Provided, however, that the prohibitions contained in Section 212.003(a) of the Local Government Code relating to quasi-zoning and other land use regulations in the extraterritorial jurisdiction of a municipality shall apply to any rule or ordinance adopted or enacted by the municipality under this Act, except that

rates may be established using impervious cover measurements relating to land use and building size.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(e), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Text of section effective until April 1, 2009

§ 402.0451. EXTENSION OF SERVICE AREA BY CERTAIN MUNICIPALITIES. (a) A municipality with a population of more than 900,000 located in one or more counties with a population of less than 1.5 million as of the 1990 federal census may extend its service area:

- (1) into the boundaries of another municipality if:
  - (A) before the extension water from the municipality to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and
  - (B) the extension is provided for by an interlocal agreement between the municipalities; or
- (2) beyond its municipal boundaries into an unincorporated area of its extraterritorial jurisdiction if:
  - (A) before the extension water from the area to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and
  - (B) the extension is provided for by an interlocal agreement between the municipality extending its service area and the county containing the area to which the service area is to be extended.

(b) An interlocal agreement under Subsection (a) may:

- (1) contain provisions necessary for the operation of a drainage system within the area to which the service area is extended; and
- (2) provide for charges for treatment of drainage water and methods of assessment of the charges to an owner of a lot or tract of benefitted property in the area to which the service area is extended.

(c) Charges and methods of assessment agreed to under Subsection (b) (2) must comply with Section 402.047.

Added by Acts 1993, 73rd Leg., ch. 773, § 2, eff. June 18, 1993.

Text of section effective until April 1, 2009

§ 402.046. INCORPORATION OF EXISTING FACILITIES. The municipality may incorporate existing drainage facilities, materials, and supplies into the drainage utility system.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Text of section effective until April 1, 2009

§ 402.047. DRAINAGE CHARGES. (a) The governing body of the municipality may charge a lot or tract of benefitted property for drainage service on any basis other than the value of the property, but the basis must be directly related to drainage and the terms of the levy, and any classification of the benefitted properties in the municipality must be nondiscriminatory, equitable, and reasonable.

(b) In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area. The governing body may use approved tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property. The governing body may consider the size, in area, the number of water meters, and topography of a parcel of benefitted property, in assessing the drainage charge to the property.

(c) The governing body may fix rates for drainage charges in advance and may change, adjust, and readjust the rates and charges for drainage service from time to time. The rates must be equitable for similar services in all areas of the service area.

(d) Unless a person's lot or tract is exempted under this subchapter, the person may not use the drainage system for the lot or tract unless the person pays the full, established, drainage charge.

(e) Users residing within the established service area, but outside the municipality's boundaries, may appeal rates established for drainage charges to the Texas Natural Resource Conservation Commission as authorized by Section 13.043(b) of the Water Code.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 76, § 11.259, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, § 2, eff. Sept. 1, 1997.

Text of section effective until April 1, 2009

§ 402.048. BILLINGS; DEPOSIT NOT REQUIRED. (a) The municipality may bill drainage charges, identified separately, with the municipality's other public utility billings. Any delinquent billings may be collected on the benefitted property under the procedure prescribed by this subchapter.

(b) The municipality may not require a deposit for drainage service as a precondition to accepting surface flow in the drainage utility system.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Text of section effective until April 1, 2009

§ 402.049. SEGREGATION OF INCOME. The income of a drainage utility system must be segregated and completely identifiable in municipal accounts. If drainage charges are solely for the cost of service, the municipality may transfer the charges in whole or in part to the municipal general fund, except for any part collected outside municipal boundaries and except for any part pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve for future construction, repair, or maintenance of the drainage system. If the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements, including replacement, new construction, or extension, that amount is not transferable to the general fund.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(f), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Text of section effective until April 1, 2009

§ 402.050. DELINQUENT CHARGES. (a) Any charge due hereunder which is not paid when due may be recovered in an action at law by the municipality. In addition to any other remedies or penalties provided at law or in this subchapter, failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the municipality, and municipalities are hereby empowered to enforce this provision against delinquent users. The employees of the utility established in accordance with this subchapter shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection or repair or for the enforcement of the provisions of this subchapter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Text of section effective until April 1, 2009

§ 402.051. DRAINAGE REVENUE BONDS. By majority vote of the governing body, the municipality may issue drainage revenue bonds. The municipality may use Chapter 1201, Government Code. In addition, the municipality may pledge income received by contracts for the provision of drainage to other governments or governmental subdivisions located inside or outside the service area.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 1420, § 8.350, eff. Sept. 1, 2001.

Text of section effective until April 1, 2009

§ 402.052. DISCONTINUATION OF DRAINAGE SYSTEM.

(a) If, after at least five years of substantially continuous operation of a municipal drainage system, the governing body of the municipality determines that the system should be discontinued, that the powers under this subchapter should be revoked, and that provision for municipal drainage should be made by other revenues, the governing body may adopt an ordinance to that effect after providing notice and a public hearing as provided by Section 402.045.

(b) If the municipality discontinues a system under Subsection (a), it may not adopt a system under this subchapter for at least five years after the discontinuation.

(c) A discontinuation does not affect a written obligation incurred by the municipality for funding or for the purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.

(d) A claim for damages based on an alleged failure of the drainage system that is filed with the municipality before the adoption of the ordinance discontinuing the drainage system is not abated by the discontinuation.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, § 1(g), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991.

Text of section effective until April 1, 2009

§ 402.053. EXEMPTIONS. (a) A governmental entity or person described by Subsection (b) and a lot or tract in which the governmental entity or person holds a freehold interest may be exempt from this subchapter and all ordinances, resolutions, and rules adopted under this subchapter.

(b) The following may be exempt:

- (1) this state;
- (2) a county;
- (3) a municipality;
- (4) a school district.

(c) The following shall be exempt from the provisions of any rules or ordinances adopted by a municipality pursuant to this Act:

- (1) property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
- (2) property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the municipality in which the property is located for maintenance; and
- (3) a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located.

(d) A municipality may exempt property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code, from drainage charges under this subchapter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended



by Acts 1991, 72nd Leg., ch. 852, § 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, § 2, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, § 3, eff. June 18, 1993.

Text of section effective until April 1, 2009