

ORDINANCE NO. _____
(Establish Henderson Municipal Code Section 14.18.047 - West Henderson-Bermuda
Wastewater Backbone Infrastructure Rates)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON,
NEVADA, TO ESTABLISH SECTION 14.18.047 – WEST HENDERSON-
BERMUDA WASTEWATER BACKBONE INFRASTRUCTURE RATES – OF
THE HENDERSON MUNICIPAL CODE.

- WHEREAS, with the exception of the Inspirada master-planned community, the area generally bounded by Las Vegas Boulevard to the west, St. Rose Parkway to the north, the master-planned communities of Seven Hills and Anthem to the east, the Sloan Canyon National Conservation Area to the south (“West Henderson”) is forecasted to increase in population by approximately 70,000 people by the year 2050; and
- WHEREAS, between now and the year 2050, West Henderson is expected to add considerable new residential and commercial development, including both retail and industrial development projects; and
- WHEREAS, Article II, Section 2.270 of the City of Henderson (“City” or “Henderson”) City Charter gives the Henderson City Council (the “City Council”) authority to provide for any part of a sanitary sewer system, extend sewer lines and “[e]stablish sewer fees and provide for the enforcement and collection thereof”; and
- WHEREAS, Article II, Section 2.280.1(b) of the Henderson City Charter gives the City Council authority to provide for the construction of any facility necessary for the provision of wastewater service; and
- WHEREAS, Henderson Municipal Code (HMC) Section 14.18.020.D provides that the assessment and collection of all fees and charges shall be made in accordance with the established procedures of the City; and
- WHEREAS, in addition, section 278.02591 of the Nevada Revised Statutes (NRS) allows a governing body to establish an analysis of the cost to construct infrastructure in an area which is undeveloped land and which is likely to become developed and NRS 278.02598 allows the governing body, through that analysis, to distribute equitably the infrastructure development costs among those persons who wish to develop the land; and
- WHEREAS, the land in West Henderson is largely undeveloped and is likely to become developed; and
- WHEREAS, wastewater backbone infrastructure must be constructed to enable the City to provide wastewater service in the West Henderson area; and
- WHEREAS, on May 1, 2018, City Council approved amendment no.1 to an agreement between the City and Atkins North America, Inc. (the “Atkins On-Call Agreement”) for increased engineering support services on an as-needed basis; and

- WHEREAS, task order no. 26 to the Atkins On-Call Agreement was necessary to provide strategic infrastructure planning support to determine the wastewater backbone infrastructure required to provide wastewater service to approximately 6,890 acres of land within West Henderson based on then-existing zoning (the “West Henderson Study Area”); and
- WHEREAS, the West Henderson Study Area is comprised of five (5) separate drainage basins referred to as the Bermuda, Giles pie, St. Rose, Las Vegas Boulevard and Airport Sewer Basins; and
- WHEREAS the Bermuda Sewer Basin is comprised of approximately 4,135 acres and is depicted in Exhibit A, consisting of one page, (the “Bermuda Basin Boundary”) and incorporated by reference herein; and
- WHEREAS, to assist with West Henderson wastewater backbone infrastructure planning, including identifying the size, capacity and locations for the backbone sewer main construction phases and segments within the Bermuda Sewer Basin, Atkins North America, Inc. produced the West Henderson Sewer Study – Bermuda Basin, dated May 24, 2019, attached as Exhibit B, consisting of 31 pages, (the “Bermuda Basin Study”) and incorporated by reference herein; and
- WHEREAS, the Bermuda Basin Study identifies an estimated total quantity of wastewater contribution equivalent to Twenty-Six Thousand Three-Hundred Fifty Five (26,355) Equivalent Residential Units (“ERUs”) within the Bermuda Basin Boundary and furthermore identified nine backbone infrastructure segments that are required to be constructed to provide wastewater service to properties from that infrastructure; and
- WHEREAS, to assist with identifying the estimated available capacities and costs for Segment 1, Segment 2, Segment 3 and Segment 9 (collectively, the “WH-Bermuda Wastewater Backbone Infrastructure”), Atkins North America, Inc. produced the West Henderson Phase 1 Wastewater Backbone Infrastructure Rate – Bermuda Sewer Phase 1 Analysis, dated August 29, 2019, consisting of 11 pages, the West Henderson Phase 2 Wastewater Backbone Infrastructure Rate – Bermuda Sewer Phase 2 Analysis, dated May 23, 2019, consisting of eight pages, (collectively, the “Bermuda Basin Rate Studies”), attached as Exhibit C and incorporated by reference herein; and
- WHEREAS, the estimated available capacities for Segments 1, 2, 3 and 9 are as follows: 32,338 ERUs for Segment 1; 25,386 ERUs for Segment 2; 24,565 ERUs for Segment 3; and, 15,280 ERUs for Segment 9; and
- WHEREAS, the Bermuda Basin Rate Studies identify the engineer’s opinion of probable cost for the design and construction of the WH-Bermuda Wastewater Backbone Infrastructure to be approximately Five Million Two Hundred Thirty Six Thousand Four Hundred Ninety Nine dollars (\$5,236,499) in 2019 dollars, which amount is comprised of One Million Nineteen Thousand Two Hundred Ninety Seven dollars (\$1,019,297) for Segment 1, One Million Two Hundred Sixteen Thousand Six Hundred Forty-Four dollars (\$1,216,644) for Segment 2, One Million Nine Thousand Seven Hundred Fifty Eight dollars (\$1,009,758) for Segment 3 and

One Million Nine Hundred Ninety Thousand Eight Hundred dollars (\$1,990,800)
for Segment 9; and

WHEREAS, after the Bermuda Basin Rate Studies were prepared, City staff received pricing from the contractor constructing Segment 3 and Segment 9 of the WH-Bermuda Wastewater Backbone Infrastructure as follows: One Million One Hundred Seventy Five Thousand Three Hundred Thirty Nine dollars (\$1,175,339) for Segment 3 and One Million Eight Hundred Ninety Three Thousand Three Hundred Sixty Five dollars (\$1,893,365) for Segment 9; and

WHEREAS, the City has determined that, although each customer is responsible for constructing and paying for wastewater backbone infrastructure, given the significant acreage and extensive coordination required to ensure orderly development, it provides a public benefit for the City to assume responsibility for planning and constructing the WH-Bermuda Wastewater Backbone Infrastructure and establishing rates for that infrastructure to enable the City to pay for this infrastructure through rates collected from customers who benefit from it (the "WH-Bermuda Wastewater Backbone Infrastructure Rates"); and

WHEREAS, the City may include all costs associated with the WH-Bermuda Wastewater Backbone Infrastructure, including the types of costs identified in HMC 14.16.050.A.5.a through HMC 14.16.050.A.5.f, when calculating the rates for that infrastructure; and

WHEREAS, in order for the City to recover the costs it has incurred and will incur to plan, design, construct and finance the WH-Bermuda Wastewater Backbone Infrastructure, the City shall establish specific rates, per ERU, with such rates being assessed to projects that benefit from the WH-Bermuda Wastewater Backbone Infrastructure; and

WHEREAS, the initial rate for the WH-Bermuda Wastewater Backbone Infrastructure shall be based on the cumulative benefit received from each segment of backbone infrastructure constructed and shall be \$31.52 per ERU to connect to Segment 1, \$79.45 per ERU to connect to Segment 2, ~~\$120.56~~ \$131.39 per ERU to connect to Segment 3 and ~~\$250.85~~ \$270.83 per ERU to connect to Segment 9, and may be adjusted to reflect actual costs; and

WHEREAS, in addition, NRS 278.02598 allows the City Council to distribute equitably the infrastructure development costs among those persons who wish to develop the land, and the wastewater backbone infrastructure is also part of the City's comprehensive plan for West Henderson infrastructure; and

WHEREAS, a Business Impact Statement was posted by the City of Henderson to collect comments on potential impacts of the required contribution created by the West Henderson wastewater backbone infrastructure rates; and

WHEREAS, the City of Henderson staff addressed the comments from the Business Impact Statement in the WH-Bermuda Wastewater Backbone Infrastructure Rates; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

Establish HMC Section 14.18.047 - West Henderson-Bermuda Wastewater Backbone Infrastructure Rates

SECTION 1 The Bermuda Basin Study and Bermuda Basin Rate Studies are hereby adopted as the analysis of the cost to plan, design and construct the WH-Bermuda Wastewater Backbone Infrastructure and, together with actual costs of WH-Bermuda Wastewater Backbone Infrastructure designed and constructed, provide the basis for the City Council to fix the WH-Bermuda Wastewater Backbone Infrastructure Rates (defined in HMC 14.18.047.B).

SECTION 2 Section 14.18.047 - West Henderson Wastewater Backbone Infrastructure Rates - is established as follows:

14.18.047 - West Henderson-Bermuda Wastewater Backbone Infrastructure Rates

A. Planning and design of wastewater backbone infrastructure for West Henderson, construction of that infrastructure, financing of that construction, and phasing of that construction are required to support wastewater service to existing and future developments in the West Henderson area. The director has the right to determine the size and capacity of that wastewater backbone infrastructure, phasing of construction of that wastewater backbone infrastructure, and method of financing the construction, taking into account projected service needs of the West Henderson area served and the need for the orderly and efficient development of the publicly owned treatment works.

B. The rates charged to projects that the city determines will receive a benefit from segment 1, segment 2, segment 3 or segment 9 of the wastewater backbone infrastructure planned, designed, constructed, and/or financed for the Bermuda Sewer Basin within West Henderson are referred to as the "segment 1 wastewater infrastructure rate," "segment 2 wastewater infrastructure rate," "segment 3 wastewater infrastructure rate" and "segment 9 wastewater infrastructure rate," respectively, and, collectively, as the "WH-Bermuda backbone wastewater infrastructure rates." The WH-Bermuda wastewater backbone infrastructure rates shall be in addition to system development and other applicable charges for wastewater service.

C. Effective November 25, 2019, all new projects that the city determines will receive a benefit from existing or future wastewater backbone infrastructure planned, designed, constructed, and/or financed for the Bermuda Sewer Basin within West Henderson shall be charged and pay the segment 1 wastewater infrastructure rate, the segment 2 wastewater infrastructure rate, the segment 3 wastewater infrastructure rate and/or the segment 9 wastewater infrastructure rate, as the city determines is appropriate. The amount(s) charged shall be based upon the total ERUs proposed for the project, as reflected in the civil improvement plans for the project approved by the city, and the rate(s) used will be the one(s) in effect on the date the city processes the building permit for the project or, if a project is not required to obtain a building permit from the city, at the rate in effect on the date the city approves the civil improvement plans for the project.

D. Any project that was initiated at the city before November 25, 2019 and whose approval was conditioned on the city being paid the rate(s) established or

other amount charged by the city for existing or future wastewater backbone infrastructure planned, designed, constructed, and/or financed for West Henderson shall be charged and pay the segment 1 wastewater infrastructure rate, the segment 2 wastewater infrastructure rate, the segment 3 wastewater infrastructure rate and/or the segment 9 wastewater infrastructure rate, as the city determines is appropriate. The amount(s) charged shall be based upon the total ERUs proposed for the project, as reflected in the civil improvement plans for the project approved by the city, and the rate(s) used will be the one(s) in effect on the date the city processes the building permit for the project or November 25, 2019, whichever is later.

E. Effective November 25, 2019, all projects that proceed with additional improvements to a property that result or might result in an increase in the amount of wastewater discharged to the publicly owned treatment works above that previously proposed – as reflected in the civil improvement plans, in the building permit or by other means of receiving city approval for such additional improvements – and that the city determines will receive a benefit from existing or future wastewater backbone infrastructure planned, designed, constructed, and/or financed for West Henderson shall be charged and pay the segment 1 wastewater infrastructure rate, the segment 2 wastewater infrastructure rate, the segment 3 wastewater infrastructure rate and/or the segment 9 wastewater infrastructure rate, as the city determines is appropriate. Whether the improvements result or might result in an increase in the amount wastewater discharged to the publicly owned treatment works above that previously proposed shall be determined by the director in his or her sole discretion. The rate(s) charged shall be based upon the increase in total additional ERUs associated with the property improvements and at the rate in effect on the date the city processes the building permit for the proposed improvements or, if a project is not required to obtain a building permit from the city, at the rate in effect on the date the city approves the civil improvement plans for the proposed improvements or provides its approval of the additional improvements by other means.

F. The initial segment 1 wastewater infrastructure rate shall be \$31.52 per ERU. The initial segment 2 wastewater infrastructure rate shall be \$79.45 per ERU. The initial segment 3 wastewater infrastructure rate shall be ~~\$131.39~~~~\$120.56~~ per ERU. The initial segment 9 wastewater infrastructure rate shall be ~~\$270.83~~~~\$250.85~~ per ERU. Initially, these rates have been based upon actual and estimated costs for the city to fund the planning, design, construction, and/or financing of the West Henderson wastewater backbone infrastructure. After construction of the particular segment is completed, the city manager may adjust the rate for that segment to reflect the actual costs to plan, design, construct, and finance the West Henderson wastewater backbone infrastructure in that segment. The city will identify the then-current segment 1 wastewater infrastructure rate, the segment 2 wastewater infrastructure rate, the segment 3 wastewater infrastructure rate and/or the segment 9 wastewater infrastructure rate in the department service rules. Unless otherwise approved in writing by the director at his or her sole discretion, the rate(s) assessed shall be paid to the city when the city issues a building permit, prior to issuance of a certificate of

occupancy or prior to commencement of permanent wastewater service, whichever is earliest.

G. For five (5) years after a certificate of occupancy is issued for a project or an improvement is made to a project, the city has the right to audit that project to confirm that the project's average annual wastewater discharge to the publicly owned treatment works is substantially the same as the total ERUs proposed for the project or project improvement. If the city determines the project is using more capacity of the West Henderson wastewater backbone infrastructure than proposed, the city may require the original developer of the project or project improvement, as applicable, to pay the difference between the total ERUs charged the project and total ERUs actually used at the property at the segment 1 wastewater infrastructure rate, the segment 2 wastewater infrastructure rate, the segment 3 wastewater infrastructure rate and/or the segment 9 wastewater infrastructure rate, as appropriate, in effect on the date the city prepares a bill for the additional payment.

H. If the segment 1 wastewater infrastructure rate, the segment 2 wastewater infrastructure rate, the segment 3 wastewater infrastructure rate or the segment 9 wastewater infrastructure rate is adjusted after the city receives a payment, the city is not obligated to true-up the payment received or to refund/collect any difference.

SECTION 3 The Bermuda Basin Study and Bermuda Basin Rate Studies meet the applicable criteria established in NRS 278.02591.2.

SECTION 4 Each project must pay City that project's equitable share of the wastewater backbone infrastructure planned, designed, constructed, and/or financed for the West Henderson in accordance with the applicable procedure in HMC Chapter 14.18, the established procedures of the City and/or through a development agreement.

END OF ORDINANCE

Exhibit A

Bermuda Basin Boundary

Figure 2 - Sewer Basins

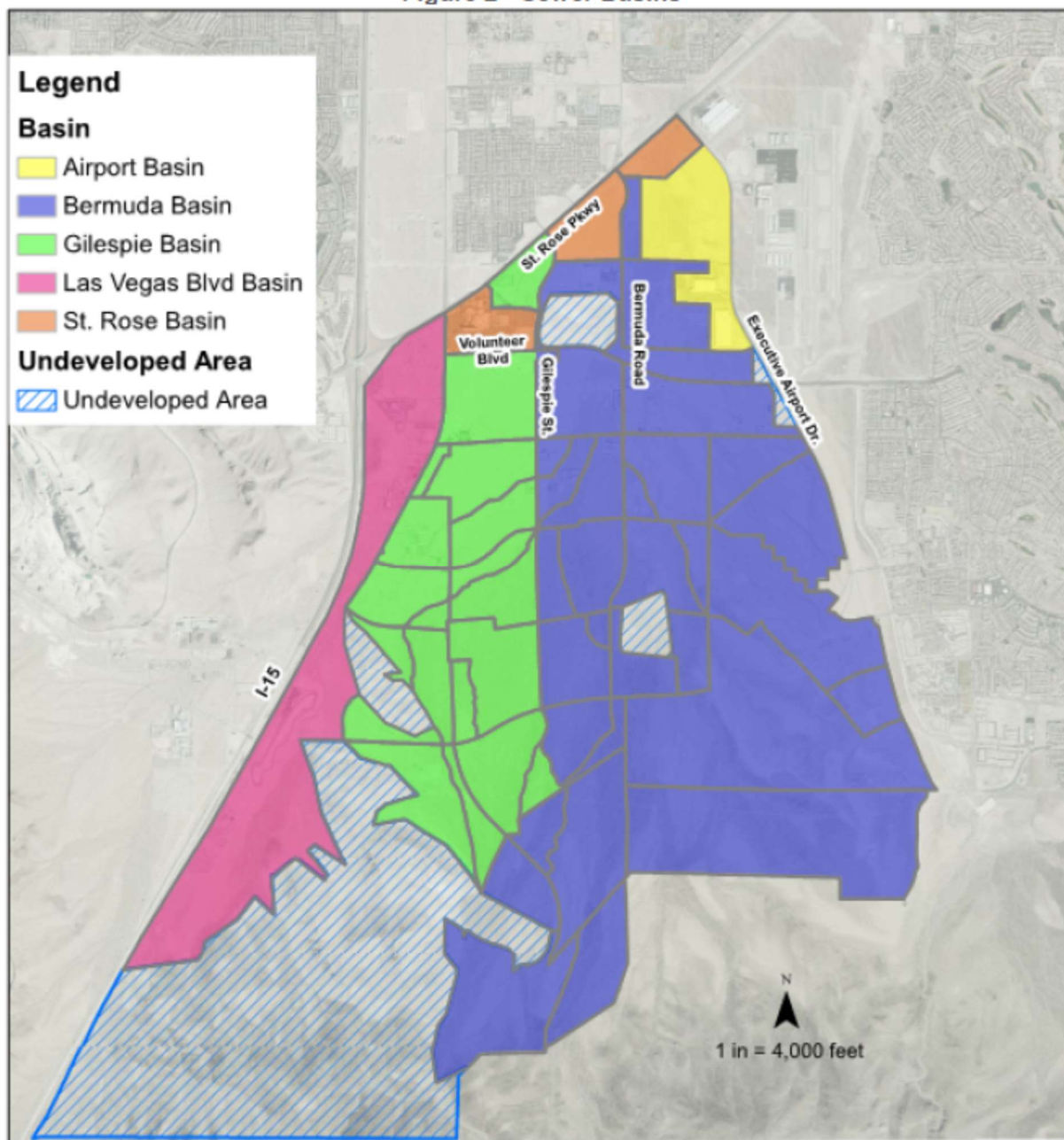


Exhibit B

Bermuda Basin Study

[Attached]

Exhibit C

Bermuda Basin Rate Studies

[Attached]