

AN ORDINANCE 2015-09-10-0761

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AMENDING AND RECODIFYING IN PART CHAPTER 34 OF THE SAN ANTONIO CITY CODE TO REVISE AND ADOPT RULES FOR THE CITY OF SAN ANTONIO DRAINAGE UTILITY; ADOPTING A NEW RATE DESIGN FOR STORM WATER DRAINAGE CHARGES; APPROVING A REVISED SCHEDULE OF DRAINAGE CHARGES; EXEMPTING CERTAIN PROPERTIES FROM DRAINAGE CHARGES; PROVIDING FOR PENALTIES AND INTEREST; IMPLEMENTING AN APPEALS PROCESS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in response regulations enacted by the U.S. Environmental Protection Agency (“EPA”) in November 1990 requiring the City of San Antonio to develop storm water drainage plans, services, and programs, on May 13, 1993 the City Council passed Ordinance No. 77949 in order to provide funding to meet federal storm water regulations and to protect the public health and safety from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the city; and

WHEREAS, Ordinance No. 77949 established a schedule of storm water drainage rates based on the cost of providing drainage service to benefitted properties within the San Antonio city limits and directed the San Antonio Water System (“SAWS”) to collect the drainage fees as an agent for the City using its billing system; and

WHEREAS, the storm water drainage system is not integrated into the SAWS sewer system, but is a City operated municipal separate storm sewer system (“MS4”) dedicated to providing collection and conveyance of storm water, rain water, flood water, or other surface water into area rivers and basins consistent with state and federal regulations implemented to protect surface water quality; and

WHEREAS, by Ordinance No. 86711 adopted on September 25, 1997, the City Council declared the drainage of the City to be a public utility to be known as the City of San Antonio Drainage Utility (“Drainage Utility”), pursuant to the authority of Chapter 552, Subchapter C, of the Local Government Code, and dedicated to the Drainage Utility all present and future City owned property (real and personal), facilities, materials, and supplies constituting the City’s drainage system to be used for the purpose of the Drainage Utility; and

WHEREAS, Ordinance No. 86711 authorized the assessment on every benefitted property within the service area of the Drainage Utility, the “storm water drainage service fee”, a monthly usage fee originally created by Ordinance No. 77949; and

WHEREAS, the storm water drainage fee has been increased six times since 1993 and most recently in Ordinance No. 2007-09-20-0988, adopted on September 20, 2007, in order to support the Drainage Utility’s cost of service; and

WHEREAS, in September 2012, the City Council rejected a request to increase the storm water drainage fees and instructed City staff to bring for Council consideration a revised schedule for

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the drainage fees that would address certain rate inequities resulting from the existing rate tiers within the schedule of drainage fees; and

WHEREAS, in FY 2013 the City engaged the services of the professional engineering firm Kimley-Horn & Associates to evaluate the City's current storm water utility fee that is based on lot size and land use and includes "rate caps"; Kimley-Horn & Associates recommended that the City move to a fee structure based on impervious cover, concluding that impervious area has a direct relationship with storm water runoff volume and rate and is the best measure of drainage system usage; and

WHEREAS, in FY 2014 Kimley-Horn & Associates conducted the Storm Water Utility Comprehensive Study that measured the amount of impervious area for every benefitted property within the City limits and demonstrated that a more equitable schedule of drainage charges could be established based on an impervious cover rate methodology; the Kimley-Horn & Associates Storm Water Utility Comprehensive Study, dated August 14, 2015, is incorporated by reference into this ordinance as if set out herein word for word, and is available for public review in the City Clerk's Office and in the City's Transportation and Capital Improvements Department; and

WHEREAS, City staff has been working with stakeholders since October 2013 and over 30 stakeholder meetings have been held since January 2014; and

WHEREAS, the revised rate design for the proposed drainage charges, as described in **Exhibit B**, is the basis for the amended schedule of rates for residential accounts and non-residential accounts, which are intended to recover the Drainage Utility's cost of service and a contribution to fund future drainage system projects, as summarized in **Exhibit A**; and

WHEREAS, the effect of the proposed tiered storm water rates on most residential benefitted properties will be minimal with approximately 72% of customers remaining at or below their current monthly fee in FY 2016, and non-residential benefitted properties will experience a more equitable rate treatment compared to the current rate design as described in **Exhibit B**; and

WHEREAS, the schedule of tiered rates for 2016 to 2020 are intended to recover the Drainage Utility's cost of service which is estimated as follows with the percentage increase in rates for each fiscal year appearing in parenthesis: (1) FY 2016 - \$45.0 million (10%); (2) FY 2017 - \$48.2 million (7%); (3) FY 2018 - \$50.2 million (4%); (4) FY 2019 - \$51.2 million (2%); and (5) FY 2020 - \$52.2 million (2%); and

WHEREAS, the City Council finds that pursuant to the Local Government Code, Section 552.045:

- (a) it has the authority to establish a revised schedule of drainage charges imposed on all benefitted properties within the City limits based on the requirements outlined in Subchapter C, Chapter 552, Texas Local Government Code ("Subchapter C");
- (b) the Drainage Utility will continue to provide drainage service to all benefitted properties within the City limits supported by drainage charges, subject to certain properties exempted in accordance with Subchapter C;

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(c) the Drainage Utility will offer drainage service on nondiscriminatory, reasonable, and equitable terms; and

WHEREAS the proposed schedule of storm water drainage charges based on an impervious cover rate methodology are consistent with the requirements of the Texas Local Government Code, Chapter 552, Subchapter C and would result in more equitable rates in comparison to the current rate methodology for setting drainage charges based on property size and type of use; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council finds that: (1) all benefitted properties within the City of San Antonio receive storm water drainage service from the City of San Antonio Drainage Utility (“Drainage Utility”); (2) impervious cover increases storm water runoff and associated pollutants into the drainage facilities of the Drainage Utility and ultimately into local creeks, streams, and river waterways; and (3) it is equitable to assess storm water drainage charges based on impervious coverage of the natural surface of all benefitted properties within the Drainage Utility’s service area.

SECTION 2. The revised rate design supporting the schedule of tiered rates based on an impervious cover methodology as described in **Exhibits A** and **B** is hereby approved.

SECTION 3. The proposed schedule of rates for the storm water drainage charges to be assessed on residential and non-residential benefitted properties for the Fiscal Year 2016 as set out in Section 7 “Drainage Utility Charges” and the proposed five-year rate plan through Fiscal Year 2020 as set out in **Exhibit C** are hereby approved.

SECTION 4. Consistent with Resolution No. 2015-04-02-0021R, passed by the City Council on April 2, 2015, the storm water drainage charges for school district benefitted properties within the Drainage Utility’s service area shall remain at current rates for the period starting at 12:01 am on January 1, 2016 and ending at 11:59 pm on December 31, 2020. The City Council finds that it has the authority to establish this and other exemptions listed in the amendments to Chapter 34 pursuant to the Texas Local Government Code, Section 552.053 and Section 580.003.

SECTION 5. The City Council finds that in order to protect public safety, health and property; protect the water quality of area waterways resulting from the discharge of storm water; and establish equitable and nondiscriminatory terms and conditions for transferring storm water runoff to the Drainage Utility System, all improvements on benefitted properties must be subject to the same drainage engineering design standards and regulations.

SECTION 6. The Director is authorized to carry out the following activities related to implementation of this ordinance:

- Establish the “impervious area” (as that term is defined below) for each benefitted property in the Drainage Utility’s service area based on the methodology and database of benefitted properties produced by the Storm Water Utility Comprehensive Study and make appropriate updates to maintain the integrity of the database.

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- Determine the appropriate storm water drainage charges for each benefitted property based on the impervious area assessment.
- Continue the relation with SAWS as billing agent, and/or engage other service providers as appropriate, to ensure all benefitted properties within the Drainage Utility service area are billed for storm water drainage charges.
- Hear appeals of Impervious Area assessments for benefitted properties pursuant to the authority provided in the amendments to the City Code approved herewith.
- Decide billing complaints that are not satisfactorily addressed under SAWS billing dispute procedures found in Chapter 34, Article I, Divisions 3 to 7.

SECTION 7. The following sections of the City Code shall be recodified as part of Unified Development Code: Sections 34-1103(a) and 34-1111(b). The following sections of the City Code shall be amended and recodified within Chapter 34 of the City Code: Sec. 34-235, 34-1101, 34-1102, 34-1103(b), and 34-1111(a), and 34-1116, and as further set out in **Exhibit D**. The San Antonio Municipal Code, Chapter 34 is amended and recodified as follows:

ARTICLE VII. – DRAINAGE UTILITY

DIVISION 1. – CREATION OF A DRAINAGE UTILITY

Sec. 34-7.01. - Establishment of drainage utility, calculation of drainage charges; service area; exemptions, and dedication of assets.

- (a) The provisions of the Texas Local Government Code, Chapter 402, Subchapter C (currently codified at Chapter 552, Subchapter C, entitled, “Municipal Drainage Utility Systems Act”) were adopted with Ordinance No. 86711 (September 25, 1997) to create the City of San Antonio Drainage Utility (herein after “Drainage Utility”). Accordingly, the City Council hereby adopts the Municipal Drainage Utility Systems Act, as currently codified; declares the drainage of the City of San Antonio to be a public utility; and dedicates to the Drainage Utility all city owned property, real and personal, facilities, materials and supplies constituting the City’s Drainage System as currently constituted and as may be acquired in the future, to be used for the purpose of the Drainage Utility.
- (b) The service area for the Drainage Utility shall include all real property within the city limits of the City of San Antonio as now existing and all which may be annexed hereafter from time to time.
- (c) The following property shall be exempt from the provisions of this Article:
 - 1. real property with proper construction and maintenance of a Wholly Sufficient and Privately Owned Drainage System;
 - 2. real 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;

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3. a subdivided lot, until a structure or improvement has been built on the lot and a Certificate of Occupancy has been issued by the City;
4. real property owned by the State of Texas;
5. real property owned by public or private institutions of higher education; and
6. real property owned by the City of San Antonio constituting the Drainage System, including public streets, rights-of-way, facilities, and infrastructure that provide drainage service.

All other real property within the Drainage Utility service area shall be subject to this Article, including but not limited to, religious organization properties, railroad yards, cemetery properties, county properties, federal properties, City properties other than noted in Section 1(c)(6) above, and school district properties. School district properties shall be subject to the current rate structure for a five-year period, through December 31, 2020. Drainage Utility Charges for the properties that make up Joint Base San Antonio shall be subject to the current rate structure for two years, through December 31, 2017, or until the federal government appropriates funds for the payment of Drainage Utility Charges.

Sec. 34-7.02. - No effect on land owner obligations under city ordinances; no waiver of immunity.

- (a) The establishment of the Drainage Utility by the City does not relieve private land owners, developers, other individuals and entities from their responsibility for complying with the obligations of other ordinances of the City or laws of the State of Texas that relate to floodplain and storm water management.
- (b) The establishment of the Drainage Utility does not imply or warrant that a Benefitted Property will be free from flooding, storm water pollution, or stream erosion. The City makes no representation that all drainage problems will be remedied. This ordinance does not create additional duties on the part of the City or create new liability or remedies for any flooding, stream erosion, deterioration of water quality, or other damages. Nothing in this ordinance shall be deemed to waive the City's immunity under law or reduce the need or necessity for flood insurance.

Sec. 34.7.03. - Other laws.

- (a) To the extent this Article conflicts with any other provisions in the City Code, the provisions shall be harmonized when possible; however, this Article shall control and supersede any other provision regarding the Drainage Utility.

DIVISION 2. – ADMINISTRATION OF DRAINAGE UTILITY

Sec. 34-7.04. - Definitions.

Terms defined herein are specific to this Article and shall not be construed as conflicting with similar terms in other parts of the City Code. Terms not otherwise defined herein shall be

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given the definitions contained in Chapter 552, Subchapter C of the Texas Local Government Code.

- (a) "The Act" shall mean the Municipal Drainage Utility Systems Act, codified in the Texas Local Government Code, Title 13 (Water and Utilities), Chapter 552 (Municipal Utilities), Subchapter C (Municipal Drainage Utility Systems).
- (b) "Administrative Charges" shall mean miscellaneous fees, other than Drainage Utility Charges, established by the City Council to recover the actual cost associated with providing optional services to Users.
- (c) "Assistant Director" shall mean the assistant director of the Department overseeing the Drainage Utility.
- (d) "Benefitted Property" shall mean an Improved Lot or Tract within the drainage Service Area to which drainage service is provided and that is subject to the assessment of Drainage Utility Charges.
- (e) "Cost of Service" shall mean the costs of providing drainage service to all Benefitted Properties, which shall be the total of:
 - 1. 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 Properties;
 - 2. prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the Benefitted Properties;
 - 3. 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 Properties;
 - 4. prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the Benefitted Properties;
 - 5. 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 Properties;
 - 6. 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 City;
 - 7. administrative costs of operating and maintaining the Drainage Utility; and
 - 8. other costs as appropriate that are incident or related to the provision and operation of draining the Benefitted Properties.

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(f) "Customer" see the definition of "User."

(g) "Department" shall mean the City's Transportation and Capital Improvements Department.

(h) "Director" shall mean the director of the Department.

(i) "Drainage" shall mean bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, water quality 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.

(j) "Drainage Utility" shall mean the City of San Antonio Drainage Utility established by Ordinance No. 86711 adopted on September 25, 1997.

(k) "Drainage Utility Charges" shall mean the service fees imposed on Users and set out in a rate schedule to recover the cost of the service of furnishing drainage service for all Benefitted Properties, including any interest and penalties; and amounts made in contribution to funding of future Drainage System construction by the City.

(l) "Drainage System" shall mean all real and personal property owned or controlled in whole or in part by the City and dedicated to the Drainage Utility for the purpose of providing drainage service to Benefitted Properties, including any future additions, extensions, and improvements thereto and replacement thereof.

(m) "Facilities" shall mean the real, personal, or mixed property that is used in providing drainage service and included in the Drainage System.

(n) "Impervious Area" or "Impervious Cover" see City of San Antonio Unified Development Code, Appendix A – Definitions and Rules of Interpretation (roads, parking areas, buildings, pools, patios, sheds, driveways, private sidewalks, and other impermeable construction covering the natural land surface).

(o) "Improved Lot or Tract" shall mean a lot or tract that has a structure or other improvement on it that causes an Impervious Area or Surface.

(p) "Non-Residential Properties" shall mean all Benefitted Properties within the Service Area, other than Residential Properties.

(q) "Owner" shall mean the owner of record of Benefitted Property.

(r) "Public Utility" shall mean drainage service that is provided by the Drainage Utility to the Users of Benefitted Properties within the Service Area and that is based on:

1. an established schedule of rates;
2. use of the police power to implement the service; and
3. nondiscriminatory, reasonable, and equitable terms consistent with the Act.

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- (s) "Residential Properties" shall mean all Benefitted Properties within the Service Area used for single-family home, duplex, or mobile home land use.
- (t) "Service Area" shall mean the city limits of the City of San Antonio, Texas as may be amended from time-to-time.
- (u) "User" or "Customer" shall mean the person or entity that owns or occupies a Benefitted Property and who is responsible for paying the Drainage Utility Charges.
- (v) "Wholly Sufficient and Privately Owned Drainage System" shall mean on-site drainage retention facilities designed to keep runoff from an Improved Lot or Tract from discharging into any natural or manmade waterway or drainage infrastructure including public streets, storm drains, culverts, drainage easements, or storm water ponds that are part of the Drainage System; for storms of magnitude up to and including the 1% annual chance (100-year) storm event, 24-hour duration, captured runoff must be removed from the retention system within 72 hours of the rainfall event without discharging into the Drainage System.

Sec. 34-7.05. - Drainage utility fund.

A separate fund has been created, known as the Storm Water Operating Fund, for the purpose of segregating, identifying, and controlling all revenues and expenses attributable to the Drainage Utility. All Drainage Utility Charges shall be deposited as collected and received into this fund and shall be used exclusively for drainage Cost of Service. Such utility revenues may be used for the operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration, debt issuance cost and debt service, and other reasonable and customary expenses associated with the operation of a utility system. It shall not be necessary that the expenditures from the Drainage Utility Fund for any authorized purpose specifically relate to or benefit any particular Benefitted Property from which the revenues were collected.

Sec. 34-7.06. - Administration of drainage utility.

The Director or his designee shall be responsible for the administration and operation of the Drainage Utility, including, but not limited to, recommending regulations and procedures necessary for the administration of the Drainage Utility Charges which shall be authorized by the City Council, the resolution of challenges to the assessment of Impervious Area to Benefitted Property, the resolution of billing disputes, the development and implementation of maintenance and facility improvement programs, the provision of appropriate utility training to personnel, and the implementation of a state and federal regulatory compliance program. The Director shall keep an accurate record of all Benefitted Properties to which services and Facilities of the Drainage Utility are made available.

Sec. 34-7.07. - Drainage utility charges.

- (a) The Drainage Utility Charge is hereby imposed upon each Benefitted Property within the Service Area. Drainage Utility Charges shall become effective on January 1, 2016. Thereafter, Drainage Utility Charges shall be billed to Benefitted Properties on a monthly basis for the duration of the Drainage Utility.

- (b) For purposes of imposing Drainage Utility Charges, all Benefitted Properties within the Service Area are classified into the following Customer categories: (1) Residential Properties and (2) Non-Residential Properties.
- (c) The Impervious Area value shall be determined by conducting an inventory of all Improved Lots in the Service Area and identifying the Impervious Area for each Improved Lot. The Impervious Area value shall be used in establishing Drainage Utility Charges for Residential Properties based on the amount of Impervious Area identified in the rate tiers in Sec. 34-7.07(d), and for Non-Residential Properties based on the methodology described in Sec. 34-7.07(e). The Director or his designee shall be responsible for determining the Impervious Area of Benefitted Property based on reliable data, including the appraisal roll, geographic information system technology, aerial photography, or other reliable means for determining Impervious Area. The Director may require additional information from the Owner, User, tenant, manager or developer to make the determination. The assessment of Impervious Area to Benefitted Properties may be revised by the Director based on the addition of structures or improvements to properties identified through the City’s building permit process.
- (d) Residential Properties shall be assigned a Rate Category and assessed a Drainage Utility Charge based on Impervious Area as provided in the following table:

Residential Rate Category	Impervious Area in Square Feet	FY 2016
Tier 1	≤ 2,750	\$3.22
Tier 2	>2,750 – 4,220	\$4.25
Tier 3	> 4,220	\$8.98

- (e) Non-Residential Properties shall be assigned a Rate Category and assessed a Drainage Utility Charge determined by a Base Fee and Impervious Fee in accordance with the values provided in the Sec. 34-7.07(e)(1) and Sec. 34-7.07(e)(2):
1. “Base Fee” shall mean a flat monthly fee assessed among all Non-Residential Benefitted Properties as determined by Bexar County Appraisal District property records. The FY 2016 is calculated at \$55.77.
 2. “Impervious Fee” shall mean a monthly fee assessed on all Non-Residential Benefitted Properties on a per square foot basis and prorated based on the percentage of Impervious Area within the Benefitted Property.

Non-Residential Rate Category	Percent Impervious Area	FY 2016
Tier 1	≤ 20%	\$0.00025/sf
Tier 2	>20% - 40%	\$0.00037/sf

Tier 3	>40% - 65%	\$0.00050/sf
Tier 4	> 65%	\$0.00062/sf

- (f) The City Council may adjust the value and rate tiers in Sec. 34-7.07(d) and Sec. 34-7.07(e) at any time based upon the recommendation of the Director that the Cost of Service for the Drainage Utility warrants an adjustment in rates.
- (g) No Drainage Utility Charge credit shall be given for the installation of drainage facilities required by the City Code or state law. However, a credit of up to thirty percent (30%) off the Impervious Fee portion of the monthly Drainage Utility Charges shall be available to Customers of Non-Residential Properties that voluntarily implement Low Impact Development water quality management practices in compliance with technical criteria adopted by the City.
- (h) Pervious pavements and other pervious surfaces in compliance with technical criteria adopted by the City shall not be included in the Impervious Area calculation. Rail ballast areas shall be considered as thirty percent (30%) impervious based on industry standard runoff coefficients. Linear railroad track right-of-way systems outside of railroad yards intended to convey storm water throughout the Drainage Utility Area and that provide drainage service to Benefitted Properties shall not be included in the Impervious Area calculation.

Sec. 34-7.08. - Billing, payments, and penalties.

- (a) Billing statements for the Drainage Utility Charges shall be rendered by the City for all Benefitted Properties within the drainage Service Area. Bills shall be payable when rendered and shall be considered received by the Customer, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the Customer. Bills shall be rendered monthly for the previous month's service.
- (b) The Director shall establish the “impervious area” for each benefitted property in the Drainage Utility’s service area based on the methodology and database of benefitted properties produced by the Drainage Utility Fee Comprehensive Study and make appropriate updates to maintain the integrity of the database.
- (c) The Director shall determine the appropriate storm water drainage charges for each benefitted property based on the impervious area assessment.
- (d) The Director shall assume that each Drainage Utility account in the Service Area serves one or more Users of a Benefitted Property, and shall assess the monthly Drainage Utility Charge to the person responsible for payment of the Drainage Utility account. The Director shall calculate the Drainage Utility Charges for all Users. If there is more than one User of a Non-Residential Property, then the Drainage Utility Charges shall be assessed to the Owner of the Non-Residential Property, unless instructed by the Owner of the Non-Residential Property, in writing, to bill Users on a prorated basis.

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- (e) Bills are due and payable on the date specified thereon and if full payment is not made by the date specified, the bill shall become delinquent.
- (f) The Director shall continue the relation with SAWS as billing agent, and/or engage other service providers as appropriate, to ensure all Benefitted Properties within the Drainage Utility service area are billed for storm water drainage charges. Drainage Utility Charges shall be billed by SAWS, or other designated billing agents, following their standard billing processes, and may be subjected to penalties, interest, and other terms.
- (g) Any charge due hereunder which is not paid when due will subject the User to discontinuance of all utility services provided by the City and may be recovered in an action at law or in equity by the City including fixture of a lien against the property, as allowed by law.
- (h) The City shall have access, at all reasonable times, to any Benefitted Property served by the Drainage Utility for necessary inspection, repair of infrastructure or enforcement of this Article VII.
- (i) The storm water drainage charges for school district Benefitted Properties within the Drainage Utility's service area shall remain at current rates for the period starting at 12:01 am on January 1, 2016 and ending at 11:59 pm on December 31, 2020. This is consistent with Resolution No. 2015-04-02-0021R, passed by the City Council on April 2, 2015.
- (j) The Director shall decide billing complaints that are not satisfactorily addressed under SAWS billing dispute procedures found in Chapter 34, Article I, Divisions 3 to 7.

Sec. 34-7.09. - Appeal of impervious area assignment.

- (a) A User may appeal the Impervious Area assigned to the User's Benefitted Property by submitting the request to the Assistant Director or his designee on a prescribed form. If the appeal results in a reassignment of Impervious Area to the Benefitted Property, the User will be entitled to a recalculation of Drainage Utility Charges which may result in a rate adjustment.
- (b) The following procedures shall apply to all appeals of Impervious Area assignments:
 1. The User shall have the burden of proof.
 2. The Director shall develop a prescribed form for Users to appeal the amount of Impervious Area assigned to a Benefitted Property. The appeal shall be submitted to the Assistant Director or his designee following the procedure outlined below.
 3. Any appeal of Impervious Area assignment shall be in writing and set forth in detail the grounds upon which relief is sought.
 4. Appeals of Impervious Area assignments will be reviewed by the Assistant Director or his designee within twenty (20) business days from the date of receipt on the prescribed form. Following the twenty (20) day review period, the Assistant Director may request additional information necessary to make a determination as prescribed in Sec. 34-

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- 7.09(b)(6). Any adjustment to Drainage Utility Charges resulting from such an appeal shall be prospective, but may be made retroactive for no more than three (3) billing periods prior to the receipt of the appeal.
5. The User requesting a reassignment of Impervious Area may be required, at the User's cost, to provide supplemental information to the Assistant Director, including, but not limited to, survey data certified by a Texas Registered Professional Land Surveyor (R.P.L.S.), design data certified by a Registered Professional Engineer (P.E.) licensed to practice in the State of Texas, or other documentation of Impervious Area. Failure to provide requested information may result in the denial of the appeal.
 6. The Assistant Director's resolution of the appeal shall be provided to the User, in writing, within ten (10) business days following review of the initial request as described in Sec. 34-7.09(b)(4). If the User is successful in the appeal, the Assistant Director shall order the reassignment of Impervious Area to the Benefitted Property consistent with the resolution of the appeal. The Assistant Director shall also order the recalculation of Drainage Utility Charges which may result in a rate adjustment. If the recalculation results in a rate adjustment it will be granted effective the next billing period.
- (c) If the Assistant Director denies the request to reassign Impervious Area to the Benefitted Property, the User may, within (10) ten business days from the date of notification, appeal the decision to the Director. The appeal shall be in writing, contain a succinct and clear statement of the User's argument and suggested remedy, and be filed with the Director's Office. The Director shall have fifteen (15) business days from the date the appeal is received to review the appeal, make a determination, and notify the User.
- (d) Before imposing a lien for delinquent Drainage Utility Charges, the City shall send notice to the Owner of the Benefitted Property stating the amount of the charges owed, and of the owner's right to appeal the placement of the lien by producing evidence the delinquent charges are not rightfully owed, by providing such within ten (10) business days from the date of notification to the Director. The Director shall not file the lien if the Owner shows that the Drainage Utility Charge made the basis of the lien is not owed. When a person pays all of the charges, a lien filed pursuant to this Article, shall be released. The paying party shall be responsible for the filing costs of the release.

Sec. 34-7.10. - Credit application.

- (a) A User of a Non-Residential Benefitted Property may submit a request for credit as identified in Sec. 34-7.07(g) and (h) to the Assistant Director.
- (b) A User of a Non-Residential Benefitted Property may submit a request for credit if the User controls multiple contiguous parcels and can prove single ownership, purpose, and use, and the User has been assessed individual Base Fees as described in Sec. 34-7.07(e)(1) for each of the properties.
- (c) The following procedures shall apply to all credit applications:
 1. The User shall have the burden of proof.

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2. The Director shall develop a prescribed form for Users to apply for credit to a Non-Residential Benefitted Property. The application shall be submitted to the Assistant Director or his designee following the procedure outlined below.
 3. Any credit application shall be in writing and set forth in detail the grounds upon which relief is sought.
 4. Credit requests will be reviewed by the Assistant Director or his designee within twenty (20) business days from the date of receipt on the prescribed form. Following the twenty (20) day review period, the Assistant Director may request additional information necessary to make a determination as prescribed in Sec. 34-7.10(c)(6). Any adjustment to Drainage Utility Charges resulting from the credit request shall be prospective.
 5. The User requesting credit may be required, at the User's cost, to provide supplemental information to the Assistant Director, including, but not limited to, survey data certified by a Texas Registered Professional Land Surveyor (R.P.L.S.), design data certified by a Registered Professional Engineer (P.E.) licensed to practice in the State of Texas, or other documentation to supplement the credit request. Failure to provide requested information may result in the denial of the request.
 6. The Assistant Director's resolution of the credit request shall be provided to the User, in writing, within ten (10) business days following review of the initial request as described in Sec. 34-7.10(c)(4). If the User is successful in the credit request, the Assistant Director shall order the recalculation of Drainage Utility Charges which may result in a rate adjustment. If the recalculation results in a rate adjustment it will be granted effective the next billing period.
- (d) If the Assistant Director denies the credit request to the Benefitted Property, the User may, within (10) ten business days from the date of notification, appeal the decision to the Director. The appeal shall be in writing, contain a succinct and clear statement of the User's argument and suggested remedy, and be filed with the Director's Office. The Director shall have fifteen (15) business days from the date the appeal is received to review the appeal, make a determination, and notify the User.
- (e) As part of the credit application, the User must commit in a written agreement to provide long-term maintenance of any credited system in accordance with a User prepared Operations and Maintenance plan, which will be on file with the City. Annual inspection and certification of the credited system shall be required by the User and made available to the City. Failure to adequately maintain the system will result in the removal of the credit amount. Credit applications must be renewed with property ownership changes.

SECTION 8. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of San Antonio, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

RP
09/10/2015
Item No. 4H

SECTION 9. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 10. Publishing and Effective Date. This ordinance shall be published and become effective according to law on customer bills issued on or after January 1, 2016.

SECTION 11. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 10th day of September, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek
City Clerk

Martha G. Sepeda
Acting City Attorney

Exhibit "A"

Storm Water Utility Fee Cost of Service

Exhibit "B"

Summary of Proposed Rate Design

Exhibit “C”

Five-Year Rate Schedule

Exhibit “D”

**Chapter 34 of the San Antonio Municipal Code
Sections 34-235, 34-1101, 34-1102, 34-1103(b), 34-111(a), and 34-1116**

Exhibit “D”

The City Code of the City of San Antonio, Chapter 34, Drainage Utility, is hereby amended by adding a new Division 1 and removing Sections 34-235, 34-1101, 34-1102, 34-1103, and 34-1111. Added language is underlined and deleted language is stricken through.

Chapter 34 Waters and Sewers

Article III Sewer Service and Rates

Division 4 Rates and Charges

Section 34-235 Schedule of rates for stormwater drainage, services and programs; billing and collection.

Chapter 34 Waters and Sewers

Article VII Drainage Utility

Section 34-1101 Declaring the drainage of the city to be a public utility.

Section 34-1102 Establishment and revision to drainage utility service area.

Section 34-1103 Establishment and revision of drainage charges.

Section 34-1111 Drainage utility fund.

Section 34-1116 Administration; rules and regulations.

Article VII - DRAINAGE UTILITY

DIVISION 1. – CREATION OF A DRAINAGE UTILITY

Sec. 34-7.01. - Establishment of drainage utility, calculation of drainage charges; service area; exemptions, and dedication of assets.

- (a) The provisions of the Texas Local Government Code, Chapter 402, Subchapter C (currently codified at Chapter 552, Subchapter C, entitled, “Municipal Drainage Utility Systems Act”) were adopted with Ordinance No. 86711 (September 25, 1997) to create the City of San Antonio Drainage Utility (herein after “Drainage Utility”). Accordingly, the City Council hereby adopts the Municipal Drainage Utility Systems Act, as currently codified; declares the drainage of the City of San Antonio to be a public utility; and dedicates to the Drainage Utility all city owned property, real and personal, facilities, materials and supplies constituting the City’s Drainage System as currently constituted and as may be acquired in the future, to be used for the purpose of the Drainage Utility.
- (b) The service area for the Drainage Utility shall include all real property within the city limits of the City of San Antonio as now existing and all which may be annexed hereafter from time to time.
- (c) The following property shall be exempt from the provisions of this Article:
1. real property with proper construction and maintenance of a Wholly Sufficient and Privately Owned Drainage System;

2. real 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;
3. a subdivided lot, until a structure or improvement has been built on the lot and a Certificate of Occupancy has been issued by the City;
4. real property owned by the State of Texas;
5. real property owned by public or private institutions of higher education; and
6. real property owned by the City of San Antonio constituting the Drainage System, including public streets, rights-of-way, facilities, and infrastructure that provide drainage service.

All other real property within the Drainage Utility service area shall be subject to this Article, including but not limited to, religious organization properties, railroad yards, cemetery properties, county properties, federal properties, City properties other than noted in Section 1(c)(6) above, and school district properties. School district properties shall be subject to the current rate structure for a five-year period, through December 31, 2020. Drainage Utility Charges for the properties that make up Joint Base San Antonio shall be subject to the current rate structure for two years, through December 31, 2017, or until the federal government appropriates funds for the payment of Drainage Utility Charges.

Sec. 34-7.02. - No effect on land owner obligations under city ordinances; no waiver of immunity.

- (a) The establishment of the Drainage Utility by the City does not relieve private land owners, developers, other individuals and entities from their responsibility for complying with the obligations of other ordinances of the City or laws of the State of Texas that relate to floodplain and storm water management.
- (b) The establishment of the Drainage Utility does not imply or warrant that a Benefitted Property will be free from flooding, storm water pollution, or stream erosion. The City makes no representation that all drainage problems will be remedied. This ordinance does not create additional duties on the part of the City or create new liability or remedies for any flooding, stream erosion, deterioration of water quality, or other damages. Nothing in this ordinance shall be deemed to waive the City's immunity under law or reduce the need or necessity for flood insurance.

Sec. 34.7.03. - Other laws.

- (a) To the extent this Article conflicts with any other provisions in the City Code, the provisions shall be harmonized when possible; however, this Article shall control and supersede any other provision regarding the Drainage Utility.

DIVISION 2. – ADMINISTRATION OF DRAINAGE UTILITY

Sec. 34-7.04. - Definitions.

Terms defined herein are specific to this Article and shall not be construed as conflicting with similar terms in other parts of the City Code. Terms not otherwise defined herein shall be given the definitions contained in Chapter 552, Subchapter C of the Texas Local Government Code.

- (a) "The Act" shall mean the Municipal Drainage Utility Systems Act, codified in the Texas Local Government Code, Title 13 (Water and Utilities), Chapter 552 (Municipal Utilities), Subchapter C (Municipal Drainage Utility Systems).
- (b) "Administrative Charges" shall mean miscellaneous fees, other than Drainage Utility Charges, established by the City Council to recover the actual cost associated with providing optional services to Users.
- (c) "Assistant Director" shall mean the assistant director of the Department overseeing the Drainage Utility.
- (d) "Benefitted Property" shall mean an Improved Lot or Tract within the drainage Service Area to which drainage service is provided and that is subject to the assessment of Drainage Utility Charges.
- (e) "Cost of Service" shall mean the costs of providing drainage service to all Benefitted Properties, which shall be the total of:
 - 1. 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 Properties;
 - 2. prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the Benefitted Properties;
 - 3. 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 Properties;
 - 4. prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the Benefitted Properties;
 - 5. 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 Properties;
 - 6. 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 City;
 - 7. administrative costs of operating and maintaining the Drainage Utility; and

8. other costs as appropriate that are incident or related to the provision and operation of draining the Benefitted Properties.

(f) "Customer" see the definition of "User."

(g) "Department" shall mean the City's Transportation and Capital Improvements Department.

(h) "Director" shall mean the director of the Department.

(i) "Drainage" shall mean bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, water quality 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.

(j) "Drainage Utility" shall mean the City of San Antonio Drainage Utility established by Ordinance No. 86711 adopted on September 25, 1997.

(k) "Drainage Utility Charges" shall mean the service fees imposed on Users and set out in a rate schedule to recover the cost of the service of furnishing drainage service for all Benefitted Properties, including any interest and penalties; and amounts made in contribution to funding of future Drainage System construction by the City.

(l) "Drainage System" shall mean all real and personal property owned or controlled in whole or in part by the City and dedicated to the Drainage Utility for the purpose of providing drainage service to Benefitted Properties, including any future additions, extensions, and improvements thereto and replacement thereof.

(m) "Facilities" shall mean the real, personal, or mixed property that is used in providing drainage service and included in the Drainage System.

(n) "Impervious Area" or "Impervious Cover" see City of San Antonio Unified Development Code, Appendix A – Definitions and Rules of Interpretation (roads, parking areas, buildings, pools, patios, sheds, driveways, private sidewalks, and other impermeable construction covering the natural land surface).

(o) "Improved Lot or Tract" shall mean a lot or tract that has a structure or other improvement on it that causes an Impervious Area or Surface.

(p) "Non-Residential Properties" shall mean all Benefitted Properties within the Service Area, other than Residential Properties.

(q) "Owner" shall mean the owner of record of Benefitted Property.

(r) "Public Utility" shall mean drainage service that is provided by the Drainage Utility to the Users of Benefitted Properties within the Service Area and that is based on:

1. an established schedule of rates;

2. use of the police power to implement the service; and

3. nondiscriminatory, reasonable, and equitable terms consistent with the Act.

- (s) "Residential Properties" shall mean all Benefitted Properties within the Service Area used for single-family home, duplex, or mobile home land use.
- (t) "Service Area" shall mean the city limits of the City of San Antonio, Texas as may be amended from time-to-time.
- (u) "User" or "Customer" shall mean the person or entity that owns or occupies a Benefitted Property and who is responsible for paying the Drainage Utility Charges.
- (v) "Wholly Sufficient and Privately Owned Drainage System" shall mean on-site drainage retention facilities designed to keep runoff from an Improved Lot or Tract from discharging into any natural or manmade waterway or drainage infrastructure including public streets, storm drains, culverts, drainage easements, or storm water ponds that are part of the Drainage System; for storms of magnitude up to and including the 1% annual chance (100-year) storm event, 24-hour duration, captured runoff must be removed from the retention system within 72 hours of the rainfall event without discharging into the Drainage System.

Sec. 34-7.05. - Drainage utility fund.

A separate fund has been created, known as the Storm Water Operating Fund, for the purpose of segregating, identifying, and controlling all revenues and expenses attributable to the Drainage Utility. All Drainage Utility Charges shall be deposited as collected and received into this fund and shall be used exclusively for drainage Cost of Service. Such utility revenues may be used for the operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration, debt issuance cost and debt service, and other reasonable and customary expenses associated with the operation of a utility system. It shall not be necessary that the expenditures from the Drainage Utility Fund for any authorized purpose specifically relate to or benefit any particular Benefitted Property from which the revenues were collected.

Sec. 34-7.06. - Administration of drainage utility.

The Director or his designee shall be responsible for the administration and operation of the Drainage Utility, including, but not limited to, recommending regulations and procedures necessary for the administration of the Drainage Utility Charges which shall be authorized by the City Council, the resolution of challenges to the assessment of Impervious Area to Benefitted Property, the resolution of billing disputes, the development and implementation of maintenance and facility improvement programs, the provision of appropriate utility training to personnel, and the implementation of a state and federal regulatory compliance program. The Director shall keep an accurate record of all Benefitted Properties to which services and Facilities of the Drainage Utility are made available.

Sec. 34-7.07. - Drainage utility charges.

- (a) The Drainage Utility Charge is hereby imposed upon each Benefitted Property within the Service Area. Drainage Utility Charges shall become effective on January 1, 2016.

Thereafter, Drainage Utility Charges shall be billed to Benefitted Properties on a monthly basis for the duration of the Drainage Utility.

(b) For purposes of imposing Drainage Utility Charges, all Benefitted Properties within the Service Area are classified into the following Customer categories: (1) Residential Properties and (2) Non-Residential Properties.

(c) The Impervious Area value shall be determined by conducting an inventory of all Improved Lots in the Service Area and identifying the Impervious Area for each Improved Lot. The Impervious Area value shall be used in establishing Drainage Utility Charges for Residential Properties based on the amount of Impervious Area identified in the rate tiers in Sec. 34-7.07(d), and for Non-Residential Properties based on the methodology described in Sec. 34-7.07(e). The Director or his designee shall be responsible for determining the Impervious Area of Benefitted Property based on reliable data, including the appraisal roll, geographic information system technology, aerial photography, or other reliable means for determining Impervious Area. The Director may require additional information from the Owner, User, tenant, manager or developer to make the determination. The assessment of Impervious Area to Benefitted Properties may be revised by the Director based on the addition of structures or improvements to properties identified through the City’s building permit process.

(d) Residential Properties shall be assigned a Rate Category and assessed a Drainage Utility Charge based on Impervious Area as provided in the following table:

<u>Residential Rate Category</u>	<u>Impervious Area in Square Feet</u>	<u>FY 2016</u>
<u>Tier 1</u>	<u>≤ 2,750</u>	<u>\$3.22</u>
<u>Tier 2</u>	<u>>2,750 – 4,220</u>	<u>\$4.25</u>
<u>Tier 3</u>	<u>> 4,220</u>	<u>\$8.98</u>

(e) Non-Residential Properties shall be assigned a Rate Category and assessed a Drainage Utility Charge determined by a Base Fee and Impervious Fee in accordance with the values provided in the Sec. 34-7.07(e)(1) and Sec. 34-7.07(e)(2):

1. “Base Fee” shall mean a flat monthly fee assessed among all Non-Residential Benefitted Properties as determined by Bexar County Appraisal District property records. The FY 2016 is calculated at \$55.77.

2. “Impervious Fee” shall mean a monthly fee assessed on all Non-Residential Benefitted Properties on a per square foot basis and prorated based on the percentage of Impervious Area within the Benefitted Property.

<u>Non-Residential Rate Category</u>	<u>Percent Impervious Area</u>	<u>FY 2016</u>
<u>Tier 1</u>	<u>≤ 20%</u>	<u>\$0.00025/sf</u>

<u>Tier 2</u>	<u>>20% - 40%</u>	<u>\$0.00037/sf</u>
<u>Tier 3</u>	<u>>40% - 65%</u>	<u>\$0.00050/sf</u>
<u>Tier 4</u>	<u>≥ 65%</u>	<u>\$0.00062/sf</u>

- (f) The City Council may adjust the value and rate tiers in Sec. 34-7.07(d) and Sec. 34-7.07(e) at any time based upon the recommendation of the Director that the Cost of Service for the Drainage Utility warrants an adjustment in rates.
- (g) No Drainage Utility Charge credit shall be given for the installation of drainage facilities required by the City Code or state law. However, a credit of up to thirty percent (30%) off the Impervious Fee portion of the monthly Drainage Utility Charges shall be available to Customers of Non-Residential Properties that voluntarily implement Low Impact Development water quality management practices in compliance with technical criteria adopted by the City.
- (h) Pervious pavements and other pervious surfaces in compliance with technical criteria adopted by the City shall not be included in the Impervious Area calculation. Rail ballast areas shall be considered as thirty percent (30%) impervious based on industry standard runoff coefficients. Linear railroad track right-of-way systems outside of railroad yards intended to convey storm water throughout the Drainage Utility Area and that provide drainage service to Benefitted Properties shall not be included in the Impervious Area calculation.

Sec. 34-7.08. - Billing, payments, and penalties.

- (a) Billing statements for the Drainage Utility Charges shall be rendered by the City for all Benefitted Properties within the drainage Service Area. Bills shall be payable when rendered and shall be considered received by the Customer, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the Customer. Bills shall be rendered monthly for the previous month's service.
- (b) The Director shall establish the “impervious area” for each benefitted property in the Drainage Utility’s service area based on the methodology and database of benefitted properties produced by the Drainage Utility Fee Comprehensive Study and make appropriate updates to maintain the integrity of the database.
- (c) The Director shall determine the appropriate storm water drainage charges for each benefitted property based on the impervious area assessment.
- (d) The Director shall assume that each Drainage Utility account in the Service Area serves one or more Users of a Benefitted Property, and shall assess the monthly Drainage Utility Charge to the person responsible for payment of the Drainage Utility account. The Director shall calculate the Drainage Utility Charges for all Users. If there is more than one User of a Non-Residential Property, then the Drainage Utility Charges shall be assessed to the Owner of the

Non-Residential Property, unless instructed by the Owner of the Non-Residential Property, in writing, to bill Users on a prorated basis.

- (e) Bills are due and payable on the date specified thereon and if full payment is not made by the date specified, the bill shall become delinquent.
- (f) The Director shall continue the relation with SAWS as billing agent, and/or engage other service providers as appropriate, to ensure all Benefitted Properties within the Drainage Utility service area are billed for storm water drainage charges. Drainage Utility Charges shall be billed by SAWS, or other designated billing agents, following their standard billing processes, and may be subjected to penalties, interest, and other terms.
- (g) Any charge due hereunder which is not paid when due will subject the User to discontinuance of all utility services provided by the City and may be recovered in an action at law or in equity by the City including fixture of a lien against the property, as allowed by law.
- (h) The City shall have access, at all reasonable times, to any Benefitted Property served by the Drainage Utility for necessary inspection, repair of infrastructure or enforcement of this Article VII.
- (i) The storm water drainage charges for school district Benefitted Properties within the Drainage Utility's service area shall remain at current rates for the period starting at 12:01 am on January 1, 2016 and ending at 11:59 pm on December 31, 2020. This is consistent with Resolution No. 2015-04-02-0021R, passed by the City Council on April 2, 2015,
- (j) The Director shall decide billing complaints that are not satisfactorily addressed under SAWS billing dispute procedures found in Chapter 34, Article I, Divisions 3 to 7.

Sec. 34-7.09. - Appeal of impervious area assignment.

- (a) A User may appeal the Impervious Area assigned to the User's Benefitted Property by submitting the request to the Assistant Director or his designee on a prescribed form. If the appeal results in a reassignment of Impervious Area to the Benefitted Property, the User will be entitled to a recalculation of Drainage Utility Charges which may result in a rate adjustment.
- (b) The following procedures shall apply to all appeals of Impervious Area assignments:
 - 1. The User shall have the burden of proof.
 - 2. The Director shall develop a prescribed form for Users to appeal the amount of Impervious Area assigned to a Benefitted Property. The appeal shall be submitted to the Assistant Director or his designee following the procedure outlined below.
 - 3. Any appeal of Impervious Area assignment shall be in writing and set forth in detail the grounds upon which relief is sought.
 - 4. Appeals of Impervious Area assignments will be reviewed by the Assistant Director or his designee within twenty (20) business days from the date of receipt on the prescribed

form. Following the twenty (20) day review period, the Assistant Director may request additional information necessary to make a determination as prescribed in Sec. 34-7.09(b)(6). Any adjustment to Drainage Utility Charges resulting from such an appeal shall be prospective, but may be made retroactive for no more than three (3) billing periods prior to the receipt of the appeal.

5. The User requesting a reassignment of Impervious Area may be required, at the User's cost, to provide supplemental information to the Assistant Director, including, but not limited to, survey data certified by a Texas Registered Professional Land Surveyor (R.P.L.S.), design data certified by a Registered Professional Engineer (P.E.) licensed to practice in the State of Texas, or other documentation of Impervious Area. Failure to provide requested information may result in the denial of the appeal.

6. The Assistant Director's resolution of the appeal shall be provided to the User, in writing, within ten (10) business days following review of the initial request as described in Sec. 34-7.09(b)(4). If the User is successful in the appeal, the Assistant Director shall order the reassignment of Impervious Area to the Benefitted Property consistent with the resolution of the appeal. The Assistant Director shall also order the recalculation of Drainage Utility Charges which may result in a rate adjustment. If the recalculation results in a rate adjustment it will be granted effective the next billing period.

(c) If the Assistant Director denies the request to reassign Impervious Area to the Benefitted Property, the User may, within (10) ten business days from the date of notification, appeal the decision to the Director. The appeal shall be in writing, contain a succinct and clear statement of the User's argument and suggested remedy, and be filed with the Director's Office. The Director shall have fifteen (15) business days from the date the appeal is received to review the appeal, make a determination, and notify the User.

(d) Before imposing a lien for delinquent Drainage Utility Charges, the City shall send notice to the Owner of the Benefitted Property stating the amount of the charges owed, and of the owner's right to appeal the placement of the lien by producing evidence the delinquent charges are not rightfully owed, by providing such within ten (10) business days from the date of notification to the Director. The Director shall not file the lien if the Owner shows that the Drainage Utility Charge made the basis of the lien is not owed. When a person pays all of the charges, a lien filed pursuant to this Article, shall be released. The paying party shall be responsible for the filing costs of the release.

Sec. 34-7.10. - Credit application.

(a) A User of a Non-Residential Benefitted Property may submit a request for credit as identified in Sec. 34-7.07(g) and (h) to the Assistant Director.

(b) A User of a Non-Residential Benefitted Property may submit a request for credit if the User controls multiple contiguous parcels and can prove single ownership, purpose, and use, and the User has been assessed individual Base Fees as described in Sec. 34-7.07(e)(1) for each of the properties.

(c) The following procedures shall apply to all credit applications:

1. The User shall have the burden of proof.
 2. The Director shall develop a prescribed form for Users to apply for credit to a Non-Residential Benefitted Property. The application shall be submitted to the Assistant Director or his designee following the procedure outlined below.
 3. Any credit application shall be in writing and set forth in detail the grounds upon which relief is sought.
 4. Credit requests will be reviewed by the Assistant Director or his designee within twenty (20) business days from the date of receipt on the prescribed form. Following the twenty (20) day review period, the Assistant Director may request additional information necessary to make a determination as prescribed in Sec. 34-7.10(c)(6). Any adjustment to Drainage Utility Charges resulting from the credit request shall be prospective.
 5. The User requesting credit may be required, at the User's cost, to provide supplemental information to the Assistant Director, including, but not limited to, survey data certified by a Texas Registered Professional Land Surveyor (R.P.L.S.), design data certified by a Registered Professional Engineer (P.E.) licensed to practice in the State of Texas, or other documentation to supplement the credit request. Failure to provide requested information may result in the denial of the request.
 6. The Assistant Director's resolution of the credit request shall be provided to the User, in writing, within ten (10) business days following review of the initial request as described in Sec. 34-7.10(c)(4). If the User is successful in the credit request, the Assistant Director shall order the recalculation of Drainage Utility Charges which may result in a rate adjustment. If the recalculation results in a rate adjustment it will be granted effective the next billing period.
- (d) If the Assistant Director denies the credit request to the Benefitted Property, the User may, within (10) ten business days from the date of notification, appeal the decision to the Director. The appeal shall be in writing, contain a succinct and clear statement of the User's argument and suggested remedy, and be filed with the Director's Office. The Director shall have fifteen (15) business days from the date the appeal is received to review the appeal, make a determination, and notify the User.
- (e) As part of the credit application, the User must commit in a written agreement to provide long-term maintenance of any credited system in accordance with a User prepared Operations and Maintenance plan, which will be on file with the City. Annual inspection and certification of the credited system shall be required by the User and made available to the City. Failure to adequately maintain the system will result in the removal of the credit amount. Credit applications must be renewed with property ownership changes.

~~Sec. 34-235.-- Schedule of rates for stormwater drainage, services and programs; billing and collection.~~

~~(a) Definitions.~~

~~Benefitted property: Real property that is a parcel of property or lot within the corporate boundaries of the City of San Antonio to which stormwater drainage plans, programs, or services are made available and which receives water, wastewater, or electric utility service from the City of San Antonio. A parcel of property is a piece of land regardless of size under one (1) ownership, such ownership being further defined as the way in which property is legally described in duly recorded legal documents in the official public records of real property of the county in which the parcel of property is located. A lot is a designated property shown on a recorded plat duly recorded in the official public records of real property of the county in which the recorded plat is located.~~

~~Billing unit: A billing unit is benefitted property and is the smallest unit of real estate with a unique legal description according to the records of the Bexar Appraisal District.~~

~~Commercial/general stormwater customer: The owner or occupant of benefitted property not meeting the definitions of a residential, multifamily, or public stormwater customer as defined herein.~~

~~Multifamily stormwater customer: The owner or occupant of benefitted property containing a multiple family dwelling unit comprised of more than two (2) family units.~~

~~Public stormwater customer: The owner or occupant of benefitted property containing an improvement related to the provision of governmental services, public or private education, or religious activities and as so classified in records of the Bexar Appraisal District.~~

~~Residential stormwater customer: The owner or occupant of benefitted property containing a single or multiple family dwelling unit composed of two (2) or less family units.~~

~~(b) Schedules of rates. The following schedules of stormwater rates shall be effective with billings on or about October 1, 2007 and shall be applied to all billing units, except as provided by section 34-235(d), herein below. These rates may be included on other utility bills or may appear on a separate bill including only stormwater or drainage charges. Each billing unit ("unit") shall be assessed each month or fraction thereof in accordance with the following schedule:~~

Residential Stormwater Rate Schedule		
Tier	Billing Unit (SF)	Billing Unit Per Month Charge
1	0—4,999	\$ 3.22
2	5,000 or more	4.25

Multifamily Stormwater Rate Schedule		
Tier	Billing Unit (SF)	Billing Unit Per Month Charge
1	0—21,999	\$ 7.19
2	22,000—43,999	22.39
3	44,000—131,999	67.90
4	132,000 or more	323.09

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Commercial/General Stormwater Rate Schedule		
Tier	Billing Unit (SF)	Billing Unit Per Month Charge
1	0—21,999	\$ 18.32
2	22,000—43,999	50.12
3	44,000—86,999	89.82
4	87,000—131,999	154.81
5	132,000 or more	342.03

-

Public Stormwater Rate Schedule		
Tier	Billing Unit (SF)	Billing Unit Per Month

		Charge
1	0—21,999	\$ 18.15
2	22,000—43,999	49.64
3	44,000—86,999	89.66
4	87,000 or more	151.57

~~Such rates are based on the following information: for private benefitted property, the imprint of improvements as depicted in the records of the Bexar Appraisal District; for public benefitted property, the imprint of improvements as depicted on forms supplied by a public entity to the San Antonio water system; in the event the San Antonio water system should request such forms from a public entity, and no forms are forthcoming, the tier four (4) charge shall be assessed.~~

~~(c) Billing, collection, and management procedures:~~

- ~~(1) Initially the San Antonio water system shall be the primary agency responsible for billing, collection, and management of other stormwater service matters relating to stormwater rates. Billing and collection procedures for stormwater rates shall be the same, insofar as practicable, as those utilized by the San Antonio water system in billing and collecting for water and wastewater service, all as set forth in City Ordinance No. 72742, approved and adopted December 6, 1990, or such successor ordinance, or those billing and collection procedures utilized by other water purveyors with whom the San Antonio water system contracts with to assist in billing and collecting stormwater rates, all with the exception that no advance deposit to secure payment of the customer's final bill for stormwater charges shall be collected.~~
- ~~(2) Billing and collection procedures shall include a process by which customers may appeal the validity of amounts billed in accordance with the written criteria established by San Antonio water system Customer Service Policies.~~

~~(d) Exemptions. The following real property, only, shall be exempt from the provisions of this section:~~

- ~~(1) Benefitted property owned by the City of San Antonio and dedicated to right-of-way for public streets and/or to provide drainage service;~~
- ~~(2) Benefitted property with proper construction and maintenance of a privately owned drainage or stormwater system wholly sufficient to provide all the drainage or stormwater service for that property;~~

~~(3) Benefitted property held and maintained in its natural state on which no improvements currently exist and until such time that the property is developed and all of the public infrastructure has been accepted by the City of San Antonio for maintenance; and~~

~~(4) Benefitted property before a structure has been built on the property or before the City of San Antonio has finally approved the use of the property in accordance with the Unified Development Code.~~

~~(e) Relationship to San Antonio water system.~~

~~(1) Initially the responsibility for the stormwater program for purposes of compliance with the EPA's rules and regulations shall be facilitated and coordinated by the board; however, such program shall not be deemed to be a part of the "system" as that term is defined in City Ordinance No. 75686, approved and adopted April 30, 1992. All revenues and expenses and other accounts related to the stormwater program shall be accounted for on a full cost of service basis separate and apart from all other funds for which the board has responsibility.~~

~~(2) No later than one (1) year prior to the expiration of the initial permit issued by the EPA, city council shall reevaluate this section and determine whether such utility shall become a part of the "system" as that term is defined in City Ordinance No. 75686.~~

~~(f) Repayment of stormwater expenses. Funds advanced by the wastewater system for stormwater or drainage plans, programs, and services in an approximate amount of five million dollars (\$5,000,000.00) to support the stormwater program shall be repaid from revenues generated by stormwater rates over a period not to exceed five (5) years from the effective date of this section. Once the specific amount of dollars expended by the wastewater system for stormwater or drainage plans, programs, and services has been finally determined, such specific amount is hereby authorized to be substituted for the approximate amount of five million dollars (\$5,000,000.00) set out herein.~~

~~Sec. 34-1101. Declaring the drainage of the city to be a public utility.~~

~~City council hereby adopts Texas Local Government Code Chapter 402 Subchapter C (entitled "Municipal Drainage Utility Systems"); declares the drainage of the city to be a public utility, to be known as the City of San Antonio Drainage Utility; and dedicates to the drainage utility all city owned property, real and personal, facilities, materials and supplies constituting the city's drainage system as constituted on the effective date of this division and as may be acquired in the future, to be used for the purpose of the drainage utility.~~

~~(Ord. No. 86711, § 1, 9-25-97)~~

~~Sec. 34-1102. Establishment and revision to drainage utility service area.~~

~~(a) Pursuant to the authority granted by Texas Local Government Code § 402.044(8)(B) the drainage service area includes all land within the municipal boundaries and unincorporated extraterritorial jurisdiction of the city.~~

~~(b) The drainage utility district area may be extended by future city council action to the extent and in a manner authorized by state law.~~

~~(Ord. No. 86711, § 1, 9-25-97)~~

~~Sec. 34-1103. Establishment and revision of drainage charges.~~

~~—The city council hereby establishes drainage charges to be paid by users of benefitted property in the service area of the drainage utility. The determination of the schedule of drainage charges is deemed nondiscriminatory, reasonable and equitable to provide regional detention and retention ponds, watershed protection, land purchase, waterway enlargement, channelization, improved conveyance structures and administration of the drainage utility. The schedule of authorized drainage charges is as follows:~~

~~(a) Stormwater development fee. The stormwater development fee is a one-time drainage charge assessed against developers who elect to have their property served by the drainage utility pursuant to section 35-4029(e) of this Code.~~

~~(1) The stormwater development fee shall be determined by acreage and property use according to the following schedule:~~

~~One family (unattached) and two family (duplex) developments: \$1,200.00 per acre or \$750.00 per lot, whichever is less~~

~~Residential development—Other than one family and two family: \$1,600.00 per acre~~

~~Nonresidential (less than 65 percent impervious cover): \$2,600.00 per acre~~

~~Nonresidential (65 percent or more impervious cover): \$3,000.00 per acre~~

~~(2) The stormwater development fee shall not be assessed against drainage easements or rights of usage (if either is in a pervious condition) or permanent detention facilities.~~

~~(3) As part of the drainage report, required in section 35-4029(1) of this Code, the developer shall provide notice of intent to be served by the drainage utility district by filing a participation form as provided in Chapter 35, Exhibit B of this Code.~~

~~(b) Stormwater drainage service fee. The stormwater drainage service fee shall be billed and collected as prescribed in section 34-235 of this Code.~~

~~(Ord. No. 86711, § 1, 9-25-97)~~

~~Sec. 34-1104—34-1110. Reserved~~

~~Sec. 34-1111. Drainage utility fund.~~

~~(a) A separate fund shall be created, effective as of the effective date of this chapter, known as the drainage utility fund, for the purpose of identifying and controlling all revenues and expenses attributable to the drainage utility. All drainage charges collected by the city, except the stormwater drainage service fee, after the effective date of this chapter, and other monies city council may wish to designate for this fund, shall be deposited in~~

~~the drainage utility fund. Such utility revenues shall be used for the purposes of administration, studies, engineering, construction, reconstruction and other reasonable and customary charges associated with the operation of the drainage utility. The stormwater drainage service fee shall be deposited as prescribed in section 34-235 of this Code.~~

- ~~(b) Stormwater development fees shall be used specifically for the regional storm water management program as authorized in section 35-4029(e) of this Code. These funds shall be recorded and accounted for in a manner that insures that said funds are expended solely for expenses accrued by the regional stormwater management program. The balance of funds on deposit in the account at the end of any fiscal year shall remain in the account and not be absorbed into the general fund.~~

~~(Ord. No. 86711, § 1, 9-25-97)~~

~~Sec. 34-1116. Administration; rules and regulations.~~

- ~~(a) The director of the department of public works shall be responsible for the administration of this division. The director shall develop necessary rules, regulations and procedures necessary for the administration of the chapter including a methodology for considering variances.~~
- ~~(b) The director of public works shall develop a procedure to provide for appeals of drainage charge disputes. The procedure shall provide for a prompt hearing before and decision by the director.~~
- ~~(c) The decision of the director may be appealed to city council. Any appeal to city council shall be in writing and received within fifteen (15) days after the date of the director's decision. The city clerk shall upon receipt place the appeal on the next available city council agenda.~~

~~(Ord. No. 86711, § 1, 9-25-97)~~