

ORDINANCE NO. 2019-12

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF BOERNE, TEXAS, CHAPTER 22. UTILITIES, BY ADDING ARTICLE VII, STORMWATER DRAINAGE UTILITY SYSTEM, DECLARING THE ADOPTION OF THE MUNICIPAL DRAINAGE UTILITY SYSTEMS ACT, SUBCHAPTER C OF CHAPTER 552, TEXAS LOCAL GOVERNMENT CODE, AND DECLARING STORMWATER DRAINAGE TO BE A PUBLIC UTILITY; ESTABLISHING A MUNICIPAL STORMWATER DRAINAGE UTILITY SYSTEM; PROVIDING FOR THE ESTABLISHMENT AND CALCULATION OF STORMWATER DRAINAGE UTILITY CHARGES AND CREDITS; PROVIDING PENALTIES AND REMEDIES FOR NONPAYMENT OF CHARGES

WHEREAS, the City of Boerne, Texas ("City") 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, it is necessary that the collection and direction of stormwater drainage runoff within the City protects the public health, safety, and welfare of the City's citizens including but not limited to protection against property damage; and

WHEREAS, the City Council of the City ("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 City; and

WHEREAS, the City Council has investigated and determined that it would be advantageous and beneficial to the citizens of the City to promote the public health, safety and welfare of the citizens by adopting a stormwater drainage utility system, as authorized by Texas Local Government Code Chapter 552, Subchapter C, "Municipal Drainage Utility Systems," as amended (the "Act"), within the City's municipal boundaries; and

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

WHEREAS, the City desires by this ordinance to establish a stormwater drainage utility system; and

WHEREAS, on March 12, 2019, in accordance with the Act and in connection with this ordinance, the City Council, before adopting this ordinance, passed Resolution No. 2019-R22 and therein found that the City will establish a schedule of stormwater drainage charges against all real property in the proposed service area subject to charges under the Act, The City will offer stormwater drainage service on nondiscriminatory, reasonable, and equitable terms; and

WHEREAS, the City 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 City's stormwater drainage utility needs, and the adoption of this ordinance 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 City and federal or state laws and regulations; and

WHEREAS, in accordance with the Act, 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 City is a public utility within the meaning of the Act.

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

SECTION 1. 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. Chapter 22. Utilities, of the Code of Ordinances, City of Boerne, Texas, is hereby amended by adding Article VII, Municipal Stormwater Drainage Utility System, as follows:

ARTICLE VII. MUNICIPAL STORMWATER DRAINAGE UTILITY SYSTEM

Sec. 22-246. Establishment of Drainage Utility; Service Area; Exemptions, and Dedication of Assets.

- (a) The provisions of the Texas Local Government Code, Chapter 552, Subchapter C are hereby adopted to create a Drainage Utility for the City. Accordingly, drainage of the City of Boerne is hereby declared to be a public utility.
- (b) The service area for the Drainage Utility shall include all real property within the city limits of the City of Boerne as now existing and all which may be annexed hereafter from time to time.
- (c) The City Council finds that:
 - (1) Impervious cover increases runoff and associated pollutants; and
 - (2) It is equitable to assess the drainage charge to each User based on impervious cover.
- (d) Pursuant to the Texas Local Government Code, Section 552.053 and Section 580.003, the following shall be exempt from the provisions of this chapter:
 - (1) Property with proper construction and maintenance of a wholly sufficient and privately-owned drainage system;
 - (2) 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 municipality in which the property is located for maintenance;
 - (3) A subdivided lot, until a structure has been built on the lot and a Certificate of Occupancy has been issued by the City;

- (4) State agencies; and
- (5) Public or private institutions of higher education;
- (e) The City incorporates into the Drainage Utility System all existing property, facilities, materials, and supplies constituting the City's drainage system on the effective date of this article. All future acquisitions by the City of real or personal property used in the City's drainage system shall be maintained as a part of the Drainage Utility.

Sec. 22-247. No Effect on Land Owner Obligations Under City Ordinances; No Waiver of Immunity.

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

Sec. 22-248. Other Laws

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

Section 22-249. Administration of Drainage Utility

Definitions

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

- (a) "The Act" shall mean the Texas Local Government Code, Chapter 552, Subchapter C.
- (b) "Benefitted Property" shall mean an improved lot or tract to which drainage service is made available under this Chapter.
- (c) "Commercial Property" shall mean all improved properties within the City other than residential property, including, but not limited to, commercial, industrial, institutional, government, multi-family, mobile-home park, and religious organization land uses.
- (d) "Cost of Service" shall mean the costs for drainage system service to a Benefitted Property, which shall be the total of:
 - (1) Prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the Benefitted Property;
 - (2) Prorated cost of the acquisition, construction, repair, and maintenance of

- structures, equipment, and facilities used in draining the Benefitted Property;
- (3) Prorated cost of architectural, engineering, legal and related services, plant and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the Benefitted Property;
 - (4) Prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the Benefitted Property;
 - (5) Prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the Benefitted Property;
 - (6) Prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the City; and
 - (7) Administrative costs of operating and maintaining a Drainage Utility System.
- (e) "Drainage" shall mean bridges, catch basins, channels, conduits, creeks, culverts, detention 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.
 - (f) "Drainage Utility Charges" shall mean the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any Benefitted Property, including any interest and penalties; and amounts made in contribution to funding of future drainage system construction by the City.
 - (g) "Drainage System" shall mean the drainage system owned or controlled in whole or in part by the City and dedicated to the service of Benefitted Property, including any future additions, extensions, and improvements thereto and replacement thereof.
 - (h) "ERU (Equivalent Residential Unit)" shall mean the unit of measure used to calculate the Drainage Utility Charge for Residential and Commercial Property.
 - (i) "Facilities" shall mean the real, personal, or mixed property that is used in providing drainage and included in the system.
 - (j) "Impervious Area" or "Impervious Surface" shall mean a surface which has become compacted or covered with a layer of material so that it is highly resistant to infiltration by water. Impervious Areas include, but are not limited to, compacted soils, graveled surfaces subject to motorized vehicular traffic, walkways, buildings, parking lots, pavement, and ingress/egress driveways. "Impervious Area" or "Impervious Surface" does not include sidewalks located in the public right-of-way and as further defined in this Code. For purposes of this definition a "walkway" is a pedestrian way in the interior of a lot or tract that is not located in the public right-of-way.
 - (k) "Improved Lot or Tract" shall mean a lot or tract that has a structure, or as further defined in this Code, or other improvement on it that causes an Impervious Surface or Area.
 - (l) "Parcel" shall mean one (1) or more lots or portions of lots that are contiguous and under single ownership.
 - (m) "Public Utility" shall mean drainage service that is regularly provided by the City through City property dedicated to that service to the users of benefited property within the service area and that is based on:
 - (1) An established schedule of charges;

- (2) Use of the police power to implement the service; and
- (3) Nondiscriminatory, reasonable, and equitable terms consistent with the Act.
- (n) "Residential Property" shall mean any improved lot or tract with single-family home, duplex, triplex, quadplex, condominium, or mobile home.
- (o) "Service Area" shall mean the municipal boundaries of the City.
- (p) "User" or "Customer" shall mean the person or entity that owns or occupies a Benefitted Property.
- (q) "Wholly Sufficient and Privately-Owned Drainage System" shall mean drainage from an improved lot or tract which does not discharge into any natural or manmade waterway or drainage infrastructure including public streets, storm drains, culverts, drainage easements, or storm water ponds that are part of the Drainage System.

Sec. 22-250. Drainage Utility Fund.

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

Sec. 22-251. Administration of Drainage Utility

The City Manager or his designee shall be responsible for the administration of the Drainage Utility, including, but not limited to, enacting any procedures necessary for the administration of the drainage charges and the consideration of appeals, development, and implementation of maintenance and facility improvement programs, state and federal regulatory compliance, and establishing drainage criteria and standards for the drainage system. The Utilities Department shall keep an accurate record of all properties benefited by the services and facilities of the Drainage Utility.

Sec. 22-252. Drainage Utility Charge

- (a) A Drainage Utility Charge is hereby imposed upon each improved lot and parcel within the Service Area. **The Drainage Utility Charge shall be billed after January 1, 2020.** Drainage Utility Charges shall be billed on a monthly basis thereafter for the duration of the Drainage Utility.
- (b) For purposes of imposing the Drainage Utility Charge, all lots and parcels within the City are classified into the following customer categories: (1) Residential Property and (2) Commercial Property. See Exhibit "A" for ERU Residential and Commercial Tiers and Rates.
- (c) The ERU value for the City is determined through an inventory of all improved single-family residential parcels in the City and determination of Impervious Area for each parcel. Evaluation of these data determined that the equivalent residential unit

Impervious Area value for assigning charges to commercial properties is forty seven hundred (4,700) square feet.

- (d) Commercial Rates shall be based on Impervious Area determination for each parcel:
Total ERU's = (Impervious Area/4,700 sq. ft.), minimum 1 ERU
- (e) The monthly Drainage Utility Charge for properties shall be calculated by multiplying the total number of ERU's for the parcel by the ERU monthly billing rate.
- (f) The following ERU monthly billing rate is hereby established and shall be used to calculate the total monthly Drainage Utility Charge for all property located in the City, both residential and commercial, in accordance with the applicable formula established in this subsection:
ERU rate = \$4.00 per ERU per month.
- (g) The Utilities Department shall be responsible for determining Impervious Area of property based on reliable data, including the appraisal roll, geographic information system technology, aerial photography, or other reliable means for determining Impervious Area. The Utilities Department may require additional information from the property owner, tenant, manager or developer to make the determination. The amount of a charge may be revised by the Utilities Department based on any additions to the Impervious Area through the City approved building permit process.
- (h) The City Council may review the schedule of charges at any time and may increase or decrease charges upon a determination that an increase or decrease is warranted.
- (i) No Drainage Utility Charge credit shall be given for the installation of drainage facilities required by the code or state law.

Sec. 22-253. Billing, Payments, and Penalties

- (a) Bills or statements for the Drainage Utility Charge shall be rendered by the City for all properties subject to the charge. Bills shall be payable when rendered and shall be considered received by the customer, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the utility customer or sent via the City's electronic billing system. Bills shall be rendered monthly for the previous month's service.
- (b) The Utilities Department shall assume that each utility account in the service area serves one (1) or more Users of a Benefitted Property, and shall assess the Drainage Charges to the person responsible for payment of the utility account. The Utilities Department shall calculate the Drainage Charges for all Users and shall assess the Drainage Charges to the person responsible for payment of the utility account. If there is more than one (1) User of a Benefitted Property (which is non-Residential), then the charges shall be assessed to the owner of the Benefitted Property, unless instructed by the owner of the Benefitted Property, in writing, to bill Users on a prorated basis.
- (c) Bills are due and payable on the date specified thereon and if full payment is not made by the date specified, the bill shall become delinquent.
- (d) Drainage Utility Charges shall be billed with the City's other public utility billings and shall be identified separately on the bill as a Drainage Utility Charge. Drainage Utility Charges are subject to the billing procedures, penalties, discounts, interest, and other terms of the City of Boerne's Utilities Rules and Regulations.
- (e) Any charge due hereunder which is not paid when due will subject the User to discontinuance of all utility services provided by the City and may be recovered in an action at law or in equity by the City including fixture of a lien against the property, as

allowed by law.

- (f) The City shall have access, at all reasonable times, to any Benefitted Property served by the Drainage Utility for necessary inspection, repair of infrastructure or enforcement of this article.

Sec. 22-254. Appeals

- (a) Requests for adjustment of a Drainage Utility Charge shall be submitted to the Utilities Department Customer Service Office. A User may apply for an adjustment if:
 - (1) The User believes that the drainage charge schedule, as applied to the User's Benefitted Property, does not fairly reflect the Cost of Service to the User's Benefitted Property;
 - (2) The User disputes the amount of Impervious Area used to calculate the drainage charge; or
 - (3) The User's Drainage Charge has been assessed in error.
- (b) The following procedures shall apply to all requests for adjustment of the Drainage Utility Charge:
 - (1) The User shall have the burden of proof.
 - (2) Any User who has paid Drainage Utility Charges and who believes the calculation or determination of the Drainage Utility Charge to be incorrect may, subject to the restrictions set forth in this Chapter, submit an adjustment request to the Utilities Department Customer Service Office.
 - (3) Requests for adjustment of Drainage Utility Charges paid by an Owner, User or Customer making the request shall be in writing and set forth in detail the grounds upon which relief is sought.
 - (4) Adjustment requests will be reviewed by the Utilities Department within twenty (20) days from the date of receipt of an adjustment request. Adjustments resulting from such a request shall be prospective but may be made retroactive for no greater time period than three (3) monthly billings prior to the receipt of the request.
 - (5) The User requesting an adjustment may be required, at the User's cost, to provide supplemental information to the Utilities Department, including, but not limited to, survey data certified by a Texas Registered Professional Land Surveyor (R.P.L.S.), or other documentation of Impervious Area. Failure to provide requested information may result in the denial of the adjustment request.
 - (6) The Utilities Department's determination of the adjustment request shall be provided to the User, in writing, within ten (10) days of the later of receipt of the request for adjustment or receipt of any additional information submitted in accordance with this section. If the Utilities Director approves the request, the adjustment to the Drainage Utility Charge will be made.
- (c) If the Utilities Department denies the adjustment request, the User may, within ten (10) days from the date of notification, appeal the decision to the City Manager in accordance with the City of Boerne's Utilities Rules and Regulations.
- (d) Before imposing a lien for delinquent Drainage Utility Charges, the City shall send notice to the record owner of the Benefitted Property stating the amount of the charges owed, and of the owner's right to appeal the placement of the lien by producing evidence the delinquent charges are not rightfully owed, by providing such within ten (10) business

days from the date of notification to the Utilities Department. A lien shall not be filed if the owner shows that the Drainage Utility Charge made the basis of the lien is not owed. When a person pays all of the charges, a lien filed pursuant to this Chapter, shall be released. The paying party shall be responsible for the filing costs of the release.

SECTION 3. That all provisions of the ordinances of the City of Boerne in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Boerne not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. That this Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

PASSED AND APPROVED on this the first reading the 9th day of April, 2019.

PASSED, APPROVED AND ADOPTED on this the second reading the ____ day of April, 2019.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
PROPOSED RESIDENTIAL AND COMMERCIAL/NON-RESIDENTIAL
STORMWATER TIERS AND RATES

PROPERTY CLASSIFICATION	TIER	TIER SQUARE FOOTAGE	ERU RATE	ERU PER TIER
Single Family Residential	1	3,100 sf or less	\$4.00	0.5
	2	>3,100 sf and <5,400 sf	\$4.00	1.0
	3	>5,400 sf and <20,000 sf	\$4.00	1.9
	4	>20,000 sf	\$4.00	6.3
Commercial/Non-Residential		Actual sf	\$4.00	Actual sf /4,700

* Proposed effective date is January 1, 2020

**The Boerne Independent School District, Kendall County governmental facilities, and religious organizations that are exempt from taxation pursuant to Section 11.20, Tax Code, shall be exempt from 50% of the Stormwater Drainage Utility charges in 2020.