

ARTICLE VI. IMPACT FEES¹

Sec. 26-210. Short title.

This article shall be known and cited as the "Denton Impact Fee Ordinance." (Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, 1-15-19)

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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, 1-15-19)

Sec. 26-212. Authority.

This article is adopted pursuant to V.T.C.A. Local Government Code Ch. 395 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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, 1-15-19)

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:

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.

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.

¹Editor's note(s)—Ordinance No. 2004-183, § 4, adopted July 20, 2004, amended article VI in its entirety to read as herein set out. Former article VI, §§ 26-210—26-234, pertained to similar provisions, and derived from Ord. No. 98-301, § III, 9-15-98; Ord. No. 2001-200, § 1, 5-15-01; Ord. No. 2003-137, § 4, 5-13-03.

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.

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

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.

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.

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.

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.

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.

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 three-fourth-inch diameter simple water meter.

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.

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.

Small residential housing unit means a single-family residence of less than one thousand three hundred (1,300) square feet on a lot of less than six thousand (6,000) square feet.

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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 V.T.C.A. Local Government Code Ch. 395.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 V.T.C.A. Local Government Code Ch. 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-year period.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 Appendix A, which exhibit is attached hereto and~~ incorporated by reference herein.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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

There ~~are~~ hereby established ~~one three (31)~~ wastewater impact fee service areas, to include all land within the city and its extraterritorial jurisdiction, the boundaries of which are depicted in ~~Exhibit A Appendix B, which exhibit is attached hereto and~~ incorporated by reference herein.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 single family service unit equivalencies (SFE) 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 Appendix C~~ and incorporated by reference herein.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 section 26-222(e) hereinafter referred to as "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 section 26-222(f) hereinafter referred to as "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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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.

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- (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 ~~V.T.C.A.~~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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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~~Appendix C herein. The service units for multi-family apartment projects with eight (8) or more units shall be determined by multiplying the number of bed-rooms 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 fees for water ~~and/or~~ wastewater service, as applicable, 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 fees for water ~~and/or~~ wastewater service, as applicable, 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.

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- (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 ~~was~~ 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 ~~V.T.C.A.~~Texas Local Government Code Ch. 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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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) This 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 ~~assessed as follows: two thousand forty-four dollars (\$2,044.00) for the water service area, and four hundred eighty-three dollars (\$483.00) for the wastewater service area.~~

<u>Water Service Area</u>	<u>\$2,044 per service unit</u>
<u>Wastewater Service Area</u>	<u>\$483 per service unit</u>

(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 ~~three thousand one hundred fifty-five dollars (\$3,155.00) for the water service area; and one thousand seven hundred three dollars (\$1,703.00) for the Zone 1 wastewater service area~~ assessed as follows:

<u>Water Service Area</u>	<u>\$3,155 per service unit</u>
<u>Wastewater Service Area (Zone 1)</u>	<u>\$1,703 per service unit</u>
<u>Wastewater Service Area (Zone 2)</u>	<u>\$2614 per service unit-</u>

(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 assessed as follows: ~~Three thousand four hundred dollars (\$3,400.00) for the Zone 1 water service area and four thousand dollars (\$4,000.00) for the Zone 2 water service area; and one thousand seven hundred dollars (\$1,700.00) for the Zone 1 wastewater service area and one thousand seven hundred sixty dollars (\$1,760.00) for the Zone 2 wastewater service area.~~

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

(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 assessed as follows: ~~Three thousand one hundred sixty-seven dollars (\$3,167.00) for the Zone 1A water service area, five thousand two hundred fifty dollars (\$5,250.00) for the Zone 1B water service area, and five thousand seven hundred fifty-three dollars (\$5,753.00) for the Zone 2 water service area; and two thousand eight hundred fifty-one dollars (\$2,851.00) for the wastewater service area.~~

<u>Water Service Area (Zone 1A)</u>	<u>\$3,167 per service unit</u>
<u>Water Service Area (Zone 1B)</u>	<u>\$5,250 per service unit</u>
<u>Water Service Area (Zone 2)</u>	<u>\$5,753 per service unit</u>
<u>Wastewater Service Area (Zone 1)</u>	<u>\$2,851 per service unit</u>

(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, but before April 1, 2026,~~ the maximum impact fee per service unit shall be assessed as follows: ~~Three thousand five hundred sixty-nine dollars (\$3,569.00) for the Zone 1A water service area, five thousand three hundred fifty-two dollars (\$5,352.00) for the Zone 1B water service area, and seven thousand six hundred thirty-eight dollars (\$7,638.00) for the Zone 2 water service area; and four thousand seven hundred sixteen dollars (\$4,716.00) for the wastewater service area.~~

<u>Water Service Area (Zone 1A)</u>	<u>\$3,569- per service unit</u>
<u>Water Service Area (Zone 1B)</u>	<u>\$5,352 per service unit</u>
<u>Water Service Area (Zone 2)</u>	<u>\$7,638per service unit</u>
<u>Wastewater Service Area</u>	<u>\$4,716 per service unit</u>

(6) For a new development for which final plat recordation occurred on or after April 1, 2026, or prior to September 15, 1998, or for any new development not subject to this subsection (e), the maximum impact fee per service unit shall be assessed as follows:

Water Service Area Zone 1A	\$1,365.00 per service unit
Water Service Area Zone 1B	\$8,059.75 per service unit
Water Service Area Zone 2	\$9,104.25 per service unit
Pecan Creek Wastewater Service Area	\$8,711.25 per service unit
Hickory Creek Wastewater Service Area	\$9,593.25 per service unit
Clear Creek Wastewater Service Area	\$13,437.00 per service unit

(f) This Schedule 2 sets the collection rate for impact fees as set forth in subparagraphs (f)(1), ~~(f)(2) and (f)(3)~~ through (f)(6) below:

(1) Except as provided in paragraphs (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

Water Service Area	\$2,044 per service unit
Wastewater Service Area	\$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

Water Service Area (Zone 1)	\$3,155 per service unit
Wastewater Service Area (Zone 1)	\$1,703 per service unit
Wastewater Service Area (Zone 2)	\$2614 per service unit

- (43) 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

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

- (45) 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

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

- (5) For a new development for which final plat recordation occurred on or after January 15, 2019, but before April 1, 2026, and for which no new service units have been added, impact fees shall be collected as follows:

<u>Water Service Area (Zone 1A)</u>	<u>\$3,569 per service unit</u>
<u>Water Service Area (Zone 1B)</u>	<u>\$5,352 per service unit</u>
<u>Water Service Area (Zone 2)</u>	<u>\$7,638 per service unit</u>
<u>Wastewater Service Area</u>	<u>\$4,716 per service unit</u>

(6) For a new development for which final plat recordation occurred on or after April 1, 2026, and for which no new service units have been added, impact fees shall be collected as follows:

<u>Water Service Area Zone 1A</u>	<u>\$1,365.00 per service unit</u>
<u>Water Service Area Zone 1B</u>	<u>\$8,059.75 per service unit</u>
<u>Water Service Area Zone 2</u>	<u>\$9,104.25 per service unit</u>
<u>Pecan Creek Wastewater Service Area</u>	<u>\$8,711.25 per service unit</u>
<u>Hickory Creek Wastewater Service Area</u>	<u>\$9,593.25 per service unit</u>
<u>Clear Creek Wastewater Service Area</u>	<u>\$13,437.00 per service unit</u>

Provided, however, if the service unit is a "small residential housing unit" as defined herein, which consists of a residence of less than one thousand three hundred (1,300) square feet, which is also located on a lot of less than six thousand (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.

(g) For land for which a plat was recorded prior to September 15, 1998, and for which no replats have been recorded, and for which no new service units have been added, the assessment shall be the amount of the maximum impact fee per service unit in effect, as set forth in Schedule 1 on September 15, 1998.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 article, 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.

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- (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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 V.T.C.A. Local Government Code Ch. 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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 V.T.C.A. Local Government Code § 395.025(d) which states that V.T.C.A. Finance Code § 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

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- (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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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 V.T.C.A. Local Government Code Ch. 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 ~~V.T.C.A.~~Texas. Local Government Code § 395.0575.
- (d) The city may amend ~~by resolution the Land Use and Service Unit/SFE~~ Equivalency Table (Exhibit B Appendix C), 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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

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.

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4, 11-19-13; Ord. No. 2019-008, § 4, 1-15-19)

Sec. 26-231. Conflicting ordinances.

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

(Ord. No. 2004-183, § 4, 7-20-04; Ord. No. 2008-156, § 4, 7-15-08; Ord. No. 2013-326, § 4(Exh. A), 11-19-13; Ord. No. 2018-008, § 4, 1-15-19)

Sec. 26-232. Reserved.

Sec. 26-233. Water conservation and drought contingency plan.

- (a) **Adoption of plans.** The Water Conservation and Drought Contingency Plan of the City adopted dated April 19, 2005, and the previous amendment thereto adopted by ordinance dated May 2, 2006, and the "City of Denton—Water Conservation and Drought Contingency Plan—April 2009" are hereby adopted by reference herein; and the attached "City of Denton—Water Conservation and Drought Contingency Plan (updated February 2012)" is hereby added to, incorporated by reference herewith, being attached as Exhibit "A" hereto, and made a part of this Code of Ordinances for all purposes, as to its Sections 6.6 and 6.7, as if fully set forth herein (hereafter collectively referred to as the "plan").
- (b) **Surcharges.** In addition to the penalties set forth in section 26-234 below, the surcharge penalties of twenty (20) percent for commercial, industrial, and residential customers may be imposed in accordance with the water conservation and drought contingency plan:
- (c) **Authority.** The city manager and assistant city manager for utilities are authorized to implement measures prescribed and required by this section and by the water conservation and drought contingency plan

approved by the city council. The assistant city manager for utilities is authorized to enforce the measures implemented and to promulgate regulations not in conflict with this section or with state and federal laws in aid of enforcement.

- (d) *Implementation of emergency order.* The assistant city manager for utilities, upon determination that the conditions for a water emergency exist, may take the actions indicated under the water conservation and drought contingency plan, and shall advise the city manager. The city manager may order that the appropriate state of emergency response, as detailed in the water conservation and drought contingency plan, be implemented. To be effective, the order must be:
 - (1) Made by public announcement via electronic media; and
 - (2) Published in a newspaper of general circulation of the city within twenty-four (24) hours after the public announcement, which order becomes effective immediately upon publication.
- (e) *Duration of the order; change; extension.* All initiated actions will remain in effect until the conditions that triggered the order have been eliminated or as otherwise provided in the water conservation and drought contingency plan. Upon recommendation of the assistant city manager for utilities, the city manager may terminate, upgrade, or downgrade the state of emergency in accordance with the requirements of the water conservation and drought contingency plan. Any change in the order must be made in the same manner prescribed in subsection (d) for implementing an emergency order.
- (f) *Wholesale service to customers outside the city.* The assistant city manager for utilities shall notify customers receiving wholesale water service from the city when any stage of the water conservation and drought contingency plan has been initiated or terminated in case of pro-rata water allocations. The assistant city manager for utilities may restrict service to customers outside the city, as permitted under contract and state law.
- (g) *Authority under other laws.* Nothing in this section shall be construed to limit the authority of the mayor, the city council, or the city manager to take emergency action or to seek emergency relief under chapter 9, "emergency management" or under the provisions of any applicable state or federal laws.

(Ord. No. 2005-121, § 1, 4-19-05; Ord. No. 2006-127, § 1, 5-2-06; Ord. No. 2012-064, § 2, 3-6-12)

Sec. 26-234. Criminal and civil penalties.

- (a) A person commits an offense if he or she knowingly makes, causes, or permits a use of water contrary to the measures implemented in the water conservation and drought contingency plan, as amended. For purposes of this section, it is presumed that a person has knowingly made, caused, or permitted a use of water contrary to the measures implemented if the mandatory measures have been implemented according to the Plan and any one of the following conditions apply:
 - (1) The plan prohibits the manner of use; or
 - (2) The amount of water used exceeds the amount allowed by the plan; or
 - (3) The amount of use or the amount used violates the terms and conditions of a compliance agreement following a variance granted by the assistant city manager for utilities; or
 - (4) The violation of any provision of the "Land and Landscape Irrigation and Water Waste Ordinance".
- (b) The following penalty shall apply during stages 3 and 4 of the water conservation and drought contingency plan, as amended. Any person who knowingly violates any provision of this article shall, upon conviction, be punished by a fine not to exceed two thousand dollars (\$2,000.00). Each day that one or more provisions in this plan is violated shall be considered to be a separate offense.

(c) The city attorney is authorized to commence an action for appropriate legal or equitable relief in a court of competent jurisdiction in addition to the penalty mentioned in the above subsection (b). Such additional relief may include:

- (1) An injunction to prevent a violation of this chapter, or of the water conservation and drought contingency plan, as amended;
- (2) Recovery for expenses incurred by the city in responding to a violation of this chapter, or of the water conservation and drought contingency plan, as amended;
- (3) A civil fine of up to one thousand dollars (\$1,000.00) per day for violations of section 26-233 or for violations of the water conservation and drought contingency plan, as amended;
- (4) All other damages, costs, remedies and legal processes to which the city may be entitled.

(Ord. No. 2005-121, § 1, 4-19-05; Ord. No. 2006-127, § 1, 5-2-06; Ord. No. 2012-064, § 2, 3-6-12)