

LEGAL NOTICE

Notice is hereby given that the City Council of the City of Texarkana will hold a public hearing on January 23, 2012 at 6:00 P.M. in the Council Chambers at Texarkana, Texas Municipal Building, West 3rd and Texas BLVD, 2nd Floor, Texarkana, TX 75501, (903) 798-3930 to consider the following:

- 1. Conduct a public hearing on Ordinance No. 001-2012, an ordinance of the City of Texarkana, Texas, adding Chapter 32A, *Stormwater (Drainage) Utility System*, Article I “Stormwater (Drainage) Utility System Rules” of the Texarkana City Code of Ordinances (1961), to establish a municipal stormwater (drainage) utility system; establish an administrative appeals process; provide penalties and remedies for nonpayment; exempt certain property from fees; and provide a process by which to discontinue the Stormwater (Drainage) Utility System; providing a cumulative clause; providing a severability clause; providing a savings clause; providing for publication; and providing an effective date.**

Please see Exhibit “A” for the Ordinance. Any interested persons and parties may submit any information they wish to be considered to the City Secretary prior to the date of the public hearings or may appear at the public hearings to be heard, or both.

The facility is wheelchair accessible. If you plan to attend and you have a disability that requires special arrangements, please notify the City Secretary 48 hours in advance of the hearings so that reasonable accommodations can be made. For sign interpretive services, please call 72 hours in advance.

For more information on this Legal Notice, please contact the City Secretary at (903) 798-3930.

Signed this the 22nd day of December, 2011.

Kerry Meredith
City Secretary

Published:

December 22, 2011
January 05, 2012
January 12, 2012

Exhibit "A"

ORDINANCE NO. 001-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS (1961) BY ADDING CHAPTER 32A ENTITLED "STORMWATER (DRAINAGE) UTILITY SYSTEM"; ARTICLE I "STORMWATER (DRAINAGE) UTILITY SYSTEM RULES" TO ESTABLISH A MUNICIPAL STORMWATER (DRAINAGE) UTILITY SYSTEM; ESTABLISH AN ADMINISTRATIVE APPEALS PROCESS; PROVIDE PENALTIES AND REMEDIES FOR NONPAYMENT; EXEMPT CERTAIN PROPERTY FROM FEES; AND PROVIDE A PROCESS BY WHICH TO DISCONTINUE THE STORMWATER (DRAINAGE) UTILITY SYSTEM; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Texarkana, Texas ("City") is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, within the City there exists a Stormwater (drainage) System developed over a number of years that collects and directs stormwater runoff; and

WHEREAS, portions of the existing Stormwater (drainage) Utility System are inadequate to collect and directs stormwater runoff within the City; and

WHEREAS, it is necessary to ensure that the collection of stormwater runoff and direction of stormwater (drainage) within the City protects the public health, safety, and welfare of City residents, as well as protects against property damage; and

WHEREAS, the City Council of the City of Texarkana, Texas ("the City Council") desires to address the various water quality and environmental issues that may further burden the City's stormwater (drainage) infrastructure; and protect against surface water overflow, standing surface water, and pollution; and

WHEREAS, the City Council desires to establish a Stormwater (drainage) Utility System, as authorized by the Texas Local Government Code Chapter 552, Subchapter C "Municipal Drainage Utility Systems," (the "Act") within the City's municipal boundaries; and

WHEREAS, the Act further authorizes the City to establish a municipal Stormwater (drainage) Utility System service area; to provide rules for the use, operation, and financing of the system; to declare, after a public hearing, the City's Stormwater (drainage) System to be a

“public utility” as defined in the Act; to prescribe bases upon which to fund a Stormwater (drainage) Utility System and to assess the fees and charges to support the system; and to require certain exemptions along with other mandatory exemptions contained in Texas Local Government Code sections 552.053 and 580.003(a); and

WHEREAS, the City desires to adopt the Act and establish a Stormwater (drainage) Utility System as a public utility; and

WHEREAS, it is the intent of the City to fund the Stormwater (drainage) Utility System in a manner that fairly, equitably, and in a non-discriminatory manner allocates the cost of stormwater control and treatment to properties in proportion to stormwater runoff potential for each class of property; and

WHEREAS, proper notice has been given and a public hearing has been held regarding the adoption of this Ordinance, as required by law.

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

SECTION 1: The Code of Ordinances of the City of Texarkana, Texas, is hereby amended by adding Chapter 32A, “STORMWATER (DRAINAGE) UTILITY SYSTEM” to read as follows:

CHAPTER 32A. STORMWATER (DRAINAGE) UTILITY SYSTEM

ARTICLE I. STORMWATER (DRAINAGE) UTILITY SYSTEM RULES

Sec. 32A-1. Authority to create Stormwater (drainage) Utility System.

The City does hereby declare under the Texas Constitution and the Texas Local Government Code, Chapter 552, Subchapter C, The Municipal Drainage Utility System Act, that said Act is hereby adopted and it is declared that the stormwater (drainage) of the City of Texarkana, Texas, shall be a “public utility” as defined in the Act. Pursuant to the provisions of Section 552.046 of the Act, the City incorporates its existing stormwater (drainage) facilities, materials, equipment, and supplies into the Stormwater (drainage) Utility System (“Stormwater (Drainage) System” or “Utility” or “Public Utility”).

Sec. 32A-2. Findings and determinations.

(a) *Determination of Utility Service Area.* The Stormwater (Drainage) System shall serve the City, the boundaries of which shall be the City’s municipal boundaries.

(b) It is hereby found, determined, and declared that the City shall:

- (1) Ensure that the cost of operating and maintaining the Stormwater (Drainage) System, and the financing of necessary repairs, replacements, improvements, and extension thereof must be related to stormwater (drainage) service and the terms of the Stormwater (drainage) Utility Fees;
- (2) Provide stormwater (drainage) facilities and services for benefitted real property within the utility service area upon payment of the Stormwater (drainage) Utility Fee unless the property is exempt under Section 32A-13; and
- (3) Establish a schedule of Stormwater (drainage) Utility Fees for benefitted properties within the utility service area in accordance with the provisions of the Act; and
- (4) Offer stormwater (drainage) service under non-discriminatory, reasonable, and equitable terms.

Sec. 32A-3. Application.

This Article applies to the Owner or Customer of a benefitted property within the utility service area, as determined by Section 32A-2, to which stormwater (drainage) service is provided, either directly or indirectly.

Sec. 32A-4. Definitions.

The following definitions shall apply to the establishment and operation of the Stormwater (Drainage) System:

Act means Chapter 552, Subchapter C “Municipal Drainage Utility Systems,” of the Texas Local Government Code, as amended.

Allocated portion of a parcel means the lot, tract, or part of a parcel that has been assigned to an Owner or Customer based on the portion used by the Owner or Customer as compared to the parcel’s total area.

Benefitted property means an improved lot, tract or parcel within the utility service area to which stormwater (drainage) service is made available under this Article. All real property within the utility’s service area directly or indirectly receives stormwater (drainage) service.

BCAD means Bowie Central Appraisal District.

City means the City of Texarkana, Texas and the City’s officers and employees.

Customer means the person(s) or entity(ies) recorded as the customer or user of utility services for a parcel based on the records of the City or its contracted utility billing system provider.

Director of Public Works means the City's Director of Public Works or his/her designee responsible for the administration and enforcement of this Article.

Equivalent residential unit (ERU) means a unit of measurement of impervious surface area calculated for the average single family residential property within the utility service area, as measured in square feet (SF), including the residential structure, garage, driveway, sidewalk, patio, out buildings, and any other impervious surface.

Impervious surface means a surface that has been compacted or covered with a layer of material so that it is resistant to penetration by water and does not have a vegetative cover. An Impervious surface includes, but is not limited to, compacted soil with a surface treatment, gravel, crushed stone surface or soil compacted by vehicle traffic, asphalt or concrete pavement, a parking lot, a driveway, a sidewalk or private roadway, a building or artificial structure, or any surface that changes the natural landscape and increases, concentrates, pollutes, or otherwise alters the flow or amount of stormwater runoff.

Impervious area means a measurement in square feet (SF) of impervious surface on which the amount of stormwater runoff potential for a benefitted property within a customer class is estimated.

Improved parcel means a parcel, lot or tract or portion of lot or tract that has been changed from its natural state by addition of a building, facility, structure or other improvement on all or a portion of the parcel, which creates an impervious surface.

Non-Residential property means an improved parcel that is not a residential property, including commercial, industrial, institutional, and governmental uses, a condominium or apartment consisting of five (5) or more residential units, a homeowners' association, or other similar uses or properties.

Owner means the person(s) or entity(ies) listed as the owner of a parcel in the records of BCAD or the City.

Public Utility (or *Utility*) shall have the same meaning as defined by the Act, Section 552.044(7).

Residential property means an improved parcel upon which four (4) or fewer residential units are constructed in one building on the Improved Parcel.

Residential dwelling unit means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by applicable City codes, for not more than one family. A residential unit may be a single-family house, a town home, a condominium, a manufactured home or a portion of a duplex, triplex or quadplex.

Service area means the geographic area within the incorporated limits of the City.

Stormwater (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 (drainage) 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.

Stormwater (drainage) Utility expenditures means an expenditure required to finance, operate and maintain stormwater (drainage) infrastructure, including debt service, equipment, personnel, educational and administrative expenditures.

Stormwater runoff potential means the relative potential for causing stormwater runoff quantities, qualities, or velocities from an improved parcel based on the type of development or land use on the parcel and the size of the parcel.

Stormwater (drainage) Utility Fee means the fee established under Article II of Chapter 32A of the Code of Ordinances of the City of Texarkana, Texas that is levied against the Owner or Customer of a benefitted property for stormwater (drainage) services provided by the Stormwater (Drainage) System, including, but not limited to, the items described in the definition of “cost-of-service” in the Act. The Stormwater (drainage) Utility Fee may also be referred to as a *Fee*.

Stormwater (drainage) System means the Stormwater (drainage) 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 benefitted property, and including provision for additions to the system. The Stormwater (Drainage) System may also be referred to as a *Public Utility* or *Utility*.

Wholly sufficient and privately owned Stormwater (drainage) 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 (Drainage) System.

Sec. 32A-5. Administration.

(a) *Duty of Director of Public Works.* The Director of Public Works shall administer the Stormwater (Drainage) System. The Director of Public Works shall maintain an accurate record of all properties benefitted or served by the Stormwater (Drainage) System and the Stormwater (drainage) Utility Fee levied for each parcel or portion of a parcel. The record may be maintained within the City’s billing system or in another record keeping system that may be developed.

(b) *Program Implementation.* By the adoption of this Article, the City makes no representation that all stormwater problems may or will be remedied and the City Council retains full discretion in establishing the priorities in expending funds as they become available to meet the City's stormwater (drainage) needs. The adoption of this Article shall not be construed to relieve private land owners, developers or other individuals or entities from providing stormwater (drainage) improvements required by the Code of Ordinances of the City of Texarkana, Texas, and federal or State laws and regulations.

(c) *Access to Benefitted Properties.* City employees shall have access to a benefitted property within the utility service area to inspect, maintain, repair, or enforce this Article or State laws or regulations.

(d) *Governmental Immunity.* The City does not waive any immunity granted under any law.

Sec. 32A-6. Stormwater (drainage) Utility Fee, billing policies, and procedures.

(a) *Stormwater (drainage) Utility Rate Classes.* A Stormwater (drainage) Utility Fee is established, and the fee shall be imposed on each benefitted property within the utility service area for stormwater (drainage) services and stormwater (drainage) facilities provided by the Stormwater (Drainage) System. A benefitted property within the utility service area shall be classified and charged a Stormwater (drainage) Utility Fee based on the Stormwater (drainage) Utility rate determined by the property's rate class. Depending on the use of the benefitted property, the property shall be classified as one of the rate classes:

- (1) Residential property; or
- (2) Non-Residential property.

(b) *Responsible Party.*

- (1) A Customer or Owner shall be billed monthly for stormwater (drainage) services. The Stormwater (drainage) Utility Fee shall be levied along with other municipal utility services provided to the premises, including water, wastewater or solid waste/refuse services.
- (2) The utility bill imposing the Stormwater (drainage) Utility Fee will be mailed to either the Customer or Owner who is currently identified as the responsible party for water, wastewater and solid waste service for the benefitted property; and, the Customer or Owner recorded in the utility billing system shall be responsible for payment of the Stormwater (drainage) Utility Fee.
- (3) If there is no active Customer account for a benefitted property recorded in the City's utility billing system, if the benefitted property is vacant (either

on a temporary or permanent basis), or when a benefitted property is not served by other municipal utility services, the Director of Public Works shall establish a “Stormwater Only Account” and shall bill the Owner of the benefitted property for the Stormwater (drainage) Utility Fee. The Owner of the benefitted property shall be responsible for payment of fees imposed via a Stormwater Only Account.

(c) *Revision of Rates.* The City Council shall establish the initial Stormwater (drainage) Utility Fee and Stormwater (drainage) Utility rates through an ordinance pursuant to the provisions of the Act. The City Council reserves the right to review the fee and rate schedules at any time and may, by ordinance, increase or decrease the Stormwater (drainage) Utility Fee or rates within the schedule upon a determination that the increase or decrease is warranted.

(d) *Billing Procedures and Policies.*

- (1) Any partial payment of the Stormwater (drainage) Utility Fee shall be applied against the amount due in accordance with the policies and procedures established for municipal utility services.
- (2) A late charge and interest may be imposed in accordance with the policies and procedures established for municipal utility services.

(e) *Non-Payment.* The City may file suit to recover any unpaid fees, together with maximum interest, attorneys’ fees and other costs and fees allowable under State or federal law. In addition to any other remedies or penalties provided by State or federal law or in this Article, a Customer’s failure to pay the Stormwater (drainage) Utility Fee when due shall subject the Customer to disconnection of any or all municipal utility services and/or the placement of a lien against the benefitted property to the extent authorized by law and the Code of Ordinances of the City of Texarkana, Texas, as amended.

Sec. 32A-7. Calculation of fees.

(a) *Rates in Accordance with the Act.* The Stormwater (Drainage) System rates shall be established in accordance with the provisions of the Act and this Section.

(b) *Fee Calculation.* The Stormwater (drainage) Utility Fee shall be based on an inventory of improved parcels within the service area. The inventory shall evaluate the stormwater runoff potential for improved parcels within the service area and establish a rate for each class of benefitted properties. If authorized by the City Council, the Director of Public Works may levy an amount to establish one or more funds to finance future stormwater (drainage) system construction and to improve stormwater quality. The stormwater runoff potential for each class shall be equitably and proportionately distributed between classes and among the parcels within each class of benefitted properties relative to the contribution of each class to stormwater runoff. The Stormwater (drainage) Utility Fee shall be set according to the requirements of Section 32A-7.

(c) *Stormwater Runoff Potential.* For purposes of establishing the stormwater runoff potential for each class of benefitted properties and between classes of benefitted properties, the Director of Public Works shall calculate the impervious area for parcels within the service area based on data gathered from BCAD, Geographic Information System records, and aerial photography and site plans or plats available. The Director of Public Works shall then determine the relative stormwater runoff potential for each rate class and among parcels within each rate class. The rate for each class of benefitted properties and for parcels within each class shall be based on the impervious area measured in square feet (SF).

(d) *Property values.* In calculating the Stormwater (drainage) Utility rate, the Director of Public Works shall be prohibited from using property values.

Sec. 32A-8. Stormwater (drainage) Utility Fee credit.

(a) Any non-residential properties on which stormwater runoff mitigation measures or best management practices (BMPs) have been implemented or which has on file with the City an approved individual stormwater management permit issued by the Texas Commission on Environmental Quality may be eligible for a credit to the Stormwater (drainage) Utility Fee.

(b) The Director of Public Works shall adjust the fee for such properties according to the actual mitigative effect of the measures taken. Best Management Practices (BMPs) as approved by the Director of Public Works that were required as part of development plan approval will not be eligible for such credits.

(c) The credit methodology shall be set forth in an administrative policy to be maintained in the Public Works Department of the City.

(d) The application for credit shall be in writing and shall include an engineering report sealed by a Texas licensed professional engineer qualified in civil engineering, or other documentation that the Director of Public Works deems necessary, to properly evaluate the rationale for determining the credit for the approved stormwater management techniques. Submitted applications may be reviewed by the Director of Public Works or by a third-party licensed engineer to validate the submitted rationale and methodology. Stormwater credits will begin upon completion and inspection of the approved mitigation measures on the property. Any property served by a private facility that is maintained by the City shall not receive a credit and shall be charged the normal monthly Stormwater (drainage) Utility Fee.

(e) The credit will be only for the impervious area within the total parcel area which receives the stormwater management technique;

(f) The maximum credits available with appropriate documentation and approval by the Director are as follows:

- (1) Mitigation efforts impacting stormwater quality are worth up to fifty percent (50%) credit against the original fee;

- (2) Mitigation efforts impacting stormwater quantity are worth up to fifty percent (50%) credit against the original fee.

(g) The Director of Public Works will determine the final credit allowance based on all engineering reports.

(h) The Director of Public Works shall have the right to inspect the private stormwater (drainage) infrastructure facility at any reasonable time to determine if it is in compliance with the approved design and continues to be capable of functioning properly. If the facility's performance is affected because it fails to meet the proper operating standards, or has been altered, or is in disrepair, the Customer or Owner shall pay the monthly Stormwater (drainage) Utility Fee at the normal rate, without benefit of reduction, until such time that the facility is brought into total compliance.

Sec. 32A-9. Collections and liens.

(a) *Disconnection of Municipal Utility Service.* The City shall keep an itemized account of the amounts owed pursuant to this Article. If any account is not paid within the time period established for municipal utility fees for the benefitted property as outlined in the City's policies and procedures, and the Customer fails to make other arrangements satisfactory to the City, the City or its contracted utility service provider is authorized to disconnect utility services pursuant to its normal and customary business practices.

(b) *Notice of Intent to Impose Lien.* If any amount is not paid within sixty (60) days of the billing date, the City shall send notice to the Customer and the Owner of its intent to impose a lien against the property to which service is provided ("the notice of intent"). The notice of intent shall be mailed to the Customer's billing address, the Owner, and the property address listed by BCAD, if different from the Owner's address. The notice of intent shall contain the following:

- (1) The name and address of the Customer to whom utility bills were sent pursuant to this Article;
- (2) The name and address of the Owner;
- (3) The street address and a legal description of the real property on which the building is or was located;
- (4) A statement of fees and the balance due, including any late charges and administrative fees incurred; and
- (5) A statement that the fees are unpaid and delinquent, and that if, within thirty (30) days, full payment of the balance due has not been received by the City or an appeal pursuant to Section 32A-10 has not been perfected, a lien will be placed upon the real property.

(c) *Notice of Lien Filed in County Records.* If, within the time specified in Section 32A-9(b)(5), full payment of the balance due has not been received by the City or an appeal pursuant to Section 32A-10 has not been perfected, the City Secretary shall file a notice of lien in the Deed Records of Bowie County, Texas (“the notice of lien”). The notice of lien shall contain the following:

- (1) The name and address of the Customer to whom utility bills were sent pursuant to this Article;
- (2) The name and address of the Owner;
- (3) The street address and a legal description of the real property on which the building is or was located; and
- (4) An updated statement of fees and the balance due, including any late charges and administrative fees incurred.

(d) *Personal Obligation of Customer and Owner.* The expenses incurred by the City as set forth in the notice of lien shall be a personal obligation of both the Customer and the Owner and shall constitute a priority lien against the property, which lien, however, shall be secondary to an existing, recorded, bona fide mortgage lien. The City may bring an action in any court of proper jurisdiction against the Owner to recover the costs incurred by the City.

(e) *Lien Shall be Valid and Privileged.* Upon filing of the notice of lien, the City’s lien shall be valid against the property so assessed. The City’s lien shall be privileged and superior to all other liens, including previously recorded judgment liens and any liens recorded after the City’s lien. The lien shall continue until the assessment and all interest due and payable thereon has been paid.

(f) *Lien Must be Paid.* No utility service, building permit, or certificate of occupancy shall be allowed or issued on any property against which a lien has been imposed until the lien is paid in full and such lien is released by the City.

(g) *Release of Lien.* After the expenses incurred by the City, as set forth in the notice of lien, have been fully paid with interest of ten percent (10%) per annum, the City Secretary shall execute a release of lien, which shall be filed in the Deed Records of Bowie County, Texas.

Sec. 32A-10. Appeal.

(a) *Standing and Exclusive Remedy.* An Owner or Customer who has been charged with and contests a Stormwater (drainage) Utility Fee, or who challenges action taken by the City under this Article for non-payment of the Stormwater (drainage) Utility Fee charged to that Owner or Customer, shall have standing to appeal under this Article; that Owner or Customer will be referred to as an "appellant" in this section. The provisions in this section shall be the exclusive administrative remedy for an appellant. By way of example and not limitation, an appellant may appeal an error in calculating the Stormwater (drainage) Utility Fee for a

benefitted property due to an error in calculating impervious surface area or an error in calculating the customer class; or an appellant may appeal the discontinuance of utility service, the filing of a lien, or other legal action taken by the City under this Article for non-payment of the Stormwater (drainage) Utility Fee.

(b) *Perfecting Appeal.* An appellant shall file a written notice of appeal with the Director of Public Works. The notice of appeal shall include a statement of the specific relief sought and all evidence in support of the appeal. The appellant shall be required to provide, at his/her sole cost, the following documents with the notice of appeal: survey data sealed by a Texas licensed professional land surveyor; or engineering reports sealed by a Texas licensed professional engineer qualified in civil engineering. The appellant's failure to provide the information required by this section shall be grounds for summary dismissal of the appeal. Except as provided below, evidence not included with the notice of appeal shall be excluded from consideration.

(c) *Optional Security to Reinstate Utility Service.* The appellant may reinstate any disconnected utility service during the pendency of an appeal by tendering a cashier's check made payable to the City in an amount not less than 125% of the balance due as provided in the notice of intent (or, if a lien has been filed, the notice of lien). The check will be deposited and applied to the appellant's Stormwater (drainage) Utility Fee account. If the appeal is resolved in whole or in part in favor of the appellant, a corresponding refund or credit shall be applied to the appellant's Stormwater (drainage) Utility Fee account. This section does not relieve the appellant from the obligation of continuing to pay the assessed Stormwater (drainage) Utility Fee during the pendency of the appeal.

(d) *Burden of Proof.* The appellant shall bear the burden of proving by a preponderance of the evidence the relief sought in the appeal. By way of example and not limitation, the appellant shall bear the burden of proving that a fee does not apply, or that the fee is calculated in error, or that the rate class assigned to the appellant is incorrect.

(e) *Rendering a Decision on Appeal.* The Director of Public Works may decide the appeal based upon the information contained in the notice of appeal and information relied upon in the original fee determination. The appellant may be required, at his/her sole cost, to provide supplemental information which the Director of Public Works deems relevant and necessary to deciding the appeal; and, the appellant shall provide such information within thirty (30) days following receipt of a written request from the Director of Public Works. If the Director of Public Works deems that an informal conference would assist in the determination of the appeal, the appellant shall be provided at least ten (10) days written notice of a date and time for such informal conference. In any case, the decision rendered shall be in writing and shall be based upon whether the appellant has met the burden of proof under section 32A-10(d).

- (1) If within the first year following the initial billing date on a benefitted property, a fee adjustment is warranted or the rate class is incorrect the Director of Public Works shall authorize a rate adjustment, which shall be retroactive to the beginning of billings for the appealed fee; but, the retroactive period shall not exceed one (1) year.

- (2) If after the first year following the initial billing date on a benefitted property, a fee adjustment is warranted or the rate class is incorrect, the Director of Public Works shall authorize a fee adjustment, which shall be prospective and applied to future billings. At the discretion of the Director of Public Works, the fee adjustment may also be retroactive; but, the retroactive period shall not exceed three (3) months prior to the receipt of the notice of appeal.

(f) *Review by the City Manager.* An appellant dissatisfied with the decision of the Director of Public Works may seek review of the decision with the City Manager by filing a request for review. A written request for review by the City Manager must be filed with the City Secretary within fifteen (15) days following receipt of the decision on appeal from the Director of Public Works. The provisions of section 32A-10 (e) shall apply to the City Manager's review, whose decision shall be final.

(g) *Material Change of Circumstances.* No appeal for the same or related issue on the same piece of property shall be allowed from a previous ruling on any appeal. If, however, the appellant asserts a material change of circumstances on a property subject to a previous appeal, the appellant must perfect a new appeal; and in such an appeal, the appellant shall bear the additional burden of proving by a preponderance of the evidence the existence of a material change of circumstances.

Sec. 32A-11. Termination of Stormwater (drainage) Utility System.

If, after at least five (5) years of substantially continuous operation of the Stormwater (Drainage) System, the City Council determines that the Stormwater (Drainage) 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 (Drainage) System.

Sec. 32A-12. Stormwater (drainage) Utility fund.

(a) *Stormwater (drainage) Utility fund.* A Stormwater (drainage) Utility fund is established and may consist of one or more accounts. All Stormwater (drainage) Utility fees shall be deposited as collected and received into this fund, and shall be used exclusively for stormwater (drainage) services as provided in 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 (drainage) facility used in draining the benefitted property;
- (6) The prorated cost of debt service and reserve requirements for funding of stormwater (drainage) 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 (Drainage) System.

(b) *Stormwater (drainage) Utility fund accounting.*

- (1) The City shall clearly account for revenues and expenditures authorized for operation of the Stormwater (Drainage) System.
- (2) The revenues collected from Stormwater (drainage) Utility Fees shall be segregated and completely identifiable from other City funds and accounts.
- (3) Funds and revenues in the Stormwater (drainage) Utility fund may be transferred to the City's general fund as allowed by law.

(c) *Stormwater (drainage) Utility service deposit.* A deposit shall not be imposed for initiation or continuation of Stormwater (drainage) Utility service.

Sec. 32A-13. Exemptions.

(a) The following shall be exempt from payment of the fees established by this Article:

(1) Entities to which a mandatory exemption under section 580.003(a) of the Texas Local Government Code applies.

(2) Any property to which a mandatory exemption under section 552.053 of the Texas Local Government Code applies, including without limitation:

- (A) Property with proper construction and maintenance of a wholly sufficient and privately owned Stormwater (drainage) System that does not discharge under any storm frequency event or conditions to waterways controlled or maintained by the City;
- (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; or
- (C) A subdivided parcel or lot, until a structure has been built on the subdivided parcel or lot and a certificate of occupancy has been issued, or the City has taken another official action to release the property for occupancy.

(3) The following shall also be exempted from payment of the fees established by this Article:

- (A) The City of Texarkana, Texas
- (B) Bowie County, Texas; and
- (C) Public school districts located in whole or in part within the city limits of Texarkana, Texas

(b) Proof of Exemption. If an Owner asserts that property is exempt pursuant to this Section or any other applicable law, the Owner has the burden of proving the exemption by filing with the Director of Public Works a notice of exemption eligibility and sufficient evidence of entitlement to such exemption. If the exemption is not granted, the Owner may appeal under Section 32A-10.

SECTION 2: Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance

shall be fined no more than TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) for each violation, and in addition shall pay all costs and expenses involved or incurred in the enforcement of the provisions of this Ordinance. Each day a violation occurs is a separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION 3: The City Secretary be and is hereby directed to publish the caption of this Ordinance for three (3) successive days in the Texarkana Gazette within ten (10) days of the passage of this Ordinance, as provided in Article XI, Section 3 of the Charter of the City of Texarkana, Texas.

SECTION 4: It is further provided that in case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a Court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION 5: All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Special Council Session on this the 23rd day of January, 2012.

STEPHEN A. MAYO, MAYOR

ATTEST:

KERRY MEREDITH, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

JEFFERY C. LEWIS, RETAINED LEGAL COUNSEL

LEGAL NOTICE

Notice is hereby given that the City Council of the City of Texarkana will hold a public hearing on January 23, 2012, at 6:00 P.M. in the Council Chambers at Texarkana, Texas Municipal Building, West 3rd and Texas BLVD, 2nd Floor, Texarkana, TX 75501, (903) 798-3930 to consider the following:

Conduct a public hearing on Ordinance No. 002-2012, amending the Code of Ordinances of the City of Texarkana, Texas (1961) by amending Chapter 32A, "Stormwater (Drainage) Utility System", as amended, by adding a new Article II "Stormwater (Drainage) Utility Fees", to establish monthly stormwater (drainage) utility fees for the purpose of funding the Stormwater (Drainage) Utility System; providing a cumulative clause; providing a severability clause; providing a savings clause; and providing an effective date.

Please see Exhibit "A" for the Ordinance. Any interested persons and parties may submit any information they wish to be considered to the City Secretary prior to the date of the public hearings or may appear at the public hearings to be heard, or both.

The facility is wheelchair accessible. If you plan to attend and you have a disability that requires special arrangements, please notify the City Secretary 48 hours in advance of the hearings so that reasonable accommodations can be made. For sign interpretive services, please call 72 hours in advance.

For more information on this Legal Notice, please contact the City Secretary at (903) 798-3930.

Signed this the 22nd day of December, 2011.

Kerry Meredith
City Secretary

Published: December 22, 2011
January 05, 2012
January 12, 2012

ORDINANCE NO. 002-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS (1961) BY AMENDING CHAPTER 32A, "STORMWATER (DRAINAGE) UTILITY SYSTEM", AS AMENDED, BY ADDING ARTICLE II "STORMWATER (DRAINAGE) UTILITY FEES", TO ESTABLISH MONTHLY STORMWATER (DRAINAGE) UTILITY FEES FOR THE PURPOSE OF FUNDING THE STORMWATER (DRAINAGE) UTILITY SYSTEM; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Texarkana, Texas ("City") is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Texarkana, Texas ("City Council") has adopted Ordinance No. 001-2012, to create a Stormwater (drainage) Utility System and provide stormwater (drainage) service to collect and direct stormwater runoff for benefitted properties within the utility service area upon payment of Stormwater (drainage) Utility Fees; and

WHEREAS, the City Council, after holding a public hearing and finding that the fees are nondiscriminatory, reasonable, and equitable, now desires to levy a schedule of Stormwater (drainage) Utility Fees for stormwater (drainage) service; and

WHEREAS, in setting the schedule of Stormwater (drainage) Utility Fees, the fees are based on an inventory of improved parcels within the utility service area.

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

SECTION 1: The City Council hereby establishes Stormwater (drainage) Utility Fees as set forth herein. Stormwater (drainage) Utility Fees shall be levied against all benefitted properties within the utility service area unless exempt under Chapter 32A, Article I, Section 32A-13. These fees shall be imposed and issued with utility billing statements issued on and after July 01, 2012.

SECTION 2: The Code of Ordinances of the City of Texarkana, Texas, is hereby amended by adding Article II to Chapter 32A "Stormwater (Drainage) Utility Fees" to read as follows:

ARTICLE II. STORMWATER (DRAINAGE) UTILITY FEES

Sec. 32A-14. Applicability.

A Stormwater (drainage) Utility Fee shall be levied against all benefitted property within the utility service area unless exempt under Article I, Section 32A-13.

Sec. 32A-15. Fee calculation.

(a) *Stormwater (drainage) Utility Fee Calculation.* Stormwater (drainage) Utility Fees shall be calculated based on the total stormwater runoff potential for benefitted properties for all customers within the utility service area. The total stormwater runoff potential shall be measured as impervious areas in square feet (“SF”).

(b) *Stormwater Utility Fee.* The total stormwater runoff potential for the service area shall be allocated between the customer classes based on the relative amount of impervious area in each class established in Article I, Section 32A-6(a). The monthly Stormwater (drainage) Utility Fee is based on the average impervious area for an ERU, which is Two Thousand Nine Hundred Square Feet (2,900 SF). The specific, applicable fees for any given fiscal year are established by the City Council and published in the City of Texarkana, Texas, Master Fee Schedule.

(1) *Residential Property Class.* The monthly Stormwater Utility Fees for each residential property as defined in Article I, Section 32A-4, shall be either a flat-rate fee per a single-family equivalent residential unit (“ERU”) or a flat-rate fee per dwelling unit on a residential parcel.

(2) *Non-Residential Property Class.* The monthly Stormwater Utility Fees for each improved non-residential property or allocated portion of an improved non-residential property shall be equal to:

Impervious Area in square feet divided by 2,900 square feet for the ERU times applicable flat-rate ERU fee

(3) *Minimum Monthly Stormwater (drainage) Utility Fee.* The minimum Stormwater (drainage) Utility Fee for all customer classes shall be the fee for the ERU.

(c) *Revision of Fees or Rates.* The Stormwater (drainage) Utility Fee or the stormwater (drainage) utility rate may be revised by the City Council through an ordinance from time to time as permitted by this Article and the Act.

SECTION 3: The following fees for calculating Stormwater Utility Fees as provided in the Code of Ordinances of the City of Texarkana, Texas, Chapter 32A “Stormwater (Drainage)

Utility System”, Section 32A-15, shall be fixed and set for each fiscal year (FY) beginning July 01, 2012 for Fiscal Year 2012, as follows for the next fiscal years:

*FY2012 shall be \$6.00 per ERU, FY2013 shall be \$6.50 per ERU,
FY2014 shall be \$7.00 per ERU, FY2015 shall be \$7.50 per ERU,
FY2016 shall be \$8.00 per ERU, FY2017 shall be \$8.50 per ERU,
FY2018 shall be \$9.00 per ERU, FY2019 shall be \$9.50 per ERU,
FY2020 shall be \$10.00 per ERU, FY2021 shall be \$10.50 per ERU*

These fees shall be published in the City of Texarkana, Texas, Master Fee Schedule and posted on the City’s website. In an effort to reduce administrative publication costs, the fees shall not be published in the City’s Code of Ordinances.

SECTION 4: It is found and determined by the City Council that the fees established by this Ordinance are nondiscriminatory, reasonable, and equitable, and that the fees are based on an inventory of improved parcels within the utility service area.

SECTION 5: It is further provided that in case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a Court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Special Council Session on this the 23rd day of January, 2012.

STEPHEN A. MAYO, MAYOR

ATTEST:

KERRY MEREDITH, CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

JEFFERY C. LEWIS, RETAINED LEGAL COUNSEL