

RESOLUTION NO. 41-96

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ESTABLISHING ADMINISTRATIVE GUIDELINES TO OUTLINE PROCEDURES FOR THE ADMINISTRATION OF IMPACT FEES RELATIVE TO THE MESQUITE IMPACT FEE REGULATIONS.

WHEREAS, Ordinance No. 3111 authorizes the development of administrative guidelines to implement the Mesquite Impact Fee regulations; and

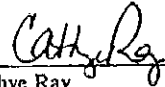
WHEREAS, it is desirable to further clarify and explain the processes related to the credits against fees, appeals, refunds and rebates, abatements, and methods of relief under the Mesquite Impact Fee regulations; and

WHEREAS, the City Council is desirous of establishing such administrative guidelines.

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

SECTION 1. The Administrative Guidelines, which are attached hereto and incorporated herein by reference as if fully set forth, are hereby adopted to implement Ordinance No. 3111, the Mesquite Impact Fee Regulations.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of November, 1996.




Cathye Ray
Mayor

ATTEST:

APPROVED:



Ellen Williams
City Secretary



B.J. Smith
City Attorney

ADMINISTRATIVE GUIDELINES
CITY OF MESQUITE IMPACT FEE REGULATIONS

SECTION I. GENERAL PROVISIONS

A. PURPOSE AND POLICY

The purpose of these guidelines is to outline procedures for the administration of impact fees relative to the Mesquite Impact Fee Regulations as adopted by Ordinance No. 3111. The guidelines contain additional instructions regarding procedures for consideration and processing of credits against fees, appeals from the Regulations or from these guidelines, refunds and rebates, variances, and abatements. These guidelines supplement the Impact Fee Regulations, which shall prevail in any case where there is a discrepancy with these guidelines. Nothing contained in these guidelines shall obligate the City to accept offers for or to execute agreements for design, dedication of property, and/or construction of improvements, either included or excluded, from the applicable impact fee capital improvements plan.

B. DEFINITIONS

1. Unless otherwise stated, all terms and definitions utilized in this document are intended to conform with the terms and definitions contained in Section 7.5-4 of Ordinance No. 3111.
2. Other terms utilized in this document have the following meaning:
 - "Agreement" means a contractual agreement between a property owner and/or lessee and the City of Mesquite.
 - "Abatement" means the full or partial exemption from impact fees on eligible property as designated by the City of Mesquite for economic development purposes.
 - "Eligible Projects" means new, expanded, or modernized buildings and structures, which will be assessed impact fees, and will contribute to the retention or expansion of primary employment or to attract major investment that would benefit the property and that would contribute to economic development within the City of Mesquite.

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"Expansion" means the addition of buildings, structures, machinery or equipment requiring additional impact fee assessment.

"Fees" means "impact fees" unless otherwise specified.

"Guidelines" means the administrative rules collectively defined in this document.

"Modernization" means the replacement and/or upgrading of existing facilities which increase the productive input or output, updates the technology or substantially lowers the unit cost of a operation. Modernization may result from the construction, alteration, or installation of buildings, structures, machinery, or equipment, or both.

"New Facility" means a property previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

"Oversized improvement" means a capital improvement that has been sized to supply capacity to new developments in addition to the development contributing the facility or capital improvement. An oversized improvement may or may not be designated in a capital improvements plan for impact fees.

"Regulations" means the Mesquite Impact Fee Regulations adopted by the City Council by Ordinance No. 3111 as may be revised from time to time.

SECTION II. CREDITS

A. AUTHORITY

Pursuant to Section 7.5-12 of the Regulations, the City shall allow credits against applicable impact fees for land or easement dedication and/or design and construction of area-related facilities, or other oversized improvement. Credits for dedication by separate instrument or construction of offsite facilities may be allowed by Agreement with the City, subject to assignment of the applicable credits to specific real property in accordance with these guidelines. In absence of an Agreement, the City may allocate credits in a manner which does not conflict with these guidelines. The value of credits shall be determined pursuant to these guidelines.

B. CRITERIA FOR CREDIT CALCULATION

1. Credit shall be given for eligible facilities based upon the amount paid to the City, subject to applicable reductions pursuant to Section 7.5-12 of the Regulations.
2. The value of a credit for the dedication and/or design and construction of an eligible facility shall be based on the unit costs for the type of capital improvement that were assumed for calculating the maximum impact fee per service unit for that type of facility. The following tables in the respective Capital Improvements Plans shall be referenced to determine the costs which were used. In no event shall allowable costs exceed those assumed in the applicable capital improvements plan for the service area.
 - a) For water facilities, reference Table II-6 of the Water and Wastewater Impact Fees Capital Improvements Plan
 - b) For wastewater facilities, reference Table III-5 of the Water and Wastewater Impact Fees Capital Improvements Plan.
 - c) For roadway facilities, reference Table 8 of the Development of Transportation Impact Fees (Roadway Capital Improvements Plan).
3. The total value of allowable credits shall not exceed an amount equal to the eligible value of the credit multiplied by a fraction, the numerator of which is the Schedule 2 impact fee per service unit then in effect for the appropriate service area, and the denominator of which is the Schedule 1 impact fee per service unit then in effect for the appropriate service area as described in Section 7.5-12(B)(2) of the Regulations.

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4. The allowable credits shall be applied against the amount of impact fee due for the applicable fee, but shall not exceed the total amount of the fee due. Pursuant to Section 7.5-12 of the Regulations, no reimbursement shall be due to the property owner or developer for unused credits which have expired or when a fee cannot be collected.

C. CREDIT RECORDS

1. A record of credits shall be maintained for a parcel, a plat or for an individual lot, depending on the method of assignment of the credit, as a unit value related to the plat or facility for which they are created. The unit for credits shall be maintained as "dollars" based upon the actual fee paid to the City.
2. Allowable credits shall be recorded in a "credit pool" account and administered in accordance with Section 7.5-12(F) of the Regulations.
3. All credits shall be limited to use solely for the lots included within the final plat with which they were created unless an alternate assignment agreement is approved by the City due to the unique nature of the development.
4. Assignment of credits created by land dedication by separate instrument or facility construction shall be administered by an assignment agreement approved by the City.
5. All credits shall be assigned to real property, designated specifically by lot or array of lots. These credits shall remain with the lot(s) as assigned until they are exhausted or lapse, pursuant to the provisions of the Regulations, or reassigned as a result of either a revision of the final plat containing said property being approved and recorded with the County, or a new Agreement approved by the City.

D. REQUESTS FOR CREDITS/EXPIRATION

1. No credits shall be granted for a reduction against impact fees until the applicant has filed a request on a form provided by the City in accordance with the requirements of Section 7.5-12(D) of the Regulations. The request shall be submitted to the Department of Community Development either at the time of application for plat approval or at the time of building permit application, unless the City agrees to a different time.
2. The City shall evaluate the credit request and determine if any units/proposed capital improvements are eligible for credits under the Regulations and these guidelines. If so, the value of the credit shall be determined by the City by multiplying the units by the appropriate unit costs. No credit shall exceed an amount equal to the eligible value of the

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credit multiplied by a fraction, the numerator of which is the Schedule 2 impact fee per service unit for the new development then in effect, and the denominator of which is the Schedule 1 impact fee per service unit for the new development then in effect. The applicant shall be notified in writing of the decision on the request and the amount, if any, which may be applied against the calculated impact fee.

3. Credits created prior to March 1, 1997 shall expire no later than February 28, 2007.

E. INELIGIBLE ACTIVITIES

The following types of activities shall not be eligible for credits against impact fees.

1. Special assessment projects for either roadway, water, or wastewater construction shall not be eligible for impact fee credits, nor shall credits be granted for any payments made toward special assessment projects for either roadway, water, or wastewater construction. Fees paid previously for water and/or wastewater front footage charges shall not be applied as credit against impact fees.
2. The following types of *land dedications* shall not be eligible for credits against fees:
 - a. Dedications of land which are not directly related to street, sidewalk, signal, street light improvements, and/or drainage improvements associated with roadway construction as designated in the Roadway Capital Improvements Plan;
 - b. Any land area which may be unusable and/or require special or unique measures to make it compatible for area-related or other oversized improvements. Examples of unique measures include crossing known landfills, organic deposits, mining areas, etc.;
 - c. Dedication of easements of temporary improvements (i.e., easements which can expire at some specific date);
 - d. Right-of-way or easement dedications for area-related facilities or other oversized improvements within the 100 year flood plain, which are in excess of the land required for the provision of the required area-related facilities;
 - e. Right-of-way or easement dedications of one hundred (100) square feet or less;
 - f. Easement dedications for water and/or wastewater improvements, unless required to exceed standard easement widths for such facilities; or,

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- g. Easement dedications of property already designated as an easement of any kind.
3. The following types of *facility design* shall not be eligible for credits against fees:
- a. Designs not accompanied by completed construction of the area-related facility or other oversized improvement;
 - b. Designs not prepared, signed, sealed, and dated by a registered professional engineer in the State of Texas with experience in municipal or general civil engineering and accepted by the City;
 - c. Design of facilities not in the applicable impact fee capital improvements plan;
 - d. Special services related to the design of facilities in the applicable impact fee capital improvements plan including but not limited to geotechnical, hydrologic and hydraulic, traffic engineering, etc.; or
 - e. Design for water and/or sanitary sewer facilities.
4. The following types of *facility construction* shall not be eligible for credits against fees:
- a. Construction of temporary improvements or facilities not built in accordance with City standards (i.e., turn-around facilities at the end of street stubs for future extension);
 - b. Private facilities or improvements to private facilities;
 - c. Street stubs intended for connection to roadways not included in the Roadway Capital Improvements Plan;
 - d. Construction of water and/or sanitary sewer facilities; or
 - e. Any costs for utilities attributable to construction.
5. Land dedication, design, and/or construction for minor collector streets or other site related facilities shall not be eligible for credits pursuant to Section 7.5-12(B)(1) of the Regulations.
6. Credits against impact fees shall not be granted for any land dedication, design and/or construction for facility realignment except for contributions in kind beyond the scope of existing facilities which are required by the City.

SECTION III. OTHER RELIEF PROCEDURES**A. APPEALS**

1. The applicant or property owner shall exhaust all administrative remedies to rectify any disagreement in the interpretation of the Regulations or Guidelines. If a property owner is not in agreement with the decision of the director of the responsible department, an appeal may be submitted to the City Council within thirty (30) days of the decision.
2. A property owner or applicant appealing any of the provisions of the Regulations shall comply with the requirements of Section 7.5-15. Said appeal shall be submitted by letter to the Department of Community Development and include the following:
 - a. Legal description of the property subject to appeal;
 - b. Documentation of reasons for appeal by record owner or applicant (as per provisions of Section 7.5-15 of the Regulations);
 - c. If a difference in fees or value against fees is involved, the amounts should be specified; and,
 - d. Signature of the record owner(s) of subject property.
3. The request shall be reviewed and placed on the agenda for City Council action at the earliest regularly scheduled meeting.
4. Any appeals filed later than the thirty (30) day period after a decision has been made, in accordance with Section 7.5-15(C) of the Regulations, shall be considered untimely.

B. REFUNDS

All refunds due under section 7.5-16 of the Regulations shall be issued to the owner of record of the property at the time the refund is issued upon completion of an application pursuant to the provisions of Section 7.5-16 of the Regulations. Said requests shall be submitted to the Department of Community Development on a form provided by the City and refunds issued after approval of the appropriate City departments. Refund requests must be made in writing within sixty days (60) of the date that the obligation to refund fees becomes due. Calculation of the amount of any refund shall be based upon the rate in effect at the time the impact fee was paid to the City.

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C. REBATES

1. Requests for rebates for withdrawn, voided, or expired permits shall be submitted to the Department of Community Development and shall be administered in accordance with Section 7.5-17 of the Regulations. Expiration of building permits shall be determined by the date of the last inspection from which construction activity occurred.
2. In the event a permit is voided or withdrawn prior to commencement of construction or connection to the water or wastewater system, a rebate may be issued at the request of the applicant and after approval of the appropriate City departments. A rebate may be issued if a permit is voided or withdrawn after commencement of construction at the applicant's request and approval of the appropriate City departments provided a roof has not been constructed on the building. Structures which do not have roofs may be issued a rebate where the City determines those structures have not been substantially completed.
3. Impact fees returned to the applicant as a result of expired, voided, or withdrawn building permits shall be rebated equal to the amount paid to the City. Interest shall not be included in any rebated amount.
4. If a previously purchased water meter is replaced with a smaller water meter, the City shall rebate the impact fees paid based upon the L.U.E. differential of the two meter sizes and the pre-L.U.E. fee at the time of the original fee payment, less an administrative charge of \$50 and any meter replacement costs incurred by the City.

D. VARIANCE PROCEDURES

1. Upon written request by the property owner or developer, the City Council may grant a variance pursuant to Section 7.5-22 of the Regulations. Said request shall be submitted to the Department of Community Development and shall include the following:
 - a. Legal description of the property subject to variance;
 - b. Statement of request and documentation;
 - c. If a reduction of impact fees is involved, the amount of the fees per facility type; and,
 - d. Signature of the record owner of subject property.
2. The request shall be reviewed by the City and placed on the agenda for City Council action at the earliest regularly scheduled meeting.

SECTION IV. ABATEMENT PROCEDURES**A. POLICY STATEMENT/ABATEMENT AUTHORIZED**

The City of Mesquite is committed to promoting high quality development in all parts of the City and to improving the quality of life for its citizens. In the interest of stimulating economic development in Mesquite, it is the policy of the City to consider the abatement of impact fees in accordance with the guidelines and criteria outlined in this document.

Upon written request by the property owner or developer, the City will consider the abatement of impact fees assessed on new construction or expansion of existing facilities, as authorized by Section 7.5-22 of the Impact Fee Regulations. Abatement under this policy is at the discretion of the City Council on a case by case basis, with each application subject to review on its own merits.

B. APPLICATION AND REVIEW PROCEDURES

1. Application for abatement must be submitted prior to the beginning of the project and before impact fees are assessed, on forms provided by the City (Impact Fee Abatement Application), and shall contain the following information in order to be accepted as a complete application:
 - a) Legal description of the property for which abatement is sought, including appropriate maps to locate and describe the property.
 - b) Statement of request with supporting documentation. Information which describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property for which abatement is sought is confidential and not subject to public disclosure until the Impact Fee Agreement is executed.
 - c) Time schedule for undertaking and completing the planned improvements.
 - d) Financial and other information as may be deemed appropriate for evaluating the financial capacity and related factors of the applicant.
 - e) Signature of the record owner of subject property.
2. Applications for abatement shall be submitted to the Department of Community Development. After review, a recommendation shall be developed for each request, which shall then be forwarded to the City Council with such recommendation for their action.

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3. The request shall be placed on the City Council agenda for public hearing and Council action at the earliest regularly scheduled meeting after development of a recommendation, but in any case, no more than forty-five (45) days after receipt of the application.
4. The City Council shall by resolution either approve or disapprove the application for Impact Fee Abatement. The City shall notify the applicant of the Council's action.

D. EVALUATION CRITERIA

The Council will evaluate requests for abatement to determine that such abatement will advance significant economic development objectives. All applicants shall be considered on a case by case basis and each application will be reviewed on its merits utilizing the criteria set out below. After such review, abatement may be denied entirely or may be granted to the extent deemed appropriate after evaluation.

1. *Guidelines and Criteria:* An applicant must satisfy the following minimum criteria:
 - a) A minimum \$10,000,000 net increase in the taxable value of the property.
 - b) The project must conform to the Comprehensive Zoning Ordinance.
 - c) The project must contribute to the retention or creation of employment in the Mesquite area, and must not be expected to solely have the effect of transferring employment from one part of the City to another.
2. *Additional Standards:* In addition to the minimum requirements specified above, the following criteria shall be considered in determining whether to grant the impact fee abatement and, if so, the percentage of fees to be abated:
 - a) The value of land and existing improvements, if any;
 - b) Type and value of proposed improvements;
 - c) Productive life of proposed improvements;
 - d) Number of existing jobs to be retained by proposed improvements;
 - e) Number and type of new jobs to be created by proposed improvements;
 - f) Amount of local payroll to be created;
 - g) Whether the new jobs to be created will be filled by people residing or projected to reside within the affected taxing jurisdictions;

- h) Amount of local sales tax to be generated directly;
- i) Amount property tax base valuation will be increased and, after abatement, a definitive commitment that such valuation shall not, in any case, be less than property tax base valuation at time of Agreement;
- j) The costs to be incurred by the City of Mesquite to provide facilities or services directly resulting from the new improvements;
- k) The population growth of the City of Mesquite that occurs directly as a result of new improvements;
- l) The types and values of public improvements, if any, to be made by the applicant seeking abatement;
- m) Whether the proposed improvements compete with existing businesses to the detriment of the local economy;
- n) The attraction of new businesses to the area;
- o) Whether the project is environmentally compatible with no negative impact on quality of life perceptions; and
- p) The degree to which the project makes a substantial contribution to redevelopment for special area plans by enhancing either functional or visual characteristics, e.g. historical structures, circulation, parking, facades, signs, materials, urban design, etc.

E. CONDITIONS AND REQUIREMENTS

1. *Approval.* When approving an application for abatement, the Council shall pass a resolution of approval, and execute an Agreement with the owner which shall include:
 - a) The amount of fee to be abated;
 - b) The proposed use of the facility, nature of construction, time schedule, map, property description and improvement list as provided in application;
 - c) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment; and
 - d) The size of investment and number of jobs involved.
2. *Denial:* If an application is denied, impact fees will be assessed and collected at the full cost determined by the Regulations. Applications shall be denied if it is determined that:
 - a) Applicant has failed to meet the minimum criteria;

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- b. The request for abatement was filed after the commencement of construction, alteration, modernization, expansion or new facility.
- c. There would be a substantial adverse effect on the provision of government service or tax base.
- d. The applicant has insufficient financial capacity.
- e. Planned or potential use of the property would constitute a hazard to public safety, health, or morals.
- f. Violations of other codes or laws.
- g. Any other reasons deemed appropriate by the City Council of the City of Mesquite.

5. **Recapture:** Should the City of Mesquite determine that the company or individual is in default according to the terms and conditions of its Agreement, the City of Mesquite shall notify the company or individual of such default in writing at the address that it stated in the Agreement, and if such is not done within thirty days from the date of the notice "Last Period" of the Agreement may be terminated.

In the event that the company or individual fails to achieve the minimum criteria and the terms stated in the Agreement, then the Agreement shall be terminated and all impact fees due on the project will be recaptured and paid within thirty days of the termination.

**RETAKE
OF
PREVIOUS
DOCUMENT**

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- b) The request for abatement was filed after the commencement of construction, alteration, modernization, expansion or new facility;
 - c) There would be a substantial adverse affect on the provision of government service or tax base;
 - d) The applicant has insufficient financial capacity;
 - e) Planned or potential use of the property would constitute a hazard to public safety, health, or morals;
 - f) Violations of other codes or laws; or
 - g) Any other reasons deemed appropriate by the City Council of the City of Mesquite.
3. *Recapture:* Should the City of Mesquite determine that the company or individual is in default according to the terms and conditions of its Agreement, the City of Mesquite shall notify the company or individual of such default in writing at the address that is stated in the Agreement, and if such is not cured within thirty days from the date of the notice ("Cure Period"), the Agreement may be terminated.

In the event that the company or individual fails to achieve the minimum criteria and the terms stated in the Agreement, then the Agreement shall be terminated and all impact fees due on the project will be recaptured and paid within thirty days of the termination.