

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING, CHAPTER 50, "UTILITIES", ARTICLE VI, IMPACT FEES BY ADDING SECTIONS 50-302 TO 50-318 AND ADOPTING LAND USE ASSUMPTIONS, ADOPTING A CAPITAL IMPROVEMENTS PLAN, ESTABLISHING A WATER AND WASTEWATER IMPACT FEE BASED ON LIVING UNIT EQUIVALENTS, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLIC NOTICE PURSUANT TO THE TEXAS OPEN MEETINGS ACT; ESTABLISHING AN EFFECTIVE DATE; AND MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED HERETO.**

**Whereas,** the City of Kyle, 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,** 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 such development will place ever-increasing demands on the City of Kyle to provide necessary public facilities; and

**Whereas,** the City Council of the City of Kyle, Texas (the "City Council") appointed an Impact Fee Advisory Committee in compliance with Section 395.058 of the Texas Local Government Code;

**Whereas,** on November 7, 2016, the Impact Fee Advisory Committee approved the land use assumptions and the capital improvements plan used in the calculation of the updated water and wastewater impact fee;

**Whereas,** on November 7, 2016, the Impact Fee Advisory Committee recommended to the City Council to adopt the 2016 Water and Wastewater Impact Fee Report including the updated water impact fee of \$3,535 per living unit equivalent and wastewater impact of \$2,826 per living unit equivalent, a combined maximum water and wastewater impact fee of \$6,361 per living unit equivalent;

**Whereas,** on November 15, 2016, the City Council adopted a Resolution establishing the date for a public hearing to be held on January 3, 2017 and directing that notice be given for such public hearing, as required Chapter 395 of the Texas Local Government Code, to consider, discuss, and review the update to the water and wastewater land use assumptions, water and wastewater capital improvements plan, and imposition of the update water and wastewater impact fees;

**Whereas**, in compliance with Section 395.049 of the Texas Local Government Code, on November 30, 2016, a notice of public hearing was published in the City's newspaper of record, the Hays Free Press;

**Whereas**, on January 3, 2017, the City Council held such public hearing to consider the adoption of land use assumptions, a capital improvements plans and the updated water and wastewater impact fees;

**Whereas**, pursuant to Chapter 395 of the Texas Local Government Code and the above citations, the City Council desires to adopt the 2016 Water and Wastewater Impact Fee Report including the amended land use assumptions, the capital improvements plan and the updated water and wastewater impact fees;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:**

**Section 1. Authority.** This Ordinance is adopted pursuant to Chapter 395 of the Texas Local Government Code, the general laws of the State of Texas, and the City Charter. The provisions of this Ordinance 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 Ordinance.

**Section 2. Adoption of Land Use Assumptions and Capital Improvements Plan.** The land use assumptions and the capital improvement plan identifying capital improvements or facility expansions pursuant to which impact fees may be assessed, as considered at the January 3, 2017 public hearing, are hereby approved. The land use assumptions and the capital improvements plan are provided in the 2016 Water and Wastewater Impact Fee Report attached hereto as Exhibit "A", which is dated November 2016.

**Section 3.** That Chapter 50, "UTILITIES" be amended to incorporate new Sections composed of Sections 50-302 to 53.318 to read as follows:

#### **DIVISION 4.-WATER AND WASTEWATER IMPACT FEES**

**Sec. 50-302 Title.** This Ordinance shall be known, and may be cited, as the Water and Wastewater Impact Fee Ordinance of the City of Kyle, Texas.

**Sec. 50-303. Findings of Fact.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact.

**Sec. 50-304. Purpose.** This Ordinance is intended to assure the provision of adequate public facilities to serve new development within the City's service area by requiring development to pay its pro rata share of the cost of improvements necessitated by and attributable to such new development.

**Sec. 50-305. Impact Fee Advisory Committee.** The Advisory Committee shall consist of the City Planning and Zoning Commission and other citizens of the City appointed by the City Council. If the Commission does not include at least one representative of the real estate, development of building industry who is not an employee or official of a governmental entity, the City council shall appoint at least one representative, having such qualifications, as a voting member of the Advisory Committee. If any impact fee is to be applied in the extraterritorial jurisdiction of the City, a representative from that area shall be appointed by the City Council.

(a) The duties of the Advisory Committee shall be as follows:

- Advise and assist the adoption of land use assumptions;
- Review the capital improvements plan and file written comments;
- Monitor and evaluate implementation of the capital improvements plan;
- File semi-annual reports with respect to the progress of the capital improvements plan and report to the City Council any perceived inequities in implementing the plan or imposing the impact fee; and
- Recommend to the City Council as necessary and required the timely amendment and/or update of the capital improvements plan and the impact fees.

**Sec. 50-306. Establishment.** There is hereby established an updated Water and Wastewater Impact Fee which shall be imposed against new development in order to generate revenues for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development.

**Sec. 50-307. Basis.** The Water and Wastewater Impact Fee shall be assessed on the basis of Living Unit Equivalents (LUEs). The number of Living Unit Equivalents shall be determined at the time of assessment as hereinafter set out.

**Sec. 50-308. Fee Amount.** The Water and Wastewater Impact Fee for each Living Unit Equivalent (LUE) shall be as follows:

- Water Impact Fee: \$3,535 per LUE
- Wastewater Impact Fee: \$2,826 per LUE

**Sec. 50-309. Exemption or Waiver.** The City Council may grant a waiver from any requirement of this Ordinance on other grounds, as may be set forth in administrative guidelines. If the City Council grants a variance or waiver to the amount of the impact fee due for a new development under this Section, it shall cause to be appropriated from the other City funds the amount of the reduction in the impact fee to the capital improvements account.

**Sec. 50-310. Use of Proceeds.** The impact fees collected pursuant to this Ordinance may be used to finance or to recoup the costs of any capital improvements or facilities expansions identified in the impact fee capital improvements plan for the services area. 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 capital improvements or facilities expansions.

**Sec. 50-311. Impact Fees Under Prior Ordinances.** Subject to the provisions of prior City Impact Fee Ordinances, the water and wastewater impact fees imposed by such prior City of Kyle Ordinances, shall continue to apply to land for which a subdivision plat was approved or filed for approval after the effective date of those respective City Ordinances but prior to the effective date of this Ordinance; provided that any such application for subdivision plat approval did not expire or lapse prior to the effective date of the Ordinance; and provided that all prior City Ordinances shall be deemed fully replaced by this Ordinance as to all other property.

Any development for which a water and/or wastewater impact fee was paid under a prior City Impact Fee Ordinance that adds additional living unit equivalent (LUE) shall be charged the impact fee established by this Ordinance for each such additional living unit equivalent or service unit. No additional impact fee shall be assessed against any such development unless the number of living unit equivalents required to service such tract or property is increased. Should the number of required number of living unit equivalents increase then impact fees shall be increased and become due in an amount equal to the impact fee established by this Ordinance multiplied by the increase in the number of living unit equivalents.

**Sec. 50-312. Impact Fees Under This Ordinance.** Unless there is executed an agreement for payment of water and wastewater impact fees in another manner, the water and wastewater impact fee imposed by this Ordinance shall be assessed and collected with respect to:

- (i) land platted after the adoption of this Ordinance; at the time the City releases such plat for recording; and
- (ii) development which occurs or is proposed without platting, at the earlier of the time application is made for a building permit or application is made for connection to the City's water or wastewater system.
- (iii) Impact fees may be assessed but not collected for property where service is not available unless:
  - a. the City commits to commence construction of necessary facilities identified in the capital improvements plan within two years and will have service available within a reasonable time not to exceed five years;
  - b. the City agrees in writing to permit the property owner to construct or finance the required capital improvement(s) or facility expansion(s) and that the costs incurred or funds advanced by such owner will either be credited against the impact fees otherwise due from such owner.

**Sec. 50-313. Calculation of Impact Fees.** Impact fees shall be calculated based upon the number of service unit as determined by using the conversion table provided in Exhibit A, the Water and wastewater Impact Fee Report. The impact fee required for any property, development or application shall be determined by multiplying the number of service unit in the proposed development by the amount of the respective impact fees per living unit equivalent set forth in section 2.3 and in Exhibit A, the Water and wastewater Impact Fee Report.

Should the number of service units required for any property increase after the impact fees for such property are assessed and collected, the impact fees for such property shall be increased in

an amount equal to the impact fee established by this Ordinance multiplied by the number of additional service units required for such property.

The total amount of impact fees to be paid to and deposit it into the impact fee account by the City for any development shall be reduced by any allowable credits, if any, for the category of capital improvements as provided in section 3.7.

If at any time impact fees are assessed against any property but are unpaid, the total amount of such unpaid impact fee shall be attached to the development application, plat and/or other documents applicable to the property and thereafter collected.

- (i) at the earliest time provided for this Ordinance; and
- (ii) in no event later than the date service is connected to the property.

Re-platting shall not require calculation of impact fees unless the number of service units is increased. If a proposed re-platting increases the number service units, the impact fee shall be recalculated as provided in Section 3.3 above.

**Sec. 50-314. In Addition to Other Fees.** The Water and Wastewater Impact Fee shall be charged in addition to all other fees set out by City Ordinance or regulation including, but not limited to, building permit fees, tap fees, inspection fees, park land dedication requirements and payments in lieu, and dedication of easements and right-of-ways, etc.

**Sec. 50-315. Easement Exclusive of Fees.** If granting of easement or right-of-ways is necessary for the construction of an impact fee capital improvement, said easement shall be granted by the record owner of the land so affected, exclusive and in addition to the payment of the impact fee, and at the time of payment of the impact fee, as a condition of service. If construction of an impact fee capital improvement is undertaken by the City in any public right-of-way due to lack of said easement, and subsequent relocation of the improvement is required by any public agency, the record owner of the land shall bear all expense of said relocation.

**Sec. 50-316. Refunds.** If a refund is due as a result of over payment, such refund shall be made to the record owner of the property at the time of the original payment of impact fees but in no event refund shall be made later than five years from the date of the fee payment.

**Sec. 50-317. Updates to Plan and Revision of Fees.** The City may update its land use assumptions and impact fee capital improvements plan and recalculate its impact fees in accordance with the procedures set forth by state law.

**Sec. 50-318. Prohibition Against Transfer.** The payment of water and wastewater impact fees under this Ordinance shall remain with the land for which such impact fees were paid, and may not be sold, assigned, conveyed or transferred for the benefit of any other land or property. No impact fee receipts, LUEs, rights, benefit or credits arising under this Ordinance may be sold, assigned, transferred or conveyed except to a subsequent grantee or purchaser of the land for which such fee was paid. All rights or benefits arising from the payment of an impact fee vest to the owner and each subsequent owner of the land for which the fee was paid.

**Sec. 50-319-50-330. - Reserved.**

**Section 4      Conflict.** The terms and provisions of this Ordinance shall not be construed in a matter to conflict with Chapter 395 of the Texas Local Government Code, as amended, and if any term of provision of this Ordinance shall appear to conflict with any term, provision or condition of Chapter 395, such Ordinance term or provision shall be read, interpreted and construed in the manner consistent with and not in conflict with Chapter 395.

**Section 5      Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

**Section 6      Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

**Section 7      Effective Date.** This Ordinance shall be in full force and take effect from and after the date of its final passage and publication as required by law.

**PASSED AND APPROVED** on First Reading this \_\_\_\_ day of January, 2017.

**FINALLY PASSED AND ADOPTED** on this \_\_\_\_ day of January, 2017.

**THE CITY OF KYLE, TEXAS**

\_\_\_\_\_  
R. Todd Webster, Mayor

**ATTEST:**

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Jennifer Vetrano, City Secretary

**EXHIBIT A**

City of Kyle, Texas

Water and Wastewater Impact Fee Report