

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 II ENTITLED “WATER AND WASTEWATER IMPACT FEES” BY AMENDING PORTIONS OF SECTIONS 130-22, 130-26 THROUGH 130-29, AND SECTIONS 130-33, 130-68, AND 130-71 AS SET FORTH HEREIN BELOW; BY THE ADOPTION OF A NEW EXHIBIT 1 REGARDING THE 2012-2013 LAND USE ASSUMPTIONS FOR UTILITY IMPACT FEES; BY THE ADOPTION OF A NEW EXHIBIT 2 REGARDING THE 2012-2013 WATER & WASTEWATER IMPACT FEE UPDATE (“WATER & WASTEWATER IMPROVEMENTS PLANS”); AND BY THE ADOPTION OF A NEW SCHEDULE 1 REGARDING THE ASSESSMENT AND COLLECTION OF WATER AND WASTEWATER 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 utility impact fees to be imposed within its corporate limits and within its extraterritorial jurisdiction by Ordinance No. 1868, and as amended by Ordinance No. 1996-03-013; Ordinance No. 2001-08-092; Ordinance No. 2003-05-056; and Ordinance No. 2008-11-103 in compliance with Chapter 395 of the Texas Local Government Code (the “Utility Impact Fee Ordinances”); and

WHEREAS, the Utility Impact Fee Ordinances have been codified in Article II 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 utility impact fees to update the land use assumptions and capital improvements plans at least once every five years; and

WHEREAS, the City held a public hearing and approved the Updated Land Use Assumptions For Utility Impact Fees in conjunction with Resolution No. 2013-06-089 (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 Water & Wastewater Impact Fee Update (“Water & Wastewater Improvements Plans”) 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 utility impact fees and Schedules 1 and 2 setting forth the water and wastewater impact fees to be assessed and collected established in the Utility Impact Fee Ordinances and codified in Article II 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 plans, and utility impact fees; and

WHEREAS, the proposed amendments to Article II 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 water and wastewater 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 130-22 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 the Service Area over a 10-year period upon which the Impact Fee Capital Improvements Plans are based. The Land Use Assumptions are set out in the most recently updated Land Use Assumptions for Utility 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 130-22 entitled "Definitions" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting the definition of "Wastewater Improvements Plan" and replacing said definition with a new definition for the phrase "Wastewater Improvements Plan" to read as follows:

"Wastewater Improvements Plan" identifies the wastewater facilities or wastewater expansion and their associated costs that are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, which capital improvements are to be financed in whole or in part through the imposition of wastewater impact fees pursuant to this Article. The Wastewater Improvements Plan is a part or component of the "Impact Fee Capital Improvements Plan or Capital Improvements Plans for Utility Impact Fees" ("Utility 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 130-22 entitled “Definitions” of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting the definition of “Water Improvements Plan” and replacing said definition with a new definition for the phrase “Water Improvements Plan” to read as follows:

“Water Improvements Plan identifies the water facilities or water expansions and their associated costs that are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, which capital improvements are to be financed in whole or in part through the imposition of water Impact Fees pursuant to this Article. The Water Improvements Plan is a part or component of the “Impact Fee Capital Improvements Plan or Capital Improvements Plans for Utility Impact Fees” (“Utility Improvements Plan”) adopted by resolution of the City Council of the City of McKinney, Texas, and attached hereto as Exhibit 2.”

5.

From and after the effective date of this Ordinance, Section 130-26 entitled “Impact Fees per Service Unit” of the Code of Ordinances of the City of McKinney, Texas, is hereby amended and replaced in its entirety so that hereafter said Section 130-26 shall be and read as follows:

“Sec. 130-26. 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 wastewater and water facilities shall be as set forth for each Meter Size and Meter Type where Meter Type is distinguished 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 made a part of this Article by reference. Schedule 1 may be amended from time to time by Ordinance.

(b) The maximum 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 utility 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 utility system."

6.

From and after the effective date of this Ordinance, Section 130-27 entitled "Assessment of Impact Fees" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended and replaced in its entirety so that hereafter said Section 130-27 shall be and read as follows:

"SECTION 130-27. 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 (post-credit) as set forth in Schedule 1, Table A, attached hereto and incorporated herein by reference, for each meter size for each proposed development unit as set forth in Schedule 1, Table A.
 - (2) 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 pursuant to the City's subdivision regulations, assessment of impact fees shall occur at the time of final plat recordation and shall be the amount of the maximum assessable (post-credit) impact fee per service unit (post-credit) as set forth in Schedule 1, Table B, attached hereto and incorporated herein by reference, for each meter size for each proposed development unit 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 occur at the time of final plat recordation and shall not exceed the amount of the maximum assessable impact fee per service unit (post-credit) as set forth in Schedule 1, Table C, attached hereto and incorporated herein by reference, for each Meter Size and Meter Type for each proposed development unit 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 occur at the time of final plat recordation and shall not exceed the amount of the maximum assessable impact fee per service unit (post-credit) as set forth in Schedule 1, Table D, attached hereto and incorporated herein by reference, for each meter size and meter type for each proposed development unit 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 be the amount of the maximum assessable impact fee per service unit (post-credit) as set forth in Schedule 1, Table D, attached hereto and incorporated herein by reference, for each meter size and meter type for each proposed development unit 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 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 or proposes to increase the Meter Size or Meter Type for any use within that development, in which case new Assessment shall occur at the maximum assessable Schedule 1 rate then in effect.
- (c) In the event that a development is evaluated by City staff, which results in a decrease in the number of Service Units, the City will credit the overall development, based on the reduction in the number of Service Units.
- (d) Following the vacating of any plat or submittal of any replat, a new Assessment must be made in accordance with Section 130-26.
- (e) Approval of an amended plat pursuant to Texas Local Government Code, Section 212.016, and the

Subdivision Ordinance, Section 142-79, is not subject to reassessment for an Impact Fee provided that the use of the property remains the same and no increase in the Meter Size or Meter Type for any use within that development is sought.”

8.

From and after the effective date of this Ordinance, Section 130-28 entitled “Payment and Collection of Impact Fees” of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting paragraph (d) in its entirety and replacing said paragraph with a new paragraph (d) to read as follows:

“(d) The amount of each Impact Fee (wastewater and water) for a New Development shall not exceed an amount computed by multiplying the maximum assessable fee per Service Unit for each category of utility pursuant to Section 130-26 by the number of Service Units generated by the development. According to the American Water Works Association the ratio of water flows for different sizes and types of Water Meters is as follows:

Meter Size	Meter Type	Ratio to ¾” meter
¾”	Simple	1.0
1”	Simple	1.7
1½”	Simple	3.3
2”	Simple	5.3
2”	Compound	5.3
2”	Turbine (Irrigation)	10.7
3”	Compound	10.7
3”	Turbine (Irrigation)	23.2
4”	Compound	16.7
4”	Turbine (Irrigation)	43.3
6”	Compound	33.3
6”	Turbine (Irrigation)	93.3
8”	Compound	53.3
8”	Turbine (Irrigation)	160.0
10”	Turbine (Irrigation)	233.3
12”	Turbine (Irrigation)	293.3

Accordingly, the number of service units for each Meter Size and Meter Type follows the same ratio and is used to determine the proportional water and wastewater impact fee for each Meter Size and Meter Type compared to a simple ¾” Water Meter.”

9.

From and after the effective date of this Ordinance, Section 130-29 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 (8) to paragraph (b) of said section to read as follows:

“8. a provision stating that in those instances where the City determines the projected cost to construct a system facility is not roughly proportionate to the dollar value of the impact fee credits which may be awarded for that system facility the City may consider, upon request of the Developer, awarding

impact fee credits based on the lesser of a percentage of the City's projected costs for that system facility or a percentage of the documented and City-approved costs to the Developer of the system facility which was dedicated to and accepted by the City with the City's projected costs or the documented and City-approved costs to the Developer being reduced by the same percentage of reduction as applied to the maximum impact fee per service unit (pre-credit) to arrive at the maximum assessable impact fee per service unit (post-credit) as reflected in the applicable Table of Schedule 1."

10.

From and after the effective date of this Ordinance, Section 130-33 entitled "Refunds" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended by deleting paragraph (e) in its entirety and re-lettering paragraph (f) as paragraph (e).

11.

From and after the effective date of this Ordinance, Section 130-68 entitled "Water Improvement Plan" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting the second sentence of paragraph (a) so that hereafter paragraph (a) of said Section 130-68 shall be and read as follows:

"(a) The Water Improvements Plan for the City of McKinney is a component of the Water & Wastewater Improvements Plans attached hereto and incorporated herein by reference as Exhibit 2."

12.

From and after the effective date of this Ordinance, Section 130-71 entitled "Wastewater Improvements Plan" of the Code of Ordinances of the City of McKinney, Texas, is hereby amended in part by deleting the second sentence of paragraph (a) so that hereafter paragraph (a) of said Section 130-71 shall be and read as follows:

"(a) The Wastewater Improvements Plan for the City of McKinney is a component of the Water & Wastewater Improvements Plans attached hereto and incorporated by reference as Exhibit 2."

13.

From and after the effective date of this Ordinance, former Exhibit 1 that was attached to and adopted by Ordinance No. 2008-11-103 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. 2013-06-089 (R), together with the 2012-2013 Land Use Assumptions for Utility Impact Fees that was approved by and incorporated into said Resolution. All references to "Exhibit 1" contained in this Ordinance and Article II of Chapter 130 of the Code of Ordinances, City of McKinney, Texas, are hereby declared to be references to Exhibit 1 of this Ordinance.

14.

From and after the effective date of this Ordinance, former Exhibit 2 that was attached to and adopted by Ordinance No. 2008-11-103 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 Water & Wastewater Impact Fee Update ("Water & Wastewater Improvements Plans") that was approved by and incorporated into said Resolution. All references to "Exhibit 2" contained in this Ordinance and Article II of Chapter 130 of the Code of Ordinances, City of McKinney, Texas, are hereby declared to be references to Exhibit 2 of this Ordinance.

15.

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.

16.

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.

17.

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.

18.

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.

19.

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.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 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