

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 012-033

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE TOWN'S CODE OF ORDINANCES BY AMENDING CHAPTER 82 (UTILITIES) OF THE TOWN CODE OF ORDINANCES TO ADD A NEW ARTICLE VI, DIVISION 1 REGARDING A MUNICIPAL STORMWATER (DRAINAGE) UTILITY SYSTEM; DECLARING THE ADOPTION OF THE MUNICIPAL DRAINAGE UTILITY SYSTEMS ACT (SUBCHAPTER C OF CHAPTER 552, TEX. LOC. GOV. CODE) AND DECLARING STORMWATER (DRAINAGE) TO BE A PUBLIC UTILITY AND ESTABLISHING A SERVICE AREA IN CONNECTION THEREWITH; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND CALCULATION OF STORMWATER (DRAINAGE) UTILITY FEES, INCLUDING PROPERTY CLASSIFICATIONS, FOR BILLING POLICIES AND PROCEDURES, AND FOR CREDITS; PROVIDING PENALTIES AND REMEDIES FOR NONPAYMENT OF FEES, INCLUDING DISCONTINUANCE OF UTILITY SERVICES AND THE FILING OF A LIEN; PROVIDING AN APPEAL PROCESS; PROVIDING FOR TERMINATION OF THE STORMWATER (DRAINAGE) UTILITY SYSTEM; PROVIDING FOR A STORMWATER (DRAINAGE) UTILITY FUND; PROVIDING FOR EXEMPTIONS FROM PAYMENT OF THE STORMWATER (DRAINAGE) UTILITY FEE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY, IN ACCORDANCE WITH SECTION 1-7 OF THE CODE OF ORDINANCES, IN AN AMOUNT NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00), EXCEPT THAT THE PENALTY FOR A VIOLATION OF A PROVISION HEREOF REGARDING FIRE SAFETY, ZONING, OR PUBLIC HEALTH OR SANITATION SHALL NOT EXCEED THE SUM OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00); BUT, IN ANY EVENT THE PENALTY SHALL NOT BE LESS THAN OR EXCEED AN AMOUNT AS MAY BE PRESCRIBED BY STATE LAW FOR A VIOLATION, AND EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas ("Town") is a home rule municipality having the full power of local self-government pursuant to its Charter, Article XI, Section 5 of the Texas Constitution, and Chapter 9 of the Texas Local Government Code; and

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

WHEREAS, it is necessary that the collection and direction of stormwater (drainage) runoff within the Town protect the public health, safety, and welfare of Town citizens including but not limited to protection against property damage; and

WHEREAS, the City Council of the Town ("City Council") desires to address the various water quality and environmental issues that may burden its stormwater (drainage) infrastructure, and to protect against surface water overflow, standing surface water, and pollution arising from nonpoint source runoff within the Town; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of the Town to promote the public health, safety and welfare of the citizens by adopting 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 Town's municipal boundaries; and

WHEREAS, the Act provides for the said public utility service to be provided within an established service area; and

WHEREAS, among other things, the Act: (i) authorizes the Town to adopt and enforce rules it considers appropriate to operate the Stormwater (drainage) Utility (Section 552.045(e) of the Act), (ii) references rules for the use, operation, and financing of the stormwater (drainage) utility system (Section 552.042(a)(2) of the Act), (iii) references authority to prescribe bases on which a municipal Stormwater (drainage) Utility system may be funded and fees and charges in support of the system may be assessed, levied and collected (Sections 552.042(a)(5), 552.045(d) of the Act), and (iv) together with Section 580.003(a) of the Local Government Code, provides for certain exemptions from the provisions of the Act and ordinances, resolutions, and rules adopted under the Act; and

WHEREAS, the Town desires by this Ordinance to, among other things, (i) establish rules for the use, operation, and financing of the Town's Stormwater (drainage) Utility system, (ii) prescribe bases on which the system is to be funded, to establish fees and charges in support of the system, and to provide for the assessment, levy and collection of the same, and (iii) to provide for certain exemptions from the provisions the Stormwater (drainage) Utility system, all in a manner that fairly, equitably, and in a non-discriminatory manner allocates the cost of stormwater (drainage) control and treatment to properties in proportion to stormwater runoff potential for each class of property; and

WHEREAS, in accordance with the Act and in connection with this Ordinance, the City Council, before adopting this Ordinance, adopted Ordinance No. ____ and therein found that: (i) the Town will establish a schedule of stormwater (drainage) charges against all real property in the proposed service area subject to charges under the Act, (ii) the Town will provide stormwater (drainage) for all real property in the proposed service area on payment of stormwater (drainage) charges, except real property exempted under the Act, and (iii) the Town will offer stormwater (drainage) service on nondiscriminatory, reasonable, and equitable terms; and

WHEREAS, in accordance with the Act (Section 552.045(c) thereof), notices of a public hearing regarding this Ordinance were published and a public hearing on this Ordinance held concerning the matters set forth herein; and

WHEREAS, as set forth herein, the City Council adopts the Act and declares that the stormwater (drainage) infrastructure and services of the Town is a public utility within the meaning of the Act.

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

Section 1. Incorporation of Recitals. The above and foregoing recitals and premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "Town") is hereby amended by amending Chapter 82 (Utilities) thereof to add thereto a new Article VI (Municipal Stormwater (Drainage) Utility System), Division 1 (Generally) regarding stormwater (drainage) as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the Code of Ordinances are not amended hereby.


Section 3. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the Town and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the Town, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount in accordance with and as provided in Section 1-7 of the Code of Ordinances (that is, in an amount, not to exceed \$500.00, except that a fine not to exceed \$2,000.00 shall be imposed upon a person convicted of a violation of this Ordinance if the violation governs fire safety, zoning or public health or sanitation, but any penalty imposed for a violation of this Ordinance shall not exceed or be less than the penalty as may be prescribed by state law), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section, subsection, sentence, paragraph, phrase, word, or provision of this Ordinance or the application of any section, subsection, sentence, paragraph, phrase, word, or provision hereof to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by the valid judgment or decree of a court of competent jurisdiction, the same shall not affect the validity of any other section, subsection, phrase, word, or provision of this Ordinance or the application of any other section, subsection, sentence, paragraph, phrase, word, or provision to any person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional section, subsection, sentence, paragraph, phrase, word, or provision, and to this end the remainder of this Ordinance shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law, including but not limited to the City Charter and ordinances.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 23rd day of October, 2012.



Todd Meier, Mayor

ATTEST:

By: 

Chris Terry, City Secretary

APPROVED AS TO FORM:

By: 

John Hill, City Attorney

EXHIBIT A
TO ORDINANCE NO. 012-033
Addition of Article VI (Municipal Stormwater (Drainage) Utility System),
Division 1 (Generally) to Chapter 82 (Utilities) of the Code of Ordinances

ARTICLE VI. STORMWATER (DRAINAGE) UTILITY SYSTEM

DIVISION 1. GENERALLY

**Section 82-261 - Municipal Stormwater (drainage) Utility System Established;
Incorporation of Existing Facilities.**

The Act (as defined in Section 82-264 below) is hereby declared adopted and shall be fully implemented as provided by the Act and by the City Council; and the stormwater (drainage) of the town is hereby declared and found to be a public utility within the meaning of the Act. Pursuant to Section 552.046 of the Act, the town's existing stormwater (drainage) facilities, materials, and supplies, including equipment, are incorporated into the Stormwater (drainage) Utility system.

Section 82-262 - Stormwater (Drainage) Service Provided; Service Area.

The town will provide stormwater (drainage) service for all real property within its boundaries upon payment of the stormwater (drainage) charges applicable thereto as may be included in this Article or otherwise adopted by the town, excluding real property exempt under the Act or other law and certain real property exempted by the town, and such stormwater (drainage) service will be based on nondiscriminatory, reasonable and equitable terms. For purposes of this Article and in connection herewith, the service area for the stormwater (drainage) service is the entire area within the boundaries of the town.

Section 82-263 - Application.

This Article applies to the user (Owner or Customer) of a benefitted property within the service area to which Stormwater (drainage) Utility service is provided.

Section 82-264 - Definitions.

The following definitions shall apply to the establishment and operation of the Stormwater (drainage) Utility system:

Act means Chapter 552, Subchapter C (entitled "Municipal Drainage Utility Systems") of the Texas Local Government Code, as amended.

Airport public area means that portion of the Addison Airport, which is now or hereafter considered by the town to be the obligation and responsibility of the town to operate and maintain for the common use and benefit of the general aviation public. Subject to the prior

sentence, the airport public area includes any air navigation facility or structure designed and intended to serve the general public and is not specifically subject to a lease agreement; all runways, taxiways and other common-use paved, graveled or turfed areas and their respective protection zones, safety areas and/or object free areas; field lighting and associated beacon and lighted wind and landing direction indicators; security, fire, and emergency medical protection; protection of aerial approaches to the Airport; directional signs; and perimeter or restricted access fences. Airport public area does not include any portion of or improvement on the Airport that (a) is owned and leased or rented to third parties by the town, or (b) is occupied by or leased or rented to any government entity, authority, or agency, including the Federal Aviation Administration or U.S. Customs.

Allocated portion means the part of an improved parcel that has been allocated to an Owner or Customer based on the portion used by the Owner or Customer as compared to the improved parcel's total improved area.

Benefitted property means an improved parcel within the service area to which Stormwater (drainage) Utility service is made available. All real property within the service area directly or indirectly receives Stormwater (drainage) Utility service.

City manager means the town manager or the manager's designee.

City secretary means the town secretary or the secretary's designee.

Customer means a user who is recorded as the customer of, or the person using, Stormwater (drainage) Utility or other service(s) for a parcel based on the records of the town.

DCAD means Dallas Central Appraisal District.

Director of Public Works or *Director* means the town's Director of Public Works or the Director's designee.

Equivalent Residential Unit (ERU) means a unit of measurement of impervious surface area calculated for the average single family residential property within the service area, as measured in square feet, including the residential structure, garage, out buildings, and an allocation for the driveway, sidewalks, patios, and any other impervious surface.

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

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. 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 (drainage) runoff.

Improved parcel means a parcel that has a building, or other structure, or other improvement, on it that causes or creates an impervious surface.

Include (and any of its derivatives, such as *including*) is a term of enlargement and not of limitation or exclusive enumeration, and use thereof does not create a presumption that components not expressed are excluded.

Non-residential property means an improved parcel that is not a residential property, and includes improved parcels used primarily for retail, commercial, industrial, institutional, or governmental uses, and multi-story, apartment complexes consisting of five (5) or more residential dwelling units in one building, and an improved parcel that is owned by a property owners' association. A condominium property that is master metered for water utility service shall be treated as a non-residential property for the purposes of calculating Stormwater (drainage) Utility Fees.

Owner means the person(s) listed as the owner of a benefitted property in the records of DCAD or the town.

Parcel means a platted lot, or other tract of land that is separately described (by metes and bounds or otherwise), including a leased tract of land.

Person means an individual, sole proprietorship, partnership, limited partnership, joint venture, limited liability company, corporation, business trust, estate, association, and any other legal entity.

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 town codes, for not more than one family. A residential dwelling unit may be housed in a single-family house, a townhome, a manufactured home or a portion of a duplex, triplex, quadplex or an individually metered unit in a condominium complex

Residential property means an improved parcel upon which four (4) or fewer residential dwelling units are constructed. A townhome development that includes a row of five (5) or more residential dwelling units that share common walls, with each unit and the land on which it is located being individually owned, are also residential property. An improved parcel owned by a homeowners association, upon which improvements were made in order to support residential dwelling units, is also residential property. An improved parcel with condominium units that are individually metered for water utility service and are similar to townhomes are also considered residential property for the purpose of calculating Stormwater (drainage) Utility Fees.

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

Stormwater (drainage) Utility Infrastructure means the property - real, personal or mixed - that is used in providing stormwater (drainage) capacity to manage and control stormwater (drainage) runoff for the Stormwater (drainage) Utility system, including bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, retention 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.

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

Stormwater (drainage) Utility means the stormwater (drainage) utility system owned or directly controlled by the town, in whole or in part, including the town's existing stormwater (drainage) facilities, materials, and supplies and any stormwater (drainage) facilities, materials, and supplies hereafter constructed or utilized, and dedicated to the service of benefitted property, including future additions to the system. The Stormwater (drainage) Utility system may also be referred to as a *Utility*.

Stormwater (drainage) Utility Fee means the fee or charge established under this Article VI that is levied against a user (Owner or Customer) of a benefitted property for Stormwater (drainage) Utility services provided by the Stormwater (drainage) Utility system. The Stormwater (drainage) Utility Fee may also be referred to as a *Fee*.

Town means the Town of Addison, Texas.

User means the person who owns or occupies a Benefitted Property.

Wholly Sufficient and Privately Owned Stormwater (drainage) Utility System means land and facilities owned and operated by a person other than the town and from which stormwater (drainage) 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 Stormwater (drainage) Utility system.

Section 82-265 - Administration.

(a) *Duty of Director of Public Works.* The Director of Public Works shall administer the Stormwater (drainage) Utility system. The Director shall maintain an accurate record of all benefitted property and the Stormwater (drainage) Utility Fee levied for each such property. The record may be maintained within the town's utility billing system and/or in another record keeping system that may be developed.

(b) *Program Implementation.* By the adoption of this Article, the town makes no representation that all stormwater (drainage) problems may or will be remedied, and the City Council has and retains full discretion in establishing the priorities in expending funds as they

become available to meet the town's Stormwater (drainage) Utility needs. The adoption of this Article does not and shall not be construed to relieve private land owners, developers or other individuals or entities from providing stormwater (drainage) improvements pursuant to the ordinances, rules, codes, and regulations of the town, and federal or State laws and regulations.

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

(d) *Governmental Immunity.* The town does not waive any immunity or defense granted or available under any law or otherwise.

Section 82-266 - Stormwater (drainage) Utility Fee, Billing Policies, and Procedures.

(a) *Stormwater (drainage) Utility Rate Classes.* A benefitted property within the 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 and relative size compared to the ERU. Depending on the use of the benefitted property, the property shall be classified as one of the following rate classes:

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

(b) *Responsible Party.*

- (1) A Customer or Owner shall be billed monthly a Stormwater (drainage) Utility Fee for Stormwater (drainage) Utility services. The Stormwater (drainage) Utility Fee shall be levied or charged, along with other municipal services (if any) provided, to the benefitted property, 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 then currently identified by the town as the responsible party for water, wastewater and/or solid waste/refuse service for the benefitted property; and, the Customer or Owner recorded in the town's utility or other 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 town's utility or other billing system, or if a benefitted property is considered by the town to be vacant, either on a temporary or permanent basis, the town may 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.

- (4) If the town does not bill a benefitted property for water service, wastewater service, or solid waste/refuse service, the Director may establish for that property a "Stormwater Only Account" and bill the Owner or Customer as the Director may determine is appropriate.

(c) *Initial Fee, Rates; Revision of Fee, Rates.* The initial Stormwater (drainage) Utility Fee and Stormwater (drainage) Utility rates are or will be set forth in Division 2 of this Article, below. The City Council has and 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 utility services provided by the town.
- (2) A late charge and interest may be imposed in accordance with the policies and procedures of the town for established utility services provided by the town.
- (3) A Stormwater (drainage) Utility Fee that is imposed for a period of less than one month shall be prorated on the basis of the proportionate part of the period during which Stormwater (drainage) Utility service was provided.

(e) *Non-Payment.* In addition to any other remedies or penalties provided at law, in the Act, or in this Article, a Customer's or Owner's failure to pay promptly when due the Stormwater (drainage) Utility Fee when due shall subject the Customer or Owner to discontinuance of any utility services provided by the town and/or the placement of a lien against the benefitted property that is the subject of such failure to pay to the extent authorized by law and this Article. Additionally, the town may file suit to recover any Stormwater (drainage) Utility Fees, together with maximum interest, attorneys' fees and other costs and fees allowable under State or federal law, that are not paid when due.

(f) *Allocation of Fee by Residential and Non-Residential Multifamily Properties.* The owner, manager or operator of a residential property or of a non-residential property with a multi-family use, such as an apartment complex or condominium complex that is not individually metered for each dwelling unit, may not bill or collect from its occupants or tenants thereof an amount that, collectively, exceeds the actual Fee imposed on the said property. Any agreement between the owner, manager or operator of such property shall contain a clear written description of the method of calculation of the allocation of the Fee for each of the occupants or tenants. However, the owner, manager or operator may charge an occupant or tenant a fee for

late payment of an occupant's or tenant's allocated portion of the Fee. The owner, manager, or operator shall maintain adequate records regarding the allocation of the Fee to occupants or tenants of such property, and shall make such records available for inspection by such occupants or tenants during normal business hours.

Section 82-267 - Calculation of Stormwater (drainage) Utility Fees.

(a) *Rates in Accordance with the Act.* The Stormwater (drainage) Utility Fee and 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 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. The stormwater runoff potential 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 (drainage) runoff. Additionally, the stormwater runoff potential within a class may be subdivided into tiers that group together parcels with similarly sized impervious area on the parcel.

(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 shall calculate the impervious area for parcels within the service area based on data gathered from DCAD, Geographic Information System records, aerial photography, and site plans or plats available. The Director 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 Fee and rates, property values may not be used.

Section 82-268 - Stormwater (drainage) Utility Fee Credit.

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

(b) The Director may adjust the Fee for such properties according to the actual mitigative effect of the measures taken. BMPs 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 developed and maintained by the Director.

(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, and/or other documentation that the Director deems necessary, to properly evaluate the rationale for determining the credit for the approved stormwater (drainage) management techniques. Submitted applications may be reviewed by the Director or by a third-party licensed engineer retained by the town to validate the submitted rationale and methodology. Stormwater (drainage) credits will begin upon completion and inspection of the approved mitigation measures on the property.

(e) Any property served by a private stormwater (drainage) facility that is maintained by the town shall not receive a credit and shall be charged the normal monthly Stormwater (drainage) Utility Fee.

(f) The credit will be only for the impervious area within the total parcel area of the property that receives the stormwater (drainage) management technique.

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

- (1) Mitigation efforts impacting stormwater (drainage) quality are worth up to fifty percent (50%) credit against the original Fee;
- (2) Mitigation efforts impacting stormwater (drainage) quantity are worth up to fifty percent (50%) credit against the original Fee.

(h) The Director will determine the final credit allowance based on all engineering reports and any other documentation that the Director deems necessary to make the determination.

(i) The Director 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, 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 as determined by the Director.

Section 82-269 – Discontinuance of Utility Service; Collections and Liens.

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

(b) *Notice of Intent to Impose Lien.* If any account as described in paragraph (a) of this section is not fully paid within sixty (60) days following the billing date for the account, the town may send notice to the Customer and the Owner of its intent to impose a lien against the benefitted property to which Stormwater (drainage) Utility service is provided (the “notice of intent”). The notice of intent shall be mailed by certified mail, return receipt requested, to the Customer’s billing address, the Owner, and the property address listed by DCAD, if different from the Owner’s address. The notice of intent shall contain the following:

- (1) The name and mailing address of the Customer or Owner to whom the unpaid utility bills were sent pursuant to this Article;
- (2) The name and mailing address of the Owner;
- (3) The street address and a legal description of the benefitted property;
- (4) A statement of Fees and the balance due, including any late charges, interest, and administrative fees incurred; and
- (5) A statement that the Fees are unpaid and delinquent, and that if, within thirty (30) days following the date the notice of intent is mailed, full payment of the balance due has not been received by the town nor an appeal perfected pursuant to Section 82-270, a lien will be placed upon the benefitted property.

(c) *Notice of Lien Filed in County Records.* If, within the time specified in Section 82-269(b)(5), full payment of the balance due has not been received by the town nor has an appeal pursuant to Section 82-270 been perfected, the town secretary may file a notice of lien in the real property records of Dallas County, Texas. The notice of lien shall contain the following:

- (1) The name and mailing address of the Customer and/or Owner to whom the unpaid utility bills were sent pursuant to this Article;
- (2) The name and mailing address of the Owner;
- (3) The street address and a legal description of the benefitted property; and
- (4) An updated statement of Fees and the balance due, including any late charges and interest, and the account number for the delinquent charges.

(d) *Personal Obligation of Customer, Owner; Lien.* The Fees, late charges, interest and administrative fees incurred by the town as set forth in the notice of lien shall be a personal obligation of both the Customer and the Owner, and shall be a lien against the benefitted property, unless the benefitted property is a homestead as protected by the Texas Constitution, for delinquent bills for Stormwater (drainage) Utility service to the benefitted property. The

Town may bring an action in any court of proper jurisdiction against the Customer or Owner to recover the same and any costs incurred by the town in connection therewith.

(e) *Perfection of Lien; Lien Shall be Valid and Privileged.* The lien shall be perfected by recording in the real property records of Dallas County a notice of lien as described in subsection (c) of this section above. The lien may include penalties, interest, and collection costs. The town's lien is inferior to a bona fide mortgage lien that is recorded before the recording of the lien in the real property records of Dallas County. The lien is superior to all other liens, including previously recorded judgment liens and any liens recorded after the town's lien. The lien shall continue until the assessment and all penalties, interest, and other charges due and payable thereon have 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 town.

(g) *Release of Lien.* After the expenses incurred by the town, as set forth in the notice of lien, have been fully paid with interest of ten percent (10%) per annum, the town secretary shall execute a release of lien, which shall be filed in the real property records of Dallas County, Texas.

Section 82-270 - Appeal.

(a) *Appeal of Fee Calculation or Determination.* An Owner or Customer who has been charged with a Stormwater (drainage) Utility Fee and who believes that the calculation or determination of the Fee is incorrect may appeal such calculation or determination to the Director. Such Owner or Customer will be referred to as "appellant" in this section. During all periods of appeal, the appellant shall be responsible for payment in full of the Stormwater (drainage) Utility Fee and related charges.

An appeal described in subsection (a) of this section shall be processed as follows:

- (1) The appeal shall be in writing and set forth in detail the grounds upon which relief is sought.
- (2) Until October 1, 2013, the Director shall issue a decision on the appeal within four (4) months from the date that the Director receives the appeal. If the Director determines an adjustment is warranted the Director shall authorize an adjustment retroactive to the beginning of billings of the appealed Fee; however, the adjustment period shall not exceed one (1) year.
- (3) From and after October 1, 2013, the Director shall issue a decision on the appeal within thirty (30) days from the date that the Director receives the appeal. An adjustment resulting from such a request shall be prospective

and applied to future billings and may also be retroactive for no more than three (3) months prior to the receipt of the appeal.

(4) The Director shall issue a written decision on an appeal.

(b) *Appeal of Other Matters.*

(1) An Owner or Customer may appeal the following to the Director:

(A) the applicability of a Stormwater (drainage) Utility Fee to a parcel;

(B) the calculation of applicable stormwater runoff potential for a parcel;

(C) the discontinuance of utility service, notice of lien, filing of a lien or other legal action (except for the filing of suit) of the town for non-payment of Stormwater (drainage) Utility Fees.

(2) An appeal described in these subsections (a) and (b) of this section shall be processed as follows:

(A) The Owner or Customer shall file a written appeal to the Director within thirty (30) days following the date of issuance by the town of a notice or information that would give rise to or be the basis of such an appeal. By way of example and not be way of limitation, the date of issuance of a billing statement that includes a Stormwater (drainage) Utility Fee charge would be the date from which to calculate the said 30-day time period for an appeal regarding the applicability of a Stormwater (drainage) Utility Fee to a parcel or regarding the calculation of applicable stormwater runoff potential for a parcel. The Director may extend the time period for filing an appeal for good cause shown.

(B) The appeal shall be in writing and set forth in detail the grounds upon which relief is sought.

(C) The Director shall hear the appeal within sixty (60) days following the Director's receipt of the appeal. Notice of the hearing shall be mailed to the address given in the appeal form, or if no address is given to the address on the utility billing statement at least fourteen (14) days prior to the hearing.

(D) The burden of proof in connection with an appeal shall be on the Owner or Customer to demonstrate that the Fee is not applicable or that the determination of the value of the Fee was not calculated according to the applicable Stormwater (drainage) Utility Fee schedule or the methodologies established for determining the Stormwater (drainage)

Utility Fees. If applicable and if not previously submitted to the Director, the Owner or Customer shall submit with the appeal a report describing the basis for the appeal. The report shall be prepared by a Texas licensed professional engineer qualified in civil engineering. The Director may require the Owner or Customer to provide supplemental information regarding the appeal, including but not limited to survey data sealed by a Texas licensed professional land surveyor, or other documentation or information that the Director deems necessary to properly evaluate the appeal. The failure to submit such a report and/or information shall be considered in determining whether the applicant has met the burden of proof.

(E) If the appeal is accompanied by a bond or other sufficient security satisfactory to the attorney for the town in an amount equal to the original determination of the Stormwater (drainage) Utility Fee due, any discontinued utility services may be reinstated while the appeal is pending.

(F) At the hearing, the Director shall allow testimony from the Owner or Customer filing the appeal, town employees, and other interested persons relevant to the appeal. The hearing may be continued from time to time.

(G) Following the hearing the Director shall consider all evidence and determine whether the appeal should be granted in whole or in part or denied. The Director shall complete the Director's review and make a decision about the appeal within thirty (30) days of the hearing.

(c) *Burden of Proof.* The Owner or Customer filing the appeal shall bear the burden of proving by a preponderance of the evidence for the relief sought in the appeal. By way of example and not limitation, the Owner or Customer 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 Owner or Customer is incorrect.

(d) *Review by the City Manager.* An Owner or Customer dissatisfied with the decision of the Director 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. In connection with a request for review from an appeal filed pursuant to subsection (a) of this section, the process set forth in subsection (a) of this section shall be followed, and in connection with a request for review from an appeal filed pursuant to subsection (b) of this section, the process set forth in subsection (b)(ii) of this section shall be followed, in each instance with "City Manager" substituted as appropriate for "Director." If the Owner or Customer does not file a request for review with the City Manager, the decision of the Director regarding the appeal shall be final. If the Owner or Customer does file a request for review with the City Manager, the decision of the City Manager shall be final.

(e) *Material Change of Circumstances.* No appeal for the same or substantially the same issue on the same parcel shall be allowed. If, however, the Owner or Customer asserts a material change of circumstances on a parcel that was the subject of a previous appeal, the Owner or Customer must perfect a new appeal; and in such an appeal, the Owner or Customer shall bear the burden of proving by a preponderance of the evidence the existence of a material change of circumstances.

Section 82-271 - Termination of Stormwater (drainage) Utility System.

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

Section 82-272 - 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) Utility services as provided in the Act, including, but not limited to the following:

- (1) The prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;
- (2) The prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;
- (3) The prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, designing, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;
- (4) The prorated 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) Utility facility used in draining the benefitted property;

- (6) The prorated cost of debt service and reserve requirements for funding of Stormwater (drainage) Utility infrastructure, equipment and facilities paid with revenue bonds or other securities or obligations issued by the town and supported by pledge of stormwater (drainage) revenues;
 - (7) To the extent permitted by law, the cost of constructing, sampling, monitoring, building, inspecting and maintaining structures needed for the town's compliance with State or federal regulations and permitting requirements for providing stormwater quality improvements for benefitted property; and
 - (8) The administrative costs of the Stormwater (drainage) Utility system.
- (b) *Stormwater (drainage) Utility Fund Accounting.*
- (1) The town shall clearly account for revenues and expenditures authorized for operation of the Stormwater (drainage) Utility system.
 - (2) The revenues collected from Stormwater (drainage) Utility Fees shall be segregated and completely identifiable from other Town funds and accounts.
 - (3) Funds and revenues in the Stormwater (drainage) Utility fund may be transferred to the town's general fund for stormwater (drainage) costs and stormwater (drainage) expenses 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.

Section 82-273 - Exemptions.

(a) *Mandatory Exemptions.* 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, including:
 - (A) an agency of the State of Texas;
 - (B) a public or private institution of higher learning.
- (2) Any property to which a mandatory exemption under Section 552.053 of the Act applies, including without limitation:

- (A) Property with proper construction and maintenance of a wholly sufficient and privately owned Stormwater (drainage) Utility system;
- (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 town for maintenance; and
- (C) A subdivided parcel, until a structure or improvement has been built on the subdivided parcel and a certificate of occupancy has been issued by the town, or the town has taken another official action to release the parcel for occupancy.

(b) *Permissible Exemptions.* The following shall be exempt from payment of the fees established by this Article (and the City Council may consider other exemptions to include herein at or after the time of the public regarding this article):

- (1) Town of Addison rights-of-way, including streets, sidewalks, and alleys;
- (2) Airport public area.

(c) *Proof of Exemption.* If the Owner or Customer asserts that a parcel is exempt pursuant to this section or any other applicable law, such Owner or Customer has the burden to assert such exemption by filing notice of eligibility for such exemption and sufficient evidence of entitlement to such exemption with the Director. If the exemption is not granted, the Owner may appeal using the procedures for appeal provided in Section 82-270(b)(2), above.