

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 35, “WATER AND SEWERS,” ARTICLE III “CHARGES” OF THE CODE OF THE CITY OF FORT WORTH, TEXAS (2015), AS AMENDED, TO ADD DIVISION 5 TO ESTABLISH A SEWER CAPACITY CHARGE COST RECOVERY METHOD TO ALLOW FOR THE IMPOSITION OF SEWER CAPACITY CHARGES FOR CITY-INITIATED AND DEVELOPER-INITIATED SANITARY SEWER INFRASTRUCTURE PROJECTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 395.001(4)(D) of the Texas Local Government Code excludes pro rata fees for reimbursements of sewer mains or lines extended by a political subdivision from the definition of impact fees; and

WHEREAS, pursuant to Chapter 35, Article III, Division 3 of the City Code, the City Council establishes sanitary sewer per acre charges as a pro rata fee to allow developers and the City to recoup some of the costs incurred in construction of certain sanitary sewer main extensions; and

WHEREAS, due to land use changes in commercial and industrial areas of the City, the City Council finds it necessary to establish an alternative method of calculating pro rata fees for sanitary sewer infrastructure; and

WHEREAS, the City Council finds that establishing sewer capacity charges as an alternative method of calculating pro rata fees for sanitary sewer infrastructure may provide the ability to establish a more equitable method of recovering costs for certain developments, including high-rise mixed-use density developments and manufacturing process developments;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, THAT:

SECTION 1.

Chapter 35, “Water and Sewers,” Article III “Charges” of the Code of the City of Fort Worth, Texas (2015), as amended, is hereby amended to add Division 5 to be and read as follows:

DIVISION 5. SEWER CAPACITY CHARGES

§ 35-94 PURPOSE

The purpose of this Division is to allow developers and the City to recover a portion of the costs incurred that are associated with the construction of Sewer Infrastructure that meets the criteria in this Division.

§ 35-95 DEFINITIONS

The following terms, when used in this Division, shall have the meanings respectively ascribed to them by this Section:

SEWER INFRASTRUCTURE. An Approach Sewer Main, Frontage Main, public sewer main or force main crossing a property boundary, or a public lift station, constructed by the City, or a developer, that is not included in the City's most recently adopted water and wastewater impact fee study.

APPROACH SEWER MAIN. The portion of a newly constructed public sewer main or force main from where it connects to an existing sewer main to the closest outer perimeter of a Proposed Development.

CITY-INITIATED SEWER INFRASTRUCTURE. Any Sewer Infrastructure constructed by the City, regardless of the size or length of the infrastructure constructed.

CITY PARTICIPATION. The portion of the construction cost that the City pays for or reimburses to a developer pursuant to the Community Facilities Agreements Ordinance, including the City's cost for over-sizing Developer-Initiated Sewer Infrastructure.

DEVELOPMENT COST.

- (a) The costs incurred by the City related to a City-Initiated Sewer Infrastructure project, or the City Participation costs in a Developer-Initiated Sewer Infrastructure project, which costs are based upon the unit costs contained in the contracts awarded for the construction of the Sewer Infrastructure that are not paid for with impact fee funds, regardless of the final cost, and may include design and easement acquisition costs, including any costs and legal fees associated with condemnation of easements; or
- (b) The cost incurred by a developer related to the construction of a Developer-Initiated Approach Sewer Main based solely on the cost of the contracts awarded for the construction of such sewer main, without regard to the final cost, and may include design and reasonable easement acquisition costs, but excludes any legal and real estate agent fees and other condemnation expenses.

DEVELOPER'S DEVELOPMENT COST PERCENTAGE. The Development Cost incurred by the developer divided by the entire cost of the project excluding the developer's legal, real estate agent fees, and other condemnation expenses, expressed as a percentage.

DEVELOPER-INITIATED SEWER INFRASTRUCTURE. Any Approach Sewer Main constructed by a developer, with or without Cost Participation, regardless of the length and size of the pipe.

FRONTAGE MAIN. The portion of a public sanitary sewer main or force main located on land abutting a street, stream, drainage channel, or water body, or the portion of a public sanitary sewer main or force main located within a property boundary.

PEAK DISCHARGE RATE. The peak discharge rate contained in the sewer study or loading analysis approved by the City.

OTHER DEVELOPMENT. A property that is developing, redeveloping, going through a change of use, or previously on a septic system or other sewer system, that connects directly or indirectly to Sewer Infrastructure for which a Sewer Capacity Charge has been established.

SEWER CAPACITY CHARGE. A pro rata charge based on one million gallons per day (MGD) of sewer capacity.

PROPOSED DEVELOPMENT. A property for which sanitary sewer service is being requested that requires the construction of Developer-Initiated Sewer Infrastructure.

§ 35-96 DEVELOPER’S RESPONSIBILITY

A developer shall provide all necessary information requested by the City to determine if a Sewer Capacity Charge should be established and to determine the amount of the Sewer Capacity Charge.

§ 35-97 ADOPTION OF AN ORDINANCE

The City Council shall adopt an ordinance to create each Sewer Capacity Charge authorized by this Division. Nothing contained herein requires the City Council to adopt such an ordinance, such adoption being in the sole discretion of the City Council. Sewer Infrastructure that is the subject of a community facilities agreement that has been fully executed at the time this Ordinance is adopted, or Sewer Infrastructure for which a sewer per acre charge has been established, shall not be eligible for a Sewer Capacity Charge.

§ 35-98 ASSUMPTIONS USED FOR SEWER PEAK DISCHARGE RATE CALCULATION

Assumptions used to calculate sewer Peak Discharge Rate are based on the wastewater loading criteria and peaking factors in the “Installation Policy and Design Criteria for Water, Wastewater, and Reclaimed Water Infrastructure.” If alternative loading criteria will be used, or the type of use is not listed in the “Installation Policy and Design Criteria for Water, Wastewater, and Reclaimed Water Infrastructure,” the developer shall provide source information to the City for approval.

If the Peak Discharge Rate is not within the “Requested Meter’s Flow Range (gpm)” in the following table, or if there is no sewer study or loading analysis approved by the City, the Peak Discharge Rate shall be the maximum limit of the “Requested Meter’s Flow Range (gpm)” in the following table:

Sensus Omni Meter Types	Meter Size	Requested Meter's Flow Range (gpm)
SRII	5/8" x 3/4"	<20
SRII	1	10 - 50
C2 Compound	1.5	21 - 50
C2 Compound	2	40 - 200
C2 Compound	3	155 - 500
C2 Compound or F2	4	425 - 1000
C2 Compound or F2	6	900 - 2000
T2 Turbo	1.5	<200
T2 Turbo	2	40 - 250
T2 Turbo	3	155 - 650
T2 Turbo	4	425 - 1250
T2 Turbo	6	900 - 2500

SRII = Single Family, Small Commercial

C2 Compound = Commercial, Multi-Commercial, Industrial, and Irrigation

T2 Turbo = Commercial Heavy User, Industrial, Heavy User, and Irrigation

F2= Combined Domestic with Fire Protection

§ 35-99 CALCULATION OF SEWER CAPACITY CHARGE

For Developer-Initiated Sewer Infrastructure projects or City-Initiated Sewer Infrastructure projects, the Sewer Capacity Charge shall be calculated as follows:

- (a) Development Cost shall be determined consistent with the definitions contained in Section 35-95.
- (b) For a Developer-Initiated Sewer Infrastructure project, the developer must provide the calculated sewer basin boundary, and all information, studies, and exhibits requested by the City. The City must approve the calculated basin area. For a City-Initiated Sewer Infrastructure project or a Developer-Initiated Sewer Infrastructure project with City Participation, the City will determine the sewer basin boundary and the developer shall provide all information, studies, and exhibits requested by the City.
- (c) The Sewer Capacity Charge is calculated by dividing the Development Cost by the Sewer Infrastructure capacity. The Sewer Infrastructure capacity is determined in accordance with the most current version of the City's "Installation Policy and Design Criteria for Water, Wastewater, and Reclaimed Water Infrastructure." The Sewer Infrastructure capacity is dependent on pipe slope and pipe diameter.

(d) A Sewer Capacity Charge shall not be created for a Frontage Main that is part of a Sewer Infrastructure project if the Frontage Main is eligible to have an assessment for a Front Footage charge pursuant to the City Code.

§ 35-100 ASSESSMENT AND PAYMENT OF THE SEWER CAPACITY CHARGE; REIMBURSEMENTS AND ADMINISTRATION

- (a) The Water Department shall be responsible for collecting, maintaining, and reimbursing Sewer Capacity Charges.
- (b) A Sewer Capacity Charge shall be assessed on Other Development located in the approved basin boundaries of Developer-Initiated or City-Initiated Sewer Infrastructure projects. The Sewer Capacity Charge for a property that meets the definition of Other Development that is redeveloping or going through a change of use will be based on the additional Peak Discharge Rate necessary for the property that is approved by the City.
- (c) Sewer Capacity Charges shall be paid to the City when the developer submits a building permit application to the City.
- (d) For Developer-Initiated Sewer Infrastructure projects, the developer should make a written request for reimbursement each November following the City's final acceptance of the Developer-Initiated Sewer Infrastructure project. It is the responsibility of the developer requesting the reimbursement to prove its eligibility to receive the reimbursement.
- (e) On January 1st of each year, a two percent (2%) annual cost adjustment increase shall be applied to each established Sewer Capacity Charge.
- (f) Reimbursement of a Sewer Capacity Charge to a developer shall cease when the developer has recovered its share of the Development Cost or after a period of 20 years, whichever occurs first.
- (g) Any assignment of the right to reimbursement of a Sewer Capacity Charge by a developer must be approved by the Water Department Director, or their designee, prior to the execution of the assignment.
- (h) Records reflecting the reimbursement limit, together with the project number, date construction was completed, permanent record number of the sewer main, limits of a portion of the sewer main upon which a Sewer Capacity Charge has been assessed, and name of the entity entitled to the reimbursement shall be maintained by the City.
- (i) It is the responsibility of a developer or landowner requesting a reimbursement to submit documentation satisfactory to the City to prove their eligibility to receive the reimbursement if the developer or landowner requesting the reimbursement is not the developer or landowner for which the Sewer Capacity Charge was established.

- (j) Upon written request by the developer during the month of November, reimbursements will be made annually during the last two months of the calendar year from Sewer Capacity Charges paid to the city.
- (k) The amount of reimbursement due to the developer each year shall be the assessed Sewer Capacity Charge collected that year multiplied by the Developer's Development Cost Percentage. The remaining portion of the amount collected that year shall be retained by the City as reimbursement for the City Participation in the project.
- (l) The City will recover the City's Development Cost for a City-Initiated Sewer Infrastructure project or City Participation in Developer-Initiated Sewer Infrastructure project. The City's collection time will cease when City's Development Cost has been fully reimbursed.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of the City of Fort Worth, or any other ordinances of the City, that 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 5.

This ordinance shall take effect upon adoption.

APPROVED AS TO FORM AND LEGALITY:

ATTEST:

Christopher Mullins
Assistant City Attorney

Jannette S. Goodall, City Secretary

ADOPTED: _____