

**AGENDA
BENBROOK CITY COUNCIL
THURSDAY, SEPTEMBER 6, 2007
911 WINSCOTT ROAD, BENBROOK, TEXAS
PRE-COUNCIL WORKSESSION 7:00 P.M.
CENTRAL CONFERENCE ROOM**



1. Review and discuss agenda items for regular meeting.
2. Receive other information from staff and Boards and Commissions.

**REGULAR MEETING 7:30 P.M.
COUNCIL CHAMBERS
ALL AGENDA ITEMS ARE SUBJECT TO FINAL ACTION**

I. CALL TO ORDER

**II. INVOCATION – Pastor Jeff Klingenberg with Benbrook Christian Fellowship
PLEDGE OF ALLEGIANCE**

III. CITIZEN PRESENTATION

1. Presentation by Joint Land Use Study (JLUS)
2. Scott Roberson – Market Center Bingo – Request permanent exemption to Smoking Ordinance

IV. PRESENTATION BY BENBROOK ECONOMIC DEVELOPMENT CORPORATION

EDC-2007- Ratify Benbrook Economic Development Corporation Budget for FY2007-2008

V. PRESENTATION BY PLANNING AND ZONING COMMISSION

VI. REPORTS OF CITY MANAGER

A. GENERAL

- G-1720 Adopt Ordinance establishing a Stormwater Utility System (Ordinance No. 1240) Public Hearing
- G-1721 Adopt Ordinance assessing a monthly utility fee to fund the Stormwater Utility System (Ordinance No. 1241) Public Hearing
- G-1722 Interlocal Agreement with Benbrook Water Authority for Refuse and Storm Water Fee Billing and Payment Collection Services
- G-1723 Interlocal Agreement with Benbrook Water Authority for Street Repair Services
- G-1724 Interlocal Agreement with City of Fort Worth for Household Hazardous Waste Program
- G-1725 Ordinance taxing tangible personal property in transit (Ordinance No. 1245) Public Hearing
- G-1726 Resolution denying Atmos Gas GRIP rate increase
- G-1727 Consider purchase of Renewable Energy Credits

VII. OTHER MATTERS OF BUSINESS

1. Public Hearing on 2007 Property Tax Rate
2. Public Hearing on Proposed Budget for Fiscal Year 2007-2008

VIII. INFORMAL CITIZEN COMMENTS – State Law prohibits any deliberation of or formal action regarding items presented in information citizen comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff place the item on an agenda for a subsequent meeting.

IX. ADJOURNMENT

ORDINANCE NO. 1240

AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, ESTABLISHING A MUNICIPAL STORMWATER (DRAINAGE) UTILITY SYSTEM; SETTING FORTH DEFINITIONS; ESTABLISHING STORMWATER CHARGES AND MONTHLY STORMWATER UTILITY SYSTEM FEES; ESTABLISHING THE BILLING AND PAYMENT OF STORMWATER (DRAINAGE) FEES; PROVIDING PENALTIES AND REMEDIES FOR FAILURE TO PAY FEES; PROVIDING EXEMPTIONS FROM AND ADJUSTMENT OF FEES; ESTABLISHING PROGRAM RESPONSIBILITIES AND A STORMWATER UTILITY SYSTEM FUND; PROVIDING PROCEDURES FOR APPEALS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, within the City of Benbrook (the “City”) there is an existing stormwater system which has been developed over a number of years for the purpose of collecting and disposing of stormwater runoff; and

WHEREAS, portions of the present stormwater system are inadequate to control and manage stormwater runoff within the City limits; and

WHEREAS, it is necessary and essential to ensure that the collection of stormwater runoff and control of stormwater runoff within the City limits adequately protects the health, safety, and welfare of the citizens of the City including, but not limited to, the protection from loss of life and damage to property caused by surface water overflows and surface water stagnation; and

WHEREAS, it is necessary and essential that the City address the various water quality and environmental issues that may further burden its stormwater infrastructure requirements; and

WHEREAS, the City Council has examined the manner and time of the giving and publishing of notice of a public hearing to consider this ordinance and has found that notice of said hearing was duly, properly and legally given, said notice having been published at least three times prior to the date of such hearing, in a newspaper of general circulation in the City, the first of which publications was made on or before thirty (30) days prior to the date of the public hearing; and

WHEREAS, Chapter 402, Subchapter C, of the Texas Local Government Code, as amended (the “Act”), authorizes the City to establish a municipal drainage (stormwater) utility system within the boundaries of the City; and

WHEREAS, the Act authorizes the City to provide rules for the use, operation and financing of a drainage (stormwater) utility system; and

WHEREAS, the Act authorizes the City to prescribe bases upon which to fund a drainage (stormwater) utility system and to assess the fees and charges to support the system; and

WHEREAS, the Act authorizes the City to provide exemptions of certain governmental and other entities or persons from the payment of these charges; and

WHEREAS, the City desires to adopt the Act and establish a stormwater utility system as a public utility; and

WHEREAS, in setting the schedule of charges for stormwater service, the calculations are based on an inventory of the lots and tracts within the City and the area of and type of development on the benefitted properties; and

WHEREAS, it is the intent of the City to fund the stormwater utility system in a manner that fairly and equitably allocates the cost of stormwater control to properties in proportion to stormwater runoff potential for each class of property;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS:

SECTION I. DEFINITIONS

The following definitions apply to the establishment and the operation of the Stormwater Utility System:

1. Act: means Chapter 402, Subchapter C, of the Texas Local Government Code, as amended.
2. Allocated Portion of a Parcel: means that portion of a parcel which has been allocated to an owner or customer based on the area utilized by the owner or customer compared to the total area of a parcel.
3. Benefitted Property: means an improved parcel, lot or tract to which stormwater service is made available. All parcels within the City receive stormwater service in some manner directly or indirectly.
4. City: means the City of Benbrook.
5. City Engineer: means the City Engineer of the City or the City Engineer's designee.
6. Customer: means the person(s) or entity(ies) recorded as the customer or user of utility services for a parcel as recorded in the records of the City's utility billing contractor, Benbrook Water Authority (BWA).

7. Dwelling Unit: means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by applicable City codes, for not more than one family, or a congregate residence for 10 or less persons. A dwelling unit may be a single family house, a town home, a manufactured home or a portion of a duplex, triplex or quadplex.
8. Impervious Area (or Impervious Surface): means a surface that has been compacted or covered with a layer of material so that it is resistant to infiltration by water and does not have a natural state of vegetative cover. Impervious areas include, but are not limited to, compacted soils with a surface treatment, gravel, crushed stone surfaces or soil compacted by vehicle traffic, asphalt or concrete pavement, parking lots, driveways, sidewalks and private roadways, and buildings, and other man-made structures, surfaces, or any uses that change the natural surface of the land and have the effect of increasing, concentrating, or otherwise altering stormwater runoff from that experienced under natural vegetative conditions.
9. Improved Parcel: means a lot or parcel that has been changed from its natural state by construction of a structure or other improvement on all or a portion of it that causes an impervious surface or change in the natural state of the vegetated soil on the property.
10. Non-Residential Property: means an improved parcel which is not a residential property, including commercial, industrial, institutional, governmental, apartments, condominiums, home owners' association and similar properties.
11. Owner: means the person(s) or entity(ies) recorded as the owner of a parcel as recorded in the records of the Tarrant County Appraisal District.
12. Parcel: means one or more lots or tracts, or portions of lots or tracts.
13. Residential Property: means an improved parcel upon which not more than four (4) dwelling units are constructed.
14. Service Area: means the area within the boundaries of the City.
15. Stormwater Infrastructure or Drainage Infrastructure: means the property, real, personal or mixed, that is used in providing stormwater capacity to manage and control stormwater runoff for the stormwater utility system, including bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, retention ponds, ditches, draws, creeks, 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 stormwater runoff away, collect, store, or treat the stormwater runoff, or divert the stormwater runoff into natural or artificial watercourses. Drainage infrastructure has the same meaning as stormwater infrastructure.

16. Stormwater Operations and Maintenance Expenditures: means any expenditures that are required to finance, operate and maintain stormwater infrastructure including debt service, equipment, personnel, educational and administrative expenditures.
17. Stormwater Only Account: means a utility billing account established for the sole purpose of billing applicable stormwater utility fees where other utility services are provided privately or through suppliers other than the City or its contractors.
18. Stormwater Runoff Potential: means relative potential for causing stormwater runoff quantities or velocities from a parcel based on the type of development or land use on the parcel and the size of the parcel.
19. Stormwater Utility Fee or Drainage Utility Fee: means the charge, including interest and penalties, paid by the owner or customer of a benefited property for stormwater services provided by the stormwater utility system, including, but not limited to, the items described in the definition of “cost-of-service” in Section 402.044(2) of the Act. Stormwater utility fee has the same meaning as the drainage utility fee.
20. Stormwater Utility Fee Ordinance: means the section of the City Code, Chapter 1.12, establishing fees for City services, as amended.
21. Stormwater Utility Ordinance: means this Ordinance, as amended from time to time.
22. Stormwater Utility System or Drainage Utility System: means the stormwater utility system owned or controlled, in whole or in part by the City, including the City’s existing stormwater facilities, materials, and supplies and any stormwater facilities, materials, and supplies hereafter constructed or utilized, and dedicated to the service of benefited property, and including provision for additions to the system. The stormwater utility system has the same meaning as the drainage utility system.
23. Wholly Sufficient and Privately Owned Stormwater System: means land and facilities owned and operated by a person or entity other than the City and from which stormwater does not discharge under any storm frequency event or conditions into a creek, river, slough, culvert, channel or other infrastructure that is part of the City's stormwater utility system.

SECTION II.
ESTABLISHMENT OF A STORMWATER UTILITY

- A. Creation within the Meaning of the Act. The City hereby adopts the provisions of Subchapter C of Chapter 402 of the Texas Local Government Code, (the “Act”), and hereby creates and establishes a stormwater utility system to serve the City, which boundaries shall be the boundaries of the City. The City declares the stormwater utility system to be a public utility and further finds that the City shall:

1. Establish a schedule of stormwater (drainage) charges against all real property in the City subject to charges under Subchapter C of Chapter 402 of the Texas Local Government Code; and
 2. Provide stormwater (drainage) facilities and services for real property in the City on payment of stormwater charges, except such real property which may be exempted therefrom as authorized by law; and
 3. Offer such drainage (stormwater) service on non-discriminatory, reasonable and equitable terms.
- B. Duty of City Engineer. It shall be the duty of the City Engineer to administer the stormwater utility system. The City Engineer shall keep an accurate record of all properties benefitted or served by the stormwater utility system and the stormwater utility fee charged for each parcel or portion of a parcel. The record may be maintained within the City's or its contractor's utility billing system or in other record keeping systems that may be developed.
- C. Program Implementation. By the adoption of this Ordinance, the City makes no representation that all of stormwater problems will be remedied; and the City Council is given full discretion in establishing the time and quantitative priorities in expending funds on a reasonable basis as the same become available to meet the stormwater needs of the City. The adoption of this Ordinance shall not be construed to relieve private land owners, developers or other individuals or entities from providing stormwater improvements pursuant to the ordinances of the City and the laws of this State which relate to stormwater or stormwater improvements. Further, the City does not waive any immunity granted under any law.
- D. Access to Benefitted Properties. Employees of the City shall have access, at all reasonable times, to any benefitted properties served by the stormwater utility system for inspection or repair or enforcement of the provisions of this Ordinance and Chapter 402, Subchapter C, Local Government Code

SECTION III.

ESTABLISHMENT OF A STORMWATER UTILITY FEE AND BILLING

- A. Stormwater Utility Rate Classes. A stormwater utility fee is established, and the fee shall be imposed on each benefitted property within the City for services and facilities provided by the stormwater utility system. For purposes of imposing the stormwater utility fee, all eligible parcels within the City are classified into the following categories:
1. Residential
 2. Non-Residential

B. Responsible Party.

1. The stormwater utility fee shall be billed monthly along with other utilities provided to the property, including water, wastewater or solid waste (garbage) services.
2. The bill imposing the stormwater utility fee will be mailed to either the owner or customer who is currently established as the responsible party for water, wastewater and solid waste service for the parcel; and, the owner or customer recorded in the utility billing system will be responsible for payment of the fee.
3. Where an improved parcel is not occupied by a customer that might use water, wastewater, solid waste or other utility service and considered by the City to be vacant, either on a temporary or permanent basis, the City may bill the owner of the parcel for the stormwater utility fee.
4. Where a parcel is not billed for water, wastewater, solid waste or other service to an owner or customer of the City or BWA, the City is hereby authorized to establish a "stormwater only account" and to bill the stormwater utility fee to either the owner or customer, as the City Engineer determines is appropriate.

C. Revision of Rates. The City Council shall establish the initial rates for the stormwater utility fee by ordinance. The City Council may review the schedule of rates at any time and may, by ordinance, increase or decrease the rates within the schedule, upon a determination that said increase or decrease is warranted.

D. Billing Procedures and Policies.

1. Any partial payment of the stormwater utility fee will be applied against the amount due in accordance with the policies and procedures established by the City and BWA with regard to all utility services provided by the City or BWA.
2. A late charge and interest may be imposed in accordance with the policies and procedures established by the City or BWA with regard to all utility services.

E. Non Payment. The City may file suit to recover any charges due hereunder, together with maximum interest, attorney fees and other costs and charges that may be allowed by the act or other law, which is not paid when due. In addition to any other remedies or penalties provided by law or in this Ordinance, failure of a customer or owner of the stormwater utility system to pay the charges promptly when due shall subject such customer or owner to discontinuance of any utility services provided by the City and/or placement of a lien against the property.

SECTION IV.
CALCULATION OF STORMWATER UTILITY FEES

- A. Rates in Accordance with Act. The stormwater utility fee shall be established in accordance with the provisions of the act, including, but not limited to, Section 402.047, which states that the basis must be directly related to drainage and the terms of the levy, and any classification of the benefited properties in the municipality must be nondiscriminatory, equitable, and reasonable.

- B. Fee Calculation. The stormwater utility fee shall be based on an inventory of parcels within the City which also evaluates the stormwater runoff potential on those parcels and establishes a rate for each class of property. The stormwater utility fee shall be set to recover the cost-of-service that has been established for the stormwater utility system in a fair and equitable manner, and if so determined by the City Council, an amount to establish one or more funds to provide financing for future stormwater system construction and for implementing programs to improve stormwater quality. The proportional stormwater runoff potential for each class shall be distributed equitably between classes and among the parcels in each class in proportion to the relative contribution of stormwater runoff from each class.

- C. Stormwater Runoff Potential. For purposes of establishing the stormwater runoff potential on parcels between and within each rate class, the impervious area for parcels shall be inventoried from information established by Tarrant County Appraisal District, from Geographic Information System records, from aerial photography and from site plans or plats available for properties within the City. The impervious area measured in square feet as obtained from these database sources, site plans or other survey or engineering calculations shall be used to establish the relative stormwater runoff potential for each rate class and among parcels within each rate class.

SECTION V.
APPEAL

- A. Appeal of Stormwater Utility Fees to the City Engineer. An owner or customer who has been charged a stormwater utility fee and believes that the calculation or determination of the stormwater utility fee is incorrect may appeal the fee determination to the City Engineer. The City Engineer shall evaluate all appeals based on the methodologies for calculating the stormwater utility fee set forth in Chapter 1.12 of the City Code.

- B. Process.
 - 1. The appeal shall be in writing and set forth in detail the grounds upon which relief is sought. The City Engineer shall decide on the appeal based upon a preponderance of the evidence.

 - 2. Until October 01, 2008, the City Engineer shall issue a decision on the appeal within four (4) months from the date that the City Engineer receives the appeal. If the City Engineer determines an adjustment is warranted, he shall authorize an adjustment retroactive to the

beginning of billings of the appealed fee and may also be retroactive for no more than one (1) year prior to the receipt of the appeal.

3. After October 01, 2008, the City Engineer shall issue a decision on the appeal within thirty (30) days from the date that the City Engineer receives the appeal. An adjustment resulting from such a request shall be prospective and applied to future billings and may also be retroactive for no more than three (3) months prior to the receipt of the appeal.
4. The City Engineer shall issue a written decision on an appeal.

B. Supporting Information for Appeal. The person filing the appeal may be required, at the person's cost, to provide supplemental information to the City Engineer, including but not limited to survey data sealed by a Texas licensed professional land surveyor, engineering reports sealed by a Texas licensed professional engineer qualified in civil engineering, or other documentation that the City Engineer deems necessary to properly evaluate the appeal. Failure to provide requested information in a timely manner may result in denial of the appeal.

C. Appeal of Stormwater Utility Fees to the City Council.

1. An owner or customer may appeal the following decisions of the City Engineer to the City Council:
 - a. the applicability of a stormwater utility fee for a parcel;
 - b. the calculation of applicable stormwater runoff potential for a parcel;
 - c. the calculation of the stormwater utility fee for a parcel; or
 - d. the discontinuance of utility service, filing of a lien or other legal actions for non-payment of stormwater utility fees.
2. The owner or customer shall file a written appeal to the City Council with the City Secretary within thirty (30) days following receipt of the City Engineer's decision. The City Council shall hear the appeal within sixty (60) days of receipt of the appeal by the City Secretary. Notice of the hearing shall be mailed to the address given in the appeal form or, if no address is given, to the address on the utility billing statement at least fourteen (14) days prior to the hearing.
3. The burden of proof shall be on the owner or customer to demonstrate that the fee is not applicable or that the determination of the value of the fee was not calculated according to the applicable stormwater fee schedule or the methodologies established in the Stormwater Utility Fee Ordinance and Chapter 1.12 of the City Code. If applicable, and if not previously submitted to the City Engineer, the owner or customer shall submit, with the appeal, a report describing the basis for the appeal. The report shall be prepared by a Texas licensed professional engineer qualified in civil engineering. The failure to submit such a report shall be considered in determining whether the applicant has met the burden of proof.

4. If the appeal is accompanied by a bond or other sufficient security satisfactory to the City Attorney in an amount equal to the original determination of the stormwater utility fee due, any discontinued utility services may be reinstated while the appeal is pending.
5. At the hearing, the City Council shall allow testimony from the applicant, City employees and other interested persons relevant to the appeal. The hearing may be continued from time to time.
6. Following the hearing, the City Council shall consider all evidence and determine whether the appeal should be granted (in whole or in part) or denied.
7. The City Council shall complete its review and make a decision about the appeal within thirty (30) days of the hearing. The City Council shall apply the standards and review criteria contained in this Section.
8. The City Council's decision shall be final.

E. Imposition and Appeal of Lien.

1. Before imposing a lien for delinquent stormwater utility charges, the City shall send notice to the owner of the amount of the charges owed and any penalties or interest accrued, and of the owner's right to appeal the imposition of the lien. The notice must provide a time, place and means by which the charges causing the lien may be paid or disputed. The notice shall be sent to the address shown on the tax rolls if the Owner has not notified the City of a different address.
2. Within ten (10) working days of the postmark of the notice sent to the owner, the owner may appeal the decision to impose the lien on the property to the City Engineer.
3. The owner shall present evidence at a meeting with the City Engineer. Within five (5) working days after the date of the meeting, the City Engineer shall direct that the lien not be filed if he finds the customer or the owner does not owe a fee, and shall give the owner written notice of the decision.
4. If warranted, the City Engineer may modify the lien to reflect the true amount of delinquency in payment for services to the property.
5. When a person pays all principal, interest and all other charges allowed by law that are secured by a lien filed pursuant to this Ordinance, the City Engineer shall execute a release of that lien.

SECTION VI.
TERMINATION OF DISTRICT

If, after at least five (5) years of substantially continuous operation of the stormwater utility system, the City Council determines that the stormwater utility system should be discontinued, the powers under the act should be revoked, and the provision for financing municipal stormwater costs should be made by using other revenues, the City Council may adopt an ordinance that in effect, after providing notice and a public hearing as required by the act, discontinues the stormwater utility system.

SECTION VII.
STORMWATER UTILITY FUND

A. Stormwater Fund. A stormwater utility fund is established and may consist of one or more accounts. All stormwater utility fees shall be deposited as collected and received into this fund, and shall be used exclusively for stormwater services as stated in Section 402.044(2) of the act, including, but not limited to the following:

1. The cost of the acquisition 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;
2. The cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;
3. The 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, designing, providing, or determining the feasibility and capability of structures, equipment, and facilities used in draining the benefitted property;
4. The cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;
5. The prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a stormwater facility used in draining the benefitted property;
6. The prorated cost of debt service and reserve requirements for funding of stormwater infrastructure, equipment and facilities paid with revenue bonds or other securities or obligations issued by the City and supported by pledge of stormwater revenues including any fees and expenses incidental thereto;
7. To the extent permitted by law, the cost of constructing, sampling, monitoring, building, inspecting and maintaining structures needed for the State's regulation and permitting requirements imposed on the City for providing stormwater quality improvements for the benefitted property; and

8. The administrative costs of the stormwater utility system.

B. Stormwater Fund Accounting.

1. The City shall clearly account for revenues and expenditures authorized for operation of the stormwater utility system.
2. The revenues collected from stormwater utility fees shall be segregated and completely identifiable from other City funds and accounts.
3. Funds and revenues in the stormwater utility fund may be transferred to the City's general fund as allowed by law.

C. Stormwater Service Deposit. A deposit shall not be charged for initiation or continuation of stormwater utility service.

SECTION VIII.
EXEMPTIONS

A. The following entities or persons shall be exempt from payment of the fees established by this ordinance:

1. State Government Entities. A state governmental entity listed below, and a parcel in which the governmental entity holds a freehold interest is exempt from payment of the fees established by this ordinance:
 - a. the State of Texas, and
 - b. a State agency
2. Institutes of Higher Education. A public or private institution of higher education is exempt from payment of the fees established by this ordinance.
3. Undeveloped Property Exemption. Any property to which a mandatory exemption under Section 402.053 of the act applies is exempt from this ordinance, including without limitation:
 - a. property with proper construction and maintenance of a wholly sufficient and privately owned stormwater system that does not discharge under any storm frequency event or conditions to waterways controlled or maintained by the City; and
 - b. 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 City for maintenance; and

- c. a subdivided parcel or lot, until a structure has been built on the lot and a certificate of occupancy has been issued, or the City has taken another official action to release the property for occupancy; and
4. Other Exemptions. Any property owned by the following described or identified entities are exempt from payment of the fees established by this ordinance:
 - a. City or Benbrook;
 - b. Benbrook Water Authority;
 - c. Tarrant County; and
 - d. Corps of Engineers.
5. Proof of Exemption. If the owner of property asserts that such property is exempt pursuant to this Section or any other applicable law, such property owner has the burden to assert such exemption by filing notice of eligibility for such exemption and sufficient evidence of entitlement to such exemption with the City Engineer. If the exemption is not granted, the owner may appeal using the procedures for appeal provided in Section V. above.

SECTION IX. CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Benbrook, Texas, as amended, except where the provisions are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION X. SAVINGS AND SEVERABILITY CLAUSE

It is hereby declared to be the action of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid due to conflict with superior statute by the valid judgment or decree of any court of competent jurisdiction, such phrases, clauses, sentences, paragraphs and sections shall be deemed to be reformed to the minimum extent necessary to conform with such constitutional and superior statutory provisions; furthermore, any such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, phrase, paragraph or section.

SECTION XI.
EFFECTIVE DATE

This Ordinance shall be in full force and effect after its passage, and it is so ordained.

PASSED AND APPROVED on this _____ day of _____, 2007.

Jerry Dittrich, Mayor

ATTEST:

Joanna King, City Secretary

ORDINANCE NO. 1241

AN ORDINANCE OF THE CITY OF BENBROOK ESTABLISHING MONTHLY STORMWATER UTILITY FEES FOR THE PURPOSE OF FUNDING THE STORMWATER UTILITY AS AUTHORIZED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has adopted Ordinance No. 1240, the Stormwater Utility Ordinance, creating a stormwater (drainage) utility system for the purpose of providing stormwater service for real property in the proposed service area upon payment of stormwater charges (except real property that is exempt from such charges), and offering stormwater service on nondiscriminatory, reasonable and equitable terms; and

WHEREAS, the City Council now desires to levy a schedule of stormwater charges for stormwater services, which the City Council finds is nondiscriminatory, reasonable and equitable; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENBROOK, TEXAS:

**SECTION I.
APPLICABILITY OF STORMWATER UTILITY FEES**

The City Council hereby establishes the stormwater utility fees as set forth herein. Stormwater utility fees will be levied against all real property in the established service areas except real properties that are exempt in the Stormwater Utility Ordinance. These fees shall be imposed and issued with utility billing statements on and after October 1, 2007.

**SECTION II.
CALCULATION OF STORMWATER UTILITY FEE**

A. Stormwater Utility Fee. Stormwater utility fees shall become part of Chapter 1.12 of the City Code and shall be calculated based on the total stormwater runoff potential for improved parcels for each customer class within the City measured as impervious area in square feet (SF). The total stormwater runoff potential shall be divided into the two (2) customer classes of residential and non-residential based on the relative amount of impervious area in each class.

1. Residential Property Fees. Stormwater utility fees for residential property, as defined in the Stormwater Utility Ordinance 1240, shall be calculated for each dwelling unit at the following flat rate per dwelling unit:

a. Residential Parcel: Fee = \$ 6.50 per dwelling unit per month



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/07	REFERENCE NUMBER: G-1722	SUBJECT: Interlocal Agreement with Benbrook Water Authority for Refuse and Storm Water Billing and Payment Collection	PAGE: 1 of 1
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BACKGROUND

Through an Interlocal Agreement (ILA), the City of Benbrook engages the Benbrook Water Authority (BWA) to bill and collect residential refuse accounts. Because the BWA already bills these customers for water and sewer service, an economies of scale is created that benefits the City, the Authority and ultimately the citizens of Benbrook.

PROPOSED INTERLOCAL AGREEMENT

The proposed ILA, in addition to the refuse billing and payment collection, includes BWA collection of storm water fees. The proposed ILA establishes a reimbursement to the BWA of 46.95 cents per bill (and collection cycle), a 1.3% cost-of-living increase over last year. The same cost-of-living increase is utilized in calculating the rate the BWA reimburses the City via the ILA agreement for street repairs.

The term of the proposed ILA is one (1) year, beginning October 1, 2007 and ending September 30, 2008

RECOMMENDATION

Staff recommends that City Council approve the Interlocal Agreement with the Benbrook Water Authority for refuse and storm water fee collection.

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/07	REFERENCE NUMBER: G-1723	SUBJECT: Interlocal Agreement with Benbrook Water Authority for Street Repair Services	PAGE: 1 of 1
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BACKGROUND

When the Benbrook Water Authority (BWA) experiences a water or sewer line failure under a street, the BWA excavates the street and makes line repairs. After line repairs are completed, the BWA is responsible for restoring the damaged street. These street repairs are commonly referred to as "street cuts". Starting in FY 2000/2001, the City of Benbrook has repaired street cuts for the BWA through an Interlocal Agreement (ILA).

Prior to this collaboration, the BWA contracted with a private firm for this service. Unfortunately, the contractor did not make repairs until a number of street cuts had accumulated. As a result, street cuts were often not completed in a timely manner, occasionally remaining open for several months. Consequently, the City and BWA received numerous complaints from citizens regarding these pending repairs. In addition, the uncompleted street cuts compromised the adjacent street area and allowed water to infiltrate the street sub-base. The ongoing ILA, which expires September 30, has resolved these negative issues.

PROPOSED INTERLOCAL AGREEMENT

The proposed ILA again engages the City of Benbrook to complete street cuts for the BWA. The term of the proposed ILA is one (1) year. The proposed agreement is identical to last year's agreement *except* that the repair price is increased by 1.3% to \$8.28/square foot. The 1.3% adjustment reflects the CPI increase. Similarly, this same 1.3% CPI rate adjustment is utilized for the annual ILA for garbage billing/collection services provided by the BWA.

OPERATING IMPACT

BWA street cuts constitute approximately 15% of the total street cuts accomplished by the City in a given year. Because of the efficiencies of scale associated with the street cut process, the repairs are easily absorbed without significantly impacting operations.

RECOMMENDATION

Staff recommends that City Council approve the Interlocal Agreement for the City of Benbrook to complete street cuts for the Benbrook Water Authority.

SUBMITTED BY:	DISPOSITION BY COUNCIL: <input type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY: CITY SECRETARY
CITY MANAGER		DATE:



City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/07	REFERENCE NUMBER: G-1724	SUBJECT: Interlocal Agreement with City of Fort Worth for Household Hazardous Waste Program	PAGE: 1 of 1
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Background

The current fiscal year marks the 8th consecutive year of participation in the Fort Worth Environmental Collection Center Household Hazardous Waste collection program. Through the program, the City hosts twice-yearly household hazardous waste collection events. The events utilize the Collection Center's mobile waste collection unit, the "Crud Cruiser". Benbrook and Fort Worth employees staff the events, where citizens bring unused toxic household chemicals for proper disposal. Accepted items include paints, pool chemicals, fertilizers, pharmaceuticals, batteries, motor oil and filters, cleaning solvents, and other household chemicals. In addition to the collection day events, citizens also deliver items directly to the Fort Worth Environmental Collection Center year-round via a voucher system coordinated through City staff.

Interlocal Agreement

The City has annually entered into an interlocal agreement with the City of Fort Worth to participate in this program. The current agreement expires on September 30, 2007. To continue participation in this program, the City must approve and return the annual interlocal agreement to the City of Fort Worth by September 18, 2007. The proposed agreement is unchanged from last year, except the rate is \$47 per household, representing a one dollar (\$1) per household increase from the current agreement. The new contract term is from October 1, 2007 through September 30, 2008.

Recommendation

Staff recommends that City Council enter into an interlocal agreement with the City of Fort Worth Environmental Collection Center to continue participating in the Household Hazardous Waste Program.

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City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/07	REFERENCE NUMBER: G-1725	SUBJECT: Ordinance taxing tangible personal property in transit (Super Freeport)	PAGE: 1 of 1
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New Legislation

The State Legislature passed HB 621 (Super Freeport) at the end of the last session. The bill implemented legislation based on a constitutional amendment passed several years ago. The bill is very similar to the existing Freeport Exemption, but has a potentially larger impact. The new law passed without much scrutiny because it affected only one county in Texas. However, an amendment was added that made the exemption applicable statewide.

The bill exempts goods, principally inventory, that is stored in a location that is not owned by the owner of the goods and is transferred from that location to another location within 175 days. The goods may be in the location for the purposes of assembling, storing, manufacturing, processing, or fabricating by the person who acquired or imported the property. Certain specific types of goods are excluded from exemption, such as: oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory. Petroleum products are defined to be only the immediate derivatives of oil and natural gas, so some goods that might be considered petroleum products may actually be exempted from taxation by the new law.

Impact on the Tax Base

At present, the new law will have a limited impact because most goods are kept in facilities that are owned by the owners of the goods themselves. However, in order to take advantage of this new law, many property owners may seek to transfer ownership of either the goods or the facilities in which the goods are stored, manufactured, processed to legal entities with different ownership. These "paper transfers" of ownership could make the property exempt.

Based on the current TAD value for Freeport Property within the City and the projected tax rate, the City could lose between \$200,000 to \$350,000 per year.

Possible Action

The governing body of each taxing unit may act to tax these goods by passing an Ordinance to "Opt Out" of this new exemption. Before City Council can act to tax these goods, a public hearing must be held.

RECOMMENDATIONS

Staff recommends that City Council conduct a public hearing and then adopt the proposed Ordinance to "Opt Out" of the new Super Freeport Exemption.

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City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/07	REFERENCE NUMBER: G-1726	SUBJECT: Resolution denying Atmos Gas GRIP rate increase	PAGE: 1 of 1
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On May 31, 2007, Atmos Energy Mid Tex (Atmos) filed its latest request for an interim rate adjustment based on calendar year 2006 under the Gas Reliability Infrastructure Program (GRIP) with 1) the Texas Railroad Commission, 2) the City of Benbrook and 3) other cities served by Atmos. The proposed increase to current customer or meter charges is \$0.59 for residential customers, \$1.47 for commercial customers, and \$28.90 for industrial customers. City Council suspended that increase at the July 19, 2007 meeting to allow time for a study of the proposal.

RJ Covington Consulting (RJC) has reviewed the GRIP filing and has confirmed that Atmos has removed some costs that were disallowed by the Texas Railroad Commission (RRC) in their most recent rate proceeding. However, RJC has identified several other items which should have been removed and were not. These expenses included office furniture, communications equipment, security services, computer equipment, and the transfer of assets from one division to another for a total of almost \$3,400,000.

The proposed resolution:

- 1) Denies the Atmos Energy Mid-Tex GRIP rate increase effective immediately;
- 2) States the City's support for legislation to reform GRIP statues; and
- 3) Asks that the City's legislative delegation support the efforts to reform GRIP in the next session.

RECOMMENDATION

Staff recommends that City Council adopt the proposed resolution denying the GRIP rate increase as proposed by Atmos Energy Mid-Tex.

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City of Benbrook

CITY COUNCIL COMMUNICATION

DATE: 09/06/07	REFERENCE NUMBER: G-1727	SUBJECT: Consider purchase of Renewable Energy Credits	PAGE: 1 of 1
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THE RENEWABLE ENERGY CREDIT (REC) PROGRAM

Several CAPP members have expressed an interest in purchasing all or part of their electrical load from renewable sources. Since the flow of electricity across the power grid can not be controlled, it is impossible for a specific user to draw power from a specific producer. So, despite our best effort to be environmentally friendly, we may be drawing electricity from the dirtiest company in the industry.

In order to encourage the development of renewable energy sources, the PUC established the Renewable Energy Credit (REC) program. A power producer receives one REC for each megawatt-hour of renewable electricity it produces. The power producer can then sell the REC, thus rewarding the company for producing renewable energy. Unfortunately, the State has no requirement that this money be reinvested in the production or enhancement of renewable energy.

REC COST

The CAPP consultant (R. J. Covington) and attorney (Lloyd Gosselink) recently completed a study of the REC system. The study indicates the current price of a REC is about \$5. The study also indicates the REC cost to the City of Benbrook would be \$150 for each percent of load (5% investment in renewable energy would cost the City \$750).

THE CASE FOR REC's

The "good will" generated from buying renewable energy would be the best incentive for purchasing some amount of REC's. In the best case scenario, the producer would use the money to produce more renewable energy.

THE CASE AGAINST REC's

There is no guarantee that the money spent on REC's will go toward the future funding or enhancement of renewable resources. Second, the State already requires that each Retail Electric Provider (REP) maintain REC's based on their pro rata share of the electric market. Since the City purchases power from a REP, we are in fact supporting renewable energy through those purchases.

RECOMMENDATIONS

Staff recommends that City Council determine if the City should invest in renewable energy and if so, at what percentage of base load.

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