

ORDINANCE NO. 2013-11-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS AMENDING CHAPTER 130, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF EXISTING ARTICLE III ENTITLED "ROADWAY IMPACT FEES" BY AMENDING PORTIONS OF SECTIONS 130-106, 130-108, 130-109, 130-111, 130-114, 130-144, AND 130-145 AS SET FORTH HEREIN BELOW; BY THE ADOPTION OF A NEW EXHIBIT 1 REGARDING THE 2012-2013 LAND USE ASSUMPTIONS FOR ROADWAY IMPACT FEES; BY THE ADOPTION OF A NEW EXHIBIT 2 REGARDING THE 2012-2013 ROADWAY IMPACT FEE UPDATE ("ROADWAY IMPROVEMENTS PLAN"); AND BY THE ADOPTION OF A NEW SCHEDULE 1 REGARDING THE ASSESSMENT AND COLLECTION OF ROADWAY IMPACT FEES; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of McKinney (the "City") is a home-rule city possessing the full power of local self-government pursuant to Article II, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code and its home rule charter; and

WHEREAS, the City established roadway impact fees to be imposed within its corporate limits by Ordinance No. 97-10-54 on October 7, 1997, and as amended by Ordinance No. 2000-03-20, Ordinance No. 2001-08-091, Ordinance No. 2003-05-055, Ordinance No. 2003-07-062, Ordinance No. 2005-11-116, and Ordinance No. 2008-11-102 in compliance with Chapter 395 of the Texas Local Government Code (the "Roadway Impact Fee Ordinances"); and

WHEREAS, the Roadway Impact Fee Ordinances have been codified in Article III of Chapter 130 of the Code of Ordinances, City of McKinney, Texas; and

WHEREAS, Texas Local Government Code Section 395.052 requires a city imposing a roadway impact fee to update the land use assumptions and capital improvements plan at least once every five years; and

WHEREAS, the City held a public hearing and approved the updated Land Use Assumptions For Roadway Impact Fees in conjunction with Resolution No. 2013-06-088 (R) which Resolution and Assumptions are attached hereto as Exhibit 1 and incorporated herein by reference for all purposes allowed by law; and

WHEREAS, the City held a public hearing and approved the 2012-2013 Roadway Impact Fee Update ("Roadway Improvements Plan") in conjunction with Resolution No. 2013-11-XXX (R), which Resolution and Update are attached hereto as Exhibit 2 and incorporated herein by reference for all purposes allowed by law; and

WHEREAS, the City Council finds that the provisions governing the administration of roadway impact fees and Schedule 1 setting forth the roadway impact fees to be assessed and collected within each service area established in the Roadway Impact Fee Ordinances and codified in Article III of Chapter 130 of the Code of Ordinances, City of McKinney, Texas should be amended; and

WHEREAS, the City Council finds that the City has complied with Chapter 395 of the Texas Local Government Code in the amendment of the land use assumptions, capital improvements plan, and roadway impact fees; and

WHEREAS, the proposed amendments to Article III of Chapter 130 of the Code of Ordinances, City of McKinney, Texas are in the best interest of the citizens of McKinney to assure the availability of adequate roadway facilities and services in order to serve new development consistent with the policies set forth in the City's Comprehensive Plan.

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

1.

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of McKinney, and they are hereby approved and incorporated into the body of this Ordinance as if restated herein in their entirety.

2.

From and after the effective date of this Ordinance, Section 130-106 entitled "Definitions" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting the definition of "Land Use Assumptions" and replacing said definition with a new definition for the phrase "Land Use Assumptions" to read as follows:

"Land Use Assumptions" means and includes a description of the service areas and the projections of population and employment growth and associated changes in land uses, densities and intensities adopted by the City, as may be amended from time to time, in each service area over a 10-year period upon which the Roadway Improvements Plan is based. The Land Use Assumptions are set out in the most recently updated Land Use Assumptions for Roadway Impact Fees adopted by resolution of the City Council of the City of McKinney, Texas, and attached hereto as Exhibit 1."

3.

From and after the effective date of this Ordinance, Section 130-106 entitled "Definitions" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting the definition of "Roadway Improvements Plan or Capital Improvements Plan for Roadway Impact Fees" and replacing said definition with a new definition for the phrase "Roadway Improvements Plan or Capital Improvements Plan for Roadway Impact Fees" to read as follows:

"Roadway Improvements Plan or Capital Improvements Plan for Roadway Impact Fees" identifies the capital improvements or facility expansions and associated costs for each roadway service area that are necessitated by and which are attributable to new development within the service area, for a period not to exceed 10 years, which capital improvements are to be financed in whole or in part through the imposition of roadway impact fees pursuant to this Article. The Roadway Improvements Plan or Capital Improvements Plan for Roadway Impact Fees Land Use Assumptions is set out in the most recently updated Roadway Impact Fee Update ("Roadway Improvements Plan") adopted by resolution of the City Council of the City of McKinney, Texas, and attached hereto as Exhibit 2."

4.

From and after the effective date of this Ordinance, Section 130-108 entitled "Impact Fees Per Service Unit" of the Code of Ordinances of the City of McKinney, Texas, be and

the same is hereby amended and replaced in its entirety so that hereafter said Section 130-108 shall be and read as follows:

“Sec. 130-108. Impact Fees per Service Unit

- (a) The maximum impact fee per service unit (pre-credit) and the maximum assessable impact fee per service unit (post-credit) for each roadway service area shall be as set forth in:
 - (1) Schedule 1, Table A, if the date of final plat recording is prior to September 1, 2003 and replatting is not necessary;
 - (2) Schedule 1, Table B, if the date of final plat recording is on or after September 1, 2003 through and including November 9, 2008 and replatting is not necessary;
 - (3) Schedule 1, Table C, if the date of final plat recording is on or after November 10, 2008 through and including November 19, 2013 and replatting is not necessary.
 - (4) Schedule 1, Table D, if the date of final plat recording or replat recording is on or after November 20, 2013.

Schedule 1, Tables A through D (sometimes hereinafter referred to collectively as “Schedule 1”) are attached hereto and hereby incorporated into and made a part of this Article by reference.

- (b) The number of vehicle miles attributable to each land use category per development unit in each new development within a roadway service area shall be as set forth in:
 - (1) Schedule 1, Table A, as designated for each particular Roadway Service Area, Roadway Service Areas 1 through 27 if the date of final plat recording is prior to September 1, 2003 and replatting is not necessary;
 - (2) Schedule 1, Table B as designated for each particular Roadway Service Area, Roadway Service Areas A through M, if the date of final plat recording is on or after September 1, 2003 through and including November 9, 2008 and replatting is not necessary;
 - (3) Schedule 1, Table C as designated for each particular Roadway Service Area, Roadway Service Areas A through M, if the date of final plat recording is on or after November 10, 2008 through and including November 19, 2013 and replatting is not necessary.
 - (4) Schedule 1, Table D as designated for each Roadway Service Area, Roadway Service Areas A through M, if the date of final plat recording or

replat recording is on or after November 20, 2013.

Schedule 1 is attached hereto and hereby incorporated into and made a part of this Article by reference.

- (c) Impact fee Schedule 1, and/or its various Tables, may be amended from time to time by Ordinance.
- (d) The maximum assessable impact fee per service unit (post-credit) set forth in Schedule 1 that is assessed to new development, as may be amended from time to time, is declared to be the roughly proportionate measure of the impact(s) generated by a new unit of development on the City's transportation system. To the extent that the impact fee per service unit collected is less than the maximum assessable impact fee per service unit, such difference is hereby declared to be founded on policies unrelated to the measurement of the actual impacts of the development on the City's transportation system. The maximum assessable impact fee per service unit may be used in evaluating any claim by an applicant, developer, or property owner that the dedication, construction, or contribution of a capital improvement imposed as a condition of development approval pursuant to the City's regulations is not roughly proportionate to the impact(s) of the new development on the City's transportation system."

5.

From and after the effective date of this Ordinance, Section 130-109 entitled "Assessment of Impact Fees" of the Code of Ordinances of the City of McKinney, Texas, be and the same is hereby amended and replaced in its entirety so that hereafter said Section 130-109 shall be and read as follows:

"Sec. 130-109. Assessment of Impact Fees

- (a) Assessment of the impact fee per service unit for any new development shall be made as follows:
 - (1) For a new development for which a final plat was recorded prior to September 1, 2003 and for which no replatting is necessary pursuant to the City's subdivision regulations prior to development or for a new development for which no plat is necessary pursuant to the City's Zoning Ordinance because the property in question is a lot of record, assessment of impact fees shall occur at the time application is made for the building permit, and shall be the amount of the maximum assessable impact fee per service unit as set forth in Schedule 1, Table A, for the particular roadway service area in which the development is situated as reflected in Map A, attached hereto and incorporated herein by reference, multiplied by the number of Vehicle Miles (Per Development Unit) for each proposed development unit in each proposed land use category as set forth in Schedule 1, Table A.

- (1) For a new development for which recordation of the final plat occurred on or after September 1, 2003 through and including November 9, 2008 and for which no replatting is necessary, assessment of impact fees shall be at the time of final plat recordation and shall not exceed the amount of the maximum assessable impact fee per service unit as set forth in Schedule 1, Table B for the particular roadway service area in which the development is situated as reflected in Map B, attached hereto and incorporated herein by reference, multiplied by the number of Vehicle Miles (Per Development Unit) for each proposed development unit in each proposed land use category as set forth in Schedule 1, Table B.
- (3) For a new development for which recordation of the final plat occurred on or after November 10, 2008 through and including November 19, 2013 and for which no replatting is necessary, assessment of impact fees shall be at the time of final plat recordation and shall not exceed the amount of the maximum assessable impact fee per service unit as set forth in Schedule 1, Table C for the particular roadway service area in which the development is situated as reflected in Map C, attached hereto and incorporated herein by reference, multiplied by the number of Vehicle Miles (Per Development Unit) for each proposed development unit in each proposed land use category as set forth in Schedule 1, Table C.
- (4) For a new development for which recordation of the final plat occurred on or after November 20, 2013, assessment of impact fees shall be at the time of final plat recordation and shall not exceed the amount of the maximum assessable impact fee per service unit as set forth in Schedule 1, Table D for the particular roadway service area in which the development is situated as reflected in Map D, attached hereto and incorporated herein by reference, multiplied by the number of Vehicle Miles (Per Development Unit) for each proposed development unit in each proposed land use category as set forth in Schedule 1, Table D.
- (5) For land on which new development occurs or is proposed to occur without platting, assessment of impact fees shall occur at the time application is made for the building permit, and shall not exceed the amount of the maximum assessable impact fee per service unit as set forth in Schedule 1, Table D for the particular roadway service area in which the development is situated as reflected in Map D multiplied by the number of Vehicle Miles (Per Development Unit) for each proposed development unit in each proposed land use category as set forth in Schedule 1, Table D.

- (b) Following assessment of the impact fee pursuant to subsection (A), the amount of the impact fee assessed per service unit for that new development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or replat approval, in which case new assessment shall occur at the maximum assessable Schedule 1 rate then in effect.
- (c) Following the vacating of any plat or submittal of any replat, a new assessment must be made in accordance with Section 130-109 (A)(4).
- (d) Approval of an amending plat pursuant to Texas Local Government Code Section 212.016 and the Subdivision Ordinance Section 142-79 is not subject to reassessment of an Impact Fee hereunder provided that the use of the property remains the same.”

6.

From and after the effective date of this Ordinance, Section 130-111 entitled “Offsets and Credits Against Impact Fees” of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by adding a new subparagraph “g” to Paragraph (2) of Subsection (b) regarding offsets to impact fees so that hereafter said new subparagraph “g” of Subsection (b)(2) of Section 130-111 shall be and read as follows:

- “g. a provision stating that in those instances where the City determines the unique characteristics of a roadway segment (such as drainage, topography, easements required, absence of roadway segments remaining in Service Area) and the projected cost to construct a section of roadway is not roughly proportionate to the dollar value of the vehicle mile credits which may be awarded for that roadway section, the City may consider, upon request of the Developer, awarding impact fee credits based upon the Developer’s verified, actual costs of said roadway section.”

7.

From and after the effective date of this Ordinance, Section 130-114 entitled “Refunds” of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by deleting Subsection (d) in its entirety and re-lettering Subsections (e) and (f) as Subsections (d) and (e) respectively.

8.

From and after the effective date of this Ordinance, Section 130-144 entitled “Roadway Service Areas” of the Code of Ordinances of the City of McKinney, Texas, be and the same is hereby amended and replaced in its entirety so that hereafter said Section 130-144 shall be and read as follows:

“Sec. 130-144. Roadway Service Areas

- A. There are hereby established thirteen (13) roadway service areas, as depicted in Exhibit 3.
- B. The boundaries of the roadway service areas may be amended from time to time or new roadway service areas may be delineated.”

9.

From and after the effective date of this Ordinance, Section 130-145 entitled “Roadway Improvements Plan” of the Code of Ordinances of the City of McKinney, Texas, be and the same is hereby amended and replaced in its entirety so that hereafter said Section 130-145 shall be and read as follows:

“Sec. 130-145. Roadway Improvements Plan

- A. The Roadway Impact Fee RIP, depicted as Exhibit #2 on unmarked Page 15 of the 2012-2013 Roadway Impact Fee Update, dated November 2013, together with Tables 2(A) through 2(M) on pages 7 through 14 of the 2012-2013 Roadway Impact Fee Update, attached hereto and incorporated by reference herein as a part of Exhibit 2 are hereby adopted as the Roadway Improvements Plan for the City of McKinney.
- B. The Roadway Improvement Plan may be amended from time to time.”

10.

From and after the effective date of this Ordinance, former Exhibit 1 that was attached to and adopted by Ordinance No. 2008-11-102 is hereby deleted in its entirety and replaced with a new Exhibit 1 that is attached hereto and incorporated herein by reference for all purposes allowed by law. Such Exhibit 1 is comprised of Resolution No. 2013-06-088 (R) together with the 2012-2013 Land Use Assumptions For Roadway Impact Fees that was approved by and incorporated into said Resolution. All references to “Exhibit 1” contained in this Ordinance and Article III of Chapter 130 of the Code of Ordinances, City of McKinney, Texas, are hereby declared to be references to Exhibit 1 of this Ordinance.

11.

From and after the effective date of this Ordinance, former Exhibit 2 that was attached to and adopted by Ordinance No. 2008-11-102 is deleted in its entirety and replaced with a new Exhibit 2 that is attached hereto and incorporated herein by reference for all purposes allowed by law. Such Exhibit 2 is comprised of Resolution No. 2013-11-XXX (R) together with the 2012-2013 Roadway Impact Fee Update (“Roadway Improvements Plan”) that was approved by and incorporated into said Resolution. All references to “Exhibit 2” contained in this Ordinance and Article III of Chapter 130 of the Code of Ordinances, City of McKinney, Texas, are hereby declared to be references to Exhibit 2 of this Ordinance.

12.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of McKinney, 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 superseded.

13.

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.

14.

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 McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he 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 said duties.

15.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of McKinney 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 McKinney.

16.

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective upon publication.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 19th DAY OF NOVEMBER, 2013.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney