



16668 was adopted by the El Paso City Council on June 19, 2007. (A copy of this ordinance is attached hereto as "Exhibit A.")

3. Ordinance No. 16668 establishes a municipal drainage utility for the City of El Paso pursuant to the provisions of Subchapter C of Chapter 402 of the Texas Local Government Code, §402.041, *et seq.* Operation and management of the City's drainage utility is delegated by Ordinance No. 16668 to the PSB pursuant to the authority of Chapter 1502 of the Texas Government Code, §1502.001, *et seq.*

4. Following extensive notice and public hearings, as required by Local Government Code § 402.045, the PSB adopted rules and fees for the drainage utility. These are found in Rule 3 of the Rules and Regulations of El Paso Water Utilities Public Service Board. (A copy of Rule 3 is attached hereto as "Exhibit B.") The rates reflected by Rule 3 have since been revised by the PSB and a revision of the rule is in process.

5. Plaintiffs' allegation that Subchapter H of Chapter 402 of the Local Government Code limits the City's ability to delegate operation and management of the drainage utility to the PSB is incorrect. Subchapter H was adopted by the legislature in 1999, as part of a non-substantive codification relating to public securities, and contains no indication that it was intended to modify or limit the provisions of (i) the Municipal Drainage Utility Systems Act, initially adopted in 1985, or (ii) the provision of Chapter 1502 of the Government Code which allows delegation by a city of operation of utility systems and combined utility systems to a board of trustees such as the PSB. Acts 1999, 76<sup>th</sup> Leg., ch. 227 § 13. (A copy of the legislation is attached hereto as "Exhibit C.")

6. By its express terms Subchapter H simply provides an option for home rule cities to delegate management and control of two or more utilities to a seven-member board of trustees.

One of the requirements for Subchapter H's application is that the city "by ordinance elect to have the management and control of two or more of those utility systems governed by the subchapter." Tex. Loc. Gov't Code § 402.141. The City has made no such election.

7. Defendants seek the Court's declaratory judgment that Ordinance No. 16668 is a valid exercise of the City's authority pursuant to Subchapter C of Chapter 402 of the Local Government Code, creating a municipal drainage utility, and that operation and management of this utility has been validly delegated to the PSB pursuant to Chapter 1502 of the Government Code. This declaratory judgment is sought pursuant to the Uniform Declaratory Judgment Act, § 37.001, *et seq.*, Texas Civil Practice and Remedies Code.

8. Defendants seek reasonable and necessary attorneys fees pursuant to § 37.009, Texas Civil Practice and Remedies Code.

**Response to Application for Injunctive Relief**

9. Plaintiffs have not shown, and cannot show, any likelihood of success on the merits.

10. Plaintiffs have not shown, and cannot show, any immediate, irreparable harm. The only harm possibly involved is money damages – by definition, not "irreparable."

11. Plaintiffs have not shown, and cannot show, that the harm they would suffer if injunctive relief does not issue exceeds the harm to the City and PSB's efforts to implement a needed stormwater management program.

12. Plaintiffs have not shown, and cannot show, that the harm that Plaintiffs will suffer if they are forced to pay a drainage fee that is ultimately determined to be unauthorized outweighs the harm to the public of enjoining collection of drainage utility fees, thereby shutting down the City's stormwater management program.

13. If the Court should grant Plaintiffs' requested temporary injunctive relief, Defendants request that Plaintiffs be required to post bond in an amount equal to the drainage fees, collection of which is sought to be enjoined. Estimating a six-month duration of the temporary injunction prior to trial on the merits, this would be approximately \$ 1.2 million per month or \$ 7.2 million.

**Prayer**

14. Defendants pray: (a) that Plaintiffs take nothing by their action; (b) that all relief requested by Plaintiffs be denied; (c) that the Court issue its declaratory judgment affirming the validity of Ordinance No. 16668 and its delegation of operation and management of the drainage utility to the PSB; (d) that Defendants be awarded reasonable and necessary attorneys fees; and (e) for such further relief at law or in equity to which Defendants may show themselves justly entitled.

Respectfully submitted,

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By: \_\_\_\_\_

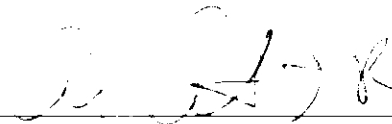
Alejandro Acosta, Jr.

Attorneys for Defendants  
City of El Paso and El Paso Water Utilities Public  
Service Board

**CERTIFICATE OF SERVICE**

This is to certify that on this 27<sup>th</sup> day of May, 2008, a true and correct copy of the foregoing document was served on the following parties via certified mail:

Brett Duke  
Law Offices of Brett Duke, P.C.  
4157 Rio Bravo  
El Paso, Texas 79902

  
\_\_\_\_\_  
Alejandro Acosta, Jr.

Ordinance No. 016668

**AN ORDINANCE OF THE CITY OF EL PASO, TEXAS,  
ESTABLISHING A MUNICIPAL DRAINAGE UTILITY SYSTEM  
AND RESOLVING MATTERS RELATED THERETO.**

**WHEREAS**, the creation of a drainage utility system within the City of El Paso ("City") is necessary and essential to ensure that the collection of storm water runoff and management and control of storm water runoff adequately protects the health, safety, and welfare of the citizens of the City including, but not limited to, protection from loss of life and property caused by surface water overflows and surface water stagnation; and

**WHEREAS**, Chapter 402, Subchapter C of the Texas Local Government Code, as amended (the "Municipal Drainage Utility Systems Act" or the "Act"), authorizes the City to establish a municipal drainage utility system within the boundaries of the City and its extraterritorial jurisdiction; and

**WHEREAS**, through this Ordinance, the City desires to adopt the Act and declare the drainage system of the City to be a public utility; and

**WHEREAS**, the City has adopted an Open Space Master Plan which emphasizes open spaces and natural areas as a possible method to help manage storm water, reduce flooding risk and improve water quality; and

**WHEREAS**, notice of the time and place of the public hearing to consider this Ordinance (including the full text of this Ordinance) has been published in the El Paso Times three times, with the date of first publication occurring on or before the 30<sup>th</sup> date before the date of such hearing, all in accordance with the Act; and

**WHEREAS**, the City intends to fund a storm water drainage system that fairly and equitably allocates the cost of storm water control to properties in proportion to storm water runoff potential for each type of property.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

**SECTION I.  
FINDINGS REQUIRED BY LAW**

The City hereby adopts the Municipal Drainage Utility Systems Act and finds that the City will, and hereby directs the El Paso Water Utilities Public Service Board of the City ("Board"), on behalf of the City, to:

- (i) Establish a schedule of drainage charges against all real property in the proposed service area subject to charges;
- (ii) Provide drainage service for all real property in the proposed area upon payment of drainage charges (except real property that is exempt from such charges); and
- (iii) Offer and provide drainage service on nondiscriminatory, reasonable, and equitable terms in accordance with Rules and Regulations as promulgated by the Board.



## SECTION II. DEFINITIONS

In this Ordinance, the following capitalized terms shall have the meanings specified below:

“Benefited property” means an improved lot or tract to which drainage service is made available under the Act and this Ordinance and in accordance with applicable Rules and Regulations.

“Board” means that certain board of trustees known as the “Public Service Board” established by the City pursuant to Section 1502.070 of the Texas Government Code and charged with having complete authority and control of the management and operation of the water and wastewater system of the City, as represented by the various persons appointed to such board from time to time.

“City” means the City of El Paso, Texas, a Texas Home Rule Municipality.

“Municipal Drainage Utility Systems Act” or the “Act” means Section 402.041, et seq., as it may be amended by the Texas Legislature from time to time to include, but not by way of limitation, the applicable definitions in the Act.

“Service Area” means all that area of land located within the city limits of the City and any other land areas in the City’s extraterritorial jurisdiction as provided by the Municipal Drainage Utility Systems Act which, as a result of topography or hydraulics, contribute to overland flow into the watersheds served by the drainage system of the City. Upon the effective dates of completed annexation of additional lands into the City, each such annexed additional land shall become part of the service area. Land annexed for limited purposes shall become a part of the service area upon annexation for full purposes. The Service Area may be extended by written resolution of the Board, to the extent permitted by the Act at the time of adoption of such resolution, to include other land areas outside the city limits of the City which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the System provided, however, in no event may the Service Area extend farther than the boundaries of the City’s then current extraterritorial jurisdiction, nor, except as expressly provided by the Act, may the Service Area extend into the boundaries of another municipality.

“Storm 2006 Projects” means those projects set forth under Priority I and Priority II in the Storm 2006 Update dated May 7, 2007 (the “Update”) given by the Acting City Engineer to the City Council and the Board and on file with the City Clerk.

“System” means the Municipal Drainage Utility System established by this Ordinance and encompasses the complete drainage system of the City as it now exists and may be improved, added to, or extended hereafter, there being included in such term all drainage facilities now or hereafter owned or operated by the City, lying within and without the boundaries of the City, and including all real estate and real and personal property of every kind and nature comprising any part of or used or useful in the operation of the System but excluding parks, roads, streets and bridges.

“Wholly sufficient and privately owned drainage system” means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert or other channel that is part of a municipal drainage utility system.

All other words unless specifically defined shall have their usual and customary meaning.



F. At least once a year beginning with the Fiscal Year ending August 31, 2009, the General Manager, on behalf of the Board, shall present to the City Council a report on the status of the System.

#### SECTION IV. ADMINISTRATIVE PROVISIONS

A. No Assumed Liability City. By the passage of this Ordinance, the City makes no representation that all of the City's drainage problems will be immediately remedied and the City Council is given full discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The passage of this Ordinance shall not be construed to relieve private landowners, developers or other individuals or entities from providing drainage improvements pursuant to the ordinances of the City and the laws of this State which relate to drainage, storm water or storm water improvements. The City itself shall be responsible for the funding and construction of the Storm 2006 Projects (regardless of final cost of completion). Neither the Board nor the System shall be responsible for the funding and construction of the Storm 2006 projects. The Board shall be responsible for those projects listed as "Priority III" work in the Update as part of the System. Nothing in this Ordinance shall be deemed to waive the City's immunity under State law.

B. No Assumed Liability Board. The Board makes no representation that all of the City's drainage problems will be immediately remedied and the Board recognizes the City Council's governmental budgeting discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The City and the Board recognize that the Board is undertaking a governmental function in accepting the delegation of the rights, duties and responsibilities of a municipal drainage utility system pursuant to the Act and the authority of the City acting as a Texas Home Rule Municipality. The effective date of this Ordinance provides the effective date for the beginning of the actions and responsibilities of the Board in this matter.

C. Exemptions from Civil Service. The General Manager shall be responsible to appoint officers and employees that directly report to the General Manager, including, an attorney or attorneys, Assistant General Manager(s) of the System and such other officers or personnel that directly report to the General Manager in his capacity as general manager of the System. All other officers and employees, except members of the Board, the General Manager, attorneys, Assistant General Manager(s) and persons directly reporting to the Assistant General Manager(s) shall serve under the City Civil Service provisions as are or may be established by the Charter of the City or the laws of Texas, and the Board shall have the same authority with respect to such officers and employees as that of the City Council with respect to other officers and other employees of the City.

D. Insurance. The Board will obtain overall property insurance on the assets of the Municipal Drainage Utility System in a form and amount as the Board may determine to be reasonable and prudent. Such insurance may take the form of general liability insurance or an umbrella insurance policy.

#### SECTION V. DRAINAGE UTILITY FUND

A. Drainage Utility Fund. The Board shall establish a drainage utility fund. All drainage utility fees shall be deposited as collected and received into this fund, and shall be used exclusively for the drainage services set forth under the Act, including but not limited to those services referenced in Local Government Code Section 402.044(2).

B. Drainage Fund Accounting. The revenues collected from drainage utility fees must be segregated and completely identifiable from other City or Board accounts.

## SECTION VI. EXEMPTIONS

The following entities or persons shall be exempt from this Ordinance:

A. Any property to which a mandatory exemption under Chapter 402.053 of the Local Government Code applies, including without limitation:

1. Property with proper construction and maintenance of a wholly sufficient and privately owned storm water system that does not discharge under any storm frequency events or conditions to waterways controlled or maintained by the City or the Board;
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 City or Board for maintenance; and
3. A subdivided parcel or lot, until a structure has been built on the lot and a certificate of occupancy has issued, or the City has taken another official action to release the property for occupancy.

B. Any property to which a mandatory exemption under Chapter 430.003 of the Local Government Code applies or which is exempt under applicable federal law, including without limitation:

1. A federal or state agency; and
2. A public institution of higher education.

## SECTION VII. CUMULATIVE

This Ordinance shall be cumulative of all provisions of ordinances and of the El Paso City Code, as amended. To the greatest extent reasonably possible, this Ordinance and such prior ordinances and City Code shall be interpreted on a consistent basis and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof are in direct conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed with respect to the subject matter of this Ordinance only.

## SECTION VIII. SEVERABILITY CLAUSE

The phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, phrase, paragraph or section.



the El Paso City Charter to publish any further notice. Copies of all Ordinances are available for review in the City Clerk's office, 2 Civic Center Plaza, Monday through Friday, 8:00 a.m. to 5:00 p.m.

### REGULAR AGENDA - OTHER BUSINESS

#### 8. FINANCIAL SERVICES:

8A. Discussion and action regarding a Resolution approving an Amendment to the Memorandum of Agreement between the City and the Firemen and Policemen Pension Fund. (All Districts) (Paul A. Braden, Bond Counsel (915) 544-9997)

#### 8B. INTRODUCTION AND PUBLIC HEARING - FINANCIAL SERVICES:

An Ordinance authorizing the issuance of "City of El Paso, Texas, Taxable General Obligation Pension Bonds, Series 2007," and resolve matters which are necessary to effectuate said issuance. (All Districts)  
(Paul A. Braden, Bond Counsel (915) 544-9997)

### REGULAR AGENDA - PUBLIC HEARINGS

#### 9. PUBLIC HEARING - CITY MANAGER:

An Ordinance establishing a Municipal Drainage Utility System. (All Districts)  
(City Manager, Joyce A. Wilson, (915) 541-4844)  
(El Paso Water Utilities Public Service Board, Ed Archuleta, (915) 594-5501)

#### 10. PUBLIC HEARINGS - DEVELOPMENT SERVICES

10A. An Ordinance changing the zoning of Tracts 13 and 14, Hughes Subdivision, City of El Paso, El Paso County, Texas, from R-F (Ranch and Farm) to R-5 (Residential). The penalty is as provided for in Chapter 20.68 of the El Paso City Code. Subject Property: North of Roseway Drive and West of New Haven Drive. Applicant: MJ Real Properties, Inc. ZON07-00028 (District 7)  
(Development Services/Planning, Natalie Nevarez-Straight, (915) 541-4904)

10B. An Ordinance changing the zoning of the following real property described as Parcel 1: a portion of Lot 3, Block 9, Canutillo Industrial Park, City of El Paso, El Paso County, Texas, from R-3 (Residential) to C-3 (Commercial) and imposing a condition; Parcel 2: a portion of Lots 4 and 5, Block 9, Canutillo Industrial Park, City of El Paso, El Paso County, Texas, from R-3 (Residential) to C-3 (Commercial); and imposing a condition. The penalty is as provided for in Chapter 20.68 of the El Paso City Code. Subject Property: North of Los Mochis Avenue and West of Interstate 10. Applicants: Chanate Partners, LTD. ZON07-00022 (District 1)  
(Development Services/Planning, Melissa Granado, (915) 541-4730)

10C. An Ordinance changing the zoning of Tract 11, Section 15, Block 80, Township 1, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas, from R-F (Ranch and Farm) to M-1 (Light Manufacturing), and

RULES AND REGULATIONS NO. 3

RULES AND REGULATIONS  
ESTABLISHING A RATE FOR THE  
FURNISHING OF STORMWATER SERVICE  
BY THE EL PASO WATER UTILITIES

BY THE AUTHORITY GRANTED TO THE PUBLIC SERVICE BOARD BY VIRTUE OF CHAPTER 402, SUBCHAPTER C OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED (THE ACT), AUTHORIZING THE CITY TO ESTABLISH A MUNICIPAL DRAINAGE UTILITY SYSTEM, AND ORDINANCE 16668, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS ON JUNE 19, 2007, DECLARING THE DRAINAGE SYSTEM OF THE CITY TO BE A PUBLIC UTILITY AND AUTHORIZING THE PUBLIC SERVICE BOARD TO HAVE COMPLETE AUTHORITY AND CONTROL OF THE MANAGEMENT AND OPERATION OF THE SYSTEM ON BEHALF OF THE SYSTEM AND DIRECTING THE BOARD TO ESTABLISH A SCHEDULE OF CHARGES; THEREFORE BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CITY OF EL PASO, THAT THE FOLLOWING RULES FOR ESTABLISHING A RATE FOR THE FURNISHING OF STORMWATER SERVICE WITHIN THE CITY OF EL PASO ARE HEREBY ESTABLISHED AND KNOWN AS RULES AND REGULATIONS NO. 3.

SECTION I GENERAL

A. TABLE OF CONTENTS

The headings or captions following are adopted as the Table of Contents for Public Service Board Rules and Regulations No. 3.

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## B. DEFINITIONS

### Benefited Property:

An improved lot or tract to which service is made available under the establishing Drainage Ordinance and in accordance with applicable Rules and Regulations.

### Best Management Practices (BMP):

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to control, prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

### Delinquent Accounts:

A user of the Utility who has failed to pay the charges promptly when due

### Drainage Ordinance:

Ordinance 16668 passed and approved by the City Council of the City of El Paso, Texas on June 19, 2007 authorizing the Public Service Board to have authority and control of the management and operation of the stormwater system.

### Equivalent Residential Unit ("ERU"):

The ERUs shall be determined by dividing the impervious square footage of a property by 2,000 square feet.

### Impervious Area:

Any area that has been disturbed from its natural condition in such a way as to reduce the ability of the surface to absorb and infiltrate water into the soil. Impervious areas include, but are not limited to, compacted soils, buildings, pavement, parking lots, driveways, sidewalks, and any other man-made structure or surface that is built or laid on the natural surface of the land which has the effect of increasing, concentrating, or otherwise altering stormwater runoff so that flows are increased. Xeriscaped properties and turf are considered pervious.

### Municipal Separate Storm Sewer System ("MS4"):

The system of conveyances (including roads with drainage systems, municipal streets, flood control dams, retention and detention basins, grate and/or curb inlets, curbs, gutters, ditches, man-made channels, arroyos, agriculture drains, storm drains or designated flow paths) owned, operated or controlled by the city and/or PSB and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

### Non-residential Property:

Non-residential properties shall include all non-residential customer classes including apartments (quadplexes and higher), commercial and industrial customers, and any other class not designated as residential, but excluding those subject to mandatory exemption under Chapter 402.053(c) of the Texas Local Government Code.

### Residential Property:

Residential properties shall include single family, duplex, and triplex properties

### Wholly Sufficient and Privately Owned Stormwater System

Land owned and operated by a person other than a utility, the drainage of which does not discharge into the MS4.

Undeveloped Land:

Property held and maintained in its natural state on which no improvements currently exist.

SECTION II STORMWATER CHARGES

A monthly stormwater fee shall be imposed on each improved parcel within the City for services and facilities provided by the Utility, except as provided for by law or by these Rules and Regulations. The stormwater fee shall be based on the developed use of the benefited property and its estimated amount of impervious area. The following charges shall apply for stormwater service provided to property within the City of El Paso:

A. STORMWATER CHARGE FOR RESIDENTIAL

Residential properties shall include single family residential, duplex, and triplex properties. Residential properties will be charged a fixed monthly charge as shown in the following table:

Residential Category	Impervious Area (Square Feet)	Stormwater Monthly Charge
Small	0 – 1,200	\$2.38
Typical	1,201 – 3,000	\$4.75
Large	> 3,000	\$9.50

Residential properties may be assigned to the Small, Typical, or Large category using data obtained from the Central Appraisal District, Utility's GIS database, or any other source deemed reasonable by the Utility.

B. STORMWATER CHARGE FOR NON-RESIDENTIAL

Non-residential properties shall include apartments, commercial, and industrial customers, and any other customer class not designated as residential but excluding those subject to mandatory exemption. Non-residential properties shall be charged for their estimated impervious square footage on a per Equivalent Residential Unit ("ERU") basis. The ERUs shall be determined by dividing the property's estimated impervious square footage by 2,000 square feet. The monthly charge per non-residential ERU is \$4.85.

An example of the monthly stormwater bill for a non-residential property is shown below:

Non-residential impervious square footage	20,000 sq. ft.
Equivalent residential unit value	<u>2,000 sq. ft.</u>
Equals calculated ERUs	10 ERUs
Monthly charge (10 ERUs x \$4.85/ERU/Mo.)	\$48.50

C. IMPERVIOUS AREA DETERMINATION

The Utility has the authority to establish the impervious square footage using the following approaches:

1. An analysis of El Paso Central Appraisal District data on the footprint of the main building and any structural additions such as garages or tennis courts that would increase the impervious footprint of the parcel<sup>1</sup>.

<sup>1</sup> Sidewalks and driveways were not included in the residential impervious square footage information obtained from the Central Appraisal District as it was not available.

2. A calculation of the impervious square footage using GIS and aerial photography.
3. Detailed and approved building plans provided.
4. Any other source deemed reasonable by the Utility.

The impervious area for a property may be updated at any time to reflect improvements made to the property that would either increase or decrease the estimated impervious square footage.

D. STORMWATER-ONLY ACCOUNTS

The Utility may establish stormwater-only accounts for properties that contribute stormwater as a result of their impervious area.

E. NO DEPOSIT REQUIRED FOR SERVICE

There is no deposit required for service as a precondition to accepting surface flow in the system.

SECTION III BILLING FOR STORMWATER

A. MONTHLY BILLING

A stormwater charge shall be billed on the monthly utility bill. The due date for payment and associated charges for delinquent accounts under Section V of Rules and Regulations No. 5 are hereby incorporated by reference as applying to stormwater. Discontinuance of service and delinquent accounts are addressed further in these Rules and Regulations.

B. RESPONSIBLE PARTY

The monthly charge for stormwater will be billed to the customer established as the responsible party for water service. If the benefited property does not receive a monthly utility bill, the bill will be the responsibility of the property owner.

C. MULTIPLE METERS

If more than one meter serves a benefited property, the Utility will determine the allocation of the charge among the users, using any reasonable method, including allocating the charge equally among the users of a benefited property.

D. EXEMPTIONS

The following entities or persons shall be exempt from charges:

1. Any property to which a mandatory exemption under Chapter 402.053(c) of the Texas Local Government Code applies, including without limitation:
  - a. Property with proper construction and maintenance of a wholly sufficient and privately owned drainage 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 municipality in which the property is located for maintenance; and
  - c. A subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located.
2. Any property to which a mandatory exemption under Chapter 430.003 of the Texas Local Government Code applies or which is exempt under applicable federal law, including without limitation:

- a. A federal or state agency; and
- b. A public institution of higher education.

#### E. CREDITS

For non-residential properties that have implemented stormwater management measures that exceed the minimum design standards established by the City, a credit may be provided. Credits may be given for stormwater improvements that reduce the volume or peak or increase the quality of the stormwater runoff above currently established minimum design standards. Credits are given at the discretion of the Utility and will only be considered with acceptable documentation evidencing that the improvements and/or BMPs employed exceed the minimum design standards. Property owners shall be responsible for providing the data and site information necessary in support of the requested credit and paying the applicable Application Fee. The credit shall be up to a maximum of 25% of the estimated impervious square footage for a non-residential property so as to recover the portion of the fee unaffected by onsite control practices. Residential properties are not eligible for credits.

#### SECTION IV DISCONTINUANCE OF SERVICE

The Utility shall have the right, with notice to the customer, to discontinue water service for non-payment of stormwater; for violation of any provisions of the Utility's Rules and Regulations; or any other lawful rule or regulation of the Utility or the City of El Paso or for any other action which interferes with providing stormwater service or which creates a danger of contamination to the water system. Provided, however, the Utility shall have the authority to immediately discontinue the customer's service without notice should any violation of these rules and regulations cause an immediate threat to the public health or safety or the environment. Such service shall remain discontinued until all errors are rectified and/or violations have ceased.

#### SECTION V DELINQUENT ACCOUNTS

The Texas Local Government Code, Chapter 402.050, authorizes a utility to discontinue any utility services it currently provides for failure to pay stormwater charges when due: "...failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the municipality...". The schedule for payment and disconnection of water service and all associated charges and fees apply to delinquent stormwater accounts and are herein incorporated by reference to Section V of Rules and Regulations No. 5.

#### SECTION VI APPEALS

Customer inquiries regarding stormwater rates, charges and regulations shall follow the Appeals process under Section II of Rules and Regulations No. 8.

#### SECTION VII SEVERABILITY

If any provision, paragraph, word, or section of this Rules and Regulations No. 3, is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, or sections shall not be affected and shall continue in full force and effect.

#### SECTION VIII SAVINGS

These rules and regulations are a part of the other rules and regulations of the Public Service Board and, save and except as amended hereby, the remaining provisions of the Public Service Board's rules and regulations shall remain in full force and effect.

#### SECTION IX EFFECTIVE DATE

These rules and regulations shall be and become effective from and after their adoption hereby and shall remain in effect until amended or changed by the Public Service Board.

PASSED, APPROVED and ADOPTED at the regular meeting of the Public Service Board of the City of El Paso, Texas, this 12th day of December, 2007, at which a quorum was present, held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.

PUBLIC SERVICE BOARD  
/s/Fermin Acosta, Jr., Chair

ATTEST:  
/s/Ruben Guerra, Secretary

APPROVED AS TO FORM:  
/s/Robert D. Andron, General Counsel



AN ACT

relating to the adoption of a nonsubstantive revision of statutes relating to public securities, including conforming amendments, repeals, and penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ADOPTION OF PUBLIC SECURITIES TITLE. The Government Code is amended by adding Title 9 to read as follows:

TITLE 9. PUBLIC SECURITIES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1201. PUBLIC SECURITY PROCEDURES ACT

CHAPTER 1202. EXAMINATION AND REGISTRATION OF PUBLIC  
SECURITIES

CHAPTER 1203. REGISTRAR FOR PUBLIC SECURITY

CHAPTER 1204. INTEREST RATE

CHAPTER 1205. PUBLIC SECURITY DECLARATORY JUDGMENT ACTIONS

CHAPTER 1206. REPLACEMENT FOR DAMAGED, DESTROYED, LOST,  
OR STOLEN PUBLIC SECURITIES

CHAPTER 1207. REFUNDING BONDS

[Chapters 1208-1230 reserved for expansion]

SUBTITLE B. PROVISIONS APPLICABLE TO SECURITIES  
ISSUED BY STATE GOVERNMENT

CHAPTER 1231. BOND REVIEW BOARD

CHAPTER 1232. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 1233. COLLEGE OPPORTUNITY ACT

[Chapters 1234-1250 reserved for expansion]



(2) acquire land for county library use; and

(3) determine the location in the county of each county library building or permanent improvement.

(b) A county that maintains a permanent improvement fund shall use money in that fund to pay for each library building, repair, or improvement. (V.A.C.S. Art. 1696a, Sec. 1.)

Sec. 323.052. COUNTY LIBRARY BONDS. (a) A county may issue bonds, and impose ad valorem taxes for payment of the bonds, to pay the cost of:

(1) purchasing, constructing, repairing, equipping, or improving a building or other permanent improvement for county library use; or

(2) acquiring land for county library use.

(b) The issuance of the bonds and the imposition of the taxes must be in conformity with Subtitles A and C, Title 9, Government Code, (V.A.C.S. Art. 1696a, Sec. 2.)

SECTION 13. CONFORMING AMENDMENT. Chapter 402, Local Government Code, is amended by adding Subchapters G and H to read as follows:

SUBCHAPTER G. MANAGEMENT OF CERTAIN ENCUMBERED MUNICIPAL  
ELECTRIC UTILITY SYSTEMS

Sec. 402.121. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a home-rule municipality that owns an electric utility system, by ordinance elects to have the management and control of the utility system governed by this subchapter, and:

(1) has outstanding obligations payable solely from and secured by a lien on and pledge of the net revenue of the system; or

(2) issues obligations that:

(A) are payable solely from and secured by a lien on and pledge of the net revenue of the system; and

(B) are approved by the attorney general. (V.A.C.S. Art. 1115a, Sec. 1.)

Sec. 402.122. TRANSFER OF MANAGEMENT AND CONTROL OF ELECTRIC UTILITY SYSTEM. (a) A municipality by ordinance may transfer management and control of

the municipality's electric utility system to a five-member board of trustees appointed by the municipality's governing body.

(b) The municipality by ordinance shall prescribe the qualifications for appointment to the board. (V.A.C.S. Art. 1115a, Sec. 2.)

Sec. 402.123. AUTHORITY OF BOARD OF TRUSTEES. (a) The municipality may delegate to the board of trustees all or part of the municipality's authority to:

- (1) establish rates and charges for use of the utility system's facilities;
- (2) exercise the power of eminent domain with respect to property that will be used by, useful to, or required by the utility system; and
- (3) issue obligations in the name of the municipality to acquire or construct an improvement to or extension of the utility system or to repair the system.

(b) The municipality may authorize the board of trustees to issue obligations under Subsection (a)(3) without the prior approval of the municipality. The obligations must be payable solely from the net revenue of the utility system.

(c) The municipality may not delegate to the board of trustees the authority to:

- (1) levy or collect ad valorem taxes; or
- (2) issue obligations that are payable in whole or in part from ad valorem taxes.

(d) The municipality and the board of trustees may jointly provide for the issuance of obligations payable from ad valorem taxes and the utility system's net revenue by adopting identical provisions in an ordinance or resolution, as appropriate. (V.A.C.S. Art. 1115a, Sec. 3.)

Sec. 402.124. EFFECT OF PREVIOUSLY ISSUED BONDS. (a) A municipality or an existing board of trustees may not exercise a power provided by this subchapter in relation to an obligation issued before June 14, 1989, unless the ordinance authorizing the issuance of the obligation or the deed of trust or trust indenture securing payment of the obligation specifically allows the municipality or board to exercise the power. The authority of the municipality or board in relation to that obligation is subject to any restriction or covenant contained in the ordinance, deed of trust, or trust indenture.

(b) The board of trustees may authorize, issue, and sell additional obligations on a parity with an obligation issued before June 14, 1989, if the ordinance, deed of trust, or trust indenture provides for the issuance of the obligations. The obligations must be payable from the revenue pledged to pay the previous obligation and must be secured by pledges and liens on a parity with the pledge securing the previous obligation. (V.A.C.S. Art. 1115a, Sec. 4.)

[Sections 402.125-402.140 reserved for expansion]

#### SUBCHAPTER H. MANAGEMENT OF CERTAIN ENCUMBERED MUNICIPAL WATER SYSTEMS

Sec. 402.141. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a home-rule municipality that owns or may own a water, wastewater, storm water, or drainage utility system, by ordinance elects to have the management and control of two or more of those utility systems governed by this subchapter, and:

(1) has outstanding obligations payable solely from and secured by a lien on and pledge of the net revenue of one or more of those systems; or

(2) issues obligations that are payable solely from and secured by a lien on and pledge of the net revenue of one or more of those systems. (V.A.C.S. Art. 1115b, Sec. 1.)

Sec. 402.142. TRANSFER OF MANAGEMENT AND CONTROL OF UTILITY SYSTEM. (a) A municipality by ordinance may transfer management and control of two or more of its water, wastewater, storm water, or drainage systems to a board of trustees.

(b) The board of trustees must consist of at least seven members, one of whom must be the presiding officer of the governing body of the municipality.

(c) The ordinance transferring management and control must prescribe the number, qualifications, terms of office, succession, compensation, powers, and duties of the members of the board of trustees.

(d) On any matter not covered by the ordinance, the board is governed by the laws and rules governing the governing body of the municipality, to the extent applicable. (V.A.C.S. Art. 1115b, Sec. 2.)

835e-1, 835e-2, 835f, 835g, 835h, 835i, 835j, 835k, 835k-1, 835l, 835m, 835n, 835o, 835p, 835q, 835r, 835s, 836, 837, 837a, 839, 840, 841, 969a-2, 1015c, 1015c-2, 1015d, 1015g, 1015g-1, 1015g-2, 1015g-3, 1015g-4, 1015g-5, 1015h, 1066g, 1105c, 1106, 1108a, 1108b, 1109a, 1109a-1, 1109a-2, 1109h, 1110a, 1110d, 1110f, 1111, 1111a, 1111b, 1111c, 1111d, 1112, 1113, 1113a, 1113b, 1114, 1114a, 1114b, 1114c, 1114d, 1115, 1115a, 1115b, 1116, 1117, 1118, 1118a, 1118b, 1118c, 1118d, 1118e, 1118f, 1118g, 1118h, 1118i, 1118j, 1118j-1, 1118j-2, 1118k, 1118l, 1118m, 1118m-1, 1118m-2, 1118n, 1118n-1, 1118n-2, 1118n-3, 1118n-4, 1118n-5, 1118n-6, 1118n-7, 1118n-8, 1118n-9, 1118n-10, 1118n-11, 1118n-12, 1118o-1, 1118p, 1118q, 1118r, 1118s, 1118t, 1118u, 1118v, 1175e, 1176b-3, 1180b, 1182e, 1182h, 1182j, 1182n, 1187a, 1187a-1, 1187a-2, 1187b, 1187c, 1187d, 1187e, 1187f, 1264, 1269h-1, 1269h-2, 1269i, 1269j, 1269j-1, 1269j-4, 1269j-4.1, 1269j-4.15, 1269j-4.3, 1269j-4.4, 1269j-4.7, 1269j-4.8, 1269j-4.9, 1269j-5, 1269j-5.1, 1269j-5.2, 1269j-5.3, 1269j-5.4, 1269j-6, 1269j-7, 1269j-8, 1269j-9, 1269j-11, 1644c, 1644c-1, 1676c, 1696a, 1696b, 2351a-4, 2351a-7, 2352c, 2368a, 2368a-13, 2368a-14, 2368b, 2368b-1, 2368c, 2368d, 2368f, 2370, 2370b, 2370c, 2370c-1, 2370d, 2372d-1, 2372d-2, 2372d-4, 2372d-8, 2372q, 2372s, 2606a, 4398, 4477-7b, 5190.1, 5190.9a, 6081h, 6081i, 6081j, 6830, 6831, 6832, 6833, 6834, 6835, 6836, 6837, 6838, 6839, 6839b, 6839c, 6839d, 6839e, and 6839g.

(b) The following are repealed:

- (1) Section 2256.056, Government Code;
- (2) Section 5, Chapter 423, Acts of the 73rd Legislature, Regular Session, 1993;
- (3) Section 3, Chapter 1058, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 29. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE. (a) This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

(b) This Act does not impair any obligation created by the issuance of bonds, notes, or other obligations in accordance with prior law, and all bonds, notes, or other obligations validly issued under provisions revised or repealed remain valid, enforceable, and binding according to

their terms and shall be paid from the sources pledged to their payment. Bonds, notes, or other obligations authorized but unissued on the effective date of this Act may be issued in compliance with and subject to the provisions of the prior law.

SECTION 30. EFFECTIVE DATE. This Act takes effect September 1, 1999.

SECTION 31. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

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President of the Senate

Speaker of the House

I certify that H.B. No. 3157 was passed by the House on April 23, 1999, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 3157 was passed by the Senate on May 10, 1999, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor