

Austin American-Statesman

Austin drainage fee is invalid, judge says

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A drainage fee that appears on the monthly utility bills of more than 300,000 Austin customers is “invalid,” a judge ruled Friday.

It’s not clear if the city will have to change the fee or offer refunds to ratepayers. State District Judge Amy Clark Meachum didn’t address those issues in her ruling, but she did award the plaintiffs’ attorneys about \$68,000.

The city collects \$71.3 million a year from the drainage fee and uses it to pay for several programs, including flood warning systems, maintaining storm sewers and controlling erosion along creeks.

The city also uses the fee to pay debt on big flood-related projects, such as buying out homes along flood-prone Onion Creek and building the Waller Creek Tunnel, a nearly finished \$149 million project that will divert floodwater and open up the eastern edge of downtown to redevelopment.

The fee is \$9.20 a month for most residential customers, including residents of homes, apartments and condos, according to the city’s website. Occupants of multifamily properties that have seven or more stories pay a smaller fee of \$4.60 per unit.

The lawsuit, filed in 2009 by plaintiffs Emily Poole, Lynne Shelton and Mohit Taneja, claimed the city was applying the fee unfairly – essentially by charging some apartment and condo dwellers the same amount as residents of much larger single-family homes.

Other cities charge drainage fees based on the amount of “impervious cover” (or paved and developed surfaces) that a building occupies. That is meant to offset the drainage problems caused by rain runoff from those surfaces, said attorney Robby Alden, who represented the plaintiffs.

In Austin, many multifamily and single-family tenants “are charged the same flat rate regardless of how large the dwelling is or how many square feet the dwelling unit occupies,” Alden said.

Meachum declined to comment Friday. City officials said they’re disappointed by the ruling and are reviewing their legal options.

Alden expects that the city will have to reimburse some of the drainage fees it has collected over the past five years. He also anticipates that the city will have to alter the fee.

It's not clear if the ruling nullifies the city's approach to financing big projects like the Waller Creek Tunnel.

Austin collects the drainage fee from about 27,500 commercial customers and 320,000 residential customers (150,000 of whom are from multifamily properties).

Shelton, one of the plaintiffs, is a lower-income, disabled retiree who lives in a 600-square-foot apartment in North Austin.

"I see that (fee) on my bill and think, 'are you kidding me?'" Shelton, 70, said Friday. "It's almost \$10 for these extra things that don't apply to me at all."

Why it matters

More than 300,000 Austin customers pay the monthly drainage fee on their utility bill, providing \$71.3 million a year for several programs, including flood-control projects. The judge's ruling against the fee might require the city to change the fee or offer refunds to some customers.