

**TOWN OF LAKEWOOD VILLAGE  
ORDINANCE NO. 16-19**

**AN ORDINANCE OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS, ADOPTING WATER AND WASTEWATER IMPACT FEES; PROVIDING FOR THE INCORPORATION OF PREMISES/PURPOSE; PROVIDING DEFINITIONS; PROVIDING APPLICABILITY; PROVIDING FOR CALCULATION OF MAXIMUM IMPACT FEES AND USE OF PROCEEDS FROM IMPACT FEES; REGULATING THE ASSESSMENT AND COLLECTION OF IMPACT FEES; PROVIDING A LAND USE EQUIVALENCY TABLE; IMPOSING AN IMPACT FEE AND PROVIDING FOR EXCEPTIONS; PROVIDING FOR CREDITS; REGULATING ACCOUNTING FOR FEES AND INTEREST; PROVIDING FOR REFUNDS; ADOPTING AND INCORPORATING APPENDIX 1 CONTAINING SCHEDULE 1, “ASSESSMENT OF IMPACT FEES” AND SCHEDULE 2, “COLLECTION RATE”; ADOPTING AND INCORPORATING THE WATER FACILITIES LAND USE ASSUMPTIONS AND SERVICE AREA, THE WATER CAPITAL IMPROVEMENTS PLAN, THE WASTEWATER FACILITIES LAND USE ASSUMPTIONS AND SERVICE AREA, AND THE WASTEWATER CAPITAL IMPROVEMENTS PLAN; ADOPTING VARIOUS OTHER PROVISIONS RELATIVE TO WATER AND WASTEWATER IMPACT FEES; PROVIDING FOR APPEALS; PROVIDING A CUMULATIVE / SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, in 1987 the Texas Legislature adopted Senate Bill 336, subsequently amended and adopted as Chapter 395 of the Local Government Code authorizing impact fees for water and wastewater facilities (“Chapter 395”); and

**WHEREAS**, the Town retained qualified professionals who used generally accepted engineering and planning practices to prepare the capital improvements plan and to calculate the Town’s impact fees in accordance with Chapter 395; and

**WHEREAS**, after notice of public hearing was published as required by Chapter 395, the Town Council held a public hearing on September 22, 2016 in which the Town Council considered and adopted the Capital Improvements Plan and Land Use Assumptions by Resolution No. 16-06 for the proposed impact fees; and

**WHEREAS**, the Capital Improvement Advisory Committee of the Town of Lakewood Village (“CIAC”), created pursuant to Section 395.058 of Chapter 395, filed its written comments on the proposed Water and Wastewater Impact Fees before the fifth (5<sup>th</sup>) business day before the date of the public hearing on the adoption of the Water and Wastewater Impact Fee as required by Section 395.050 of Chapter 395; and

**WHEREAS**, as required by Section 395.044 of Chapter 395, the Town Council provided notice as required and conducted a public hearing on November 10, 2016 on the adoption of Water and Wastewater Impact Fees in which any member of the public had the right to appear at the hearing and present evidence for or against the plan and proposed fee, a record of the hearing was made and will be maintained and available for inspection for at least ten (10) years following the date of the hearing; and

**WHEREAS**, the Town Council desires to adopt the Water and Wastewater Impact Fees and related administrative processes as herein described, finds that the fees adopted herein are based upon generally accepted engineering and planning practices, finds that the fees set forth herein are reasonable and have been adopted in accordance with Chapter 395, and finds that adoption of this Ordinance is in the best interest of the citizens of the Town of Lakewood Village;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS:**

**Section 1. Incorporation of Premises/Purpose.**

A. Incorporation of Premises. The above and foregoing recitals are true and correct and are findings incorporated into this Ordinance and made a part hereof for all purposes.

B. Purpose. This Ordinance is adopted pursuant to the provisions of Chapter 395 of the Texas Local Government Code, as amended, as well as under the authority of Article XI, Section 5 of the Texas Constitution. This Ordinance implements a policy of the Town to impose fees on each new development project to pay the costs of constructing capital improvements and facility expansions necessary to serve new development.

**Section 2. Definitions**

(1) Advisory Committee (also referred to as Impact Fee Advisory Committee). The Town's Planning and Zoning Commission, together with such ad hoc representatives as may be appointed from time to time, to fulfill the composition mandated by Tex. Loc. Gov't Code sec. 395.058 to serve.

(2) Assessment. The determination of the amount of the maximum impact fee per service unit, which can be imposed, on new development pursuant to Schedule 1 of Appendix 1 of this Ordinance.

(3) Capital improvement. Either a water facility or facility expansion, or a wastewater facility or facility expansion, with a life expectancy of three (3) or more years, to be owned and operated by or on behalf of the Town.

(4) Capital improvements plan. Either water improvements or wastewater improvements adopted or revised under this ordinance, See "Impact fee capital improvements plan" definition below.

(5) Town. Town of Lakewood Village, Denton County, Texas.

(6) Collection. The receipt of impact fees by the Town from a property owner in accordance with Schedule 2 of Appendix 1 of this Ordinance.

(7) Credit. The amount of the reduction of an impact fee for fees, payments, or charges for the same type of capital improvements for which the impact fee has been assessed.

(8) Facility expansion. The expansion of either a water facility or a wastewater facility.

(9) Final plat approval or approval of a final plat. The point at which the applicant has complied with all the conditions of approval required within the Town's Subdivision Ordinance and the plat has been released for filing with the Denton County Clerk.

(10) Final plat recordation. The point at which the applicant has complied with all conditions precedent to recording an approved final plat in the county, including any infrastructure or other improvements required by the Subdivision Ordinance, Subdivision Regulations or any other ordinance.

(11) Impact fee. A charge or assessment imposed against new development in order to generate revenue for funding or recovering of the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

- (a) Dedication of land for public parks or payment in lieu of the dedication to serve park needs; or
- (b) Dedication of rights-of-way or easements, or the construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;
- (c) Lot or acreage fees or pro-rata fees to be placed in trust funds for the purpose of reimbursing developers for constructing or over-sizing water or wastewater mains or lines; or
- (d) Other pro rata fees for reimbursement of water or wastewater mains or lines extended by the Town.

(12) Impact fee capital improvements plan. Either a water improvements plan or a wastewater improvements plan adopted or revised pursuant to this Ordinance. Impact fee capital improvements plan may refer either to the plan for a particular service or to the aggregation of capital improvements or facilities expansions and the associated costs programmed for all service area for a particular category of capital improvements or facilities expansions.

(13) Land use assumptions. A description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a ten (10) year period which has been adopted by the Town, as may be amended from time to time, and upon which the capital improvements plan is based.

(14) Land use equivalency table. 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. The land use equivalency table may be incorporated in a schedule of impact fee rates.

(15) Mayor. The Mayor of the Town of Lakewood Village, or his or her designee.

(16) New development. A project involving the subdivision of land; 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 and filing with the County in which the property is located of a plat pursuant to the Town's subdivision regulations or the issuance of a building permit, or connection to the Town's water or wastewater system, and which has not been exempted from these regulations by provisions of this Ordinance.

(17) Offset. The amount of the reduction of an impact fee designed to fairly reflect the value of system facilities provided by a developer, pursuant to rules herein established or council-approved administrative guidelines pursuant to the Town's Subdivision Ordinance, Subdivision Regulations or other ordinance requirements.

(18) Plat. The term defined in the Town's Subdivision Ordinance, Subdivision Regulations. Plat includes Minor Plat, Replat, and Amended Plat.

(19) Recoupment or Recoup. The imposition of an impact fee to reimburse the Town for capital improvements, which the Town has previously oversized to serve new development and which have been included in the applicable capital improvements plan.

(20) Service area. The entire area within the corporate limits and extraterritorial jurisdiction of the Town, within which impact fees for water or wastewater improvements or facility expansions 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 capital improvements plan applicable to the service area.

(21) Service unit. A living unit equivalent based upon a 5/8" x 3/4" displacement type water meter, which serves as the standardized measure of consumption, use, generation, or discharge attributable to the new unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the Town or other political subdivision in which the individual unit of development is located during the previous ten (10) years.

(22) Site-related facility. 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 or wastewater facilities to serve the new development, and which is not included in the capital improvements plans for such facilities and for which the developer or property owner is solely responsible under subdivision or other applicable development regulations.

(23) System facility. A water or a wastewater facility or facility expansion which is designated in the capital improvements plan for that type of facility, and which is not a site-related facility. System facility may include a capital improvement which is located offsite or within or on the perimeter of the development site.

(24) Wastewater facility. A wastewater interceptor or main, lift station, treatment facility or other facility included within and comprising an integral component of the Town'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.

(25) Wastewater facility expansion. The expansion of the capacity of any existing wastewater improvement for the purpose of serving new development; provided however, the term does not include the repair, maintenance, modernization or expansion of an existing wastewater facility to serve existing development.

(26) Wastewater capital improvements plan. The adopted plan, as may be amended from time to time, which identifies the wastewater facilities or wastewater facility expansions 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 impact fees for wastewater facilities pursuant to this Ordinance.

(27) Water facility. 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 Town's water storage or distribution system. Water facility includes land, easements or structures associated with such facilities. Water facility excludes site-related facilities.

(28) Water facility expansion. The expansion of the capacity of any existing water facility for the purpose of serving new development; provided however, the term does not include the repair, maintenance, modernization or expansion of an existing water facility to serve existing development.

(29) Water capital improvements plan. The adopted plan, as may be amended from time to time, which identifies the water facilities or water facility expansions 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 impact fees for water facilities pursuant to this Ordinance.

### **Section 3. Applicability**

A. The provisions of this Ordinance apply to all new, non-exempt development within the corporate boundaries and/or the extraterritorial jurisdiction of the Town located within a service area as allowed by law and this Ordinance.

B. No final plat for new development shall be approved within the service area without assessment of an impact fee pursuant to this Ordinance. No final plat for new development shall be approved nor shall a building permit be issued or utility connection be made for other types of new

development until the property owner has paid the impact fee stated in Schedule 2 of Appendix 1 to this Ordinance.

#### **Section 4. Calculation of Maximum Impact Fees**

Maximum impact fees per service unit shall be established for each service area for each type of capital improvement. The maximum impact fee per service unit for each service area shall be computed in the following manner:

- (1) Calculate the total projected costs of capital improvements necessitated by and attributable to new development in the service area identified in the capital improvements plan ("CIP Costs");
- (2) From such amount, subtract a credit equal to fifty percent (50%) of the amount determined in subsection (1); alternatively, subtract a credit equal to that portion of ad valorem tax revenues, if any, 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 improvements in the plan from the amount determined in subsection (1) ("Credits").
- (3) Divide the resultant amount by the total number of projected service units ("Service Units) anticipated within the service area, based upon the land use assumptions for that service area.
- (4) The formula for calculating the maximum impact fee per service unit described by subsections (1) through (3) may be expressed as:  
(Total CIP Costs - Total Credits) / Total Service Units

#### **Section 5. Use of Proceeds from Impact Fees**

A. Impact fees and the interest earned thereon for each service area may be used to finance or to recoup the costs of any capital improvements or facility expansions identified in the capital improvements plan for the service area, including but not limited to the construction contract price; surveying and engineering fees, and land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees). Impact fees may 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 Town to finance such capital improvements or facility expansions identified in the capital improvements plan. Impact fees may be used to pay fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant who is not an employee of the Town for the preparation of or updating of a 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, or facility expansions other than those identified in the applicable capital improvements plan;
- (2) repair, operation, or maintenance of existing capital improvements or facility expansions;
- (3) upgrade, update, expansion or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) upgrade, update, 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, updating, 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 Town; or
- (6) principal payments and interest or other finance charges on bonds or other indebtedness, unless the improvement or expansion is identified in the capital improvements plan and at the time of the pledge, the Town Council certifies in an ordinance or resolution that none of the impact fees will be used or expended for an improvement or expansion not identified in the capital improvements plan.

## **Section 6. Accounting for Fees and Interest.**

A. All impact fees collected shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee is adopted. Impact fees shall be spent only for the purposes for which the impact fee was imposed in accordance with the capital improvement plan and Chapter 395 of the Texas Local Government Code.

B. Interest earned on impact fees will be credited to the account on which it is earned and is subject to the same restrictions on expenditures under Section 5 of this Ordinance as the funds generating such interest.

C. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours consistent with the Public Information Act.

## **Section 7 Use of Other Financing Mechanisms**

A. The Town may finance water and wastewater improvements or facility expansions designated in the applicable capital improvements plan through the issuance of bonds 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 Town Council may decide that the Town may credit or offset all or a part of impact fees due for a new development pursuant to duly adopted criteria. Any such action shall be in accordance applicable procedures in an open meeting.

## **Section 8. 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 Town on the development of land or the issuance of building permits or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of Town's comprehensive land use plan, the capital improvements plan, the zoning ordinance, subdivision regulations and other Town policies, ordinances and resolutions by which the Town 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 Ordinance, Subdivision Ordinance, Regulations or other ordinances or regulations of the Town, which shall be operative and remain in full force and effect without limitation with respect to all such development.

C. The maximum impact fee assessed per service unit for water or wastewater facilities, as set forth in Schedules 1 and 2 of Appendix 1 and as may be amended from time to time, hereby is declared to be an approximate and appropriate measure of the impacts generated by a new unit of development on the Town's water or wastewater system.

## **Section 9. Assessment and Collection Schedules for Impact Fees**

The amount of the impact fees to be assessed per service unit shall be as set forth in Schedule 1 of Appendix 1 to this Ordinance. The amount of the impact fees, which are to be collected per service unit, shall be as set forth in Schedule 2 of Appendix 1 to this Ordinance. Schedules 1 and 2 may be



amended from time to time utilizing the amendment procedure set forth in Section 13 of this Ordinance and as allowed by Chapter 395.

## **Section 10. Assessment of Impact Fees**

Assessment of impact fees for any new development shall occur in accordance with the provisions of Section 395.016 of the Texas Local Government Code, as it exists or as amended.

## **Section 11. Collection of Impact Fees**

A. Impact fees shall be collected at the time the Town issues a building permit for a new development within the corporate limits of the Town, or at the time of application for an individual meter connection to the water or wastewater system, for land outside Town limits, unless a different time is provided for in an agreement for capital improvements pursuant to subsection (C) of this Section.

B. The number of service units for a new development shall be determined by using the Land Use Equivalency Table in this Ordinance. In determining the number of service units, the following rules shall apply:

- (1) Each new freestanding building requires a new water meter, except as provided in subsection (2).
- (2) Where a site is redeveloped (clearance and reconstruction), no new service units will be attributed to such redevelopment, provided that the water meter is of the same size as the development previously occupying the site. If the meter size is increased, the number of new service units 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 service units will be attributed to such development if the water meter size remains the same. If the meter size is increased, the number of service units will be based upon the increase in capacity of the meter.
- (4) In determining the number of service units for wastewater impact fees, no service units will be attributed to irrigation meters.
- (5) If a new development does not require a water meter for water or wastewater service, or does not generate the need for water or wastewater services, no service will be attributable to the development.

C. The impact fees to be collected per service unit for a new development shall be the amount listed in Schedule 2 of Appendix 1. The Town may enter into an agreement with a developer

for a different time and manner of payment of impact fees, in which case the agreement shall determine the time and manner of payment.

D. The Town shall compute the impact fees for a new development in the following manner:

- (1) The amount of each impact fee shall be determined by multiplying the number of service units generated by the new development by the impact fee per service unit for the service area using Schedule 2 of Appendix 1. The number of service units shall be determined by using the Land Use Equivalency Table below. For single-family residential developments, each irrigation meter shall be counted as additional service unit(s) at the appropriate size.

**Land Use Equivalency Table for Water & Wastewater Impact Fees**

<b>WATER METER SIZE</b>	<b>SERVICE UNIT EQUIVALENT</b>
5/8"x3/4" PD	1.0
3/4" PD	1.5
1" PD	2.5
1 1/2" PD	5
2" PD	8
2" Compound	8
2" Turbine	16
3" Compound	17.5
3" Turbine	35
4" Compound	30
4" Turbine	65
6" Compound	67.5
6" Turbine	140
8" Compound	90
8" Turbine	240
10" Turbine	350

*\*PD = Positive Displacement Meter (typical residential meter)*

*\*\*Operating capacities obtained from American Water Works Association (AWWA) C700-15, C701-15, and C702-15. Turbine and Compound meter flows are based on Class II (in-line) meters.*

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

- (3) The total amount of the impact fees for the new development shall be attached to the development application as a condition of approval.
- (4) The amount of each impact fee for a new development shall not exceed an amount computed by multiplying the fee assessed per service unit pursuant to Section 10 under Schedule 1 of Appendix 1 by the number of service units generated by the development.
- (5) 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 of Appendix 1, then in effect, and such additional fee shall be collected at the times prescribed by this section.

E. Impact fees may be assessed but not collected for property where service is not available unless:

- (1) The Town commits to commence construction of necessary facilities identified in the capital improvements plan within two (2) years under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed; provided that such time does not exceed a maximum of five (5) years; or
- (2) The Town agrees in writing to permit the owner of the property to construct or finance the capital improvement or facility expansion and agrees that the costs incurred or funds advanced will either:
  - (a) be credited against the impact fees otherwise due from new development; or
  - (b) reimburse thru a pro rata agreement to the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, in which case fees shall be collected and reimbursed to the owner at the time the other new development plats are recorded; or
  - (c) the owner voluntarily requests that the Town reserve capacity to serve future development and the owner enters into a valid written agreement with Town,

## **Section 12. Credits Against Impact Fees**

A. The Town shall credit the contribution of land, improvements or funding for construction of any system facility that is required or agreed to by the Town, pursuant to rules established in this section or pursuant to administrative guidelines promulgated by the Town. The credit shall be associated with the plat or other detailed plan of development for the property that is to be served by the facility.

B. Master planned projects, including subdivisions containing multiple phases may apply for credits against impact fees for the entire project based upon contributions of land, improvements or funds toward construction of system facilities, or other capital improvements supplying excess capacity. The credit determination shall be incorporated within an agreement for credits, in accordance with subsection (F).

C. All credits against impact fees shall be based upon standards promulgated by the Town, 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) The unit costs used to calculate offsets and credits may be those assumed for the water or wastewater improvements included in the applicable capital improvements plan, or other costs used by the Town in the ordinary course of administering its capital facilities agreements and contracts.
- (3) In no event will the Town grant a credit against impact fees due for a category of capital improvements when no impact fees can be collected pursuant to this Ordinance, or for any amount exceeding the total impact fees due for the development for the same type of improvement, unless expressly agreed to by the Town Council in writing.
- (4) In no event will the Town grant credit against impact fees due for a category of capital improvements based upon contributions of a different category of capital improvements.
- (5) The Town may participate in the costs of a system improvement to be dedicated to the Town, including costs that exceed the amount of the impact fees due for the development, in accordance with policies and rules established by the Town. The amount of any credit for construction of a system facility shall be reduced by the amount of any participation funds received from the Town.

D. Credits for construction of improvements shall be deemed created when the improvements are completed and the Town has accepted the facility. Notwithstanding any other agreements, credits created shall expire 10 years from the date the credit was created. Upon

application by the property owner, the Town may agree to extend the expiration date for the credit on mutually agreeable terms.

E. Unless an agreement for credits under subsection (F) is executed providing for a different manner of applying credits against impact fees due, a credit associated with a plat shall be applied at the time of application for the first building permit, or, for land outside the Town, for each utility connection, and, at each application for a building permit or utility connection thereafter, to reduce impact fees due until the credit is exhausted.

F. An owner of a new development who has constructed or financed a capital improvement or facility expansion designated in the applicable capital improvements plan, or other capital improvement that supplies excess capacity, as required or authorized by the Town, shall enter into an agreement with the Town to provide for credits against impact fees due for the development.

The agreement shall identify the basis for, the method for computing and the amount of the credit due and any reduction in credits attributable to consumption of capacity by developed lots or tracts served by the capital improvements. For multi-phased projects, the Town may require that total credits be proportionally allocated among the phases. If authorized by the Town, the agreement also may provide for allocation of credits among new developments within the project, and provisions for the timing and collection of impact fees.

### **Section 13. Updates to Plans and Revision of Fees**

A. The Town shall update its land use assumptions and capital improvements plans at least every five (5) 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, Ch. 395, or in any successor statute.

B. The Town 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 fees recalculated accordingly, utilizing statutory update procedures.

C. 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. Public notice and hearing is required to amend Schedule 2 in accordance with the procedure for amending impact fees set forth in Texas Local Government Code, Ch. 395, or in any successor statute.

D. If, at the time an update is required pursuant to subsection (A), the Town Council determines that no change to the land use assumptions, capital improvements plans or impact fees are needed, it may dispense with such update by following the procedures in Texas Local Government Code, Section 395.0575 or successor statute.

## **Section 14. Refunds**

A. Upon application, any impact fee or portion thereof collected pursuant to these regulations, which has not been expended within the service area or any other obligations expressly provided for in section 5 of this ordinance, within ten (10) years from the date of payment, shall be refunded to the record owner of the property at the time the refund is paid for 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 Section 302.002 Texas Finance Code, 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 (10) 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 expansions authorized 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. If a refund is due pursuant to subsections (A) or (B); the Town 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.

D. If the building permit for a new development for which an impact fee has been paid has expired, and a modified or new application has not been filed within six (6) months of such expiration, the Town 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 15. Appeals**

A. The property owner or applicant for new development may appeal the following administrative decisions of Town staff to the Mayor and Town Council in accordance with the procedures set forth in this Section:

- (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 amount of the impact fee in proportion to the benefit received by the new development; or

(5) the amount of a refund due, if any.

B. The burden of proof shall be on the property owner or applicant for new development to demonstrate that relief should be granted by the Town.

C. In order to file an appeal under this Section, the property owner or applicant for new development (“appellant”) must file a written notice of appeal with the Mayor within thirty (30) days following the decision appealed from. The mayor may resolve the appeal without further action if the appellant agrees with the Mayor’s decision, and receives subsequent council approval. If the appellant does not agree with the decision of the Mayor, the appellant may appeal the matter to the Town Council for final decision. Upon appellant request of Council review, the Town Secretary shall schedule a public hearing at which the appellant may present testimony and evidence before the Town Council. The Council shall act on the appeal within sixty (60) days of receipt of the notice of appeal by the Town.

D. If the notice of appeal is accompanied by a payment in an amount equal to the original determination of the impact fee due, the Town shall process and may issue a building permit if other requirements are met while the appeal is pending,

E. Any person who has paid an impact fee or an owner of land upon which an impact fee has been paid may petition the Town 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 (60) days of the request. If the Town 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 those matters which may be appealed pursuant to subsection (A) of this Section.

## **Section 16. Waivers and Exemptions**

Pursuant to Texas Local Government Code, Section 395.022, as amended, a school district shall not be required to pay impact fees imposed under this Ordinance unless the board of trustees of the district consents to the payment of the fees by entering a contract with the Town imposing the fees.

## **Section 17. Water Facilities Land Use Assumptions and Service Area**

A. The land use assumptions and service area for water facilities as recommended by the Impact Fee Advisory Committee are hereby adopted and are incorporated by reference herein.

B. The land use assumptions for water facilities and the boundaries of the water facilities service area may be amended from time to time or new land use assumptions for water facilities or water facilities service areas may be designated, pursuant to the procedures in Section 13 of this Ordinance

**Section 18. Water Capital Improvements Plan**

A. The Water Capital Improvements Plan as recommended by the Impact Fee Advisory Committee is hereby adopted and is incorporated by reference herein.

B. The Water Capital Improvements Plan may be amended from time to time, pursuant to the procedures in Section 13 of this Ordinance.

**Section 19. Wastewater Facilities Land Use Assumptions and Service Area**

A. The land use assumptions and service area for wastewater facilities as recommended by the Impact Fee Advisory Committee are hereby adopted and are incorporated by reference herein.

B. The land use assumptions for wastewater facilities and the boundaries of the wastewater facilities service area may be amended from time to time, or new land use assumptions for wastewater facilities or wastewater facilities service areas may be designated, pursuant to the procedures in Section 13 of this Ordinance.

**Section 20. Wastewater Capital Improvements Plan**

A. The Wastewater Capital Improvements Plan as recommended by the Impact Fee Advisory Committee is hereby adopted and is incorporated by reference herein.

B. The Wastewater Improvements Plan may be amended from time to time, pursuant to the procedures in Section 13 of this Ordinance.

**Section 21. Water and Wastewater Impact Fees**

A. The maximum impact fees per service unit for water and wastewater facilities are hereby adopted and incorporated in Schedule 1 as hereinafter set forth as an Appendix 1 to this Ordinance.

B. The impact fees per service unit for water and wastewater facilities, which are to be collected for each new development, are hereby adopted and incorporated in Schedule 2 as hereinafter set forth as an Appendix 1 to this Ordinance.

C. The impact fees per service unit for water and/or wastewater facilities may be amended from time to time, pursuant to the procedures in Section 13 of this Ordinance.

**Section 22. Fees For Existing Development**

A. If upon the effective date of this Ordinance, any existing development within the service area utilizes a water well, a septic tank or an individual waste disposal system and the property owner requests to be connected to the Town's water or wastewater system, the property owner shall pay the fee prescribed by Section 11 of this Ordinance for connection to the Town's system.



B. If the property owner or any existing development within the service area requests enlargement of a water meter presently serving the development and no new development is to occur on the property, the owner shall pay the fee prescribed by Section 21 of this Ordinance for the increase in size of the capacity of the meter prior to installation of the enlarged meter.

**Section 23. Cumulative / Savings Clause**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Town ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. All rights and remedies of the Town of Lakewood Village are expressly saved to any and all violations of the provisions of any ordinance affecting new development of land and fees related thereto, which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

**Section 23. Severability Clause**

If any section, paragraph, or provision of this ordinance or the application of that section, paragraph, or provision to any person, firm, corporation or situation is for any reason judged invalid, the adjudication shall not affect any other section, paragraph, or provision of this ordinance or the application of any other section, paragraph or provision to any other person, firm, corporation or situation, nor shall adjudication affect any other section, paragraph, or provision of the Subdivision Regulations of the Town of Lakewood Village, Texas, and the Town Council declares that it would have adopted the valid portions and applications of the ordinance without the invalid parts and to this end the provisions for this ordinance are declared to be severable.

**Section 24. Effective Date**

This ordinance shall take effect immediately from and after its passage as allowed by law.

**PASSED AND APPROVED** by the Town Council of the Town of Lakewood Village, Texas, this 10<sup>th</sup> day of November 2016

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Dr. Mark E. Vargus  
Mayor

**ATTEST:**

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Linda Asbell, TRMC  
Town Secretary

**APPROVED AS TO FORM:**

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Wm. Andy Messer, Esq.  
Town Attorney

**APPENDIX 1**

<p align="center"><b><u>SCHEDULE 1</u></b>  <b>ASSESSMENT OF IMPACT FEES</b>  <b><u>MAXIMUM IMPACT FEES FOR SERVICE UNIT FOR WATER AND WASTEWATER FACILITIES</u></b></p>	
<p align="center"><b>IMPACT FEES</b></p>	<p align="center"><b>LAND PLATTED AFTER 11/10/2016</b>  <b>[adoption date of new Ord]</b></p>
<p align="center"><b>WATER FACILITIES PER SERVICE UNIT</b></p>	<p>\$9,695</p>
<p align="center"><b>WASTEWATER FACILITIES PER SERVICE UNIT</b></p>	<p>\$5,923</p>
<p align="center"><b><u>SCHEDULE 2</u></b>  <b>COLLECTION RATE</b>  <b><u>IMPACT FEES FOR SERVICE UNIT FOR WATER AND WASTEWATER</u></b>  <b><u>FACILITIES</u></b></p>	
<p align="center"><b>IMPACT FEES</b></p>	<p align="center"><b>LAND PLATTED AFTER 11/10/2016</b>  <b>[adoption date of new Ord]</b></p>
<p align="center"><b>WATER FACILITIES PER SERVICE UNIT</b></p>	<p>\$9,695</p>
<p align="center"><b>WASTEWATER FACILITIES PER SERVICE UNIT</b></p>	<p>\$5,923</p>

**End of Exhibit A**

ADOPTION AND SUMMARY OF AMENDMENTS

16-XX	November 10, 2016	• Original Adoption