

ORDINANCE NO. 2019.008

AN ORDINANCE OF THE CITY OF DENTON, TEXAS UPDATING IMPACT FEES BY AMENDING CHAPTER 26, "UTILITIES," SECTION 26-210 THROUGH SECTION 26-232 OF THE CITY OF DENTON CODE OF ORDINANCES; ADOPTING REVISED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLANS FOR WATER AND WASTEWATER IMPACT FEES; ESTABLISHING NEW SERVICE AREAS FOR WATER AND WASTEWATER IMPACT FEES; ESTABLISHING NEW MAXIMUM IMPACT FEES PER SERVICE UNIT AND IMPACT FEES TO BE COLLECTED; CREATING SCHEDULES FOR THE ASSESSMENT AND COLLECTION OF IMPACT FEES; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000 FOR EACH VIOLATION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code, Chapter 395 authorizes a city to adopt and amend impact fees for the purpose of financing capital improvements required by new development; and

WHEREAS, the City Council of the City of Denton, Texas in accordance with State law, initially enacted water and wastewater impact fees in accordance with Ordinance No. 98-301, dated on the September 15, 1998; and

WHEREAS, the City Council, in accordance with State law, then enacted water and wastewater impact fees in accordance with Ordinance No. 2003-137 which was adopted by the City Council on May 13, 2003, and effective as of May 29, 2003; and then enacted Ordinance No. 2004-183, nunc pro tunc on July 20, 2004, and effective as of August 4, 2004 in order to properly recite several provisions that were inadvertently omitted or misstated from the above-referenced Ordinance No. 2003-137; and then enacted Ordinance No. 2008-156 which was adopted by the City Council on the July 15, 2008, and effective as of July 29, 2008 establishing new maximum fees and establishing a new service area for Water impact fees; and

WHEREAS, the City Council of the City of Denton, Texas in accordance with State law, then enacted water and wastewater impact fees in accordance with Ordinance No. 2013-326 on November 19, 2013; and

WHEREAS, five (5) years has passed since the Council considered impact fees, and it is now appropriate and lawfully required that the City once again address the issues of Land Use Assumptions and a Capital Improvements Plan, as well as the subject of Amended Water and Wastewater Impact Fees; and

WHEREAS, the City Council in accordance with law desires to update its impact fee program by amending land use assumptions, service areas, capital improvements plans and impact fees for water and wastewater facilities; and

WHEREAS, the City Council of the City of Denton, Texas has duly appointed a Capital Improvements Advisory Committee (the "Committee") by Ordinance No. 18-411 on March 20, 2018;

the Council has received written comments as required by law from such Committee, on November 29, 2018; and has adopted Land Use Assumptions and a Capital Improvements Plan for amended water and wastewater impact fees all in accordance with the requirements of Texas Local Government Code, Chapter 395; and

WHEREAS, the City Council of the City of Denton, Texas also received a recommendation of the Denton Public Utilities Board (the "Board"), an advisory Board, to consider the impact fees and the zones set forth below in this ordinance, which recommendation was obtained in an open meeting of the Board on October 8, 2018; and

WHEREAS, on December 18, 2018, after due notice being issued in accordance with State law, a public hearing of the City Council was convened during the regularly called City Council meeting regarding the subject of the land use assumptions, capital improvements plans, and amended impact fees; and

WHEREAS, the City Council of the City of Denton, Texas, having complied with all applicable substantive and procedural requirements of Texas Local Government Code, Chapter 395; considering the comments of the Capital Improvements Advisory Committee; considering the recommendation of the Public Utilities Board; and after due deliberation and consideration finds it necessary and appropriate and in the public interest to establish water and wastewater impact fees, and to establish amended water and amended wastewater impact fees to pay the costs of certain capital improvements for new development; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The facts, circumstances, and recitations contained in the preambles to this Ordinance are hereby found and declared to be true and correct.

SECTION 2. The Capital Improvements Plan for Water and Wastewater Impact Fees is hereby amended, as set forth in Exhibit "A," which is attached hereto and incorporated by reference herewith.

SECTION 3. The Land Use Assumptions for Water and Wastewater Impact Fees hereby are amended as set forth in Exhibit "A," which is attached hereto and incorporated by reference herewith.

SECTION 4. Chapter 26 of the Code of Ordinances of the City of Denton, Texas, entitled "Utilities," is hereby amended, which shall hereafter read as follows:

CHAPTER 26: UTILITIES

ARTICLE VI. IMPACT FEES

Sec. 26-210. Short Title.

This Article shall be known and cited as the "Denton Impact Fee Ordinance."

Sec. 26-211. Statement of Purpose.

This Article is intended to assure the provision of adequate public facilities to serve new development in the City by requiring each development to pay its proportional share of the costs of such improvements necessitated by and attributable to such new development as related to water and wastewater capital improvements.

Sec. 26-212. Authority.

This Article is adopted pursuant to Chapter 395 of the Texas Local Government Code and pursuant to the Denton Charter. The provisions of this Article shall not be construed to limit the powers 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 Article. The effective date of this Article is September 15, 1998.

Sec. 26-213. Definitions.

The following words, terms and phrases, as used in this Article, shall have the meanings respectively ascribed to them in this Section, unless the context clearly indicates otherwise:

(1) *Area-related facility* means a capital improvement or facility expansion which is designated in the Impact Fee Capital Improvements Plan and which is not a site-related facility. Area-related facility may include a capital improvement, which is located offsite, within, or on the perimeter of the development site.

(2) *Assessment* means the determination of the amount of the maximum impact fee per service unit that can be imposed on new development pursuant to this Article.

(3) *Capital improvement* means any water supply; or treatment, transmission, pumping and storage facilities; or wastewater treatment and conveyance facilities that have a life expectancy of three (3) or more years, and are owned and operated by or on behalf of the City.

(4) *Director* means the Director of Water or Wastewater Utilities, or General Manager of Utilities for the City of Denton, or his or her designee.

(5) *Facility expansion* means the expansion of the capacity of any existing facility for the purpose of serving new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to serve existing development.

(6) *Impact fee capital improvements plan* means the adopted plan for a service area, as may be amended from time to time, which identifies the water facilities or wastewater facilities and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, and which are to be financed in whole or in part through the imposition of water or wastewater impact fees pursuant to this Chapter 26, Article VI.

(7) *Land use assumptions* means the projections of population and employment growth and associated changes in land uses, densities and intensities for a service area adopted by the City, as may be amended from time to time, upon which the impact fee capital improvements plan for the

service area is based.

(8) *New development* means an activity involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of land, which has the effect of increasing water or wastewater demand, measured by an increase in the number of the service units utilizing the City's water or wastewater system that are attributable to such activity, and which requires either the approval and filing of a plat, or a re-plat pursuant to the City's subdivision regulations, or the issuance of a building permit, or a utility connection.

(9) *Service area* means a geographic area within the City or within the City's extraterritorial jurisdiction, within which impact fees for water or wastewater facilities may be collected for new development occurring within such area and within which fees so collected will be expended for those types of improvements identified in the type of capital improvements plan applicable to the service area.

(10) *Service unit* means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards, for a particular category of capital improvements or facility expansions. For water and wastewater facilities, the service unit shall constitute the basis for establishing equivalency within various customer classes based upon the relationship of the continuous duty maximum flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4-inch diameter simple water meter.

(11) *Single-family equivalency ("SFE")* means an equivalency factor, based on the demand associated with the smallest water meter used in the City of Denton, Texas utility system. SFE's are utilized to establish the number of service units to be allocated to various meter sizes used in the City of Denton, Texas Water and Wastewater utilities system.

(12) *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 water and wastewater facilities to serve the new development and which is not included in the impact fee capital improvements plan and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.

(13) *Small residential housing unit* means a single-family residence of less than 1,300 square feet on a lot of less than 6,000 square feet.

(14) *Utility connection* means connection of an individual meter to the City's water or wastewater system, or an increase in the size of an existing meter.

Sec. 26-214. Impact fee as condition of development approval.

No new development shall be connected to the City's water or wastewater system within the service

area without the assessment of an impact fee pursuant to this Article, and no building permit or request for service shall be issued until the applicant has paid the impact fee imposed herein, except for those entities that are expressly exempt from impact fees as set forth in Texas Local Government Code, Chapter 395.

Sec. 26-215. Land use assumptions.

(a) Said land use assumptions for the City shall be updated at least every five (5) years utilizing the amendment procedure set forth in Texas Local Government Code, Chapter 395.

(b) Amendment to the land use assumptions shall incorporate projections of changes in land uses, densities, intensities and population for the service area over at least a ten (10) year period.

Sec. 26-216. Water impact fee service area.

There are hereby established three (3) water impact fee service areas, to include all land within the City and its extraterritorial jurisdiction, the boundaries of which are depicted in Exhibit A, which Exhibit is attached hereto and incorporated by reference herein.

Sec. 26-217. Wastewater impact fee service areas.

There is hereby established one (1) wastewater impact fee service area, to include all land within the City and its extraterritorial jurisdiction, the boundaries of which are depicted in Exhibit A, which Exhibit is attached hereto and incorporated by reference herein.

Sec. 26-218. Determination of service units.

The number of service units for both water or wastewater impact fees shall be determined by using the land use, and the service unit equivalencies table which converts the demands for water or wastewater improvements generated by typical land uses to water meter size, and which table is included within Exhibit B and incorporated by reference herein.

Sec. 26-219. Impact fees per service unit.

(a) Maximum impact fees per service unit for each service area shall be established by category of capital improvements. The maximum impact fee per service unit for each service area for each category of capital improvement shall be computed in the following manner:

(1) For each category of capital improvements, calculate the total projected costs of capital improvements necessitated by and attributable to new development in the service area identified in the impact fee capital improvements plan;

(2) From such amount, subtract a credit in the amount of that portion of utility service revenues, if any, including the payment of debt, to be generated by new service units during the period the capital improvements plan is in effect, including the payment of debt, associated with the capital improvements in the plan;

(3) Divide the resultant amount by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area.

(b) The maximum impact fee per service unit for water or wastewater facilities by service area shall be as set forth in Schedule 1, which is attached hereto and incorporated herein by reference. Schedule 1 shall be used to assess impact fees. Schedule 1 may be amended from time to time utilizing the amendment procedure set forth in Section 26-228.

(c) 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, which is attached hereto and incorporated by reference, and shall be an amount less than or equal to the maximum impact fee per service unit established in Schedule 1. Schedule 2 may be amended from time to time utilizing the amendment procedure set forth in Section 26-228.

Sec. 26-220. Assessment of impact fees.

(a) Assessment of impact fees for any new development in all of the Denton Water and Wastewater Service Areas shall be made as follows:

(1) For land which is unplatted at the time of application for a building permit or utility connection, or for a new development which received final plat approval prior to the effective date of this Article, and for which no re-platting is necessary pursuant to the City's subdivision regulations prior to development, assessment of impact fees shall occur at the time application is made for the building permit or utility connection, whichever first occurs, and shall be the amount of the maximum impact fee per service unit in effect, as set forth in Schedule 1.

(2) For a new development which is submitted for approval pursuant to the City's subdivision regulations on or after the effective date of this Article, or for which re-platting results in an increase in the number of service units after such date, assessment of impact fees shall be at the time of final plat recordation, and shall be the amount of the maximum impact fee per service unit in effect as set forth in Schedule 1.

(b) Following assessment of impact fees pursuant to subsection (a), the amount of impact fee assessment 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 other development application that results in approval of additional service units, in which case a new assessment shall occur at the Schedule 1 rate then in effect for such additional service units.

(c) Following the vacating of any plat or approval of any re-plat, a new assessment must be made in accordance with subsection (a)(2).

(d) An application for an amending plat made pursuant to Texas Local Government Code §212.016 and the City of Denton Subdivision Ordinance, and for which no new development is proposed, is not subject to reassessment for an impact fee.

Sec. 26-221. Computation of impact fees.

(a) Following the filing and acceptance of a written application for building permit or utility connection, the City shall compute the impact fee due in the following manner:

(1) The number of service units shall be determined by the size of the water meter purchased using the Land Use and Service Unit/SFE Equivalencies table incorporated as Exhibit B herein. The service units for multi-family apartment projects with eight (8) or more units shall be determined by multiplying the number of bedrooms in said apartment project by 0.26 SFE;

(2) Service units shall be summed for all meters, or for all bedrooms within a multi-family apartment project with eight (8) or more units purchased for the development;

(3) The total number of service units shall be multiplied by the impact fee per service unit for water and/or wastewater service facilities using Schedule 2 then in effect as established in Section 26-219;

(4) The amount of each impact fee shall be reduced by any allowable offsets or credits for that category of capital improvements, in the manner provided in Section 26-223.

(b) The amount of impact fee due for new development shall not exceed the amount computed by multiplying the assessed fee for water and/or wastewater service by the total number of service units generated by the development. The amount of impact fee due for redevelopment shall not exceed the amount computed by multiplying the assessed fee for water and/or wastewater service by the net increase in service units generated by the redevelopment.

(c) The developer may submit or the Director may require the submission of a study, prepared by a professional engineer, licensed in the State of Texas, clearly indicating the number of water and/or wastewater service units which will be consumed or generated by the new development. The Director will review the information for completeness and conformity with generally accepted engineering practices and will, when satisfied with the completeness and conformity of the study, multiply the number of service units determined by the study, times the impact fee per service unit contained in Section 26-219 above to determine the total impact fee to be collected for the development. The Director may also use recent historical water billing records for existing customers to determine water demands and single-family equivalents ("SFE") in accordance with data from the most recent Capital Improvements Plan.

(d) Whenever the property owner increases the number of service units for a development, the additional impact fees collected for such new service units shall be determined based on Schedule 2 and applicable offsets, credits, and discounts then in effect, and such additional fee shall be assessed and collected at the time the additional meters are purchased.

(e) In the event the property owner decreases the number of service units for a development, the property owner shall be entitled to a refund of the impact fee or impact fees actually paid, but only for the amounts represented by the decrease in service units based on the assessed fee and offsets,

credits, or discounts applicable at the time the fee was paid.

(f) If the building permit for the property on which an impact fee is paid has expired and a new application for a building permit is thereafter filed for the identical property and the identical number of service units, the impact fee previously paid satisfies the requirements of this Article, unless the earlier impact fee was refunded to the applicant at the expiration of the previously-issued building permit, or is otherwise refunded.

(g) The impact fee shall attach to the property for which the impact fee was paid and shall not be transferable to other properties or service units.

(h) No building permit or utility connection shall be issued if the applicant cannot verify payment to Staff of the appropriate impact fee and other applicable fees, or if existing facilities do not have actual capacity to provide service to the new connection(s), except for those entities that are exempted from impact fees as are specifically set forth in Texas Local Government Code, Chapter 395.

(i) All matters pertaining to the enforcement, assessment, computation, or collection of impact fees provided for herein shall be determined by the Director, or his or her designate.

Sec. 26-222. Collection of impact fees.

(a) Except as otherwise provided in this Section, the impact fee for the new development shall be collected at the time the City issues a building permit, or if a building permit is not required, at the time an application is filed for a new connection, to the City's water or wastewater system or for an increase in water meter size.

(b) Except as otherwise provided by contracts with political subdivisions, developer's contracts, or wholesale customers, no building permit shall be issued until all impact fees due and owing have been paid to the City.

(c) The City may enter into an agreement for capital improvements with a property owner pursuant to Section 26-229 that establishes a different time and manner of payment.

(d) In the event that a property owner agrees to construct or finance capital improvements in the capital improvements plan pursuant to Section 26-229, the costs of which are to be reimbursed to the owner from impact fees paid from other new developments that will use such facilities, the City may collect impact fees from such other new developments at the time final plats are recorded for such development.

(e) Schedule 1 sets the assessment rate and establishes maximum impact fees as set forth in subparagraphs (e)(1) through (e)(4) below:

(1) For a new development for which final plat recordation occurred on or after September 15, 1998, but before May 29, 2003, the maximum impact fee per service unit shall be \$2,044 for the water service area, and \$483 for the wastewater service area.

(2) For a new development for which final plat recordation occurred on or after May 29, 2003, but before July 29, 2008, the maximum impact fee per service unit shall be \$3,155 for the water service area; and \$1,703 for the Zone 1 wastewater service area.

(3) For a new development for which final plat recordation occurred on or after July 29, 2008, but before December 3, 2013 the maximum impact fee per service unit shall be as follows: \$3,400 for the Zone 1 water service area and \$4,000 for the Zone 2 water service area; and \$1,700 for the Zone 1 wastewater service area and \$1,760 for the Zone 2 wastewater service area.

(4) For a new development for which final plat recordation occurred on or after December 3, 2013, but before January 9, 2019, the maximum impact fee per service unit shall be as follows: \$3,167 for the Zone 1A water service area, \$5,250 for the Zone 1B water service area, and \$5,753 for the Zone 2 water service area; and \$2,851 for the wastewater service area.

(5) For a new development for which final plat recordation occurred on or after January 9, 2019, or for any plats filed prior to September 15, 1998, the maximum impact fee per service unit shall be as follows: \$3,569 for the Zone 1A water service area, \$5,352 for the Zone 1B water service area, and \$7,638 for the Zone 2 water service area; and \$4,716 for the wastewater service area.

(f) Schedule 2 sets the collection rate for impact fees as set forth in subparagraph (f)(1), (f)(2) and (f)(3) below:

(1) Except as provided in paragraph (2-5) below, impact fees shall be collected and paid as follows:

Water Service Area (Zone 1A)	\$3,569 per service unit
Water Service Area (Zone 1B)	\$3,532 per service unit
Water Service Area (Zone 2)	\$7,638 per service unit
Wastewater Service Area	\$4,716 per service unit

(2) For a new development for which final plat recordation occurred on or after September 15, 1998, but before May 29, 2003, and for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area	\$2,044 per service unit
Wastewater Service Area (Zone 1)	\$483 per service unit

(3) For a new development for which final plat recordation occurred on or after May 29, 2003, but before July 29, 2008, and for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area (Zone 1)	\$3,155 per service unit
Wastewater Service Area (Zone 1)	\$1,703 per service unit

(4) For a new development for which final plat recordation occurred on or after July 29, 2008, but before December 3, 2013, and for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area (Zone 1)	\$3,400 per service unit
Water Service Area (Zone 2)	\$4,000 per service unit
Wastewater Service Area (Zone 1)	\$1,700 per service unit
Wastewater Service Area (Zone 2)	\$1,760 per service unit

(5) For a new development for which final plat recordation occurred on or after December 3, 2013, but before January 9, 2019 for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area (Zone 1A)	\$3,100 per service unit
Water Service Area (Zone 1B)	\$3,900 per service unit
Water Service Area (Zone 2)	\$4,500 per service unit
Wastewater Service Area (Zone 1)	\$2,200 per service unit

Provided, however, if the service unit is a “small residential housing unit” as defined herein, which consists of a residence of less than 1,300 square feet, which is also located on a lot of less than 6,000 square feet, that service unit shall be assessed and charged a 0.5 SFE charge, no matter in which Zone it is located in, and no matter when the lot is platted.

Sec. 26-223. Offsets and credits.

(a) The City shall offset the reasonable value of any area-related facilities, identified in the impact fee capital improvements plan and constructed pursuant to an agreement with the City, except as otherwise provided therein, which are dedicated to and received by the City on or after the effective date of this ordinance, against the amount of the impact fee due for that category of capital improvement. No offsets or credits shall be provided for required over-sizing of water and wastewater lines or lift stations not identified in the capital improvements plan or for pro-rata payments to repay other developers for such over-sizing.

(b) The City shall credit any new development that occurs subsequent to the effective date of this Article, any amount of capital recovery fees which have been collected by the City pursuant to duly adopted ordinances and any impact fees collected by the City pursuant to this Article.

(c) All offsets and credits against impact fees shall be subject to the following limitations and shall be granted based on this Article and additional standards promulgated by the City, which may be adopted as administrative guidelines.

(1) No offset or credit shall be given for the dedication or construction of site-related facilities.

(2) No offset or credit shall exceed the impact fee to be collected from new

development as established in Section 26-219.

(3) The unit costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the impact fee capital improvements plan for the category of facility within the service area for which the impact fee is imposed.

(4) If an offset or credit applicable to a plat has not been exhausted within ten (10) years from the date of the acquisition of the first building permit issued or connection made after the effective date of this Article or within such period as may be otherwise designated by agreement for capital improvements pursuant to Section 26-229, such offset or credit shall lapse.

(5) In no event will the City reimburse the property owner or developer for an offset or credit when no impact fees for the new development can be collected pursuant to this Article or for any amount exceeding the total impact fees collected or due for the development for that category of capital improvement, unless otherwise agreed to by the City.

(6) No offset shall exceed an amount equal to the eligible costs of the improvement multiplied by a fraction, the numerator of which is the impact fee per service unit due for the new development as computed using Schedule 2 and the denominator of which is the maximum impact fee per service unit for the new development as computed using Schedule 1.

(7) Offsets or credits for area-related facilities dedicated to and accepted by the City for a development prior to the effective date of this Article shall be prorated among the total number of service units within such development and reduced by an amount equivalent to the number of existing service units within such development and shall be further reduced by the amount of any participation funds received from the City and by any payments received from other developments who utilize the system facility.

(8) The City may participate in the costs of an area-related improvement to be dedicated to the City, including costs that exceed the amount of the impact fees due for the development under Schedule 1 for that category of capital improvements, in accordance with policies and rules established under the City's subdivision regulations and when incorporated into an agreement for capital improvements pursuant to Section 26-229. The amount of any offset shall not include the amount of the City's participation.

(d) Unless an agreement for capital improvements is executed providing for a different manner of offsetting or crediting impact fees due pursuant to Section 26-229, an offset or credit associated with a plat shall be applied to reduce an impact fee at the time of application for the first building permit or at the time of application for the first utility connection for the property, in the case of land located within the City's extraterritorial jurisdiction, and, thereafter, to reduce impact fees subsequently to be collected, until the offset or credit is exhausted.

Sec. 26-224. Establishment of accounts.

(a) The City's Department of Finance shall establish separate interest-bearing accounts

clearly identifying the category of capital improvement (i.e., water facilities and wastewater facilities) within the service area for which the impact fee is collected.

(b) Interest earned by each account shall be credited to the account on which it is earned and shall be used solely for the purposes specified for impact fees as authorized herein.

(c) The City's Department of Finance shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in this Article. 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 Article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date the fee is deposited into the account.

(d) The City's Department of Finance shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received, the number of service units for which the monies are received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the impact fee capital improvements plan as area-related capital projects. The City's Department of Finance shall also maintain such records as are necessary to ensure that refunds are appropriately made in accordance with this Article. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours. The City may establish a fee for copying services

Sec. 26-225. Use of proceeds of impact fee accounts.

(a) The impact fee collected pursuant to this Article may be used to finance or to recoup capital construction costs for water and wastewater facilities identified in the impact fee capital improvements plan and for any purpose authorized in Texas Local Government Code, Chapter 395, as amended. 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.

(b) Impact fees collected pursuant to this Article shall not be used to pay for any of the following expenses:

(1) Construction, acquisition, or expansion of capital improvements or assets other than those identified for the water and wastewater utility in the impact fee capital improvements plan;

(2) Repair, operation, or maintenance of existing or new capital improvements or facilities expansions;

(3) Upgrading, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(4) Upgrading, expanding, or replacing existing capital improvements to serve

existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or

- (5) Administrative and operating costs of the City.

Sec. 26-226. Appeals.

(a) The property owner or applicant for new development may appeal the following Staff decisions and determinations to the Denton Public Utilities Board: (a) the applicability of an impact fee to the new development; (b) the method of calculating the amount of the impact fee due; (c) the availability or the amount of an offset, credit or rebate; (d) the application of an offset or credit against an impact fee due; or (e) the amount of a refund due, if any. The Property Owner or Applicant shall notify the City Secretary of the City of Denton, Texas in writing, of its desire to appeal any such decision and determination to the Public Utilities Board, no later than thirty (30) days following the date of Staff decision or determination. This notice shall be untimely if it is received by the City Secretary more than thirty (30) days following the date of Staff decision and determination.

(b) The Owner and/or Applicant must file a notice of appeal with the City Secretary within thirty (30) days following the determination of the amount of the impact fees to be paid by the development by city Staff. 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 of the impact fee is pending.

(c) The written notice to the City Secretary requesting an appeal shall contain the following information:

- (1) The name of the Owner and/or Applicant of the Appeal; and
- (2) The business address and telephone number of the Owner and/or Applicant;
and
- (3) The specific decision or determination of Staff which Owner and/or Applicant are complaining of, and the date of issuance thereof; and
- (4) State specifically the grounds regarding Owner's and/or Applicant's application for appeal; and
- (5) State specifically what amount of money that you believe is owing the City, as well as your basis therefor; and
- (6) The name and address of any legal counsel who will appear before the Public Utilities Board to argue on your behalf; and
- (7) The signature of the Owner and/or Applicant regarding this Appeal.

(d) The burden of proof shall be on the property owner and/or applicant to demonstrate that the amount of the fee or the amount of the offset, credit or rebate was not calculated according to the provisions of this Article. Upon submission of the case and the hearing held before the Public Utilities Board (the "Board"), a decision shall be made by the Board, upon Public Hearing, which shall constitute a formal recommendation to the Denton City Council. The Board shall submit all of the materials that it receives as evidence from Staff and all of the materials that it receives as evidence from the Owner and/or Applicant to the City Council for its final consideration. All evidence as well as the record shall be closed by the Public Utilities Board. A record shall be made of the Public Utilities Board hearing and shall be forwarded to the City Council. The City Council shall then make its decision on the record produced by the Public Utilities Board and upon the oral arguments that are limited to not more than fifteen (15) minutes each for the Owner and/or Applicant, and the City. The City Council shall then determine the appeal and issue its written decision.

Sec. 26-227. Refunds.

(a) Any impact fee or portion thereof collected pursuant to this Article which has not been expended 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 Local Government Code, Section 395.025(d) which states that Texas Finance Code, Section 302.002, or any successor statute applies.

(b) Upon the written request of an owner of the property on which an impact fee has been paid, the City shall refund such fees if:

(1) Existing service is available and service is denied; or

(2) Service was not available when the fee was collected and the City has failed to commence construction of facilities to provide service within two (2) years of fee payment; or

(3) Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event no later than five (5) years from the date of the payment.

(c) The City shall refund an appropriate proportion of impact fee payments in the event that a previously purchased but uninstalled water meter for which the impact fee has been paid is replaced with a smaller meter, based on the service unit differential of the two (2) meter sizes and the fee per service unit at the time of the original fee payment.

(d) A petition for refund under this section shall be submitted to the Director on a form provided by the City for such purpose. Within one (1) month of the date of receipt of a petition for refund, the Director must provide the petitioner, in writing, with a decision on the refund request,

including the reasons for the decision. If a refund is due to the petitioner, the Director shall notify the General Manager of Utilities and request that a refund payment be made to the petitioner.

Sec. 26-228. Update of plan and revision of fees.

(a) The City shall update its land use assumptions and capital improvements plans at least every five (5) years, commencing approximately from the date of adoption of such plans, and shall recalculate the impact fees based thereon in accordance with the procedures set forth in Texas Local Government Code, Chapter 395, or in any successor statute.

(b) The City may review its land use assumptions, impact fees, capital improvements plans and other factors such as market conditions more frequently than provided in subsection (a) to determine whether the land use assumptions and capital improvements plans should be updated and the impact fee recalculated accordingly, or whether Schedules 1 or 2 should be changed. Schedule 2 may be amended without revising land use assumptions and capital improvements plans at any time prior to the update provided for in subsection (a), provided that the impact fees to be collected under Schedule 2 do not exceed the impact fees assessed under Schedule 1.

(c) If, at the time an update is required pursuant to Subsection (a), the City Council determines that no change to the land use assumptions, capital improvements plan or impact fee is needed, it may dispense with such update by following the procedures in Texas Local Government Code, Section 395.0575.

(d) The City may amend by resolution the Land Use and Service Unit/SFE Equivalency table (Exhibit B), at any time prior to the update provided for in Subsection (a), provided that the number of service units associated with a particular land use shall not be increased.

Sec. 26-229. Agreement for capital improvements.

An owner of a new development may construct or finance a capital improvement or facility expansion designated in the impact fee capital improvements plan, if required or authorized by the City, by entering into an agreement with the City prior to the issuance of any building permit for the development. The agreement shall be on a form approved by the City and shall identify the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to City standards and such other terms and conditions as deemed necessary by the City. The agreement shall provide for the method to be used to determine the amount of the offset to be given against the impact fees due for the development or any reimbursement to the owner for construction of the facility.

Sec. 26-230. Use of other financing mechanisms.

(a) In addition to the use of impact fees, the City may finance water and wastewater capital improvements or facilities expansions designated in the impact fee capital improvements plan through the issuance of bonds, through the formation of public improvements districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations

as may be provided by law.

(b) Except as otherwise provided herein, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

(c) The City may pay all or part of impact fees due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

Sec. 26-231. Conflicting ordinances.

All ordinances or parts of ordinances that are in force when the provisions of this ordinance become effective, which are inconsistent or in conflict with the terms or provisions contained in this ordinance, are hereby repealed to the extent of the conflict.

Sec. 26-232. Reserved.

SECTION 4. Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not to exceed \$2,000. Each day that a provision of this Ordinance is violated shall constitute a separate and distinct offense.

SECTION 5. If any section, subsection, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions, despite any such invalidity.

SECTION 6. This Ordinance shall repeal any conflicting ordinances and resolutions to the contrary; it being the intention of the City Council to fully amend all provisions of Chapter 26 of the City of Denton, Texas Code of Ordinances dealing with Impact Fees.

SECTION 7. This Ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this Ordinance to be published twice in the *Denton Record Chronicle*, a daily newspaper published in the City of Denton, Denton County, Texas, within ten (10) days of the date of its passage.

The motion to approve this Ordinance was made by _____ and seconded by _____; the Ordinance was passed and approved by the following vote [___ - ___]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Chris Watts, Mayor:	_____	_____	_____	_____
Gerard Hudspeth, District 1:	_____	_____	_____	_____
Keely G. Briggs, District 2:	_____	_____	_____	_____
Don Duff, District 3:	_____	_____	_____	_____
John Ryan, District 4:	_____	_____	_____	_____

Deb Armintor, At Large Place 5:
Paul Meltzer, At Large Place 6:

PASSED AND APPROVED this the 15 day of January, 2019.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 