

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 08-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING SUBPART A OF THE CODE OF ORDINANCES THROUGH THE AMENDMENT OF CHAPTER 42, "IMPACT FEES," TO ADOPT UPDATED LAND USE ASSUMPTIONS, UPDATED CAPITAL IMPROVEMENTS PLANS AND TO UPDATE CERTAIN ORDINANCES REGARDING THE IMPOSITION OF IMPACT FEES, THROUGH THE AMENDMENT OF ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 42-1, "CAPITAL IMPROVEMENT PLANS ADOPTED;" THROUGH THE AMENDMENT OF ARTICLE II, ENTITLED "WATER AND WASTEWATER IMPACT FEE," BY AMENDING SECTION 42-34, "DEFINITIONS," SECTION 42-37, "FEE CALCULATION," AND SECTION 42-38, "CREDITS;" THROUGH THE AMENDMENT OF ARTICLE III, ENTITLED "ROAD IMPACT FEES," BY AMENDING SECTION 42-74, "DEFINITIONS," SECTION 42-76, "FEE ASSESSMENT," SECTION 42-77, "FEE CALCULATION," AND SECTION 42-78, "CREDITS;" BY THE DELETION OF CURRENT EXHIBITS A, B AND C TO CHAPTER 42 AND THE ADOPTION OF NEW EXHIBITS A THROUGH E DESCRIBED HEREIN BELOW; AND BY AMENDING APPENDIX A "FEE SCHEDULE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND RELATIVE TO CHAPTER 42 IMPACT FEES; MAKING FINDINGS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound ("Town") is a home-rule municipality possessing the full power of local self-government pursuant to Article II, Section 5 of the Texas Constitution, Section 51.072 of the Texas Local Government Code and its home rule charter; and

WHEREAS, the Town has previously adopted ordinances in compliance with Chapter 395 of the Texas Local Government Code regarding the calculation, assessment and collection of impact fees for roadways, water and wastewater facilities; and

WHEREAS, the Impact Fees Ordinance has been codified in Chapter 42 of the Code of Ordinances, Town of Flower Mound, Texas; and

WHEREAS, Texas Local Government Code Section 395.052 requires a municipality imposing an impact fee to update the land use assumptions and capital improvements plan at least once every five years; and

WHEREAS, the Town provided notice as required by law and held a public hearing regarding updated Land Use Assumptions, updated Capital Improvements Plans and updates to the manner of imposing impact fees before the Capital Improvements Advisory Committee ("CIAC") on or about January 11, 2010; and

WHEREAS, the CIAC recommended approval of the updated Land Use Assumptions, updated Capital Improvements Plans and updates to the manner of imposing impact fees; and

WHEREAS, the Town Council finds that the Town has complied with Chapter 395 of the Texas Local Government Code in the amendment of the land use assumptions, capital improvements plan, and imposition of impact fees; and

WHEREAS, the proposed amendments to Chapter 42 of the Code of Ordinances, Town of Flower Mound, Texas are in the best interest of the citizens of Flower Mound to assure the availability of adequate roadway, water and wastewater facilities and services in order to serve new development consistent with the policies set forth in the Town's Master Plan 2001, as amended;

WHEREAS, after public notice and public hearing as required by law, and upon due deliberation and consideration of the recommendation of the Capital Improvements Advisory Committee and of all testimony and information submitted during said public hearings, the Town Council of the Town of Flower Mound, Texas, has determined that it is in the public's best interest and in support of the health, safety, morals and general welfare of the citizens of the Town that the updated Land Use Assumptions and updated Capital Improvement Plans should be adopted and that certain provisions regarding the manner of imposing impact fees should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance, existing Section 42-1, "Capital Improvement Plans Adopted," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby repealed in its entirety and replaced with a new Section 42-1 entitled "Land Use Assumptions and Capital Improvement Plans Adopted" to read as follows:

“Sec. 42-1. Land Use Assumptions And Capital Improvement Plans Adopted.

(a) The Town Council hereby adopts the Land Use Assumptions as set forth in the 2009 Impact Fee Update dated October 2009, attached hereto as Exhibit A and incorporated herein for all purposes allowed by law.

(b) The Town Council hereby adopts the Water System Capital Improvement Plan as set forth in the Water Impact Fee Update dated December 2009, attached hereto as Exhibit B and incorporated herein for all purposes allowed by law.

(b) The Town Council hereby adopts the Wastewater System Capital Improvements Plan as set forth in the Wastewater Impact Fee Update dated December 2009, attached hereto as Exhibit C and incorporated herein for all purposes allowed by law.

(c) The Town Council hereby adopts the Roadway System Capital Improvement Plan as set forth in the Roadway Impact Fee Update dated December 2009, attached hereto as Exhibit D and incorporated herein for all purposes allowed by law.”

SECTION 3

From and after the effective date of this Ordinance, existing Section 42-34, “Definitions,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended in part by deleting the existing definition of the phrase “Wastewater impact fee service area” with a new definition of said phrase to read as follows:

“Wastewater impact fee service area means a geographic area in which wastewater service is provided by the town. There are four wastewater impact fee service areas which are identified as the Long Prairie Service Area, Lakeside Service Area, Denton Creek Service Area and Prairie Vista Service Area as identified in Master Plan 2001, as amended. (The Cross Timbers Conservation District is not considered a wastewater impact fee service area because it is not provided with wastewater service and is not assessed a wastewater impact fee.)”

SECTION 4

From and after the effective date of this Ordinance, existing Section 42-37, “Fee Calculation,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby

amended in part by deleting existing subparagraphs (b) and (c) in their entirety and replacing subparagraphs (b) and (c) with new subparagraphs (b) and (c) to read as follows:

- “(b) *Water impact fees.* Water impact fees shall be calculated by multiplying the number of equivalent residential connections associated with the water meter by the net growth-related capital cost required to provide water service to an equivalent residential connection, less any water impact fee credits applicable to the property pursuant to section 42-38. Based on the adopted land use assumptions and capital improvements plan, the net growth-related capital cost required to provide water service to an equivalent residential connection is based upon a single Town-wide service area as provided in Exhibit B to this ordinance. Based on this cost per service unit, the water impact fees by water meter size are as listed in Exhibit E attached hereto and incorporated herein for all purposes allowed by law.

Exception. Water impact fees for nonresidential development shall be assessed at 50 percent of the adopted fee per equivalent residential connections as provided in Exhibit E to this ordinance. Further, water impact fees for nonresidential development determined to have met the criteria of the SMARTGrowth program, economic development incentive policy shall be assessed at 25 percent of the adopted fee for equivalent residential connections as provided in Exhibit E attached hereto and incorporated herein for all purposes allowed by law.

- (c) *Wastewater impact fees.* Wastewater impact fees shall be calculated by multiplying the number of equivalent residential connections associated with the water meter by the net growth related capital cost required to provide wastewater credits applicable to the property pursuant to section 42-38. Based on the adopted land use assumptions and capital improvements plan, the net growth-related capital cost required to provide wastewater service to an equivalent residential connection is based upon four specific service areas as provided for in Exhibit C to this ordinance. The cost-per-service unit for wastewater impact fees by water meter size is as listed in Exhibit E to this ordinance.

Exception. Wastewater impact fees for nonresidential development shall be assessed at 50 percent of the adopted fee as provided in Exhibit E to this ordinance. Further, wastewater impact fees for nonresidential development determined to have met the criteria of the SMARTGrowth program, economic development incentive policy shall be assessed at 25 percent of the adopted fee as provided in Exhibit E to this ordinance.”

SECTION 5

From and after the effective date of this Ordinance, existing Section 42-38, “Credits,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby repealed in its entirety and replaced with a new Section 42-38 also entitled “Credits” to read as follows:

“Sec. 42-38. Credits.

- (a) If the Town requires as a condition of development approval, or otherwise enters into an agreement with a developer, to have the developer construct, fund or otherwise contribute toward the cost of a capital improvement or facility expansion that is necessary to serve the developer’s development and which is included in the adopted water or wastewater capital improvements plan, the Town shall provide for reimbursement in the form of credits against impact fees that would otherwise be due from the development. Such credits shall run with the land and shall be used to reduce the amount of the impact fee that would otherwise be owed at the time of collection of impact fees.

In determining the amount of such credits, the developer shall submit evidence of the actual, fair-market cost of the required improvements. The actual, fair-market cost shall then be reduced in the same manner and proportion as the actual assessed impact fee amounts charged by the Town are reduced from the projected actual costs of impact fee capital projects of the same type facility (water or wastewater) in the same service area (the “Reduced Cost Values”). Credits shall then be granted to the developer in an amount equal to such Reduced Cost Values. Such credits shall only be applicable against the impact fees for the type of facility (water or wastewater) for which the capital improvement is made.

- (b) The Town may also enter into an agreement with a developer to have the developer construct, fund or otherwise contribute toward the cost of a capital improvement or facility expansion that is included in the adopted water or wastewater capital improvements plan and which is not necessary to serve the developer's development such as the oversizing of pipes, pumps or lift stations or the addition of extra facilities beyond the minimum standards required by the Town's ordinances to serve the developer's development. The Town may provide for reimbursement in the form of credits against impact fees that would otherwise be due from the development. Such credits shall run with the land and shall be used to reduce the amount of the impact fee that would otherwise be owed at the time of collection of impact fees.

In determining the amount of such credits, the developer shall submit evidence of the actual, fair-market cost of the oversized improvements. If the amount of such credits would be insufficient to reimburse the developer for the cost of such oversized improvements or extra improvements beyond the minimum standards required by the Town's ordinances to serve the developer's development, the Town may provide for reimbursement to the developer up to the balance of the cost of such oversized required improvements from water or wastewater impact fees collected from other new development within the same service area."

SECTION 6

From and after the effective date of this Ordinance, existing Section 42-74, "Definitions," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended in part by deleting the existing definition of the phrase "Road Impact Fee Service Area" with a new definition of said phrase to read as follows:

"Road impact fee service area means one of three geographic areas in which development is served by the roadway facilities designated in the Capital Improvements Plan. Road impact fee service areas 1 through 3 are shown in Exhibit D to this ordinance. The boundaries of the service areas consist of the Town limits or the most distant right-of-way line of existing or planned roads. Where an existing or planned road serves as the boundary between two adjacent service areas, the

boundary shall be interpreted as the centerline of the existing or planned road.”

SECTION 7

From and after the effective date of this Ordinance, existing Section 42-76, “Fee Assessment,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended in part by deleting existing subparagraph (b) in its entirety and replacing subparagraph (b) with a new subparagraph (b) to read as follows:

- “(b) The maximum road impact fee per service unit shall be computed by dividing the total costs of capital improvements by and attributable to new development in the service area identified in the road impact fee capital improvements plan by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area. Based on the adopted land use assumptions and the capital improvements plan, the maximum road impact fees per service unit for each service area are as listed in Exhibit F to this ordinance.”

SECTION 8

From and after the effective date of this Ordinance, existing Section 42-77, “Fee Calculation,” of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended in part by deleting existing subparagraphs (a) and (e) in their entirety and replacing subparagraphs (a) and (e) with new subparagraphs (a) and (e) to read as follows:

- “(a) The number of service units (vehicle-miles of travel during the p.m. peak hour) generated by a development shall be determined from Exhibit F attached hereto and incorporated herein by reference for all purposes allowed by law, subject to the following:
- (1) References to square feet refer to gross floor area, as defined in the town's land development code, subpart B of this Code.
 - (2) When a change of use, redevelopment, or modification of an existing use or building requires the issuance of a building permit or certificate of occupancy, the number of service units generated by the development shall be based on the difference between the service units calculated for the previous use and the service units calculated for the proposed use.

However, should the change of use, redevelopment or modification of an existing use or building result in a net decrease, no refund or credits for past road impact fees paid shall be made or created.

- (3) In the event of a disagreement between the applicant and the town over the land use category applicable to a development, the applicant may present evidence supporting the appropriateness of a particular land use category, and the final decision shall be made by the town engineer.
- (4) If the land use category is one of the "others not specified" categories, the applicant may present evidence in support of alternative trip rate and trip length factors, with the final decision to be made by the town engineer.

* * * *

- (e) Road impact fees in each of the three service areas shall be as set forth in the fee schedule, as set forth in Exhibit F to this ordinance."

SECTION 9

From and after the effective date of this Ordinance, existing Section 42-78, "Credits," of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby repealed in its entirety and replaced with a new Section 42-78 also entitled "Credits" to read as follows:

"Sec. 42-78. Credits.

- (a) If the Town requires as a condition of development approval, or otherwise enters into an agreement with a developer, to have the developer construct, fund or otherwise contribute toward the cost of a roadway facility that is necessary to serve the developer's development and which is included in the adopted road capital improvements plan, the Town shall provide for reimbursement in the form of credits against impact fees that would otherwise be due from the development. Such credits shall run with the land and shall be used to reduce the amount of the impact fee

that would otherwise be owed at the time of collection of impact fees.

In determining the amount of such credits, the developer shall submit evidence of the actual, fair market cost of the required improvements. The actual, fair-market cost shall then be reduced in the same manner and proportion as the actual assessed impact fee amounts charged by the Town are reduced from the projected actual costs of impact fee capital projects of the roadway facility in the same service area (the "Reduced Cost Values"). Credits shall then be granted to the developer in an amount equal to such Reduced Cost Values. Such credits shall only be applicable against road impact fees in the same service area in which the roadway facility was constructed.

- (b) The Town may also enter into an agreement with a developer to have the developer construct, fund or otherwise contribute toward the cost of a roadway improvement or roadway expansion that is included in the adopted roadway capital improvements plan and which is not necessary to serve the developer's development such as additional lanes, appurtenances and warranted signalization beyond the minimum standards required by the Town's ordinances to serve the developer's development. The Town may provide for reimbursement in the form of credits against impact fees that would otherwise be due from the development. Such credits shall run with the land and shall be used to reduce the amount of the impact fee that would otherwise be owed at the time of collection of impact fees.

In determining the amount of such credits, the developer shall submit evidence of the actual, fair-market cost of the roadway improvements. If the amount of such credits would be insufficient to reimburse the developer for the cost of such extra improvements beyond the minimum standards required by the Town's ordinances to serve the developer's development, the Town may provide for reimbursement to the developer up to the balance of the cost of such oversized required improvements from road impact fees collected from other new development within the same service area."

SECTION 10

From and after the effective date of this Ordinance, existing Exhibits A, B and C to Chapter 42 "Impact Fees" of the Code of Ordinances of the Town of Flower Mound, Texas, are hereby repealed in their entirety.

SECTION 11

From and after the effective date of this Ordinance, Appendix A, "Fee Schedule" of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended by the deletion of the existing provisions, charts and tables regarding Chapter 42 "Impact Fees" contained therein and the replacement thereof with Exhibits E and F attached to this ordinance.

SECTION 12

This Ordinance shall be cumulative of all provisions of ordinances of the Town of Flower Mound, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 13

It is hereby declared to be the intention of the Town 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 any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 14

This Ordinance shall take effect and be in full force from and after its passage, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 1st DAY OF FEBRUARY, 2010.



Jody Smith, Mayor

ATTEST:



Paula Paschal, Town Secretary

APPROVED AS TO FORM AND LEGALITY:



Terrence S. Welch, Town Attorney