

Ordinance No. _____

An ordinance amending the “Impact Fees” Chapter of the Code of the City of Arlington, Texas, 1987, in its entirety; revising administrative provisions; amending land use assumptions, capital improvement plans, service areas, equivalency tables and discount tables; adopting assessment and collection rates per service units; updating the City of Arlington Impact Fee Program pursuant to Chapter 395 of the Texas Local Government Code; providing this ordinance be cumulative; and providing for severability, governmental immunity, injunctions, publication, and an effective date

WHEREAS, the City of Arlington adopted the “Impact Fees” Chapter of the City Code of Arlington, Texas, 1987, through Ordinance No. 89-49, on April 25, 1989; and

WHEREAS, the City of Arlington has routinely updated the Capital Improvements Plan and all associated studies and calculations concerning the implementation, assessment and collection of impact fees; and

WHEREAS, pursuant to Chapter 395 of the Texas Local Government Code, the City of Arlington has commissioned the preparation of updated land use assumptions, capital improvements plans, service areas, equivalency tables, discount tables and assessment and collection rates for water, sanitary sewer and roadway impact fees; and

WHEREAS, the Capital Improvements Plan Advisory Committee (“CIPAC”) has recommended the adoption of updated land use assumptions, capital improvements plans, and the establishment of new impact fee schedules; and

WHEREAS, a public hearing was held before the City Council on January 24, 2017, for purposes of receiving testimony on the proposed update of the City’s impact fee program, in accordance with Chapter 395; and

WHEREAS, the City has observed all methodologies and procedures prescribed by Chapter 395; and

WHEREAS, following the required public hearing called in compliance with the applicable provisions of state law; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the “**Impact Fees**” Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended in its entirety, so that said Chapter shall be and read as follows:

ARTICLE I
GENERAL PROVISIONS

Section 1.01 Short Title

This Chapter shall be known and cited as the "Arlington Impact Fees Chapter."

Section 1.02 Purpose and Effect

This Chapter is intended to assure the provision of adequate public facilities to serve new development in the City by requiring each development to pay a share of the costs of improvements necessitated by and attributable to such new development. Impact fees established by this Chapter are additional and supplemental to, and not in substitution of any other requirements imposed by the City on the development of land or the issuance of building permits or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of City's Comprehensive Plan, the impact fee capital improvements plan, the Unified Development Code, and other City policies, ordinances and resolutions by which the City seeks to provide adequate public facilities in conjunction with the development of land.

Section 1.03 Authority

This Chapter is adopted pursuant to Texas Local Government Code, Chapter 395 and the Arlington City Charter. The provisions of this Chapter shall not be construed to limit the power of the City to utilize other methods authorized under State law or pursuant to other City powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this Chapter. Guidelines may be developed by City Council resolution or otherwise to implement and administer this Chapter.

Section 1.04 Definitions

The definitions found in Texas Local Government Code Section 395.001, and as may be amended by the legislature, are hereby adopted.

The following definitions shall apply to the Impact Fees Chapter:

"Area-related Facility" means a capital improvement or facility expansion, which is designated in the Impact Fee Capital Improvements Plan.

"Assessment" means the determination of the amount of the maximum impact fee per service unit, which can be imposed, on new development.

"Capital Improvement" means a roadway facility, a water facility or a sanitary sewer facility, each with a life expectancy of three (3) or more years, to be owned and operated by or on behalf of the City.

"City" means the City of Arlington, Texas.

"Discount" means the amount of the reduction of an impact fee designed to fairly reflect the value of area-related facilities provided by a developer pursuant to the City's development regulations or requirements.

"Impact Fee" means a fee for roadway facilities, water facilities or sanitary sewer facilities imposed on new development in order to fund or recoup the costs of capital improvements or facilities expansions necessitated by and attributable to such new development.

Impact fees do not include the dedication of rights-of-way or easements for facilities or the construction of improvements necessitated by and attributable to the new development. Impact fees also do not include any participation or extension agreements for water and/or sanitary sewer improvements imposed pursuant to Section 9.04 of the "Water" Chapter of the Code of the City of Arlington; front footage charges for water and/or sanitary sewer lines imposed pursuant to Section 7.01 of the "Water" Chapter; or funds deposited for the construction of roadway improvements imposed pursuant to Article 6 of the Unified Development Code.

"Offsite" means outside the boundaries of the property for which a new development is proposed.

"Plat Approval or Approval of a Plat" means the point at which the applicant has complied with all conditions of approval, and the plat has been released for filing with Tarrant County.

"Recoupment" means the imposition of an impact fee to reimburse the City for capital improvements, which the City has previously oversized to serve new development.

"Roadway" means any freeway, expressway, major or minor arterials or collectors designated in the City's adopted Thoroughfare Plan.

"Roadway Facility" means a roadway together with appurtenances to a roadway which includes, but is not limited to design, rights-of-way, whether conveyed by deed or easement; intersection improvements; traffic control devices; turn lanes; drainage facilities associated with the roadway; sidewalks; street lighting or curbs. Roadway Facility also includes any improvement or appurtenance to an intersection with a roadway officially enumerated in the federal or Texas highway system. Roadway facility excludes those improvements to a roadway or appurtenances, which are site-related facilities.

"Sanitary Sewer Facility" means an improvement for providing sanitary sewer service, including but not limited to land or easements, treatment facilities, lift stations or interceptor mains. Sanitary sewer facility excludes sanitary sewer mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities. Sanitary sewer facilities exclude site-related facilities.

"Service Unit" means the applicable standard units of measure shown on the conversion table in the Impact Fees Capital Improvements Plan which can be converted either to vehicle miles of travel during the highest one hour peak as measured during the 4 p.m. to 6 p.m. weekday peak period, or to five-eighths inch (5/8") water meter equivalents, as the context indicates, which serves as the standardized measure of consumption, use or generation attributable to the new unit of development.

"Site-Related Facility" means an improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of roadway, water or sanitary sewer facilities to serve the new development, and which is not included in the Impact Fees Capital Improvements Plan and for which the developer or property owner is solely responsible under Subdivision and other applicable regulations.

"Water Facility" means an improvement for providing water service, including but not limited to land or easements, water treatment facilities, water supply facilities or water distribution mains. Water facility excludes water mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities. Water facility excludes site-related facilities.

Section 1.05 Applicability

This Chapter applies to all new development within the corporate boundaries of the City and its extra-territorial jurisdiction.

Section 1.06 Impact Fee as Condition of Development Approval

No application for new development shall be approved within the City without assessment of an impact fee, and no building permit shall be issued, nor utility connection allowed, unless the applicant has paid the impact fee.

Section 1.07 Land Use Assumptions

Land Use Assumptions shall be adopted by ordinance, as may be amended from time to time.

Section 1.08 Capital Improvements Plans

Impact Fee capital improvements plans for roadway facilities, sanitary sewer facilities and water facilities shall be adopted by ordinance, as may be amended from time to time.

Section 1.09 Service Areas

Service areas are established as follows:

- A. Roadway service areas are established as designated on the map incorporated within the roadway impact fee capital improvements plan, as may be amended from time to time.
- B. The water service area is all areas within the City and its extra-territorial jurisdiction to be served by the capital improvements or facilities expansion specified in the water impact fee capital improvements plan, as may be amended from time to time.

- C. The sanitary sewer service area is all areas within the City and its extra-territorial jurisdiction to be served by the capital improvements or facilities expansion specified in the sanitary sewer impact fee capital improvements plan, as may be amended from time to time.

Section 1.10 Impact Fees Per Service Unit

- A. The maximum impact fee per service unit for each service area shall be computed by subtracting 50% of the total projected cost of implementing the impact fee capital improvement plan and dividing that amount by the total number of service units projected within the service area, based upon the land use assumptions for that service area. Maximum impact fees per service unit for each service area shall be established by category of capital improvements and shall be as fully set forth in Schedule 1.
- B. The impact fee per service unit, which is to be paid by each new development within a service area, shall be as set forth in Schedule 2. The City Council may establish different Schedule 2 impact fee rates among service areas or land uses for a category of capital improvements in order to implement the policies of the City's Comprehensive Plan, or to further economic development strategies, or to otherwise reasonably promote the health, safety or general welfare of the City.
- C. Schedules 1 and 2 shall be adopted by ordinance, as may be amended from time to time.

Section 1.11 Assessment of Impact Fees

- A. The approval of any new development shall include as a condition the assessment of the impact fee applicable to such development.
- B. Assessment of the impact fee for any new development shall occur as follows:
 - 1. For a development which is submitted for approval pursuant to the City's subdivision regulations, assessment shall be at the time of final plat recordation, and shall be the amount of the maximum impact fee per service unit then in effect, as set forth in Schedule 1.
 - 2. For land which is not platted or which is not required to be platted as a condition of issuing a building permit or utility connection, assessment shall occur at the time application is made for the building permit or utility connection, and shall be the amount of the maximum impact fee per service unit then in effect, as set forth in Schedule 1.
 - 3. For land for which a plat was recorded prior to May 25, 1989, and for which no replats have been recorded, the assessment shall be the amount of the maximum impact fee per service unit in effect, as set forth in Schedule 1 on May 25, 1989.
- C. Following assessment of the impact fee, the amount of the impact fee per service unit for that development cannot be increased above the amount of the Schedule 1 rate in effect at the time of the assessment, unless the owner submits a new

application for plat approval, in which case new assessment shall occur at the Schedule 1 rate then in effect.

- D. An application for an amending plat made pursuant to Texas Local Government Code, Section 212.016, and the Unified Development Code, is not subject to reassessment for an impact fee.

Section 1.12 Computation and Collection of Impact Fees

- A. The impact fees due for a new development shall be collected at the time of issuance of the building permit or at the time that an application is made for connection to the City's water or sanitary sewer system if no building permit is required, unless an agreement between the developer and the City has been executed providing for a different time of payment.
- B. Following the filing and acceptance of an application for a building permit or the request for connection to the City's water or sanitary sewer system, the City shall compute the impact fees due for the new development in the following manner:
 - 1. The amount of each impact fee due shall be determined by multiplying the number of service units generated by the new development by the impact fee due per service unit for the service area using Schedule 2. The number of service units shall be determined by using the equivalency table contained in the impact fee capital improvements plan.
 - 2. The amount of each impact fee due shall be reduced by any allowable discounts for that category of capital improvements in the manner provided in Section 1.13.
- C. If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees due shall be computed using Schedule 2 in effect at the time the new application is filed. If the fee had not been refunded, the new impact fee shall be limited to the amount attributable to the additional service units, if any.
- D. Whenever the property owner proposes to increase the number of service units for a development, the additional impact fees collected for such new service units shall be determined by using Schedule 2 in effect at the time the new application is filed in the same manner as required for an original building permit.

Section 1.13 Discounts Against Roadway Impact Fees

- A. The City shall reasonably offset the dedication or construction costs of any area-related roadway facility, minus any city participation in such costs, against roadway impact fees otherwise due, which occurs on or after May 25, 1989, by discounting the amount of the roadway impact fees due in accordance with this section 1.13. The City Council, upon an appeal filed pursuant to section 1.19.B, may also offset the costs of dedicating or constructing a roadway facility that is eligible for inclusion on the roadway improvements plan but is not on the currently adopted plan, and which is not a site-related facility.
- B. The Discount for roadway facilities authorized by this section shall be granted and applied against impact fees due in the following manner:

1. The discount for the dedication or construction of each roadway facility shall be expressed as a percentage (rounded to the nearest whole percent). The total reduction in roadway impact fees from applicable discount shall be the sum of the whole number percentage discount for each roadway facility dedicated or constructed.

a. For each dedication of right-of-way for a roadway facility, the percentage discount shall be determined according to the following formula:

$$\left(\frac{\text{Square feet dedicated}}{\text{Total impact fee roadway improvement plan square feet in service area}} \right) \times \text{\% of capital improvement cost represented by roadway dedication in service area}$$

b. For each construction of improvements for a roadway facility, the percentage discount shall be determined according to the following formula:

$$\left(\frac{\text{Lane mile construction}}{\text{Total impact fee roadway improvement plan lane mile construction in service area}} \right) \times \text{\% of capital improvement cost represented by roadway construction in service area}$$

c. For the purpose of calculating percent reduction in roadway impact fees, the number of total square footage, the number of lane mile construction, the percentage of capital improvement cost represented by roadway dedication, and the percentage of capital improvement cost represented by roadway construction shall be established as a Discount Calculation Table adopted by ordinance, as may be amended from time to time.

2. Such percentage(s) shall be applied uniformly to reduce roadway impact fees for all new development within the final plat for which the dedication or construction of the roadway facility was required.

3. For the dedication of any roadway, the discount shall be made available upon the filing of the dedication.

4. For the construction of any roadway facility, the discount shall be made available upon the initial acceptance of the roadway facility. A property owner who wishes to receive the construction discount prior to initial acceptance of the roadway facility shall submit a request upon acceptance of the 3-way contract for the roadway facility.

C. Discounts created pursuant to this section shall expire ten years from the date of the creation of the discounts.

D. Roadway impact fees shall not offset water and sanitary sewer impact fees.

Section 1.14 Reserved

Section 1.15 Establishment of Accounts

- A. The City's Finance Department shall establish an account for each service area for each category of capital facility for which an impact fee is imposed. Each impact fee collected within the service area shall be deposited in such account.
- B. Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in Section 1.16.
- C. The City's Finance Department shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in Section 1.16. Disbursement of funds shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Chapter. Any impact fee paid shall be expended within a reasonable period of time, not to exceed ten (10) years from the date the fee is deposited into the account. Execution of a design or construction contract by the City shall be considered to be expenditure of funds of the account.
- D. The City's Finance Department shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended from each service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Section 1.16 Use of Proceeds of Impact Fee Accounts

The impact fee proceeds may be used to finance or to recoup the costs of any capital improvements or facilities expansions identified in the applicable impact fee capital improvements plan for the service area, including the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees and expert witness fees), and the fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the impact fee capital improvements plan who is not an employee of the political subdivision. Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the City to finance such capital improvements or facilities expansions.

Section 1.17 Refunds

- A. Any impact fee or portion thereof, which has not been expended within the service area within ten (10) years from the date of payment, shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Texas Finance Code Section 302.002 or any successor statute.
- B. An impact fee shall be considered expended if the total expenditures for capital improvements or facilities expansions authorized in Section 1.16 within the

service area within ten (10) years following the date of payment exceeds the total fees collected for such improvements or expansions during such period. An impact fee shall be considered expended on a first-in, first-out basis.

- C. If a refund is due pursuant to Subsections (A) and (B), the City shall pro-rate the same by dividing the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record owner shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.
- D. If the building permit for a new development for which an impact fee has been paid has expired, and a modified or new application has not been filed within six (6) months of such expiration, the City shall, upon written application, refund the amount of the impact fee to the applicant. Failure to apply for a refund within twelve (12) months of expiration of the permit shall waive any right to refund and the fee shall be applied to any future building permit upon the same property, as stated in Section 1.12.

Section 1.18 Updates to Plan and Revision of Fees

- A. The City shall update its land use assumptions and impact fees capital improvements plans, and shall recalculate its impact fees in accordance with the procedures set out in Texas Local Government Code, Chapter 395, or in any successor statute.
- B. The City may amend by resolution the equivalency table in the impact fee capital improvements plan, which establishes the ratio of service units to various types of land uses, at any time prior to the update; provided, however, that the number of service units associated with a particular land use shall not be increased, unless such change is made in conjunction with amendments to the impact fee capital improvements plan at the time of the update.

Section 1.19 Relief Procedures

- A. Any person who has paid an impact fee, or an owner of land upon which an impact fee has been paid, may petition the City Council to determine whether any duty required by this ordinance has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within sixty (60) days of the request. If the City Council determines that the duty is required pursuant to the ordinance and is late in being performed, it shall cause the duty to commence with sixty (60) days of the date of the request and to continue until completion.
- B. The property owner or applicant for a new development may appeal the following decisions to the planning director:
 - 1. The applicability of an impact fee to the development;

2. The amount of an impact fee due;
 3. The availability or amount of a discount against roadway impact fees; or
 4. The availability or amount of a refund.
- C. All appeals shall be taken with 30 days of notice of the administrative decision from which the appeal is taken.
- D. The burden of proof shall be on the appellant.
- E. The planning director's decision may be appealed to the City Council by filing a notice of appeal with the City Secretary within 30 days of the planning director's decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal is pending.
- F. The planning director, or the City Council on appeal, shall review the evidence presented by the appellant and any reports by the Department of Community Development and Planning, and determine whether the impact fee regulations have been correctly applied to the availability of a discount or refund, or to the amount of an impact fee, discount or refund applied to the proposed development.
- G. A property owner or applicant for new development who contends that the imposition of an impact fee, whether in itself or in combination with a requirement to dedicate land for or construct a capital improvement, is not roughly proportional to the nature and extent of the development proposed, shall utilize the procedures in Section 6.01 of the "General Regulations" Chapter of the Code of the City of Arlington, 1987, as amended.

Section 1.20 Exemptions

In order to implement the City's economic development strategy, economic development plans, and redevelopment plans including housing and infill development plans, as amended from time to time, the City Council may grant an exemption from impact fees due for new development meeting all of the criteria of the adopted economic development strategy.

ARTICLE II

TRANSITION PROVISION

Section 2.01 Effective Date

To provide for an orderly transition between administration of the impact fee program established by this ordinance, and the administration of the impact fee program under the existing Impact Fees Chapter, Schedule 2 shall take effect on July 1, 2017. All other provisions of this ordinance shall become effective upon publication and signature by the Mayor.

2.

That the following studies, plans, and schedules are adopted for the purpose of implementing the "Arlington Impact Fees" Chapter:

The Land Use Assumptions for water, sanitary sewer and roadway impact fees, attached hereto as Exhibit "A".

The Capital Improvements Plans ("CIP") for water, sanitary sewer and roadway impact fees, attached hereto as Exhibit "B".

The Discount Calculation Table for roadway impact fees, attached hereto as Exhibit "C".

The Equivalency Tables for water, sanitary sewer and roadway impact fees, attached hereto as Exhibit "D".

The maximum impact fee per service unit (Schedule 1) and the impact fee per service unit - adopted rate (Schedule 2) for water, sanitary sewer and roadway impact fees, attached hereto as Exhibit "E".

Each of the foregoing exhibits is hereby incorporated by reference for all legal purposes.

3.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

4.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

5.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

6.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

7.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

8.

The caption and penalty of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

9.

This ordinance shall become effective ten days after first publication.

PRESENTED AND GIVEN FIRST READING on the ____ day of _____, 2017, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the ____ day of _____, 2017, by a vote of ____ ayes and ____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____