

AN ORDINANCE

REPEALING AND REPLACING E ARTICLE 13.09, "STORM WATER MANAGEMENT UTILITY " OF THE LEON VALLEY CITY CODE CHAPTER 13 "UTILITIES" AND PRESCRIBING PENALTIES OF NOT LESS THAN FIVE HUNDRED (\$500.00) OR MORE THAN TWO THOUSAND (\$2000.00) DOLLARS

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

1. ARTICLE 13.09 "STORMWATER MANAGEMENT UTILITY," of City Code Chapter 13 "Utilities" is hereby repealed and replaced with the following:

Division 1	Generally
Division 2	Funding
Division 3	Rate Methodology
Division 4	Enforcement

Division 1. Generally

Sec.13.09.001 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings indicated:

- (a) *Assessment Roll* means the official listing of assessments of real property maintained by the Bexar County Appraisal District.
- (b) *Base Rate* means the Storm Water Management Fee charged on a square foot of benefited real property.
- (c) *Benefited Property* means an improved lot or tract to which drainage service is made available under this subchapter.
- (d) *Board* means the Storm Water Management Board for Leon Valley. The Leon Valley City Council is designated as the Storm Water Management Board.
- (e) *Certificate of Occupancy* means the final inspection by the City building inspector.
- (f) *City* means the City of Leon Valley, Bexar County, Texas.
- (g) *City Manager* means the City Manager for the City of Leon Valley, Texas.
- (h) *Commercial Property* means all developed property not meeting the definition of Residential property, Multifamily property or Public property.

- (l) *Cost of service* as applied to a drainage system service to any benefited property means:
- (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 benefited property;
 - (2) the prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in draining the benefited 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, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefited property;
 - (4) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefited property;
 - (5) the 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 benefited property;
 - (6) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledged securities or obligations issued by the municipality.
- (j) *Council* means the City Council of the City of Leon Valley.
- (k) *Drainage* means 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 and shall be used synonymously with storm water.
- (l) *Developed Property* means real property, which has been altered from its natural condition by the addition of any improvements such as buildings, structures, or other impervious area.
- (m) *Fee* means the monthly service storm water management charge established under this Chapter and levied on owners of benefited real property to fund the costs of storm water management including operating, maintaining, and improving the storm water system in the City.
- (n) *Fund* means the Storm Water Management Fund created by this Chapter to operate, maintain, and improve the City's storm water system.

- (o) *Impervious Surface* means the number of square feet of surface area covered by buildings or other improvements which are compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, or any other surface which impedes the natural infiltration of surface water as determined by the City.
- (p) *Multifamily Property* means a developed property which serves the primary purpose of providing three (3) or more permanent dwelling units.
- (q) *Non-point Source Pollution* means pollutants, which are not otherwise permitted for discharge, including but not limited to: soil erosion, motor oils, antifreeze, gasoline, fertilizers, pesticides, household chemicals, faulty septic systems, and animal wastes.
- (r) *Pollution* means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water of the State or water of the United States, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
- (s) *Property Owner* means the property owner of record as listed in the assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- (t) *Public property* means a developed property which serves the primary purpose for use by the public such as, but not limited to, a church or a school.
- (u) *Residential Property* means a developed property which serves the primary purpose of providing a permanent dwelling unit and which is classified as residential in the assessment roll. A single-family, detached, dwelling townhouse or a second dwelling unit (duplex) is included in this definition.
- (v) *Storm Water* means surface flow water from precipitation that accumulates in and flows through natural and/or man made storage and conveyance systems during and immediately following a storm event.
- (w) *Storm Water Management* means the planning, design, construction, regulation, enforcement, improvement, repair, maintenance, and operation of facilities and programs relating to water, pollutants, grading, erosion, tree conservation, and sediment control.
- (x) *Storm Water System* means the system or network of storm water management facilities including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins and other components as well as all natural waterways within the City.
- (y) *Undeveloped Property* means any property that is in its natural condition.
- (z) *User* means the person or entity who owns or occupies a benefited property.

(aa) *Water* means any storm water, surface water, snowmelt or ground water.

Sec. 13.09.002 Statutory Powers

The statutory powers as to public utilities granted by Vernon's Annotated Revised Civil Statutes of Texas, Title 28, "Cities, Towns and Villages", Chapter 10, "Public Utilities", Article 1106 through 1132, inclusive and the Environmental Protection Agency and the Texas Commission on Environmental Quality and other powers as adopted by this Chapter are hereby recognized and expressly declared to embody the policy and power of the City of Leon Valley, (hereinafter "City") with respect to public utilities.

Sec. 13.09.003 Responsibility

The City of Leon Valley is responsible for storm water management in the City of Leon Valley.

Sec. 13.09.004 Authority

The governing body of a municipality is authorized by Texas Local Government Code, Section 402, otherwise known as the Texas Municipal Drainage Utility Systems Act, to adopt a system of charges to fund the implementation of storm water management programs. State law, Texas Local Government Code, Section 402.045, requires that drainage utilities be enacted by ordinance through a majority vote of the entire governing body. This ordinance declares the drainage system of the municipality to be a public utility.

Sec. 13.09.005 Enactment

The City is enacting a Storm Water Management Fee system based on factors that influence runoff, including the size of the parcel, the pollutants present, and the land use of the property. The governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing.

Sec. 13.09.006 Administration

The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Section 13.09.005. The proposed schedule of drainage charges as originally adopted or as revised, must be published in the notice. After completion of the public hearing on the charges, the municipality may levy a schedule of drainage charges. The schedule of drainage charges must be based on an inventory of lots and land in the service area.

Sec. 13.09.007 Scope of Utility

All real property in the City, including property owned by public and tax-exempt entities, contributes to runoff and pollution of the receiving stream and either uses or benefits from the storm water system. Texas State law requires a municipality to set customer fees on any basis other than the value of the property. Fees are to be directly related to drainage, and drainage services must be afforded on a nondiscriminatory, equitable, and reasonable basis. Equity for all ratepayers is the primary objective in establishing a drainage utility – each customer pays a fee relative to the amount of storm water runoff service or damage generated from a property,

negatively affecting the public health and safety in loss of the life and property as a result of surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the established service area.

Sec. 13.09.008 Causes

Storm water runoff results in overflow damage, stagnation and associated health hazards, and contributes to non-point source pollution of the drainage systems of the City and a storm water management program is required to reduce this type of damage, including pollution.

Sec. 13.09.009 Fee System

It is in the interests of the public to fund storm water management with a user fee system that allocates the costs of storm water management to benefited property owners in the City. A Storm Water Management Fee system offers additional financial management options that would assist the City to improve storm water services. After a determination of the utility revenue requirements and the selected billing rate structure, a schedule of charges will be developed for the new utility. The standard billing rate will be calculated by dividing the necessary revenue requirement by the total number of billing units in the customer database. The initial rate will be designed with adequate revenue generation to cover the annual revenue requirements for subsequent years. This allows for a constant utility rate for the first four years of utility operation. The Council may make changes to the rate system as allowed by law and may give additional notification to citizens of required hearings, whether one or more, through the Storm Water Management Fee billing at least 30 days prior to a public hearing. The date of the public hearing will be posted as provided by law and provided on the billing notice.

Sec. 13.09.010 Storm Water Drainage Revenue Bonds

As provided in Local Government Code, Section 402.051, and Government Code, Title 9, Chapter 1201, by majority vote of the Council, the City may issue storm water drainage revenue bonds. The City may use the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes). In addition, the City may pledge income received by contracts for the provision of storm water drainage services to other governments or governmental subdivisions located inside or outside the service area.

Sec. 13.09.011 Enforcement

Unless the property is exempted, a person must pay the established fee to the drainage system. Failure to pay such charges will subject such person to legal actions set forth below.

Sec. 13.09.012 Segregation of Income

The income of a drainage utility system must be segregated and completely identifiable in municipal accounts. If drainage charges are solely for the cost of service, the municipality may transfer the charges in whole or in part to the municipal general fund, except for any part collected outside municipal boundaries and except for any part pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve for future construction, repair, or maintenance of the drainage system. If the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements, including replacement, new construction, or extension, that amount is not transferable to the general fund.

Sec.13.09.013-13.09.050 Reserved

Division 2. Funding

Sec. 13.09.051 Findings

- (a) The City owns, operates and maintains a storm water system.
- (b) The storm water system in the City needs regular maintenance and improvements.
- (c) Water quality is degraded by erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances introduced into and through the storm water system.
- (d) The public health, safety, and welfare are adversely affected by degraded water quality that results from storm water.
- (e) All real property in the City either uses or benefits from the maintenance and improvement of the storm water system.
- (f) The extent of use of the storm water system by each property is dependent on factors that influence runoff, including land use and the amount of impervious surface on the property.
- (g) The costs of improving, maintaining, operating, and monitoring the storm water system should be allocated, to the extent practicable, to all benefited property based on the impact of storm water runoff from the property into the storm water management system.
- (h) Management of the storm water system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance storm water management adequately with a user charge system that is “reasonable and equitable” so that each user of the system pays to the extent to which he contributes to the need for it.

Sec. 13.09.052 Establishing a Storm Water Management Fund

- (a) The storm water management program is established and the storm water system is provided to protect the waterways and land in the City by protecting the natural environment. The costs of designing, developing, improving, operating, maintaining, and monitoring the storm water system required in the City should, therefore, be allocated, to the extent practicable, to all property owners based on their impact on the storm water system. In order to provide revenue to fund those costs and to fairly allocate those costs, a Storm Water Management Fund is established.
- (b) All revenues collected from the Storm Water Management Fee, from grants, permit fees and other charges collected by storm water management, shall be deposited to the Fund. The Council and the Board may make additional appropriations to the Fund. All disbursements from the Fund shall be for the purposes of the Fund as set forth in Section 13.09.051.

Sec. 1309.053 Purposes of the Fund

The Fund shall be used for the following purposes:

- (a) All costs of administration and implementation of the storm water management program, including the establishment of reasonable operating and capital reserves and contingencies;
- (b) Operation and maintenance of the storm water system;
- (c) Monitoring, surveillance, and inspection of storm water devices;
- (d) Water quality programs;
- (e) Inspection and enforcement activities;
- (f) Legal expenses;
- (g) Billing and administrative costs; and
- (h) Other activities that are reasonably required for the operation of the storm water program.

Sec. 13.09.054 Classification of Property for the Purpose of Determining the Storm Water Management Fee

For purposes of determining the Storm Water Management Fee, all properties in the City are classified into one of the following classes:

- (a) Residential property,
- (b) Commercial property,
- (c) Multifamily property, or
- (d) Public Use property.

Sec. 13.09.055 Storm Water Management Fee

A monthly service charge is imposed upon all benefited real property beginning January 1, 2009 to fund storm water management programs. This service charge shall be known as the Storm Water Management Fee ("Fee"). Any real property completed or added to the County tax assessment roll after January 1, 2009, or annexed into the City after January 1, 2009 will be subject to the monthly charge. The Fee is based on:

- (a) The property land area in square feet,
- (b) The classification of the property, and
- (c) The cost of implementing, operating and maintaining a storm water management program.

Sec. 13.09.056 Base Rate

The Board shall, as set forth in Section 13.09.091, establish the effective unit rate for the Storm Water Management Fee. The base rate shall be calculated to insure adequate revenues to fund the costs of storm water management and to provide for the operation, maintenance, and capital improvements of the storm water system in the City.

Sec. 13.09.057 Exempt Properties and Exemptions

- (a) The Council finds that all benefited real property in the City contributes to runoff and either uses or benefits from the maintenance of the storm water system. Therefore, all benefited real property in the City, including property that is tax-exempt, shall be charged with the Fee except those properties identified to be exempt herein.
- (b) Property that is owned by the City of Leon Valley, the County of Bexar, the State of Texas, and the Federal Government of the United States of America shall be exempt from the Fee.
- (c) New residence development is exempt, until the City has completed final occupancy inspections.
- (d) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system may reduce the Fee to the extent that the private drainage system is effective.
- (d) Property held and maintained in its natural state is exempt, until such time that the property is developed.

Sec. 13.09.058 When the Storm Water Management Fee Is Payable, Interest and Penalties, Lien on Real Property, Abatement of Small Amounts Due

- (a) The monthly Fee must be paid within 30 days after the bill is mailed or issued to the property owner and is overdue after that date. An overdue Fee penalty will be assessed at the rate specified in the rate ordinance.
- (b) The Fee, including interest and penalties, when overdue constitutes the basis for the City filing a lien on real property and may be collected in the same manner as a delinquent electric bill or by a suit against the property owner or other methods as allowed by law. During the period when the fee is overdue and after written notice to the owner, the property is no longer authorized to deliver storm water to the City's storm water system.
- (c) The City Manager may abate the Fee, including interest and penalties, if it is determined by the City to be in error or otherwise not collectable.

Sec. 13.09.059 Requests for Correction of the Storm Water Management Fee

- (a) A property owner may request correction of the Fee by submitting a written request to the City Manager at 6400 El Verde Road, Leon Valley, Texas, 78238,

within 30 days after the date the assessment notice or the bill is mailed or issued to the property owner. Grounds for correction of the Fee include:

- (1) Incorrect classification of the property for purposes of determining the Fee;
 - (2) An error in the square footage of the property;
 - (3) Mathematical error in calculating the Fee to be applied to the property; and
 - (4) Errors in the identification of the property owner of a property subject to the Fee.
- (b) Requests for correction of errors, which are received after 30 days, will be considered; however, no credit for any levy prior to receipt of the request shall be issued. The City Manager shall make a determination within 30 days after receipt of the property owner's completed written request for correction of the Fee. The City Manager's decision on a request for correction of the Fee shall end the administrative remedies available to the customer.
- (c) A property owner must comply with all rules and procedures adopted by the City when submitting a request for correction of the Fee and must provide all information necessary for the City Manager to make a determination on a request for correction of the Fee. If a property owner alleges an error under Section 13.09.091, the request for correction must include a certification by a registered engineer or professional land surveyor of the size in square feet of the property if the property is unplatted. Failure to comply with the provisions of this subsection shall be grounds for denial of the request.

Sec. 13.09.060 Discontinuation of Drainage System

- (a) If, after at least five years of substantially continuous operation of the drainage system, the Council determines that the system should be discontinued, that the powers under this ordinance should be revoked, and that provision for City drainage should be made by other revenues, the Council may adopt an ordinance to that effect after providing notice and a public hearing as provided by Section 13.09.005.
- (b) If the municipality discontinues a system under Subsection (a), it may not adopt a system under this subchapter for at least five years after the discontinuation.
- (c) A discontinuation does not affect a written obligation incurred by the City for funding or for the purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.
- (d) A claim for damages based on an alleged failure of the drainage system that is filed with the City before the adoption of the ordinance discontinuing the drainage system is not abated by the discontinuation.

Sec. 13.09.061-13.09.090 Reserved

Division 3. Rate Methodology

Sec. 13.09.091 Origin of the Base Rate

Benefitted properties will be assessed a fee based on square footage of real property as follows:

Residential	Area (Square Feet)	Monthly Rate
Tier I	0 to 4,999	\$2.78
Tier II	4,999 or more	\$3.68
Multifamily		
Tier I	0-21,999	\$6.19
Tier II	22,000 to 43,999	\$19.37
Tier III	44,000 to 131,999	\$58.73
Tier IV	132,000 or more	\$279.49
Commercial		
Tier I	0-21,999	\$15.85
Tier II	22,000 to 43,999	\$43.35
Tier III	44,000 to 86,999	\$77.70
Tier IV	87,000 to 131,999	\$133.91
Tier V	132,000 or more	\$295.87
Public		
Tier I	0-21,999	\$15.70
Tier II	22,000 to 43,999	\$42.94
Tier III	44,000 to 86,999	\$77.56
Tier IV	87,000 or more	\$131.12

Sec. 13.09.095-13.09.130 Reserved

Division 4. Enforcement

Sec. 13.09.131 Delinquent Payments

Any charge due hereunder which is not paid when due may be recovered in an action at law by the City. In addition to any other remedies or penalties provided at law or in this ordinance, failure of a user of the utility within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the City. The City Manager or designee is hereby empowered to enforce this provision against delinquent users. The employees of the utility established in accordance with this ordinance shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection or repair of the storm water facilities or for the enforcement of the provisions of this Subchapter.

Sec. 13.09.132 Severability

If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the Ordinance which can be given effect without the invalid provision or application and to this end the provisions of this Ordinance are declared to be severable.

2. Each violation of this ordinance shall be punished by a penalty of a fine of no less than \$500.00 and no more than \$2000.00.

3. This ordinance shall take effect after approval and publication as provided by law.

PASSED and APPROVED this 20th day of January, 2009.

Chris Riley
Mayor

ATTEST:
Marie Feunz
City Secretary



APPROVED AS TO FORM:
William M. McKameil
City Attorney