

ORDINANCE NO. 2015-20

AN ORDINANCE AMENDING CHAPTER 53 OF THE CITY CODE OF ORDINANCES BY ADDING SECTION 53.40 TO 53.50 TITLED WATER AND SEWER IMPACT FEES TO CREATE AN IMPACT FEE FOR PUBLIC UTILITIES; SETTING A PENALTY, AN EFFECTIVE DATE AND A SEVERABILITY CLAUSE

WHEREAS, the City of Balcones Heights, Texas, is responsible for and committed to the provision of public facilities and services (including water and wastewater service) at levels necessary to cure any existing public service deficiencies in already developed areas; and

WHEREAS, such facilities and service levels shall be provided by the City of Balcones Heights utilizing funds allocated in the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein; and

WHEREAS, residential and commercial development causes and imposes increased and excessive demands upon water and wastewater utilities public facilities and services, including water and sewer facilities, that would not otherwise occur; and

WHEREAS, such development will place ever-increasing demands on the City of Balcones Heights to provide necessary public facilities; and

WHEREAS, to the extent that such new development places demands upon the public facility infrastructure, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands for them; and

WHEREAS, the amount of the impact fee to be imposed shall be determined by the cost of the additional public facilities needed to support such development, which public facilities shall be identified in a capital improvements program, and

WHEREAS, the City Council, after careful consideration of the matter, hereby finds and declares that impact fees imposed upon residential and commercial development to finance specified major public facilities, the demand for which is created by such development, is in the best interests of the general welfare of the City and its residents, is equitable, and does not impose an unfair burden on such development; and

WHEREAS, the City Council finds that s the City has complied with Chapter 395 of the Texas Local Government Code with regards to notice, adoption, promulgation, and methodology necessary to adopt Impact Fees; and

WHEREAS, the City has completed a review and update of the land use assumptions, the capital improvements plan for water and wastewater facilities, and the impact fees in accordance with the procedures set forth in Texas Local Government Code Chapter 395;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BALCONES HEIGHS, TEXAS.

SECTION 1. That Chapter 53, "UTILITY RATES AND CHARGES; TAXES" be amended to incorporate new Sections composed of Sections 53.40 to 53.50 to read as follows:

WATER AND SEWER IMPACT FEES

Sec. 53.40. Intent

This Ordinance is intended to impose water and wastewater impact fees, as established in this Ordinance, in order to finance public facilities, the demand for which is generated by new development in the city. .

Sec. 53.41. Authority

The City is authorized to enact this Ordinance by Texas Local Government Code Chapter 395 and its successors, which authorizes cities, among others, to enact or impose impact fees (impact fees) on land within their corporate boundaries, as charges or assessments imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. The provisions of this Ordinance shall not be construed to limit the power of the City to adopt such Ordinance pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this Ordinance. Guidelines may be developed by resolution or otherwise to implement and administer this chapter.

Sec. 53.42. Definitions

As applied in this Ordinance, the following words and terms shall be used:

- (1) **Assessment** - The determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this Ordinance.
- (2) **Impact Fee** - Fee to be imposed upon new development, for the related costs of facilities in proportion to development creating the need for such facilities, fees do not include dedication of rights-of-way or easements, or construction or dedication of site-related water distribution or wastewater collection facilities required by other ordinances of the City Code or policy; or pro rata fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains.
- (3) **Existing Development** - All development within the City of Balcones Heights service area which has a water or wastewater utility service as of the date of the adoption of this Ordinance.
- (4) **Equivalent Dwelling Unit (EDU)** - Basis for establishing equivalency among and within various customer classes based upon the relationship of the continuous duty maximum flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 5/8" diameter simple

water meter, using American Water Works Association C700-C703 standards. For purposes of this ordinance, 5/8" water meters are considered to equal one (1) LUE.

Sec. 53.43. Applicability of Impact Fees

No new development shall be exempt from the assessment of impact fees as defined in this Ordinance. However, the City Council may determine that for reasons of applicant hardship or for reasons of general community welfare, the applicable fees may be paid by the City into the appropriate utility funds in lieu of payment by the applicant or waived by the City.

Sec. 53.44. Impact Fees as Conditions of Development Approval

No application for new development shall be approved without assessment of impact fees pursuant to this Ordinance, and no Application for City Utility Service or building Certificate of Occupancy shall be issued unless the applicant has paid the impact fees imposed by and calculated herein

Sec. 53.45. Assessment of Impact Fees

(1) The approval of any subdivision of land or of any new development shall include as a condition the assessment of the impact fee applicable to such development.

(2) Assessment of the impact fee for any new development shall be made as follows:

Impact Fees based on Equivalent Dwelling Unit (EDU) SAWS rate + 5% Admin Fee

New Water Supply	*\$2,796
New Water Delivery Flow	*\$1,182
New Water Delivery System Development	*\$ 619
New Wastewater Treatment	*\$ 786
New Wastewater Collection	*\$1,469 New

*The Water and Wastewater impact fee may be amended through the City's annual ordinance establishing the consolidated municipal fee schedule for city utilities, and other services.

(3) Following assessment of the impact fee pursuant to subsection (2), no additional impact fees or increases thereof shall be assessed against that development unless the number of service units increases.

(4) Following the lapse or expiration of approval for a preliminary plat, which was made pursuant to the Subdivision Ordinance, the assessment made at the time the completed application for a preliminary plat was filed expires, and a new assessment shall be made.

Sec. 53.46. Collection of Impact Fees

- (1) No approval of Application for City Utility Service shall be made until all relevant impact fees have been paid to the City.
- (2) For a platted or unplatted development which is submitted in accordance with all applicable ordinance submission requirements for approval pursuant to the City's subdivision regulations and utilities policies subsequent to the effective date of this Ordinance, impact fees shall be collected at the time of Application for City Utility Service or Application for Building Permit for use of water and wastewater utility facilities in an amount as determined in Section 53.45.
- (3) For a development which has received final plat approval prior to the effective date of this Ordinance and for which no replatting is necessary prior to provision of a water or wastewater utility services, impact fees shall be collected at the time of Application for City Utility Service or Application for Building Permit.

Sec. 53.47. Establishment of Accounts

- (1) The City shall establish separate interest bearing accounts, in an institution authorized in the City's Investment Policy, for the two major categories of water and wastewater facilities for which an impact fee is imposed pursuant to this Ordinance.
- (2) The City shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the accounts are utilized solely for the purposes authorized in Section 53.47. Disbursement of funds shall be authorized by the City Council at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date the fee is deposited into the account.
- (3) The City Administrator or his designee shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program as area-related facilities. The City shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provisions this Ordinance.

Sec. 53.48. Use of Proceeds of Impact Fee Amounts

The impact fees collected pursuant to this Ordinance may be used to finance or to recoup capital construction costs of service. Impact fees may also be used to retire bonds or 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 water and wastewater capital improvements or facilities expansions.

Sec. 53.49. Appeals

- (1) The property owner or applicant for new development may appeal the following decisions to the City Council:
 - (a) The applicability of an impact fee to the development;
 - (b) The availability or the amount of an offset or credit;
 - (c) The application of an offset or credit against an impact fee due;
 - (d) The amount of the refund due, if any.
- (2) The burden of proof shall be on the appellant to demonstrate that the amount of the fee or the amount of the offset or credit was not calculated according to the applicable impact fee schedule or the guidelines established for determining offsets and credits.
- (3) The appellant must file a notice of appeal with the City Administrator within thirty (30) days following the decision. The development application or Application for City Utility Service may be processed while the appeal is pending.

Sec. 53.50. Refunds

- (1) Any impact fee or portion thereof collected pursuant to this Ordinance which has not been expended within ten (10) years from the date of payment, shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Tex. Rev. Civ. Stat. Art. 5069-1.03, or any successor statute.
- (2) An impact fee collected pursuant to this Ordinance shall be considered expended if the total expenditures for capital improvements or facilities expansions within ten (10) years following the date of payment exceed the total fees collected for such improvements or expansions during such period.
- (3) Upon the request of an owner of the property on which an impact fee has been paid, the City shall refund such fees if:
 - (a) Existing service is available and service is denied; or
 - (b) Service was not available when the fee was collected and the City has failed to commence construction of facilities to provide service within two years of fee payment; or
 - (c) 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 years from the date of fee payment.

- (4) The City shall refund an appropriate proportion of impact fee payments in the event that a previously purchased water meter is replaced with a smaller meter, based on the EDU differential of the two meter sizes and the per-EDU fee at the time of the original fee payment, less an administrative charge of \$50.

SECTION 2. REPEALER. All ordinances, resolutions, and municipal orders in conflict herewith are repealed to the extent of such conflict.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void; and that in lieu of each clause or provision of this Ordinance that is invalid, illegal, or unenforceable there be added by the Mayor as necessary with the approval of the City Attorney as to form, and as a part of the Ordinance a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

SECTION 4, EFFECTIVE DATE. Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the following sections will apply within the corporate city limits of Balcones Heights, Texas.

PASSED, ORDERED AND APPROVED THIS 31ST DAY OF AUGUST, 2015.



Suzanne de Leon
Mayor

ATTEST:



Delia Flores, TRMC
City Secretary

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