

ORDINANCE NO. 3111

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE CODE OF THE CITY OF MESQUITE BY ADDING A NEW CHAPTER 7.5; PROVIDING FOR THE ESTABLISHMENT OF PROCEDURES FOR ASSESSING AND COLLECTING IMPACT FEES; ESTABLISHING PROVISIONS FOR CREDITS AGAINST IMPACT FEES; PROVIDING AN APPEALS PROCEDURE; ADOPTING CAPITAL IMPROVEMENTS PLANS AND IMPACT FEES FOR ROADWAY, WATER, AND WASTEWATER FACILITIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code, Chapter 395, authorizes impact fees for water, wastewater and roadway facilities; and

WHEREAS, the City of Mesquite has appointed a Capital Improvements Advisory Committee to advise the City Council concerning adoption of land use assumptions, impact fee capital improvements plans and impact fees for roadway, water, and wastewater facilities; and

WHEREAS, the City has retained consultants to prepare land use assumptions, impact fee capital improvements plans, impact fees and ordinance provisions in order to meet the requirements of Chapter 395; and

WHEREAS, the Advisory Committee recommended for approval and City Council adopted land use assumptions for water and wastewater facilities and land use assumptions for roadway facilities on May 6, 1996, by Resolution No. 15-96; and

WHEREAS, on June 3, 1996, City Council passed Resolution No. 17-96, establishing a public hearing date of July 15, 1996, for consideration of adoption of capital improvements plans and impact fees for roadway, water and wastewater facilities; and

WHEREAS, notice has been published, public hearings held and the written recommendations of the Advisory Committee received concerning impact fee capital improvements plans for roadway, water, and wastewater facilities, as prepared by a qualified professional engineer; and

WHEREAS, the City Council and the Capital Improvements Advisory Committee have held public hearings and meetings to receive input on and answer any questions regarding the proposed impact fees and capital improvements plans; and

WHEREAS, notice was properly made in accordance with Chapter 395 for the public hearing before City Council on July 15, 1996; and

WHEREAS, such public hearing being held on July 15, 1996, and being continued until August 19, 1996, and all interested members of the public having been heard on such occasions; and

Impact Fee Ordinance
City of Mesquite--I

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City to adopt such impact fee capital improvements plans, and impact fees for water and wastewater facilities, and to adopt such impact fee capital improvements plans, and impact fees for roadway facilities;

WHEREAS, the City Council finds that policies related to economic development and affordable housing must also be taken into consideration in establishing initial fees to be collected, particularly for roadway fees;

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

SECTION 1. That the Code of the City of Mesquite hereby is amended by adding a new Chapter 7.5 concerning the adoption, imposition and administration of impact fees for water, wastewater and roadway facilities, to read as follows. All other Chapters and provisions contained in the Code to remain in full force and effect.

**Chapter 7.5
IMPACT FEES**

**ARTICLE I
GENERAL PROVISIONS**

Section 7.5-1. Short Title

This chapter shall be known and cited as the Mesquite Impact Fee Regulations.

Section 7.5-2. Purpose and Policy

This Chapter is intended to assure the provision of adequate public facilities for roadway, water, and wastewater facilities to serve new development by requiring each such development to pay its pro rata share of the costs of such improvements necessitated by and attributable to such new development, in conformance with the provisions of Texas Local Government Code, Chapter 395.

Section 7.5-3. Authority

This Chapter is adopted pursuant to Texas Local Government Code, Chapter 395 (Vernon 1996 Supp.) and pursuant to the Mesquite City Charter. The provisions of this Chapter shall not be construed to limit the power of the City to utilize other methods authorized under state law or pursuant to other City powers to accomplish the purposes set forth herein, either in substitution for or in conjunction with this Chapter. Administrative guidelines may be developed and adopted by resolution to implement and administer this Chapter.

Section 7.5-4. Definitions

- (1) *Advisory Committee* means the capital improvements advisory committee established by the City for purposes of reviewing and making recommendations to the City Council on adoption and amendment of the City's impact fee program.
- (2) *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 off-site, or within or on the perimeter of the development site.
- (3) *Assessment* means the determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this Chapter.
- (4) *Building permit* means written permission issued by the City for the construction of, repair, alteration or addition to a structure.
- (5) *Capital improvement* means either a roadway facility, a water facility or a wastewater facility, with a life expectancy of three or more years, to be owned and operated by or on behalf of the City.
- (6) *City* means the City of Mesquite, Texas.
- (7) *City Council (Council)* means the governing body of the City of Mesquite.
- (8) *Comprehensive Plan* means the comprehensive long-range plan, adopted by the City Council, which is intended to guide growth and development of the City which includes analysis, recommendations and proposals for the City regarding such topics as population, economy, housing, transportation, community facilities and land use.
- (9) *Credit* means the amount of the reduction of an impact fee due, determined under this Chapter or pursuant to administrative guidelines, that is equivalent to the value of area-related facilities provided by a property owner pursuant to the City's subdivision or zoning regulations or requirements, for the same type of facility.
- (10) *Director* means the Director of Community Development or other City official designated by the City Manager to administer these regulations.
- (11) *Facility expansion* means either a roadway facility expansion, a water facility expansion or a wastewater facility expansion.
- (12) *Final plat approval* means authorization by the City Planning and Zoning Commission that the final map of a proposed subdivision meets all City standards and conditions in accordance with the City's subdivision regulations and that the plat may be recorded in the office of the County Clerk of Dallas County.

- (13) *Impact fee* means either a fee for roadway facilities, a fee for water facilities or a fee for wastewater facilities imposed on new development by the City pursuant to this Chapter in order to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to such new development. *Impact fees* do not include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements, imposed pursuant to the City's zoning or subdivision regulations, nor do impact fees include fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or wastewater mains or lines.
- (14) *Impact fee capital improvements plan* means either a roadway capital improvements plan, a water capital improvements plan or a wastewater capital improvements plan adopted or revised pursuant to these impact fee regulations.
- (15) *Land use assumptions* means the projections of population and employment growth and associated changes in land uses, densities and intensities over at least a ten-year period, as adopted by the City and as may be amended from time to time, upon which the capital improvements plans are based.
- (16) *Land use equivalency table* means a table converting the demands for capital improvements generated by various land uses to numbers of service units, as may be amended from time to time.
- (17) *Living Unit Equivalent (LUE)* means the standard unit of measure for calculating service units to establish equivalency among and within various water and wastewater 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 five-eighths inch ($\frac{5}{8}$ " diameter simple water meter, using American Water Works Association C700-C703 standards.
- (18) *New development* means a project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which has the effect of increasing the requirements for capital improvements or facility expansions, measured by the number of service units to be generated by such activity, and which requires either the approval of a plat pursuant to the City's subdivision regulations, the issuance of a building permit, or the purchase of a new water or wastewater tap, and which has not been exempted from these regulations by provisions herein.
- (19) *Plat* has the meaning given the term in the City's subdivision regulations. *Plat* includes replat.
- (20) *Platting* means the process by which land is subdivided according to a detailed plan of the development of the property, in accordance with the meaning of the term "plat" in the City's subdivision regulations. *Platting* includes replatting.

- (21) *Property owner* means any person, corporation, legal entity or agent thereof having a legal or equitable interest in the land for which an impact fee becomes due. *Property owner* includes the developer for the new development.
- (22) *Recoupment* means the imposition of an impact fee to reimburse the City for capital improvements which the City has previously oversized to serve new development.
- (23) *Roadway* means any freeway, expressway, principal or minor arterial or collector roadways designated in the City's adopted Thoroughfare Plan, as may be amended from time to time. *Roadway* does not include any roadway designated as a numbered highway on the official federal or Texas highway system.
- (24) *Roadway capital improvements plan* means the adopted plan, as may be amended from time to time, which identifies the roadway facilities or roadway expansions and their costs for each road service area, which are necessitated by and which are attributable to new development, for a period not to exceed 10 years, which are to be financed in whole or in part through the imposition of road facilities fees pursuant to this Chapter.
- (25) *Roadway expansion* means the expansion of the capacity of an existing roadway in the City, but does not include the repair, maintenance, modernization, or expansion of an existing roadway to better serve existing development.
- (26) *Roadway facility* means an improvement or appurtenance to a roadway which includes, but is not limited to, rights-of-way, whether conveyed by deed or easement; intersection improvements; traffic signals; turn lanes; drainage facilities associated with the roadway; street lighting or curbs. *Roadway facility* also includes any improvement or appurtenance to an intersection with a roadway officially enumerated in the federal or Texas highway system. *Roadway facility* excludes those improvements or appurtenances to a roadway which are site-related facilities.
- (27) *Service area* means either a roadway service area, a water service area or wastewater service area within the City and, except for roadway facilities, within the City's extraterritorial jurisdiction, within which impact fees for capital improvements or facility expansion may be collected for new development occurring within such area and within which fees so collected will be expended for those types of improvements or expansions identified in the type of capital improvements plan applicable to the service area.
- (28) *Service unit* means, for roadway facilities, a vehicle mile in p.m. peak hour, or, for water and for wastewater facilities, a Living Unit Equivalent (LUE), which serves as the standardized measure of consumption, use or generation attributable to the new unit of development.
- (29) *Site-related facility* means an improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of roadway, water or wastewater facilities to serve the new

development, and which is not included in the impact fees capital improvements plan and for which the property owner is solely responsible under subdivision or other applicable development regulations.

- (30) *Utility connection* means the filing with the City of a written application for a water or wastewater tap and the acceptance of applicable fees by the City.
- (31) *Wastewater facility* means a wastewater interceptor or main, lift station, treatment facility or other facility included within and comprising an integral component of the City's collection and transmission system for wastewater. *Wastewater facility* includes land, easements or structures associated with such facilities. *Wastewater facility* excludes a site-related facility.
- (32) *Wastewater facility expansion* means the expansion of the capacity of any existing wastewater improvement for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing sewer facility to serve existing development.
- (33) *Wastewater capital improvements plan* means the adopted plan, as may be amended from time to time, which identifies the wastewater facilities or wastewater expansions and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed 10 years, and which are to be financed in whole or in part through the imposition of wastewater facilities fees pursuant to this Chapter.
- (34) *Water facility* means a water transmission line or main, pump station, storage tank, water supply facility, treatment facility or other facility included within and comprising an integral component of the City's water storage or distribution system. *Water facility* includes land, easements or structures associated with such facilities. *Water facility* excludes site-related facilities.
- (35) *Water facility expansion* means the expansion of the capacity of any existing water facility for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing water improvement to serve existing development.
- (36) *Water improvements plan* means the adopted plan, as may be amended from time to time, which identifies the water facilities or water expansions and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed 10 years, and which are to be financed in whole or in part through the imposition of water facilities impact fees pursuant to this Chapter.
- (37) *Water meter* means a device for measuring the flow of water to a development, whether for domestic or for irrigation purposes.

Section 7.5-5. Applicability

The provisions of this Chapter concerning water and wastewater impact fees apply to all new, non-exempt development within the corporate boundaries of the City and within its extraterritorial jurisdiction and in any area outside the City or its extraterritorial jurisdiction for which an intergovernmental cooperation agreement has been executed authorizing the City to collect and expend impact fees in accordance with this Chapter. The provisions of this Chapter concerning roadway impact fees apply only within the corporate boundaries of the City. The provisions of this Chapter apply uniformly within each service area.

Section 7.5-6. Impact Fee as Condition of Development Approval

No final plat for new development shall be approved within the service area without assessment of an impact fee pursuant to these impact fee regulations. No building permit shall be issued or utility connection be made, until the property owner has paid the impact fee imposed by and calculated herein, unless a different time and/or method of payment has been authorized by agreement between the City and the property owner.

Section 7.5-7. Service Unit Determination

- A. The number of service units for a new development shall be determined by Tables 1 and 2, the Land Use Equivalency Tables for Water and Wasterwater Facilities and Roadway Facilities, respectfully.
- B. In determining the number of service units, the following rules shall apply:
 - 1. Each new free standing building requires a new water meter, except as provided in Subsection (2).
 - 2. Where a site is redeveloped (clearance and reconstruction), no new LUEs will be attributed to such redevelopment, provided that the water meter is of the same size as the development previously occupying the site. If meter size is increased, the number of LUEs will be based upon the increase in capacity of the meter.
 - 3. Existing buildings or land uses may be expanded using existing meter service. No LUEs will be attributed to such development if the water meter size remains the same. If the meter size is increased, the number LUEs will be based upon the increase in capacity of the meter.
 - 4. Calculation of the number of service units for water and wastewater impact fees generally shall be the same, except that no LUEs for wastewater impact fees will be attributed to irrigation meters.
 - 5. If an existing structure or use does not require a water meter for water or wastewater service, or does not generate the need for water or wastewater service, no LUEs will be attributable to such use or structure.

6. If a fire demand meter (tap) is purchased for a property, the meter size utilized to calculate the number of LUEs shall be the dimension of the portion of the fire demand meter which reflects the meter size which would provide only potable service to the property. The reduced meter size shall then be utilized to calculate the number of LUEs.
 - a. The meter types used to calculate the number of LUEs shall be simple, compound or turbine meters.
 - b. To avoid the use of fire flow volumes for potable usage, the owner of any property for which a fire demand meter is purchased shall be required to execute a restrictive covenant on a form approved by the City Attorney, which covenant shall state that use of the fire demand meter for potable water needs in excess of that determined in establishing the meter size for impact fees shall be cause for collection of additional impact fees up to the actual size of the fire demand meter. Said covenant shall be executed prior to the purchase of the fire demand meter and shall be filed in the deed records of the County.
- C. The land use equivalency table may be amended from time to time utilizing the amendment procedure set forth in Section 7.5-17.

Section 7.5-8. Impact Fees per Service Unit

- A. The maximum impact fee per service unit for each service area shall be computed by dividing the total costs of capital improvements in the service area identified in the impact fee capital improvements plan for that category of capital improvements by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area. Maximum impact fees per service unit for each service area shall be established by category of capital improvements and shall be as set forth in Schedule 1, Assessment Rates.
- B. The impact fee per service unit which is to be paid by each new development within a service area shall be that established by the City Council, as may be amended from time to time, and shall be an amount less than or equal to the maximum impact fee per service unit established in Subsection A. Impact fees which are to be paid shall be as set forth in Schedule 2, Collection Rates.
- C. Impact fee Schedules 1 and 2 may be amended from time to time utilizing the amendment procedure set forth in Section 7.5-17.

Section 7.5-9. Assessment of Impact Fees

- A. Assessment of the impact fee for any new development 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 has received final plat

approval prior to the effective date of this ordinance, and for which no replatting is necessary pursuant to the City's subdivision regulations prior to development, assessment shall occur at the time application is made for the building permit or utility connection, whichever occurs first, and shall be the amount of the maximum impact fee per service unit then 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 after the effective date of this ordinance, or for which replatting results in an increase in the number of service units after such date, assessment shall be at the time of final plat approval, and shall be the amount of the maximum impact fee per service unit then in effect, as set forth in Schedule 1.

B. Following initial assessment of the impact fee for a new development pursuant to Subsection A, the amount of the maximum impact fee per service unit for that development cannot be increased, unless the owner proposes to change the approved development by the submission of a new development application, in which case the impact fee will be reassessed at the Schedule 1 rate then in effect for such additional service units.

C. Following the lapse or expiration of approval of a new development, a new assessment shall be performed at the time a new application for such development is filed.

Section 7.5-10. Calculation of Impact Fees

A. At the time of application for a building permit or the utility connection for new developments, the City shall compute the impact fees due for the new development in the following manner:

1. The amount of each impact fee due shall be determined by multiplying the number of service units generated by the new development by the impact fee due per service unit for the service area using Schedule 2. The number of service units shall be determined according to Section 7.5-7.

2. The amount of each impact fee due shall be reduced by any allowable credits for that category of capital improvements, in the manner provided in Section 7.5-12.

B. The amount of each impact fee due for a new development shall not exceed an amount computed by multiplying the maximum impact fee per service unit under Schedule 1 by the number of service units generated by the development.

C. Whenever the property owner proposes to increase the number of service units for a development, the additional impact fees collected for such new service units shall be determined by using Schedule 2 then in effect and such additional fee shall be collected either prior to or at the time of issuance of a new building permit, or prior to or at the time of enlargement of the connection to the City's water or wastewater system.

Section 7.5-11. Collection of Impact Fees

- A. For all new developments, the impact fees due shall be collected at the time of application for a building permit, or at the time of application for a utility connection, whichever occurs first, unless an agreement between the developer and the City has been executed providing for a different time of payment. If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees due shall be computed using Schedule 2 then in effect, and previous payments of impact fees shall be credited against the new fees due.
- B. No impact fee may be collected for a new development for which a final plat was approved prior to the effective date of these regulations and for which a building permit is issued within one year of such effective date; provided that a building permit that expires or is withdrawn for such development shall be subject to collection of impact fees.

Section 7.5-12. Credits Against Impact Fees

- A. A property owner who constructs or dedicates an area related facility or advances funds for the construction of an area related facility may reduce impact fees due for the new development for that category of capital improvement by the value of such improvement or contribution, pursuant to rules established in this section or pursuant to administrative guidelines promulgated by the City. The credit shall be associated with the plat of the property that is to be served by the capital improvement constructed.
- B. All offsets and credits against impact fees shall be based upon standards promulgated by the City, which may be adopted as administrative guidelines, including the following standards:
 - 1. No credit shall be given for the dedication or construction of site-related facilities.
 - 2. No credit 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.
 - 3. The unit costs used to calculate credits shall not exceed those assumed for the capital improvements included in the impact fees capital improvements plan for the category of facility for which the impact fee is imposed.
 - 4. No credit or offset shall be given for an area-related facility which is not identified within the applicable impact fees capital improvements plan, unless the City agrees that such improvement supplies capacity to new developments other than the development paying the impact fee and provisions for credits are incorporated in an agreement for capital improvements pursuant to Section 7.5-19.

- 5. In no event will the City reimburse the property owner or developer for a credit when no impact fees for the new development can be collected pursuant to these impact fee regulations or for any amount exceeding the total impact fees due for the development for that category of capital improvements, unless otherwise agreed to by the City.
- 6. No credits shall be given where the City participates in the costs of the capital improvements, pursuant to Section E.
- C. Credits created pursuant to this ordinance shall expire within 10 years from the date the credit was created. Credits for prior subdivision improvement requirements before the effective date of this ordinance shall expire within 10 years from the date credit is given under this ordinance.
- D. An applicant for new development shall apply for a credit against impact fees due for the development either at the time of application for final plat approval or at the time of building permit application, unless the City agrees to a different time. The applicant shall file a petition for credits with the City on a form provided for such purpose. The City must provide the applicant, in writing, with a decision on the credit request, specifying the maximum value of the credit which may be applied against an impact fee.
- E. After the effective date of this ordinance, credits for construction of capital improvements to be applied against impact fees due shall be determined in accordance with an agreement for capital improvements pursuant to Section 7.5-19. The agreement required may provide for participation by the City in the costs of the capital improvement to be constructed by the property owner, as provided in the City's subdivision regulations. The amount of any credit shall be reduced by the amount of the City's participation.
- F. A credit associated with a plat shall be applied to reduce impact fees at the time of application for the first building permit or at the time of application for the first utility connection for the property and, thereafter, to all subsequently issued building permits or utility connections, until the credit is exhausted, unless the City agrees otherwise.

Section 7.5-13. Establishment of Accounts

- A. The City shall establish an account to which interest is allocated for each service area for each type of capital facility for which an impact fee is imposed pursuant to this Chapter. Each impact fee collected within the service area shall be deposited in such account.
- B. Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in Section 7.5-14.
- C. The City shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in Section 7.5-14. Disbursement of funds shall be authorized by the City at such times as are

reasonably necessary to carry out the purposes and intent of these regulations; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date impact fees are deposited into the account.

- D. The City shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended within each service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours. The City may establish a fee for copying services.

Section 7.5-14. Use of Proceeds of Impact Fee Accounts

- A. The impact fees collected for each service area pursuant to these regulations may be used to finance or to recoup the costs of any capital improvements or facility expansion identified in the applicable capital improvements plan for the service area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees). 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 facility expansion. Impact fees also may be used to pay fees actually contracted to be paid to an independent qualified engineer or financial consultant for preparation of or updating the impact fee capital improvements plan.
- B. Impact fees collected pursuant to this ordinance 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 in the applicable capital improvements plan;
 - (2) repair, operation, or maintenance of existing or new capital improvements or facility expansion;
 - (3) upgrade, expansion or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
 - (4) upgrade, expansion, or replacement of existing capital improvements to provide better service to 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.

Section 7.5-15. Appeals

A. The property owner or applicant for new development may appeal the following administrative decisions to the City Council:

- (1) the applicability of an impact fee to the development;
- (2) the amount of the impact fee due;
- (3) the availability of, the amount of, or the expiration of a credit;
- (4) the application of a credit against an impact fee due;
- (5) the amount of a refund due, if any; or
- (6) the amount of the impact fee or credit in proportion to the demand created by or the benefit received by the new development.

B. The appellant must file a written notice of appeal with the City within thirty (30) days following the decision. If the notice of appeal is accompanied by a payment or other security satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application or utility connection may be processed while the appeal is pending.

C. The burden of proof shall be on the appellant to demonstrate either that the City has not followed the impact fee ordinance or administrative guidelines, or that the amount of the impact fee or credit is not in proportion to the demand created by or the benefit received by the new development.

D. The City Council may grant such relief as is appropriate if it sustains the appeal of the applicant on one or more grounds.

Section 7.5-16. Refunds and Rebates

A. Upon application, any impact fee or portion thereof collected pursuant to these regulations, which has not been expended within the service area within ten (10) years from the date of payment, shall be refunded to the record owner of the property for which the impact fee was 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 Article 1.03, Title 79, Revised Statutes (Article 5069-1.03, Vernon's Texas Civil Statutes), or its successor statute. The application for refund pursuant to this section shall be submitted within sixty (60) days after the expiration of the ten-year period for expenditure of the fee. An impact fee shall be considered expended on a first-in, first out basis.

B. An impact fee collected pursuant to these regulations shall also be considered expended if the total expenditures for capital improvements or facility expansion authorized in Section 7.5-14 within the service area within ten (10) years following the date of payment

exceeds the total fees collected within the service area for such improvements or expansions during such period.

C. Upon application, any impact fee for water and wastewater facilities or portion thereof collected pursuant to these regulations shall be refunded 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 later than five (5) years from the date of fee payment.

D. If a refund is due pursuant to subsections A, B, or C, the City shall divide the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record owner shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

E. Upon completion of all the capital improvements or facility expansion identified in the capital improvements plan for the service area, the City shall recalculate the maximum impact fee per service unit using the actual costs for the improvements or expansions. If the maximum impact fee per service unit based on actual cost is less than the impact fee per service unit paid, the City shall refund the difference, if such difference exceeds the impact fee paid by more than 10%. If the difference is less than 10%, no refund shall be due. The refund to the record owner shall be calculated by multiplying such difference by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

F. No refunds or credits against impact fees due shall be given for decreasing the number or size of water meters serving a development, except as provided herein. If a tract of land for which an impact fee has been paid is replatted, resulting in a reduction in the number of service units, and the new impact fee to be collected is less than that paid, the City shall refund the difference, provided that water meters to serve the development have not been installed.

F. If the building permit for a new development for which an impact fee has been paid has expired, no utility connections for that category of capital improvements have been made to the development, and a modified or new application has not been filed within six months of such expiration, the City shall, upon written application, rebate the amount of the impact fee to the record owner of the property for which the impact fee was paid.

If no application for rebate pursuant to this subsection has been filed within this period, no rebate shall become due.

Section 7.5-17. Updates to Plan and Revision of Fees

- A. The City shall update its land use assumptions and capital improvements plans at least every three (3) years, commencing 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 Tables 1 and 2, the Land Use Equivalency Tables, 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.

Section 7.5-18. Functions of Advisory Committee

- A. The Advisory Committee shall perform the following functions:
 - 1. advise and assist the City in adopting land use assumptions;
 - 2. review the capital improvements plans and file written comments thereon.
 - 3. monitor and evaluate implementation of the capital improvements plans;
 - 4. advise the City of the need to update or revise the land use assumptions, capital improvements plans and impact fees; and
 - 5. file a semiannual report evaluating the progress of the capital improvements plans and identifying perceived inequities in implementing the plans or administering the impact fees.
- B. The City shall make available to the Advisory Committee any professional reports prepared in the development or implementation of the capital improvements plans.

Section 7.5-19. Agreement for Capital Improvements

- A. An owner of a new development may dedicate, construct, or finance a capital improvement or facility expansion designated in the capital improvements plan, if required or authorized by the City, by entering into an agreement with the City prior to fee collection 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 Director shall review the improvement plan, verify costs and time schedules, determine if the improvement is contained in the CIP, and determine the amount of the credit to be given against impact fees due for the development before submitting the proposed agreement to the City Council for approval.
- B. The City and such owner either may agree that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development, or they may agree that the City shall reimburse the owner for such costs from impact fees paid from other new developments which will use such capital improvements or facility expansions, or from other funding sources. In the event that the City elects to reimburse an owner for the dedication, construction or financing of a capital improvement or facility expansion designated in the capital improvements plan, the terms of reimbursement shall be incorporated in the agreement required by Subsection A.

Section 7.5-20. Use of Other Financing Mechanisms

- A. The City may finance capital improvements or facility expansion designated in the capital improvements plan through the issuance of bonds, through the formation of public utility 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, in addition to the use of impact fees.
- B. Except as herein otherwise provided, 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 a part of impact fees due for a new development pursuant to duly adopted criteria.

Section 7.5-21. Impact Fee as Additional and Supplemental Regulation

- A. Impact fees established by these regulations are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land or the issuance of building permits, the sale of water or wastewater taps, or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of City's comprehensive land use plan, the capital improvements plan, the zoning ordinance, subdivision regulations and other City policies, ordinances and resolutions by which the

City seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

- B. This ordinance shall not affect, in any manner, the permissible use of property, density of development, design, and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Section 7.5-22. Relief procedures

- A. Any person who has paid an impact fee or an owner of land upon which an impact fee has been paid may petition the City Council to determine whether any duty required by this ordinance has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the duty be performed within sixty days of the request. If the City Council determines that the duty is required pursuant to the ordinance and is late in being performed, it shall cause the duty to commence within sixty (60) days of the date of the request and to continue until completion. This subsection is not applicable to matters which may be appealed pursuant to Section 7.5-15.
- B. The City Council may grant a variance from any requirement of this ordinance, upon written request by a developer or owner of property subject to the ordinance, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property. If the City Council grants a variance to the amount of the impact fee due for a new development under this subsection, it shall cause to be appropriated from other City funds the amount of the reduction in the impact fee to the account for the service area in which the property is located.
- C. The City Council may authorize abatement from payment of impact fees in whole or in part upon a written request by the property owner or developer subject to the ordinance, following a public hearing and upon a finding that such abatement will advance significant economic development objectives as may be hereafter set forth in administrative guidelines adopted by resolution, and is in the best interests of the public health, safety, welfare and morals.

**ARTICLE II
LAND USE ASSUMPTIONS**

Section 7.5-23. Land Use Assumptions.

- A. The Land Use Assumptions for the City of Mesquite, adopted by Resolution 15-96 on May 6, 1996, are incorporated by reference herein.

- B. The Land Use Assumptions may be amended from time to time, or new land use assumptions may be adopted, pursuant to the procedures in Section 7.5-17.

**ARTICLE III.
WATER FACILITIES IMPACT FEES**

Section 7.5-24. Water Service Area

- A. There is hereby established a water service area, constituting all of the land within City limits and within the City's extraterritorial jurisdiction, as depicted in the Land Use Assumptions incorporated herein by reference.
- B. The boundaries of the water service area may be amended from time to time, or new water benefit areas may be delineated, pursuant to the procedures in Section 7.5-17.

Section 7.5-25. Water Capital Improvements Plan

- A. The Water Capital Improvements Plan for the City of Mesquite, dated May 17, 1996, is hereby adopted and incorporated by reference herein.
- B. The Water Capital Improvements Plan may be amended from time to time, pursuant to the procedures in Section 7.5-17.

Section 7.5-26. Water Facilities Impact Fees

- A. The maximum impact fees per service unit for water facilities are hereby adopted as set out in Schedule 1.
- B. The impact fees per service unit for water facilities, which are to be paid by each new development, are hereby adopted as set out in Schedule 2.
- C. The impact fees per service unit for water facilities may be amended from time to time, pursuant to the procedures in Section 7.5-17.

**ARTICLE IV
WASTEWATER FACILITIES IMPACT FEES.**

Section 7.5-27. Wastewater Service Area

- A. There is hereby established a wastewater service area, constituting all of the land within City limits and within the City's extraterritorial jurisdiction, and all of the land to be provided with wastewater service in the North Mesquite Drainage Basin, as depicted in the Land Use Assumptions incorporated herein by reference.

- B. The boundaries of the wastewater service area may be amended from time to time, or new wastewater service areas may be delineated, pursuant to the procedures in Section 7.5-17.

Section 7.5-28. Wastewater Capital Improvements Plan

- A. The Wastewater Capital Improvements Plan for the City of Mesquite, dated May 17, 1996, is hereby adopted and incorporated by reference herein.
- B. The Wastewater Capital Improvements Plan may be amended from time to time, pursuant to the procedures in Section 7.5-17.

Section 7.5-29. Wastewater Facilities Impact Fees

- A. The maximum impact fees per service unit for wastewater facilities are hereby adopted as set out in Schedule 1.
- B. The impact fees per service unit for wastewater facilities, which are to be paid by each new development, are hereby adopted as set out in Schedule 2.
- C. The impact fees per service unit for wastewater facilities may be amended from time to time, pursuant to the procedures in Section 7.5-17.

**ARTICLE V
ROADWAY FACILITIES IMPACT FEES**

Section 7.5-30. Roadway Service Areas

- A. There are hereby established fifteen (15) roadway service areas, collectively constituting all of the land within City boundaries, as depicted in the Land Use Assumptions incorporated herein by reference.
- B. The boundaries of the roadway service areas may be amended from time to time, or new roadway service areas may be delineated, pursuant to the procedures in Section 7.5-17.

Section 7.5-31. Roadway Capital Improvements Plan

- A. The Roadway Capital Improvements Plan for the City of Mesquite, dated May 17, 1996, is hereby adopted and incorporated by reference herein.
- B. The Roadway Capital Improvements Plan may be amended from time to time, pursuant to the procedures in Section 7.5-17.

Section 7.5-32. Roadway Facilities Impact Fees

- A. The maximum impact fees per service unit for roadway facilities are hereby adopted as set out in Schedule 1.
- B. The impact fees per service unit for roadway facilities, which are to be paid by each new development, are hereby adopted as set out in Schedule 2.
- C. The impact fees per service unit for roadway facilities may be amended from time to time, pursuant to the procedures in Section 7.5-17.

SECTION 2. That should any paragraph, sentence, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal, or unconstitutional, and shall not affect the validity of the Code of the City of Mesquite as a whole.

SECTION 3. That any person, firm or corporation violating any of the provisions of this ordinance, shall be guilty of a misdemeanor and upon final conviction therefore shall be fined in a sum not to exceed five hundred dollars (\$500.00). Each and every day such violation continues shall constitute a separate offense and shall be punishable as such hereunder.

SECTION 4. That all ordinances or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 5. That this ordinance shall take effect on March 1, 1997.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of September, A.D., 1996.

CITY OF MESQUITE

Cathy Ray
Cathy Ray, Mayor

ATTEST:

Ellen Williams
Ellen Williams
City Secretary

APPROVED:

B.J. Smith
B.J. Smith
City Attorney

Schedule 1 Assessment Rates

City of Mesquite

Maximum Rates for Water Facility Impact Fees

<u>Service Area*</u>	<u>Maximum Fee Per Service Unit</u>
City of Mesquite	\$1,020.57

Maximum Rates for Wastewater Facility Impact Fees

<u>Service Area*</u>	<u>Maximum Fee Per Service Unit</u>
City of Mesquite and North Mesquite Drainage Basin Service Area	\$714.25

Maximum Rates for Roadway Facility Impact Fees

<u>Service Area*</u>	<u>Maximum Fee Per Service Unit</u>
1	\$ 963.00
2	\$ 664.00
3	\$ 477.00
4	\$ 929.00
5	\$1,393.00
6	\$ 436.00
7	\$ 302.00
8	\$ 933.00
9	\$ 853.00
10	\$1,328.00
11	\$1,448.00
12	\$1,399.00
13	\$1,246.00
14	\$1,287.00
15	\$ 471.00

* The entire City of Mesquite constitutes one (1) service area for purposes of water facility impact fees. The entire City of Mesquite and the North Mesquite Drainage Basin Service Area constitute one (1) service area for purposes of wastewater facility impact fees. Consult the service area map to determine the service areas for roadway facility impact fees.

Schedule 2 Collection Rates

City of Mesquite Collection Rates for Water Facility Impact Fees

<u>Service Area*</u>	<u>Fee Per Service Unit</u>
City of Mesquite	\$408.00

Collection Rates for Wastewater Facility Impact Fees

<u>Service Area*</u>	<u>Fee Per Service Unit</u>
City of Mesquite and North Mesquite Drainage Basin Service Area	\$286.00

Collection Rates for Roadway Facility Impact Fees

<u>Service Area*</u>	<u>Fee Per Service Unit for</u>	
	<u>Residential Uses</u>	<u>Non-Residential Uses</u>
1	\$120.80	\$30.20
2	\$120.80	\$30.20
3	\$120.80	\$30.20
4	\$120.80	\$30.20
5	\$120.80	\$30.20
6	\$120.80	\$30.20
7	\$120.80	\$30.20
8	\$120.80	\$30.20
9	\$120.80	\$30.20
10	\$120.80	\$30.20
11	\$120.80	\$30.20
12	\$120.80	\$30.20
13	\$120.80	\$30.20
14	\$120.80	\$30.20
15	\$120.80	\$30.20

* The entire City of Mesquite constitutes one (1) service area for purposes of water facility impact fees. The entire City of Mesquite and the North Mesquite Drainage Basin Service Area constitute one (1) service area for purposes of wastewater facility impact fees. Consult the service area map to determine the service areas for roadway facility impact fees.

Table 1
Service Unit Equivalencies
for Various Types and Sizes of Water Meters
(Water and Wastewater Facilities)

Meter Type	Meter Size	Continuous Duty Maximum Rate (gpm)*	Ratio to 5/8-inch Meter	Example of User
Simple	5/8"	10	1.0	Single Family Home Duplex
Simple	3/4"	15	1.5	Convenience Store Clothing Store
Simple	1"	25	2.5	Auto Parts Store Clothing Store
Simple	1-1/2"	50	5.0	Apartment Complex Laundry
Simple Compound Turbine	2" 2" 2"	80 80 100	8.0 8.0 10.0	Trailer Park Car Wash Restaurant
Compound Turbine	3" 3"	160 240	16.0 24.0	Office Building Golf Club Manufacturing
Compound Turbine	4" 4"	250 420	25.0 42.0	Grocery Store Warehouse Food Manufacturing
Compound Turbine	6" 6"	500 920	50.0 92.0	Hotel Pharmaceutical Company
Compound Turbine	8" 8"	800 1,600	80.0 160.0	Shopping Center Air Conditioner Manufacturing
Compound Turbine	10" 10"	1,150 2,500	115.0 250.0	Regional Shopping Mall Electronics Manufacturing

*Source: AWWA Standards C700 - C702

**Table 2
Land Use / Vehicle Mile Equivalencies
(Roadway Facilities)**

Category	Land Use	Development Units (X)	Trip Rate	Trip Length (Mile)	Total Service Units (Veh Mi/Dev Unit)
RESIDENTIAL	Single Family Detached	D.U.	0.95(X)	3.0	2.85
	Townhouse-Condominium	D.U.	0.58(X)	3.0	1.74
	Multifamily	D.U.	0.49(X)	3.0	1.47
	Retirement Community	D.U.	0.28(X)	3.0	0.84
	Others Not Specified*	D.U.	0.95(X)	3.0	2.85
OFFICE	General Office Building	1000 GFA	1.33(X)	3.0	3.99
	Office Park	1000 GFA	1.51(X)	3.0	4.53
	Business Park	1000 GFA	1.48(X)	3.0	4.44
	Others Not Specified*	1000 GFA	1.33(X)	3.0	3.99
COMMERCIAL	General Retail	1000 GFA	1.62(X)	2.3	3.65
	Shopping Center	1000 GLA	2.04(X)	2.3	4.69
	Discount Club	1000 GFA	2.63(X)	2.3	6.05
	Quality Restaurant	1000 GFA	2.07(X)	1.7	3.52
	Fast Food Restaurant	1000 GFA	7.31(X)	1.7	12.43
	High-Turnover Restaurant	1000 GFA	3.61(X)	1.7	6.14
	Convenience Store	1000 GFA	10.01(X)	0.2	2.00
	Service Station	FUEL POS.	2.05(X)	0.2	0.41
	Gas Station w/Convenience Store	FUEL POS.	2.19(X)	0.2	0.44
	Bank	1000 GFA	6.38(X)	1.1	7.02
	Hotel	ROOMS	0.76(X)	2.2	1.67
	Motel	ROOMS	0.60(X)	2.2	1.32
	New Car Sales	1000 GFA	1.57(X)	2.3	3.61
	Auto Care Center	1000 GLA	2.16(X)	2.7	5.83
	Furniture Store	1000 GFA	0.35(X)	2.3	0.81
	Apparel Store	1000 GFA	1.83(X)	2.3	4.21
	Building Mat'l/Lumber Store	1000 GFA	2.94(X)	2.3	6.76
	Golf Course/Driving Range	ACRES	0.39(X)	3.0	1.17
Others Not Specified*	1000 GFA	1.62(X)	2.3	3.65	
INDUSTRIAL	General Light Industrial	1000 GFA	0.72(X)	3.0	2.16
	Industrial Park	1000 GFA	0.91(X)	3.0	2.73
	Manufacturing	1000 GFA	0.63(X)	3.0	1.89
	Warehouse	1000 GFA	0.74(X)	3.0	2.22
	Mini-warehouse	1000 GFA	0.20(X)	3.0	0.60
	Others Not Specified*	1000 GFA	0.91(X)	3.0	2.73

Category	Land Use	Development Units (X)	Trip Rate	Trip Length (Mile)	Total Service Units (Veh Mi/Dev Unit)
INSTITUTIONAL	Elementary School	STUDENTS	0.015(X)	1.5	0.02
	High School	STUDENTS	0.04(X)	1.5	0.06
	Junior/Community College	STUDENTS	0.12(X)	2.1	0.25
	Day Care Center	STUDENTS	0.20(X)	1.9	0.38
	Hospital	BEDS	1.05(X)	2.6	2.73
	Nursing Home	BEDS	0.17(X)	2.6	0.44
	Church/Synagogue	1000 GFA	0.29(X)	1.5	0.44
	Others Not Specified*	1000 GFA	0.29(X)	1.5	0.44
*This represents total service unit equivalency for land uses not specified in this category. Actual equivalency may vary and may be demonstrated by property owner to be different pursuant to City guidelines.			D.U. = Dwelling Unit GFA = Gross Floor Area GLA = Gross Leasable Area FUEL POS = Fuel Position		

