

MEMORANDUM

TO: James Leonard, Record Commissioner

FROM: Bernard Brunwasser, Chair, Water, Sewer and Storm Water Rate Board *lyn m BB*

DATE: December 21, 2016

RE: Determination of Water Department Storm Water Rates applicable to Community Gardens

On October 12, 2016, the Water Department filed a "Formal Notice of Proposed Change in Storm Water Rates for Community Gardens for Community Gardens" ("Application"). In accordance with Section 5-801 of the Philadelphia Home Rule Charter, Section 13-101 of the Philadelphia Code, and the Regulations of the Philadelphia Water, Sewer and Storm Water Rate Board ("Rate Board"), the Rate Board held public hearings on this Application on October 25, 2016; November 14, 2016; November 16, 2016; and November 18, 2016. Due to the limited nature of the Application, and in full compliance with the Rate Board's Regulations, technical hearings were not conducted.

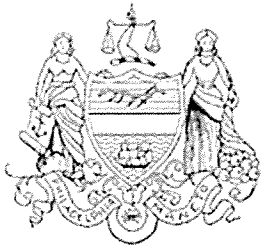
Pursuant to Section 5-801 of the Charter, Section 13-101 of the Code, and the Rate Board's Regulations, and at the direction of the Rate Board in its public meeting on December 21, 2016, I am forwarding herewith for filing the "Report of the Hearing Officer on the Application to Establish Special Rates for Community Gardens" which constitutes the Rate Report and Rate Determination of the Rate Board, along with a memorandum of approval from the Law Department.

We expect that the Water Department will shortly file Rates and charges in conformance with the Rate Determination.

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City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 15th Floor
Philadelphia, PA 19102

MEMORANDUM

TO: Bernard Brunwasser, Chair, Water, Sewer and Storm Water Rate Board
FROM: Gemela McClendon, Counsel, Water, Sewer and Storm Water Rate Board
DATE: December 21, 2016
RE: Determination of Water Department Storm Water Rates Applicable to Community Gardens

I have reviewed the attached "Report of the Hearing Officer on the Application to Establish Special Rates for Community Gardens," completed today by the Hearing Officer on behalf of the Philadelphia Water, Sewer and Storm Water Rate Board ("Rate Board"). The Rate Board is an independent rate-making body, established by ordinance of City Council pursuant to Section 5-801 of the Philadelphia Home Rule Charter to fix and regulate rates and charges for water and sewer services. The attached document is the Rate Board's Rate Determination pursuant to Section II.9 of the Rate Board Regulations. I find the Rate Determination to be legal and in proper form.

In accordance with Section 13-101(8) of the Philadelphia Code and Section II.9(c) of the Rate Board's Regulations, you may forward the Rate Determination to the Department of Records for filing. As Stated in the Rate Determination and consistent with Section 13-101(3)(e) of the Code and Section II(9)(d) of the Rate Board Regulations, the effective date of the changes in the rates and charges will be January 1, 2017 if the Water Department files its conforming Rates and Charges at least ten days prior to that date.

A handwritten signature in black ink, appearing to read "Gemela N. McClendon".

Gemela N. McClendon, Deputy City Solicitor,
Economic Development and Investments Unit

Attachment

Cc: All Rate Board Members (via E-mail)
Nancy Brockway, Hearing Officer (via E-Mail)

*In the Matter of the Proposed Stormwater Charge Discount for Community Gardens
Hearing Officer Report*

BEFORE THE PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

RE: APPLICATION OF THE PHILADELPHIA WATER DEPARTMENT TO
ESTABLISH SPECIAL RATES FOR COMMUNITY GARDENS

Report of the Hearing Officer

December 21, 2016

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This application to establish special rates for community gardens comes before the Philadelphia Water, Sewer and Storm Water Rate Board (Rate Board), which is charged by Section 13-101(3) of the City Code to “fix and regulate rates and charges for supplying water, sewer and storm water service” by the Philadelphia Water Department (PWD or Department) within the City.

I. PROCEDURAL HISTORY

On June 28, 2016, Mayor James F. Kenney signed an ordinance passed by Council that allows community gardens a special discounted rate for stormwater management services. Bill No. 160523, codified at Section 19-1603 of the Philadelphia Code (the ordinance). The ordinance directs the Rate Board to establish a special discounted stormwater charge, in an amount up to and including 100%, for qualifying community gardens, to take effect January 1, 2017. Under the ordinance, the Board may exempt community gardens from paying a monthly stormwater charge, as long as the gardens meet the criteria set out in the ordinance. The most important criteria a community garden must meet are that:

- the property's principal use is for growing crops and for related uses,
- a community group operates the garden for public benefit, and
- stormwater is sustainably managed on at least 80% of the property.

Section 2 of the Ordinance also provides that the discounted charge allowed by Section I of the Ordinance “shall be without prejudice to any prior arrangement for relief of storm water management and disposal fees between the Water Department and a Community Garden or similar entity, provided that (1) such relief was granted on or after July 1, 2010; and (2) no such relief may be presumed to continue beyond the effective date of this Ordinance except pursuant to the terms of Section I or when extended in writing by the Water Department.” This provision relates to informal agreements entered into by the Department to suspend enforcement of stormwater charges for qualifying gardens, pending the development of the special discount provided for in the Ordinance. This provision will be discussed further below in the section on issues presented.

On July 20, 2016, community garden representatives requested that the Water Department initiate a proceeding before the Rate Board to consider the stormwater charge exemption. On September 12, 2016, the Philadelphia Water Department filed its Advance Notice with City Council and the Rate Board, as provided in Section 13-101(7) of the Code, and Section 2(2)(a) of the Rate Board regulations, to establish special rates for qualified community gardens pursuant to the ordinance. Under the proposed special rates, qualified community gardens would be exempt from stormwater charges.

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On October 12, 2016, the Department filed its Final Notice pursuant to Section 2(2)(b). The Advance and Final Notices were duly published.

Under the ordinance and the Rate Board regulations, the Department's filing of the Advance and Final Notice began the review process by the Rate Board. The Rate Board established a schedule whereby on October 25, 2016, the Water Department provided its presentation of its proposed rate change, including its reasons for the proposal, as provided in Section 7(a)(3) of the regulations.

Three organizations sought and were granted formal participant status, which enabled them to participate in discovery and in technical hearings, if any. These were the Neighborhood Gardens Trust (NGT), the Village of Arts and Humanities (Village), and Norris Square Neighborhood Project (NSNP) (together, the Joint Participants). These entities stated that each is "committed to preserving and promoting community gardening in the Philadelphia area and would be directly impacted by the Water Rate Board's decision regarding stormwater fee exemptions." Joint Participants' Written Testimony, Position and Summary, November 30, 2016. On October 25, 2016, they were granted participant status by the Hearing Officer at the public hearing and presentation on that date.

Public input hearings were held at the Philadelphia Horticultural Society (100 N. 20th Street) on October 25, 2016; Casa Caribe (167 W. Allegheny Avenue) on November 14, 2016; City Hall on November 16, 2016; and the Fumo Library (2437 S. Broad Street) on November 18, 2016. All hearings were open to the public and were advertised consistent with Rate Board regulations.

Twenty-eight persons provided public testimony, on behalf of more than 30 neighborhood gardens, concerned citizens, and public interest groups. All supported the proposed rate discount. No person testified against the Department's proposal.

In addition to testimony received from the public at the public hearings, the Board received written comments from thirteen persons or organizations. None opposed the Department's proposal. One commentator, Robert Ballenger, posed a series of questions to the Department regarding the proposal. The Department filed its answers to the questions on November 18, 2016 (Responses to Ballenger Questions). In addition, the Department undertook to provide a written answer to a number of questions raised orally at the October 25 public hearing (transcript questions). The Department filed these answers on November 18, 2016. The Department's answers to the Ballenger questions and to the transcript questions are appended to this Report.

At the October 25, 2016, public hearing, the Department made its presentation to the Board in support of the proposal, as required pursuant to Section 7(a)(3) of the regulations.¹

¹ Section 7(a)(3) appears in the portion of the regulations pertaining to technical hearings. At the time of the Department presentation, no decision on whether technical hearings would be necessary had been made. Technical

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On November 30, 2016, the Joint Participants filed their Written Testimony, Position and Summary [Summary]. These items were combined in one filing, as suggested by the Hearing Officer in an email directive dated November 22, 2016.

On December 2, 2016, the Department filed its Brief in support of the proposed special discount.

The Hearing Officer report was circulated on December 9, 2016. Corrections were due December 16, 2016. On December 16, 2016, counsel for the Department submitted a letter seeking minor edits to the Report. The Joint Participants did not file any corrections. The Department's edits are reflected in this final Report.

II. THE PROPOSED SPECIAL RATE

The Final Notice filed by the Department included the following material supporting the application:

1. PWD Exhibit No. 1 - Public Notice and Plain English Statement of Reasons Why PWD Is Requesting a Change to Existing Stormwater Charges;
2. PWD Exhibit No. 2 - Bill No. 160523, approved June 28, 2016 (provides for special rates for qualified community gardens);
3. PWD Statement No. 1 — Direct Testimony of Debra A. McCarty, Commissioner, Water Department, with Exhibit DM-1 (Letter of support from Philadelphia Horticultural Society and Neighborhood Gardens Trust) and DM-2 (proposed special Rates and Charges, Section 5.2 of Department rates); and
4. PWD Exhibit No. 4 — Direct Testimony of Melissa La Buda, Assistant Commissioner for Finance, with Exhibit ML-1 (Black & Veatch Financial Analysis of impact on revenues).

In her testimony, Water Commissioner McCarty asked that Board's rate determination instruct the Water Department to revise Section 5.2 of its rates and charges to establish a new group of special customers consisting of customers with parcels eligible for an exemption or discount from stormwater charges as qualified community gardens. After the Board's final determination, the Water Department would file the revised rates and charges with the new exemption or discount for community gardens with the Department of Records.

As required by the Board's regulations, the effective date of the change in rates would be the date set in the Board's rate determination, which may not be sooner than ten days after the Water Department files its new rates and charges with the Department of Records.

hearings of the kind conducted in the Rate Board's 2016 Rate Proceeding were not held in this Special Rate Case, as there was no need for them.

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In addition, according to the Commissioner, the Water Department would promulgate regulations that further define the program requirements and the application procedures. Section 1603(5) of the Ordinance provides that the Department promulgate operational regulations to give effect to the discount approved by the Rate Board. These operational regulations would be filed with the Records Department in accordance with the City Charter to initiate the 30-day inspection period. If there are no requests for hearings on the program regulations, they would become effective at midnight on the thirtieth day after filing. If a public hearing is requested, there would be a public hearing on the proposed operational regulations before the Water Department and the City Solicitor, and the Water Department, with the approval of the Law Department, would then file a hearing report reaffirming or modifying the proposed regulations with the Department of Records.²

Exhibit DM-2 to Commissioner McCarty's testimony, and appended to the Hearing Officer's report, is a redline version of the Section 5.2 of the Department rates and charges as this section would be revised if the Board approves the exemption proposed by the Department.

As set out in Exhibit DM-2, the proposed special rate would exempt qualifying community gardens from the stormwater charges altogether. In effect, the discount would be 100%. Under the tariff language, to qualify for the proposed exemption, a community garden must satisfy certain conditions set out in the Ordinance:

Section 19-1603. [Reserved.] Community Gardens.

(l) For purposes of this Section, "Community Garden " shall mean any parcel of land used for growing crops, whether food or non-food, for personal consumption, donation, or sale, provided that the following criteria are met:

- a. The parcel's principal use is devoted to regularly-planted crop bed and such other related uses as are reasonable and necessary to growing such crops and maintaining the garden (for example, but not by way of limitation, common areas for hand tool storage sheds or compost bins);
- b. At least 80% of the gross area of the parcel is effectively pervious;
- c. A community or non-profit organization, or a group of individuals ascertainable to the Water Department and associated for purposes of operating the garden for public benefit, operates the parcel and possesses written evidence of the right to use the parcel as a Community Garden; such evidence may include a deed in the

² According to the Brief of the Water Department, at page 5, footnote 9, the Department filed proposed regulations with the Department of Records on December 1, 2016. The proposed regulations may be reviewed on the Department of Records website at: <http://regulations.phila-records.com>

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name of the organization, a lease, license or other agreement, or such other written authorization as may be reasonably satisfactory to the Water Department;

- d. Gardening activities are conducted primarily by members of the organization or group of individuals defined in Section 19-1603(1)(c) and
- e. The parcel is appropriately maintained so as not to cause blight or nuisance.

The Water Department retained Black and Veatch to do an analysis of the revenue impact of the proposed exemption. Exhibit ML-1. The financial analysis determined that a 100% stormwater rate discount to known community gardens for the current rate period (July 1, 2016 through June 30, 2018) would result in lost billings to the Philadelphia Water Department estimated to be \$46,490 in FY2017 and \$48,374 in FY2018, for a total of \$94,864 over the current Rate Period. The Department in its presentations at the public hearings said that this means that no other customer would pay more for water, sewer and storm water service in the current Rate Period if the community garden exemption is granted. See e.g., Transcript October 25, 2016, at page 6.

III. BROAD SUPPORT FOR THE PROPOSED EXEMPTION

The Department, the Joint Participants and the members of the public who presented information regarding their community gardens agreed that exempting qualifying gardens from stormwater costs will be beneficial to the Water Department, the City and the community for a number of reasons. With respect to the Department's interest in reducing stormwater runoff, and thereby meeting environmental standards in the operation of the water and sewer system of the City, witnesses noted that community gardens reduce urban stormwater runoff in two key ways:

- First, community garden soil is substantially more porous than other urban land surfaces including even grass-covered lots, and captures more water.
- Second, community gardens contribute to stormwater diversion through surface-level water capture. Many community gardens contain rain barrels and other water capture systems that both reduce stormwater runoff and provide a free source of water for gardeners.

Commenters noted additional societal and civic benefits of community gardens, including the following:

- Community gardens provide locally-grown, healthy food for the neighborhood (increasing access to fresh foods otherwise not available in the area).
- Many community gardens run educational programs and assist individuals in maintaining their gardens.
- Community gardens provide education and activities for area youth.
- Community gardens serve as community gathering places.
- Community gardens can foster cultural preservation and understanding.

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- Community gardens transform blighted urban plots.
- Community gardens increase property tax values and tax revenues.

Joint Participants noted that “[i]mpervious urban surfaces, rooftops, and vacant lots with compacted soil, all contribute to increased runoff, which in turn strains man-made stormwater management infrastructure and increases the risk of water pollution in Philadelphia.” Joint Participants’ Summary at page 1. Joint Participants argue that community gardens “alleviate these stresses on stormwater infrastructure and provide positive benefits to urban economic, social and ecological systems.” In support of their advocacy of a complete exemption for such gardens from stormwater fees, Joint Participants note that such fees impose “a heavy financial and administrative burden on community garden organizations, disproportionate to their slim operating costs and great benefit provided to their communities and the environment.” Joint Participants’ Summary, at page 2.

The following excerpt from comments presented to the Board is representative of the description by commenters on the social and environmental benefits of community gardens:

There are upwards of 500 community gardens across the city, many of which have transformed vacant, trash-filled lots into beautiful and productive spaces. These gardens serve as community anchors, providing safe, green spaces for residents to come together. They are a source of community identity and pride. Community gardens provide many important benefits, including access to healthy affordable food, positive impacts on physical and mental health, and crime reduction.

Jennie Greenberg, Executive Director, Neighborhood Gardens Trust,
Transcript October 25, 2016, at page 41.

IV. ISSUES PRESENTED

A. Issues Presented

The Department’s proposal presents several issues to the Board:

- Does the proposal meet the terms of the Ordinance?
- How many parcels will ultimately be eligible for the discount?
- What will the impact of the exemption on rates for other customers, particularly after the current rate period?
- Is there any reason to amend the proposal and provide only a partial discount?
- What if anything should the Board do with respect to the existing unpaid bills that have been the subject of agreements with the Department pending passage of a suitable ordinance?

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B. Terms of the Ordinance

There was no dispute that the proposed exemption meets the terms of the Ordinance. The Department has chosen a discount of 100%, which is within the range allowed by the Ordinance.

C. Number of Qualifying Gardens

With respect to the number of qualifying community gardens eligible to receive the proposed exemption, the Water Department estimates approximately 231 parcels may qualify today for the stormwater exemption pursuant to the Ordinance. Exhibit ML-1. A question arose during the proceedings as to the number of qualifying parcels, in light of information from a collaborative that has been doing data collection on gardens since 2012 that there are many more community garden plots in Philadelphia. The question was presented to the Department by Mr. Ballenger in his written questions:

5. PWD's 2016 Special Rates Filing assumes that 231 community garden parcels will qualify for the community gardens exemption, if implemented. PWD reports a total of 286 known community garden parcels. (a) Please explain why PWD's community gardens figure (286 known parcels) varies so significantly from statements from representatives of community gardens, who testified to City Council that there are upwards of 500 community gardens in Philadelphia

At the public comment hearings and in its response to the Ballenger questions, the Department explained the apparent difference in estimates. As stated by the Department in its response:

The Special Rate Filing assumes that 231 community gardens are potentially eligible for the discount or exemption; however, actual eligibility based on the criteria in the ordinance has not yet been determined. The list of 286 community gardens was compiled based on information supplied by Neighborhood Gardens Trust (NGT), Pennsylvania Horticultural Society, Amy Laura Cahn of the Public Interest Law Center, and others. Of these 286 potentially eligible garden parcels, 55 are vacant parcels exempt from stormwater charges pursuant to the ordinance approved in 2011, ... and the remaining 231 parcels currently are billed for stormwater. Additional parcels on vacant land were identified but were not added to the list because they currently are exempt.

See also the testimony of Amy Laura Cahn indicating that NGT's longer list of approximately 500 parcels includes a large number of gardens that do not qualify as eligible community gardens under the ordinance because the principal use of such additional parcels is not for a community garden. (See Transcript, 10/25/2016, pages 44-47). (Attachment omitted).

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D. Impact on Other Customers

As to the impact of the exemption on other customers' rates, the Department's consultant determined, without challenge, that a 100% stormwater rate discount to known community gardens for the current rate period (July 1, 2016 through June 30, 2018) would result in lost billings to the Philadelphia Water Department estimated to be \$46,490 in FY2017 and \$48,374 in FY2018, for a total of \$94,864 over the current Rate Period. In response to a question from Board Member Popowsky, the Department clarified that the \$46,490 estimate of the lost revenues in FY2017 was calculated based on an assumption that the rate discount was in effect for the whole fiscal year. The Department stated that, as it will only be in effect half of that fiscal year (January 1, 2017 through June 30, 2017), the lost revenues would be about half that amount for FY2017. Transcript October 25, 2016, pages 19-20. In other words, for the first year of the present rate period, the unbilled revenue from the community gardens discount would amount to less than \$25,000.

The Department in its Brief pointed out that these amounts are *de minimis* in a system with over \$600 million in annual revenues, and with estimated FY 2017 stormwater revenue requirements of \$153,690,000. Department Brief at page 6, and footnote 13.

Regarding the impacts on future revenue requirements, the evidence before the Board does not spell out the entirety of accounting issues and possible out-year consequences of the exemption. For the current Rate Period ending June 30, 2018, the Department states that its estimate of required revenues already reflected the fact that many parcel owners have not been paying some or all of their stormwater fees. The Department included these billing shortfalls in its 2016 Rate Case collection ratios, and associated estimate of revenue requirements:

All collection factors that were offered as part of the last rate proceeding contemplate the nuance [sic] of the difference between billings and collections.

As a result, the rates now in effect already recover the amount estimated for stormwater fees that had not been anticipated to be collected in any case.³ As Ms. LaBuda stated, then, the lost revenue projections in this Special Rate case "capture the lost revenue from those gardens that have made some form of payment historically." October 25, 2016 Transcript, at page 72. The Board does not have a breakout of total stormwater bill payments for community gardens. See Responses to Ballenger Questions.

In the next Rate Period, none of the parcels would be expected to make stormwater payments, as a result of the proposed exemption. The treatment of foregone revenues would be treated

³ Some comments urged the Board *not* to impose new stormwater charges. This request appears to have been made in light of the informal moratorium on stormwater charge collections for community gardens that has been in place in recent years. For such gardens, anything less than a 100% discount would amount in effect to a rate increase. The Department proposes a 100% discount. Disposition of past-due amounts is discussed below.

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differently, as none of them would be bad debt. The impact of the exemption would not be part of the revenue collection factors used to estimate the extent to which billed revenues are in fact paid. Rather, the impact would be felt in the comparison of the costs of the system to the revenues billed for the system.

Net revenue shortfalls are made up by tapping reserve funds at the end of the fiscal year, such as The Rate Stabilization Fund.⁴ Accordingly, all else equal, the revenue shortfalls in the current rate period (not covered by the revenue collection factors) would be made up by withdrawals from the Rate Stabilization Fund. In future Rate Periods, if community gardens are exempt from paying stormwater costs, revenues otherwise anticipated from qualified gardens under existing rates would not appear in the accounts of the Department in any form. To the extent that stormwater costs exceeded revenues from stormwater billings, the costs would be spread to other customers as a matter of cost allocation and/or rate design.⁵

E. Future Numbers of Eligible Parcels

The number of additional parcels that will be eligible for the discount could have an impact on the future estimates of foregone revenues.⁶ As to future numbers of eligible gardens, Ms. Cahn noted a collaborative of garden proponents has been working to qualify a number of presently-ineligible parcels for the exemption. According to Ms. Cahn, there are a number of gardens on vacant lots that are privately-owned, but “there is no owner in the picture,” and the lot is tax-delinquent. Transcript October 25, 2016, p. 46, line 10. Ms. Cahn said that the Pennsylvania Horticultural Society has worked with the City to start gardens on these abandoned lots. As long as there is no owner identified for the parcels, those gardens have not been eligible for a water bill and hence have not been charged for stormwater. *Id.*, lines 4-10.

The collaborative has been working towards “having an owner in the picture and preserving those spaces and then they become eligible for the exemption.” *Id.*, lines 10-17. Neither Ms. Cahn nor the Department offered an estimate of the number of such parcels that may in the future be eligible for a discount under the proposed special rate. Many of the remaining ineligible gardens will not qualify in the future however, as they are City-owned and do not pay water bills in any event. *See* Department Response to Ballenger Questions, 5(a).⁷ As a result, the number of stormwater customers eligible for the exemption is not likely to approach the total

⁴ According to the prefiled direct testimony of Melissa LaBuda, Deputy Commissioner for Finance, in the 2016 Rate Case, the Rate Stabilization Fund (RSF) was established ... to provide funds to cover annual expenditures when the revenues are less than projected and to prevent the need for large swings in the water rates year to year.” PWD Statement No. 2, at page 2.

⁵ Note that withdrawals from the RSF are ultimately paid for in rates. Allocation of RSF contributions and disbursements is subject to cost allocation and rate design treatments.

⁶ The resolution of the question whether the discount should be 100% (discussed below) could have an impact on these estimates, as well.

⁷ Note that the Ordinance does not apply to other green spaces, such as residential lawns or private gardens. Existing rates for such customers will remain in effect under the Ordinance.

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number of community gardens operating in the City. The total in non-billed charges will thus likely stay at a relatively small amount out of the Department's budget, even if all potentially-qualifying parcels are ultimately qualified and are not billed for stormwater.

F. Partial Discount

The Hearing Officer asked the Department, Joint Participants and others testifying at public hearings their opinion on the idea that the discount be less than 100%. Transcript October 25, 2016, page 21. If the discount were set at 100%, as permitted by the Ordinance,⁸ it would not be easy to decrease the discount in the future should the burden of the discount on other customers become onerous.

All participants and commenters strongly objected to any discount less than 100%. See, e.g., Transcript October 25, 2016, pages 21-22, 30, 42-43, 53-54. They pointed out that any stormwater charges are a burden on poorly-funded, all-volunteer community gardens. They also pointed out that the gardens would continue to bear the administrative costs of preparing bills if there were any stormwater charge. *Id.*, at pages 50, 62-63. The Department similarly noted that "a decision by the Rate Board to approve a ... 100% discount would simplify the current billing system for community gardens." Department Brief, p. 8. The Department also noted that a 100% discount would eliminate the disincentive that now exists for transferring ownership of vacant parcels from the City to the garden organizations. *Id.*

F. Past Due Bills

Section 2 of the Ordinance states as follows:

The discounted charge allowed by Section 1 of this Ordinance shall be without prejudice to any prior arrangement for relief of storm water management and disposal fees between the Water Department and a Community Garden or similar entity, provided that (1) such relief was granted on or after July 1, 2010; and (2) no such relief may be presumed to continue beyond the effective date of this Ordinance except pursuant to the terms of Section 1 or when extended in writing by the Water Department.

For a number of years, the Department has refrained from aggressive enforcement efforts against community gardens for stormwater charges. As described by NGT representative Jenny Greenberg, PWD has for the past several years advised NGT and other community

⁸ The Ordinance refers to the authorized special rate as a "discount." Section 19-1603(2). A 100% discount amounts to an exemption, and in fact the preamble to the Ordinance provides for "an exemption" from charges relating to storm water management and disposal. The term "discount" is used in the text of the Ordinance, however, so it is more consistent to refer to the Department's proposal as such.

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garden landholders to place existing stormwater charges in dispute rather than paying them, “in anticipation of a fee exemption.” Transcript October 25, 2016, page 46, lines 19-24. Others at public hearings also stressed the importance of the existing informal agreements to defer and ultimately waive stormwater costs in the last few years. *Id.*, page 46, lines 10-11; page 69, lines 12-25.

Without confirming the specifics of the transactions PWD has made regarding past stormwater charges, Susan Crosby, Esq., Divisional Deputy City Solicitor stated that “[t]here have been promises and gentlemen agreements regarding the prior bills. And the Water Department and the Water Revenue Department will abide by those agreements regarding those prior bills.” *Id.*, at page 70.

The Department confirmed this representation in its Brief at page 2. There it said that Section 2:

does not make the Board’s decision as to the discount retroactive, but instead provides that the discount will be without prejudice to any prior arrangement for relief of stormwater fees under certain conditions. As noted in the Water Department’s response to written questions, it is anticipated that Section 2 will be implement through payment arrangements and/or settlements negotiated by the Law Department.

The Board is not charged with overseeing the collection of any past-due stormwater charges. Accordingly, the Board need not make a decision on the manner in which such charges are handled.

IV. CONCLUSION

A Board decision by December 21, 2016, accepting the Hearing Officer’s report of the proposed Special Rate discount for qualified community gardens from stormwater charges from January 1, 2017, would make the proposed exemption effective January 1, 2017, as intended by the Council.

**PHILADELPHIA WATER DEPARTMENT
RATES AND CHARGES**

* * *

5.2 Special Customers.

The water, sewer and stormwater management service charges established in Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq. shall be applied to all general Customers, except the following groups of special Customers:

(a) GROUP I

(1) Public and private schools which provide instruction up to or below the twelfth grade but not beyond that grade, and excluding service to any separate or adjoining facilities or structures not used exclusively for educational or instructional purposes.

(2) Institutions of "purely public charity", as defined by Pennsylvania law, except universities and colleges and excluding service to any separate or adjoining facilities or structures not used exclusively for the principal purpose of the charity.

(3) Places used for actual religious worship.

(b) GROUP II

(1) Residences of eligible senior citizens provided that the senior citizen shall:

(i) Make application for such reduction to the Revenue Department within the first billing period for which reduction is sought; and

(ii) Submit satisfactory proof that the applicant is 65 years of age or older and that he or she makes payment directly to the City for water, sewer, and stormwater service to his or her residence which is located in the City of Philadelphia; and

(iii) Submit satisfactory proof to the Revenue Department that the applicant does not exceed the household income limitation of \$31,500 per year established by the Department. The above income limitation shall apply to those applying for this discount subsequent to June 30, 1982.

(iv) Effective with each subsequent change in the water/sewer/stormwater charges, the Department shall adjust the Senior Citizen Income Limitation using the latest Consumer Price Index data available, as defined in the Philadelphia Code at Section 19-1901.

(c) GROUP III

(1) Universities and colleges, excluding service to any separate or adjoining facilities or structures not used exclusively for educational or instructional purposes.

(d) GROUP IV

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(1) Public housing properties of the Philadelphia Housing Authority.

(e) GROUP V

(1) Group V Customers are Customers enrolled in the Income-Based Water Revenue Assistance Program (IWRAP) described in Section 19-1605 of the Philadelphia Code after the Water Revenue Bureau begins to issue IWRAP bills. Monthly bills for a Customer enrolled in IWRAP will be determined based on the Customer's family size and household income and will be charged in lieu of the service, usage and stormwater charges established in Sections 2.0 et seq., 3.0 et seq. and 4.0 et seq. for general Customers. Group V Customers will pay a percentage of his/her household income depending on where that Customer falls within the Federal Poverty Guidelines (FPL), subject to a minimum bill amount of \$12 per month.

(2) For determining the amount of service, usage and stormwater charges on monthly bills, Group V Customers will be defined according to three income tiers as follows:

(i) Group V-A. Group V Customers whose gross household income has been verified as being from 0% of FPL and up to and including 50% of FPL.

(ii) Group V-B. Group V Customers whose gross household income has been verified as being greater than 50% of FPL and up to and including 100% of FPL.

(iii) Group V-C. Group V Customers whose gross household income has been verified as being greater than 100% of FPL and up to and including 150% of FPL.

(f) GROUP VI

(1) Customers with parcels eligible for a discount or exemption from the stormwater management service charge as a qualified community garden pursuant to Section 19-1603 of the Philadelphia Code and regulations promulgated by the Water Department under that Section.

(fg) Charges for Special Customers

(1) As of July 1, 2016, the charges to Groups I, II and III of special Customers listed above shall be seventy-five percent (75%) of the charges as established in Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq., including both the water and sewer service and quantity charges, and the SWMS charges. The charges to Group IV Customers shall be ninety-five percent (95%) of the charges as established in Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq., including both the water and sewer service and quantity charges, and the SWMS charges.

(2) Group V Customers enrolled in IWRAP after the Water Revenue Bureau begins to issue IWRAP bills will be responsible for paying the following charges for service, usage and stormwater charges, or \$12 per month, whichever is greater:

(i) Group V-A: 2.0% of household income.

(ii) Group V-B: 2.5% of household income.

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(iii) Group V-C: 3% of household income.

(3) Group VI: Effective with bills issued on or after [January 1, 2017] Group VI special Customers will not be charged stormwater management service charges on parcels classified by the Department as community gardens when the Department approves an application for an exemption as set forth in Section 19-1603 of the Philadelphia Code and regulations promulgated by the Department under that Section.

(g) All of these special Customers shall meter all water connections and they shall be subject to all provisions herein not inconsistent with Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq.

(h.i) All special Customers are subject at any time to review as to their special charges by the Department or the Water Revenue Bureau and may be required to furnish adequate evidence supporting the continuance of such charges to the Department or the Water Revenue Bureau upon written notice to do so. Failure to furnish such evidence shall be sufficient ground for denial or termination of such special charges.

(ij) Special charges may be granted subject to the Department's review and approval of the size of the meter installed.

(jk) When the special use for which the special charge is granted ceases, the special charge ceases and the charges for general Customers shall apply thereafter.

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**DEPARTMENT RESPONSE TO WRITTEN QUESTIONS FROM ROBERT W. BALLENGER
PUBLIC INPUT HEARING
October 25, 2016**

Questions Posed by Mr. Ballenger	Philadelphia Water Department Responses
<p>1. Testimony during the hearings at City Council included discussion of the fact that community gardens were advised by PWD to place stormwater billings in dispute, rather than paying them. Accordingly, some community gardens have unpaid stormwater bills, for which PWD has not pursued collections.</p> <p>(a) Please explain why PWD decided that community gardens should be advised not to pay stormwater bills in past years</p> <p>(b) How much actual stormwater revenue did PWD collect, on an annual basis over the past five years, from community gardens that, going forward, may be exempt from stormwater fees?</p> <p>(c) Does PWD have any other informal arrangements with customers through which it advises them not to pay bills pending a change in the rate structure or the availability of some other form of relief? If so, please describe them.</p>	<p>Response:</p> <p>(a) Stormwater fees for these parcels were placed in dispute upon request pending a permanent resolution of requests from such customers for an exemption from stormwater charges for community gardens.</p> <p>(b) PWD did not separately track stormwater revenue over the past five years from community gardens.</p> <p>(c) Charges for properties owned by the Philadelphia Housing Development Corporation (PHDC) are abated upon request pursuant to the Ordinance approved on October 2, 1968 (attached as Attachment 1). Charges for vacant properties acquired by the Philadelphia Redevelopment Authority of Philadelphia (RDA) are abated upon request pursuant to the Ordinance approved on July 5, 2011 (attached as Attachment 2).</p>
<p>2. According to testimony at City Council, PWD's arrangement (advising community gardens to place storm water bills in dispute) has been ongoing for as long as five years, with PWD, at times, making commitments to implement an exemption.</p> <p>(a) Why did PWD decide not to propose formalizing a stormwater exemption for community gardens in the rate increase proceeding for FY 2017 and 2018?</p> <p>(b) Why did PWD not propose formalizing a stormwater exemption for community gardens at any time over the past five years (including the period of time prior to the Board's oversight)?</p> <p>(c) Confirm that PWD's "collection factor" used in the FY 2017-FY 2018 Rate Proceeding reflected non-payment (in prior years) of stormwater fees by community gardens that were advised not to pay.</p>	<p>Response:</p> <p>(a)-(b) All of discounted rates for Special Customers (schools, charities, places of religious worship, senior citizens, PHA, IWRAP) were enacted pursuant to ordinances approved by City Council and adopted by the City. The Ordinance authorizing discounted rates for community gardens and establishing eligibility criteria was not passed by City Council until after the conclusion of the rate increase proceeding.</p> <p>(c)-(d) The collection factors used in the FY 2017-2018 Rate Proceeding reflect the historical payment patterns of all customers, including any historical non-payment of stormwater fees by community gardens. Collection factors were developed for Retail Excluding Stormwater Only Customers and Retail Stormwater Only Customers. The historical payment patterns and resulting collection factors were not analyzed exclusively for community gardens nor any other subset of customer types. The rates are reflective of historical payment patterns of any customer types including those community gardens that have</p>

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(d) If PWD's collection factor reflected non-payment (in prior years) by community gardens, isn't it correct that customer rates have already increased (through the application of the collection factor) as a result of unpaid stormwater fees from community gardens? If not, why not?	historically not paid their bill.
3. The ordinance states that the discount provided to community gardens is without prejudice to any other prior arrangement for relief. (a) What other arrangements for relief of stormwater bills for community gardens are currently in effect, and what has been the impact on PWD revenues from such arrangements in past years?	Response: See answer to 1(a). In addition, some community gardens may qualify for credits and discounts.
4. Testimony during hearings at City Council included discussion of retroactivity of stormwater exemptions. (a) To what extent does PWD propose that exemptions should be retroactive and for what reasons? (b) To the extent PWD proposes the exemptions should be retroactive, how much in stormwater billings for prior billing periods is potentially subject to an exemption?	Response: PWD does not propose that the exemption be retroactive. The ordinance does not make the exemption retroactive but instead provides in Section 2 that the discount or exemption shall be without prejudice to any prior arrangement for relief of stormwater fees between the Water Department and a Community Garden under certain conditions. It is anticipated that Section 2 will be implemented through payment arrangements and/or settlements negotiated by the Law Department.
5. PWD's 2016 Special Rates Filing assumes that 231 community garden parcels will qualify for the community gardens exemption, if implemented. PWD reports a total of 286 known community garden parcels (a) Please explain why PWD's community gardens figure (286 known parcels) varies so significantly from statements from representatives of community gardens, who testified to City Council that there are upwards of 500 community gardens in Philadelphia.	Response: The Special Rate Filing assumes that 231 community gardens are potentially eligible for the discount or exemption; however, actual eligibility based on the criteria in the ordinance has not yet been determined. The list of 286 community gardens was compiled based on information supplied by Neighborhood Gardens Trust (NGT), Pennsylvania Horticultural Society, Amy Laura Cahn of the Public Interest Law Center, and others. Of these 286 potentially eligible garden parcels, 55 are vacant parcels exempt from stormwater charges pursuant to the ordinance approved in 2011 (Attachment 2) and the remaining 231 parcels currently are billed for stormwater. Additional parcels on vacant land were identified but were not added to the list because they currently are exempt. See also the testimony of Amy Laura Cahn indicating that NGT's longer list of approximately 500 parcels includes a large number of gardens that do not qualify as eligible community gardens under the ordinance because the principal use of such additional parcels is not for a community garden. (See Transcript, 10/25/2016, pages 44-47).
6. As described in testimony during hearings at City Council, the benefits of community gardens	Response: (a)-(b) PWD did not provide such testimony at City Council. By way of further answer, see: (1)

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<p>include reduction in gun violence, improved health outcomes for neighborhood residents, increased exercise and decreased stress levels, additional housing value, availability of donated surplus crops, etc.</p> <p>(a) Please provide any supporting documentation in PWD's possession for these benefits.</p> <p>(b) Please provide any supporting documentation in PWD's possession for any other benefits provided by community gardens.</p>	<p>Transcript of the City Council Finance Committee hearing on June 2, 2016, pages 264-311 (attached as Attachment 3), including statement of Councilman Domb on behalf of Councilwoman Sanchez. Statement of Councilman Henon and Testimony of Ms. Chan, Mr. Hopkins and Ms. Unver; and (2) transcript and written public comments from the Rate Board's Public Input Hearings in this proceeding.</p>
<p>7. According to testimony at City Council, community gardens retain stormwater, and benefit PWD's stormwater program. Furthermore, community gardens report working together with PWD to manage stormwater from nearby rights-of-way.</p> <p>(a) Has PWD assessed the extent to which community gardens retain stormwater? If so, how, if at all, did PWD take into consideration this assessment in calculating the net revenue requirement in the FY 2017-FY 2018 rate proceeding?</p> <p>(b) Provide a full report on the feasibility of measures for community gardens to manage stormwater from nearby rights-of-way.</p> <p>(c) Please explain how stormwater fees for rights-of-way (largely impervious area) are allocated to customers.</p>	<p>Response: PWD did not provide such testimony at City Council. By way of further answer, see the responses below.</p> <p>(a)-(b) PWD has not independently assessed stormwater runoff associated with community gardens but is aware of an assessment prepared by the Pennsylvania Horticultural Society (attached as Attachment 4)</p> <p>(c) Streets, medians and sidewalks in public rights-of-way are not included in the billable units of service. Stormwater management of such rights-of-way is shared by all customers.</p>

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**TRANSCRIPT QUESTIONS FROM
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Name/Association	Question/Comment	Department Answer/Response
Linda Zaimis - Schuylkill River Park Community Garden	Is the Schuylkill River Park Community Garden considered exempt as city-owned?	Yes. This property is exempt from stormwater charges under Section 19-1602 of the Philadelphia Code because it is a City-owned vacant parcel.
Justin Navarro – Spring Gardens	Has Spring Gardens lost its exemption because ownership of the parcels was transferred to the City Parks and Recreation Department from the Philadelphia Redevelopment Authority (RDA)?	Bill 160458, adopted on September 6, 2016, authorizes the Commissioner of Public Property to accept title to approximately 27 parcels at this location and includes these properties among the area designated as part of the Fairmount Park System. However, the transfer of title has not yet occurred. All of the parcels are still owned by either RDA or the Philadelphia Housing Authority (PHA). Parcels owned by RDA are exempt as vacant City-owned parcels. Parcels owned by PHA are billed to PHA subject to the 5% PHA discount.
Jennifer Gold – Liberty Lands	Supports exemption.	Please note that the Liberty Lands community garden at 931-61 N. 3 rd Street was evaluated as part of the potentially eligible 231 non-exempt parcels. Actual eligibility based on all of the criteria in the ordinance has not been determined.
Misako Scott – Urban Tree Community	Supports exemption.	Please note that some parcels referred to in this testimony were evaluated as part of the potentially eligible 231 non-exempt parcels and other parcels are currently exempt as City-owned vacant parcels. Actual eligibility of the non-exempt parcels for an exemption or discount based on all of the criteria in the ordinance has not been determined.
Bob Jobin – Bouvier Community Garden	Supports exemption. Also submitted written testimony.	Please note that the Bouvier Community Garden at 1348-1350 S. Bouvier Street was evaluated as part of the potentially eligible 231 non-exempt parcel. Actual eligibility based on all of the criteria in the ordinance has not been determined.
Sharon Hilebrand – Brewerytown Garden	Garden association currently does not pay a stormwater fee.	Please note that this garden currently is exempt from stormwater charges under Philadelphia Code 19-1602 because it is on vacant City-owned parcels.
Robert Ballenger	Does not have a position on the merits. Submitted written questions.	See response to written questions, attached.
Russ Troyar – Spring Gardens	Is not currently paying stormwater bills.	See response to Mr. Navarro, above.
Jenny Greenberg –	Supports Exemption.	

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Name/Association	Question/Comment	Department Answer/Response
Neighborhood Gardens Trust (NGT)		
Gregory Duffy (NGT)	Supports exemption.	
Fee Sepahi - Ralph Books Park Community Garden at 20 th and Tasker	Supports exemption. Noted that water bill is being paid by someone else.	Please note that some of the parcels at this location are exempt under Philadelphia Code 19-1602 as vacant City-owned parcels.
Julianne Ortega – Pennsylvania Horticultural Society	Supports exemption.	
Janet Finegar – Liberty Lands, Orianna Park, Green Acres, and Emerald Park	Supports exemption.	See response to Ms. Gold, above, regarding Liberty Lands. Orianna Park was evaluated as part of the potentially eligible 231 non-exempt parcels. Actual eligibility of this parcel based on all of the criteria in the ordinance has not been determined. The garden parcel at 2304-06 Emerald Street was not evaluated but is an exempt parcel owned by Philadelphia Housing Development Corporation (PHDC).
Aviva Kapust – Village of Arts and Humanities	Provided testimony about the Village of Arts and Humanities.	Please note that parcels owned by the Village of Arts and Humanities were evaluated as part of the potentially eligible 231 non-exempt parcels. Actual eligibility based on all of the criteria in the ordinance has not been determined.
Tom Hardenbergh – Southwark Queen Village Community Garden	Supports exemption. Garden has an outstanding bill. If the exemption is passed, will past fees in dispute be forgiven? Will forgiveness be based on the amount of the discount approved by the Board?	The parcel currently is exempt from stormwater charges because it is a City-owned vacant parcel. Prior bills included a stormwater charge, but those prior stormwater charges were removed in 2015 when PWD confirmed that the parcel was exempt. Currently, this account is billed annually for water only and no charges are in dispute.
Sonny Popowsky Board Member	Are you going to charge amounts not collected on delinquencies from prior bills to other customers in the future?	<p>The revenue loss due to a discount or exemption for community gardens will begin to occur as soon as the ordinance becomes effective. In the next rate proceeding, the lost revenue due to the discount or exemption and any adjustments to outstanding balances may result in some increase in charges to other customers. However, the extent to which such factors will result in increased rates in future rate cases has not been determined.</p> <p>Additionally, outstanding amounts may not be collected during the current rate period for various reasons, including abatements or the removal of principal and penalties by the Tax Review Board, corrections of billing errors, stays of enforcement</p>

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Name/Association	Question/Comment	Department Answer/Response
		during pending appeals, reclassification of properties as exempt properties in the billing system, and/or the entry into payment agreements or settlement agreements to resolve disputes. Neither the ordinance nor the Board's decision in this proceeding will affect decisions on adjustments to outstanding balances for stormwater services provided to community gardens prior to January 1, 2017, which is the effective date of the ordinance.