

## **ARTICLE VIII: TRANSPORTATION IMPACT FEES**

### **DIVISION 1: GENERAL PROVISIONS**

#### **§ 30-151 SHORT TITLE.**

This article shall be known and cited as the Fort Worth Transportation Impact Fee Regulations.

#### **§ 30-152 PURPOSE.**

This article is intended to assure the provision of adequate transportation facilities to serve new development in the city by requiring each development to pay a share of the costs of such improvements necessitated by and attributable to such new development.

#### **§ 30-153 AUTHORITY.**

This article is adopted pursuant to Tex. Local Government Code Chapter 395 and the Fort Worth City Charter. The provisions of this article shall not be construed to limit the power of the city to utilize other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this article. Guidelines may be developed by ordinance, resolution or otherwise to implement and administer this article.

#### **§ 30-154 DEFINITIONS.**

The following words, terms and phrases, when used in this article, whether capitalized or not, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- **ANNEXATION (Full-Purpose).** The legal process for annexing an area in order to provide full municipal services. The city enforces all ordinances, provides services as provided by law, and assesses property taxes and sales taxes. **(Limited-Purpose)** The legal process for annexing an area in order to provide only certain regulatory services for a specified period of time.
- **ASSESSMENT.** The determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this article.
- **CAPITAL IMPROVEMENT.** A transportation facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the city.
- **CAPITAL IMPROVEMENTS ADVISORY COMMITTEE.** The city's plan commission, together with such ad hoc representatives as may be appointed from time to time, to fulfill the composition mandated by Tex. Local Government Code § 395.058.
- **CHANGE OF USE.** A new development involving a change in use or occupancy of any existing structure, with the exception of SHELL BUILDING(s) never previously occupied, that has the effect of increasing the number of service units beyond those attributable to the immediately preceding use, which requires the issuance of a new permit and which may include, but is not limited to, the reconstruction, redevelopment, conversion, structural alteration or enlargement of any structure.

- CITY. The City of Fort Worth, Texas.
- CREDIT. A reduction in the amount of a transportation impact fee for a new development, either by a decrease in the number of service units attributable to such development or a decrease in the amount of transportation impact fees otherwise due, that results from contributions of land, improvements or funds to construct system improvements in accordance with the city's subdivision and development regulations, policies or requirements.
- FINAL PLAT APPROVAL The point at which the applicant has complied with all conditions of approval and the executive secretary of the city plan commission has signed the applicant's plat.
- IMPACT FEE. A fee for transportation facilities imposed on new development by the city pursuant to this article in order to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to such new development. IMPACT FEES do not include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements, imposed pursuant to the city's zoning or subdivision regulations.
- LAND USE ASSUMPTIONS. The projections of population and employment growth and associated changes in land uses, densities and intensities adopted by the city, as may be amended from time to time, upon which the transportation impact fee TRANSPORTATION IMPROVEMENTS PLAN is based.
- LAND USE PER VEHICLE MILE EQUIVALENCY TABLE (LUVMET). 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 PER VEHICLE MILE EQUIVALENCY TABLE may be incorporated in a schedule of impact fee rates.
- NEW DEVELOPMENT. A project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure, or any use or extension of land, 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 city's subdivision regulations or the issuance of a building permit, and which has not been exempted from these regulations by provisions herein.
- PROPERTY OWNER. Any person, corporation, legal entity or agent thereof having a legal or equitable interest in the land for which an impact fee becomes due. PROPERTY OWNER includes the developer for the new development.
- ROADWAY. Any thoroughfare designated in the city's adopted master thoroughfare plan, as may be amended from time to time. ROADWAY also includes any thoroughfare designated as a numbered highway on the official federal or Texas highway system; to the extent that the city incurs capital improvement costs for such facility.
- SERVICE AREA. Designated areas within the city, within which impact fees for TRANSPORTATION FACILITY EXPANSIONS may be collected from NEW

DEVELOPMENT occurring within such area and within which area fees so collected will be expended for those types of improvements or expansions identified in the TRANSPORTATION IMPROVEMENTS PLAN.

- SERVICE UNIT. A vehicle mile which shall be defined as one vehicle traveling a distance of one mile during the afternoon peak hour.
- SHELL BUILDING. A new, non-residential building that is built without a final use determined.
- SITE-RELATED FACILITY. An improvement or facility which is for the primary use or benefit of one or more new developments and/or which is for the primary purpose of safe and adequate provision of transportation facilities to serve the new development, including access to the development, which is not included in the transportation improvements plan, and for which the developer(s) or property owner(s) is solely responsible under subdivision or other applicable development regulations.
- SYSTEM FACILITY. A transportation improvement or facility expansion which is designated in the TRANSPORTATION IMPROVEMENTS PLAN. SYSTEM FACILITY may include a transportation improvement which is located within or on the perimeter of a new development site.
- TRANSPORTATION FACILITY. An improvement to a ROADWAY which includes, but is not limited to: rights-of-way, whether conveyed by deed or easement, or capacity expansion including additional lanes, intersection improvements, turn lanes, drainage facilities associated with the ROADWAY, and water and wastewater relocation if affected by the ROADWAY. TRANSPORTATION FACILITY also includes improvements, as described above, to a roadway officially enumerated in the federal or Texas highway system to the extent that the city has incurred capital costs for such facilities, including, without limitation, local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances and rights-of-way.
- TRANSPORTATION FACILITY EXPANSION. The expansion of the capacity of an existing ROADWAY in the city to serve new development, but does not include the repair, maintenance, modernization or expansion of roadways to better serve existing development.
- TRANSPORTATION IMPROVEMENTS PLAN. The adopted plan, as may be amended from time to time, which identifies the transportation facilities or transportation facility expansions and their costs for each transportation service area, which are necessitated by and which are attributable to new development, for a period not to exceed ten years, which are to be financed in whole or in part through the imposition of transportation impact fees pursuant to this article.

#### § 30-155 APPLICABILITY.

The provisions of this article apply to all new, non-exempt development within the corporate boundaries of the city located within a transportation service area.

#### § 30-156 COMPUTATION OF MAXIMUM IMPACT FEES PER SERVICE UNIT.

(a) Maximum transportation impact fees per service unit shall be established for each service area. 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 transportation improvements necessitated by and attributable to new development in the service area identified in the transportation improvements plan;

(2) From such amount, subtract a credit equal to the amount of that portion of ad valorem tax revenues, if any, to be generated by new service units during the period the transportation improvements plan is in effect, including the payment of debt, associated with the transportation improvements in the plan; and

(3) Divide the resultant amount by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area.

(b) The impact fee per service unit which is to be paid by each new development within a service area shall be that established by ordinance by the city council, as such may be amended from time to time, and shall be an amount less than or equal to the maximum impact fee per service unit established in subsection (a) above.

(c) The city may vary the rates of collection or amount of transportation impact fees per service unit among or within service areas in order to reasonably further goals and policies affecting the adequacy of transportation facilities serving new development, or other regulatory purposes affecting the type, quality, intensity, economic development potential or development timing of land uses within such service districts.

(d) The maximum impact fee per service unit for transportation facilities, 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 city's transportation system. To the extent that the impact fee charged against a new development, as may be amended from time to time, is less than the maximum impact fee per service unit, such difference hereby is declared to be founded on policies unrelated to measurement of the impacts of the new development on the city's transportation system. The maximum impact fee may be used in evaluating any claim by a property owner that the dedication or construction of a capital improvement within a service area imposed as a condition of development approval pursuant to the city's subdivision or development regulations is disproportionate to the impacts created by the development on the city's transportation system.

#### § 30-157 USE OF PROCEEDS OF IMPACT FEE ACCOUNTS.

(a) The transportation impact fees collected for each service area pursuant to these regulations may be used to finance or to recoup the costs of any transportation improvements or facility expansions identified in the transportation improvements plan for the service area necessitated by new development, 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). Transportation impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such transportation improvements or facility expansions. Transportation impact

fees also may be used to pay fees actually contracted to be paid to an independent qualified engineer or financial consultant for preparation of or updating the transportation improvements plan.

(b) Transportation impact fees collected pursuant to this article shall not be used to pay for any of the following expenses:

(1) Construction, acquisition or expansion of transportation improvements or assets other than those identified in the applicable transportation improvements plan;

(2) Repair, operation or maintenance of existing or new transportation improvements or facility expansions;

(3) Upgrading, updating, expansion or replacement of existing transportation improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(4) Upgrading, updating, expansion or replacement of existing transportation improvements to provide better service to existing development; or

(5) Administrative and operating costs of the city.

#### § 30-158 ESTABLISHMENT OF ACCOUNTS.

(a) The city's financial management services department shall establish an account to which interest is allocated for each service area for which a transportation impact fee is imposed pursuant to this article. Each impact fee collected within the service area shall be deposited in such account.

(b) Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in § 30-157.

(c) The city's financial management services department shall establish adequate financial and accounting controls to ensure that transportation impact fees disbursed from the account are utilized solely for the purposes authorized in § 30-157. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any road impact fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee is deposited into the account.

(d) The city's financial management services department shall maintain and keep financial records for transportation impact fees, which shall show the source and disbursement of all fees collected in or expended from each service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours. The city may establish a fee for copying services.

#### § 30-159 FUNCTIONS OF CAPITAL IMPROVEMENTS ADVISORY COMMITTEE FOR TRANSPORTATION IMPACT FEES.

(a) The capital improvements advisory committee for transportation impact fees shall perform the following functions:

(1) Advise and assist the city in adopting land use assumptions;

(2) Review the transportation improvements plans and file written comments on impact fees;

(3) Monitor and evaluate implementation of the transportation improvements plans;

(4) Advise the city of the need to update or revise the land use assumptions, transportation improvements plans and transportation impact fees; and

(5) File a semiannual report, which shall be circulated among interested organizations, evaluating the progress of the transportation improvements plans and identifying perceived inequities in implementing the plans or administering the transportation impact fees.

(b) The city shall make available to the capital improvements advisory committee for transportation impact fees any professional reports prepared in the development or implementation of the transportation improvements plans.

(c) The city council will adopt procedural rules for the capital improvements advisory committee for transportation impact fees to follow in carrying out its duties.

#### § 30-160 USE OF OTHER FINANCING MECHANISMS.

(a) The city may finance transportation improvements or facility expansions designated in the transportation improvements plan through the issuance of bonds, through the formation of public utility districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of impact fees.

(b) Except as herein otherwise provided, the assessment and collection of a transportation impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

(c) The city council may decide that the city shall pay all or a part of transportation impact fees due for a new development pursuant to duly adopted criteria.

#### § 30-161 IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REGULATION.

(a) Transportation impact fees established by these regulations are additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of city's comprehensive land use plan, the capital improvements plan, the zoning ordinance, subdivision regulations and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

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

§§ 30-162—30-170 RESERVED.

## **DIVISION 2: ASSESSMENT AND COLLECTION OF IMPACT FEES**

### **§ 30-171 ASSESSMENT AND COLLECTION SCHEDULES FOR IMPACT FEES.**

The amount of the impact fees to be assessed shall be as set forth in Schedule 1, on file in the city secretary's office, and made a part of this article by reference. The amount of the impact fees which are to be collected shall be as set forth in Schedule 2, on file in the city secretary's office, and made a part of this Article by reference. Schedules 1 and 2 may be amended from time to time utilizing the amendment procedure set forth in § 30-191.

### **§ 30-172 ASSESSMENT OF IMPACT FEES.**

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

(1) For land first made subject to an impact fee upon adoption of the original or a subsequent transportation impact fee ordinance, and which land was finally platted before the effective date of such ordinance, assessment shall occur on the effective date of the original or subsequent transportation impact fee ordinance, as the case may be, and shall be the amount of the maximum impact fee per service unit established by such original or subsequent ordinance, as set forth in Schedule 1 thereof.

(2) For land which is unplatted at the time of application for a building permit, and for which no plat is necessary pursuant to the city's subdivision regulations prior to development, assessment of transportation impact fees shall occur at the time application is made for the building permit, and shall be the amount of the maximum impact fee per service unit as set forth in Schedule 1 then in effect.

(3) For a new development which is submitted for approval pursuant to the city's subdivision regulations on or after the effective date of this article, or for which replatting results in an increase in the number of service units after such date, assessment of impact fees shall be at the time of final plat approval, and shall be the amount of the maximum impact fee per service unit as set forth in Schedule 1 then in effect.

(b) Following assessment of the impact fee, the amount of the impact fee assessment per service unit for that development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or other development application that results in approval of additional service units, in which case a new assessment shall occur at the Schedule 1 rate then in effect for such additional service units.

(c) Following the submittal of any replat that results in an increase in the number of service units, a new assessment must be made in accordance with § 30-172(a) and (b).

(d) Approval of an amending plat pursuant to Tex. Local Government Code §212.016 and the city's subdivision regulations is not subject to reassessment for an impact fee.

### **§ 30-173 COLLECTION OF IMPACT FEES.**

(a) Transportation impact fees shall be collected at the time the city issues a building permit for a new development, unless a different time is provided for in an agreement for capital improvements pursuant to subsection (b) below.

(b) The impact fees to be paid per service unit for a new development, less any applicable discounts in accordance with § 30-173(d), shall be the amount listed in Schedule 2 in effect at the time of building permit submittal, and shall be based on the amount listed in Schedule 1 in effect at the time of final plat approval.

(c) The Director of Development Services or his or her delegate shall compute the transportation impact fees for a new development in the following manner.

(1) The director shall first determine whether the new development qualifies for any discount computed in accordance with subsection (d) below that reduce impact fees otherwise due in whole or in part.

(2) To the extent that impact fees are owed for the new development after application of available discounts, the director shall next determine whether the new development is eligible for credits calculated in accordance with Division 3 to reduce impact fees due.

(3) The total amount of the impact fees for the new development shall be calculated based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual land use definitions.

(4) Impact fees for Shell Buildings will be collected at the time of building permit application. Tenant finish-out permits will be reviewed and compared against the original shell building land use for collection of additional impact fees owed, if any.

(5) An applicant may request an alternative service unit computation for land uses not contained in the most current edition of the Institute of Transportation Engineers Trip Generation Manual by submitting a trip generation study demonstrating the appropriateness of the trip generation rates for the proposed development to the director for decision. An applicant may also include an alternative service unit calculation in an appeal taken pursuant to § 30-192.

(d) The following discounts shall apply to reduce Schedule 2 transportation impact fees otherwise due:

(1) Adequate Public Facilities Discount.

a. The Schedule 2 transportation impact fees shall be reduced by 50% for any development where:

1. One or more points of access serve at least 75% of the peak-hour site-generated traffic volumes;

2. Such point(s) connect the development to the city's thoroughfare system, as depicted in the city's master thoroughfare plan (MTP) provided however, sites with multiple access points may include a TxDOT facility as one of the access points to meet this criteria; and

3. The transportation facility so connected has been improved to its ultimate capacity as classified under the current master thoroughfare plan.

b. Eligibility for this discount must be determined no later than issuance of the first building permit for land subject to the final plat.

(2) Mixed-use/Multi-modal Development Discount. The amount of transportation impact fees due under Schedule 2 shall be reduced up to 25% for any development where an accepted traffic impact study demonstrates that the development will reduce the vehicle



trips from those contained in the adopted land use equivalency table, to one of the following:

5 to 9% trip capture:	10% impact fee reduction
10 to 14% trip capture:	15% impact fee reduction
15% to 20% trip capture:	20% impact fee reduction
21% or > trip capture:	25% impact fee reduction

(3) Extraordinary investment discount.

a. The amount of transportation impact fees due under Schedule 2 shall be reduced 25% for any development that results in all of the following qualifications, as jointly determined by the Development Services Department and the Department of Economic Development:

1. \$25 million in capital investment, excluding land costs;
2. Creation of 75 new jobs; and
3. The projected salary of the new jobs is at least twice the current federal minimum wage, plus benefits.

b. For each additional \$10,000,000 in capital investment or additional 75 qualified new jobs, the impact fee amount due under Schedule 2 will be further reduced by an additional 5% up to a maximum reduction of 50%. A development may receive this discount and have a period of up to four years from the issuance of a building permit to qualify under the terms of this discount. Impact fees otherwise paid shall be refunded to the original payor at the time of issuance of the building permit. A development shall refund a pro rata share of this discount should the development not continue to maintain the number of new jobs for a period of at least ten years from the date of building permit (or the date of qualification for this discount), equal to 10% per annum for each year that the number of jobs is not maintained. The terms related to this discount shall be incorporated within an agreement for credits pursuant to § 30-182.

(4) Discounts cumulative. Discounts identified in subsections (d)(1) to (d)(3) above are cumulative, so that a development that qualifies for the maximum discount under each provision may reduce impact fees otherwise due up to 100%.

(5) Burden of proof. The applicant for a discount provided for in this section has the burden of proof to show that the development qualifies for the discount.

(6) Application. An application for discounts shall be submitted with the first building permit application submitted by the applicant. The application for discounts shall be forwarded to the appropriate reviewing department(s).

(e) 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 § 30-172 by the number of service units generated by the development.

(f) If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees shall be computed using Schedule 2 then in effect, with credits for previous payment of fees being applied against the new fees due.

(g) Whenever the property owner proposes to increase the number of service units for a development, the additional impact fees collected for such new service units shall be determined by using Schedule 2 then in effect, and such additional fee shall be collected at the times prescribed by this section.

§§ 30-174—30-180 RESERVED.

### **DIVISION 3: CREDITS AGAINST IMPACT FEES**

#### **§ 30-181 CREDITS AGAINST TRANSPORTATION IMPACT FEES.**

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

Credit for right-of-way dedication will be determined by the highest of the following three calculations per square foot:

(1) Twenty percent (20%) of the estimated construction cost in the latest transportation improvement plan.

(2) Twenty percent (20%) of the total project cost as determined by the City's acceptance of the roadway facility.

(3) The current Appraisal District Land Market Value per square foot for the property as listed in the most recent Appraisal District Valuation for the property.

(b) Master planned projects, including subdivisions containing multiple phases, and whether approved before or after the effective date of these impact fee regulations, may apply for credits against transportation impact fees for the entire project based upon contributions of land, improvements or funds toward construction of system facilities, or other transportation improvements supplying excess capacity. Credits shall be determined by comparing costs of transportation improvements supplied by the project with the costs of transportation improvements to be utilized by development within the project, utilizing a methodology approved by the city. The credit determination shall be incorporated within an agreement for credits, in accordance with § 30-182.

(c) State and federal law and the city's ordinances, policies and regulations, as amended, shall apply to determine a new development's obligations to construct adjacent system facilities. The obligation to construct, however, shall not exceed the maximum impact fees assessed against the new development under Schedule 1. Construction required under such ordinances, policies and regulations shall be credited against the amount of transportation impact fees otherwise due. If the costs of constructing a system facility in accordance with the community facilities agreement are greater than the amount of impact fees due, the amount of the credit due shall be deemed to be 100% of the impact fees and no impact fee shall be collected thereafter for the development, unless the number of service units is subsequently increased.

(d) All credits against transportation impact fees shall be based upon standards promulgated by the city, which may be adopted as administrative guidelines, including the following standards.

(1) No credit shall be given for the dedication or construction of site-related facilities.

(2) No credit shall be given for a transportation facility which is not identified within the transportation improvements plan, unless the facility is on or qualifies for inclusion on the master thoroughfare plan and the city agrees that such improvement supplies capacity to new developments other than the development paying the transportation impact fee and provisions for credits are incorporated in an agreement for credits pursuant to § 30-182.

(3) In no event will the city grant a credit when no transportation impact fees can be collected pursuant to this article or for any amount exceeding the total transportation impact fees due for the development, unless expressly agreed to by the city in writing.

(4) The city may participate in the costs of a system improvement to be dedicated to the city, including costs that exceed the amount of the impact fees due for the development, in accordance with policies and rules established by the city. The amount of any credit for construction of a system facility shall be reduced by the amount of any participation funds received from the city.

(5) Where funds for transportation facilities have been escrowed through a community facilities agreement or future improvements agreement for transportation facilities that was executed with the city, the following rules apply:

a. Funds expended under the agreement for transportation facilities shall first be credited against the amount of transportation impact fees that would have been due under Schedule 2 for those units of development for which building permits already have been issued; and

b. Any remaining funds shall be credited against impact fees due for the development under Schedule 2 at the time building permits are issued.

(e) Credits for right-of-way dedication shall be deemed created when the right-of-way dedication has been executed and credits for construction of improvements shall be deemed created when the improvements are completed and the city has accepted the facility, or in the case of improvements constructed and accepted prior to the effective date of this article, on such effective date. Credits created after the effective date of this article shall expire ten years from the date the credit was created. Credits arising prior to such effective date shall expire ten years from such effective date. Upon application by the property owner, the city may agree to extend the expiration date for the credit on mutually agreeable terms.

(f) Unless an agreement for credits under § 30-182 is executed providing for a different manner of applying credits against transportation impact fees due, a credit associated with a plat shall be applied at the time of application for the first building permit and, at each building permit application thereafter, to reduce impact fees due until the credit is exhausted.

#### § 30-182 AGREEMENT FOR CREDITS.

An owner of a new development who has constructed or financed a transportation improvement or facility expansion designated in the transportation improvements plan, or

other transportation improvement that supplies excess capacity, as required or authorized by the city, shall enter into an agreement with the city to provide for credits against transportation impact fees due for the development in accordance with § 30-181. The agreement shall identify the basis for and the method for computing and the amount of the credit due and any reduction in credits attributable to consumption of road capacity by developed lots or tracts served by the transportation improvements. For multi-phased projects, the city may require that total credits be proportionally allocated among the phases. If authorized by the city, 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.

§§ 30-183—30-190 RESERVED.

#### **DIVISION 4: UPDATE AND RELIEF PROCEDURES**

##### **§ 30-191 UPDATES TO PLANS AND REVISION OF FEES.**

(a) The city shall update its land use assumptions and transportation improvements plans at least every five years, commencing from the date of adoption of such plans, and shall recalculate the transportation impact fees based thereon in accordance with the procedures set forth in Tex. Local Government Code Chapter 395, or in any successor statute.

(b) The city may review its land use assumptions, transportation impact fees, transportation improvements plans and other factors such as market conditions more frequently than provided in subsection (a) above to determine whether the land use assumptions and transportation improvements plans should be updated and the transportation impact fees recalculated accordingly, utilizing statutory update procedures.

(c) Schedule 2 may be amended without revising land use assumptions and transportation improvements plans at any time prior to the update provided for in subsection (a) above, provided that the transportation impact fees to be collected under Schedule 2 do not exceed the transportation 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 Tex. Local Government Code Chapter 395, or in any successor statute.

(d) If, at the time an update is required pursuant to subsection (a) above, the city council determines that no change to the land use assumptions, transportation improvements plan or transportation impact fees are needed, it may dispense with such update by following the procedures in Tex. Local Government Code § 395.0575 or successor statute.

(e) The city may amend any other provisions of this article in accordance with procedures for ordinance amendments contained in the city's Charter.

##### **§ 30-192 APPEALS.**

(a) The property owner or applicant for new development may appeal the following administrative acts, as provided for in subsection (c), below:

(1) The applicability of a transportation impact fee to the development;

- (2) The amount of the transportation impact fee due;
  - (3) The availability of, the amount of, or the expiration of a credit;
  - (4) The application of a credit against a transportation impact fee due;
  - (5) The amount of the transportation impact fee in proportion to the benefit received by the new development;
  - (6) The amount of a refund due, if any; or
  - (7) The availability of a discount against the collection of transportation impact fees.
- (b) The burden of proof shall be on the appellant to demonstrate that relief should be granted by the city.

(c) The appellant must file a written notice of appeal with the Director of Development Services within 30 days following the decision appealed from. The Director or his or her designee may resolve the appeal if the appellant agrees with the Director's decision, or refer the matter to the City Manager for decision with the Director's recommendation. If the appellant disagrees with the City Manager's decision, the appellant may request city council review after receiving the manager's written decision. City council review shall be requested within 30 days from the date the appellant has received the manager's decision. The city secretary shall schedule a public hearing to be held within 30 days of the date the request for city council review has been received, unless otherwise mutually determined, at which the appellant may present testimony and evidence before the city council. The city council may act at the time of the public hearing and must act on the appeal no later than 30 days after the public hearing.

(d) If the notice of appeal is accompanied by a payment or other security satisfactory to the Director, in an amount equal to the original determination of the transportation impact fee due, the city shall process and may issue a building permit if all other requirements are met while the appeal is pending.

#### § 30-193 REFUNDS.

(a) Upon application, any transportation impact fee or portion thereof collected pursuant to these regulations, which has not been expended within the service area within ten years from the date of payment, shall be refunded to the record owner of the property for which the impact fee was paid or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Tex. Local Government Code § 395.025, or its successor statute. The application for refund pursuant to this section shall be submitted within 60 days after the expiration of the ten-year period for expenditure of the fee. An impact fee shall be considered expended on a first-in, first out basis.

(b) An impact fee collected pursuant to these regulations shall also be considered expended if the total expenditures for transportation improvements or facility expansions authorized within the service area within ten 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) above, the city shall divide the difference between the amount of expenditures and the amount of the fees collected by the

total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record owner shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

#### § 30-194 REBATES.

If the building permit for a new development for which a transportation impact fee has been paid has expired, and a modified or new application has not been filed within six months of such expiration, the city shall, upon written application, rebate the amount of the impact fee to the record owner of the property for which the impact fee was paid. If no application for rebate pursuant to this section has been filed within this period, no rebate shall become due.

#### § 30-195 WAIVERS AND EXEMPTIONS.

(a) Pursuant to Tex. Local Government Code § 395.022, as amended, a school district is not required to pay transportation impact fees imposed under this article unless the board of trustees of the district consents to the payment of the fees by entering a contract with the city imposing the fees.

(b) Impact fees will be waived for qualified neighborhood empowerment zone (NEZ) projects or properties.

(c) A change of use, as defined in § 30-154, is exempt from the payment of impact fees.

#### § 30-196 RELIEF PROCEDURES.

(a) Any person who has paid a transportation impact fee or an owner of land upon which a transportation impact fee has been paid may petition the city council to determine whether any duty required by this article 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 60 days of the request. If the city council determines that the duty is required pursuant to the ordinance and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion. This subsection (a) is not applicable to matters which may be appealed pursuant to § 30-192.

(b) The city council may grant a variance from any requirement of this article, upon written request by a developer or owner of property subject to the ordinance, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property. The request for a variance shall be processed and decided as an appeal under § 30-192.

(c) If the city council grants a variance to the amount of the transportation impact fee due for a new development under this section, it may cause to be appropriated from other city funds the amount of the reduction in the impact fee to the account for the service area in which the property is located.

§§ 30-197 ANNEXATIONS. A formal annexation and incorporation of land into the City after the effective date of this ordinance shall also place the land into a service area(s) after an update of the land use assumptions, service area boundaries and impact fees for the affected service area(s) has been adopted by the city council. Developments on such annexed land will thereafter be subject to this subchapter and the updated (if necessary), Schedule 1 and Schedule 2 rates. Final plats for land and/or applications for building permits filed prior to finalized annexation shall not be subject to assessment or collection of transportation impact fees or be eligible for credits thereto unless a pre-annexation or other agreement expressly stating the parties' intent has been executed with the City.

§§ 30-198 —30-200 RESERVED.

## **DIVISION 5: TRANSPORTATION IMPACT FEES**

§ 30-201 SERVICE AREAS.

(a) Service Areas as established, described and depicted in the original Transportation Impact Fee Study, as updated and amended, are on file with the city secretary's office.

(b) The boundaries of the transportation service areas may be amended from time to time, or new transportation service areas may be delineated, pursuant to the procedures in § 30-191.

§ 30-202 TRANSPORTATION IMPROVEMENTS PLAN.

(a) The transportation improvements plan for the City of Fort Worth is as presented in the most recent Transportation Impact Fee Study on file with the city secretary's office.

(b) The transportation improvements plan may be amended from time to time, pursuant to the procedures in § 30-191.

§ 30-203 TRANSPORTATION IMPACT FEES.

(a) The maximum impact fees per service unit for transportation facilities are as shown on Schedule 1, on file with the city secretary's office.

(b) The impact fees per service unit for transportation facilities, which are to be paid by each new development, are as shown on Schedule 2, on file with the city secretary's office.

(c) The impact fees per service unit for transportation facilities may be amended from time to time, pursuant to the procedures in § 30-191-.