

**AN ORDINANCE ADDING CHAPTER 33, IMPACT FEES; PROVIDING FOR COLLECTION OF WATER AND WASTEWATER IMPACT FEES; PROVIDING FOR OFFSETS AND CREDITS AGAINST IMPACT FEE CHARGES; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Killeen, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

**WHEREAS**, the Texas Local Government Code Ch. 395 authorizes Texas cities to create and implement impact fees to generate revenue for funding certain costs attributable to new development;

**WHEREAS**, the City Council of the City of Killeen deems the continued funding and repayment of costs for capital improvements or facility expansions necessitated by and attributable to new development to be of vital importance to the protection of the public health, safety, and welfare of its citizens; and,

**WHEREAS**, the City Council adopted Land Use Assumptions and the Water and Wastewater Impact Fee Capital Improvements Plan in accordance with provisions of the Local Government Code Chapter 395;

**WHEREAS**, the City of Killeen has determined that in order to adequately fund necessary capital improvements, it is necessary and in the best interest of the public health and safety to provide for the collection of impact fees; and,

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

**SECTION I.** That Chapter 33 of the City of Killeen Code of Ordinances is hereby added to read as follows:

**Chapter 33.- Impact Fees**

**ARTICLE I. – Reserved.**

**ARTICLE II. – WATER AND WASTEWATER IMPACT FEES**

**Sec. 33-21. - Purpose.**

This article is intended to ensure the provision of adequate water and wastewater facilities to serve new development in the City by requiring each development to pay its share of the costs of such improvements necessitated by and attributable to such new development.

**Sec. 33-22. - Definitions.**

*Assessment* means the determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this article. The amount of the impact fee per service unit is a measure of the impact on system facilities created by the new development.

*Capital improvement* means either a water facility or a wastewater facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the City. Capital improvement applies to a newly constructed water or wastewater facility or to the expansion of an existing water or wastewater facility necessary to serve new development.

*Capital improvements advisory committee* means a committee appointed by the City Council to oversee the adoption and implementation of impact Fees.

*City* means the City of Killeen, Texas.

*Credit* means:

- (1) When used in the context of determining the maximum assessable impact fee per service unit, an amount equal to: fifty (50) percent of the total projected cost of implementing the capital improvements plan.
- (2) When used in the context of determining the offset for system facilities, the amount of the reduction of an impact fee designed to fairly reflect the value of any construction of, contributions to, or dedications of a system facility agreed to or required by the City as a condition of development approval, pursuant to rules herein established or pursuant to City Council-approved administrative guidelines which value shall be credited against water and wastewater facilities impact fees otherwise due from the development and which credits are hereinafter referred to as an "offset" or "offsets" to avoid confusion.

*Facilities expansion* means either a water facility expansion or a wastewater facility expansion.

*Final plat approval or approval of a final plat* means the point at which the applicant has complied with all conditions of approval and the plat (minor plat or record plat) has been released for filing with the county.

*Final plat recordation or recordation of a final plat* means the point at which the applicant has complied with all conditions precedent to recording an approved final plat (minor plat or record plat) in the county, including the final completion of and acceptance by the City of any infrastructure or other improvements required by the subdivision ordinance or any other ordinance and the plat is filed for record with the county clerk's office.

*Impact fee or utility impact fee* means a charge or assessment imposed by the City, pursuant to this article, against new development in order to generate revenue for funding or recouping the costs of capital improvements or facilities expansions necessitated by and attributable to such new development. The term does not include dedication of land for public parks or payment in lieu of the dedication to serve park needs, dedication of rights-of-way or easements or construction or dedication of water distribution, wastewater collection or drainage facilities, streets, sidewalks, or curbs if the dedication or construction is required by ordinance and is necessitated by and attributable to the new development, lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines, or other pro rata fees for reimbursement of water or sewer mains or lines extended by the City.

*Impact fee capital improvements plan or capital improvements plans for utility impact fees* means the adopted capital improvements plan, as it may be amended from time to time, which identifies the capital improvements or facility expansions and associated costs for each service area that are necessitated by and which are attributable to new development within the service area, for a period not to exceed ten years, which capital improvements are to be financed in whole or in part through the imposition of utility impact fees pursuant to this article. "Impact fee capital improvements plan" may refer either to the plan for a particular service area or to the aggregation of capital improvements or facilities expansions and the associated costs programmed for all service areas for a particular category of capital improvements or facilities expansions.

*Land use assumptions* means and includes a description of the service areas and 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, in the service area over a ten-year period upon which the impact fee capital improvements plans are based. The land use assumptions are set out in the most recently updated land use assumptions for utility impact fees adopted by resolution of the City Council.

*New development* means a project involving the subdivision of land and/or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land, which has the effect of increasing the requirements for capital improvements or facility expansions, measured by an increase in the number of service units to be generated by such activity, and which requires either the approval and filing with the county of a plat pursuant to the City's subdivision ordinance, the issuance of a building permit, or connection to the City's water or wastewater system.

*Offset or offsets* means the amount of the reduction of an impact fee designed to fairly reflect the value of any construction of, contributions to, or dedications of a system facility agreed to or required by the City as a condition of development approval, pursuant to rules herein established or pursuant to council-approved administrative guidelines, which value shall be credited against utility impact fees otherwise due from the development.

*Recoup* means to reimburse the City for capital improvements which the City has previously installed or caused to be installed.

*Service area* means either a water benefit area or wastewater benefit area within the City's corporate boundaries and/or its extraterritorial jurisdiction in which impact fees for capital improvements or facilities expansions will be collected for new development occurring within such area and within which the fees so collected will be expended for the types of improvements or expansions identified in the impact fee capital improvements plan.

*Service unit* means the applicable standard unit of measure that serves as the standardized measure of consumption, use or generation attributable to the new unit of development. The service unit for water and wastewater is a  $\frac{3}{4}$ -inch water meter which is the typical water meter used for a single-family detached living unit and is commonly referred to as the single family living unit equivalent (SFLUE). The number of service units used for water and wastewater by a particular land use is determined by the water meter size employed by such land use.

*Service unit equivalent* is a multiplier based on the capacity of a development in comparison to the capacity of a  $\frac{3}{4}$ "-inch water meter.

*Single family residential lot* means a lot platted to accommodate a single family or a duplex dwelling unit, as authorized under the City's zoning regulations.

*Site-related facility* means an improvement or facility which is constructed for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of water or wastewater facilities to serve the new development, and which is not included in the impact fees capital improvements plan and for which the developer or property owner is solely responsible under the subdivision, and other applicable, regulations. For water and wastewater facilities, a site-related facility shall include those lines which are less than or equal to 12 inches in diameter. Site-related facilities also include water and wastewater lines between two or more developers where pro-rata reimbursement agreements are required to equitably allocate costs. Site-related facility cost means either the cost of a site-related facility or that portion of the cost of a system facility equivalent to the first 12 inches in diameter of the size of a water or wastewater main, and which has not been included in the costs used to compute the maximum impact fee per service unit.

*System facility* means a capital improvement or facility expansion which is designated in the impact fee capital improvements plan and which is not a site-related facility. System facility may include a capital improvement which is located off-site, within, or on and along the perimeter of the new development site. For water and wastewater facilities, a system facility shall include the oversized portion of those lines which are greater than 12 inches in diameter and which serve solely new development and which are on the impact

fee capital improvements plan or the comprehensive water or wastewater improvements plan.

*Wastewater facility* means an improvement for providing wastewater service, including but not limited to, land or easements, treatment facilities, lift stations, collector mains or interceptor mains. "Wastewater facility" excludes wastewater facilities, lines, or mains which are constructed by developers, the costs of which are reimbursed through pro-rata or other development-related agreements paid by subsequent users of the facilities. Wastewater facilities exclude site-related facilities.

*Wastewater facility expansion* means the expansion of the capacity of any existing wastewater improvement for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing wastewater facility to serve existing development.

*Wastewater improvements plan* identifies the wastewater facilities or wastewater expansion and their associated costs that are necessitated by and which are attributable to new development, for a period not to exceed ten years, which capital improvements are to be financed in whole or in part through the imposition of wastewater impact fees pursuant to this article. The wastewater improvements plan is a part or component of the "Water, Wastewater, & Roadway Impact Fee Study" adopted by resolution of the City Council, and amended from time to time.

*Water facility* means an improvement for providing water service, including, but not limited to, land or easements, water treatment facilities, water supply facilities, or water distribution lines. "Water facility" excludes site-related water facilities, lines, or mains which are constructed by developers, the costs of which are reimbursed through pro-rata or other development related agreements paid by subsequent users of the facilities. "Water facility" excludes site-related facilities.

*Water facility expansion* means the expansion of the capacity of any existing water facility for the purpose of serving new development, but does not include the repair, maintenance, modernization, or expansion of an existing water facility to serve existing development.

*Water improvements plan* identifies the water facilities or water expansions and their associated costs that are necessitated by and which are attributable to new development, for a period not to exceed ten years, which capital improvements are to be financed in whole or in part through the imposition of water impact fees pursuant to this article. The water improvements plan is a part or component of the "Water, Wastewater, & Roadway Impact Fee Study" adopted by resolution of the City Council and amended from time to time.

*Water meter* means a device for measuring the flow of water to a development, whether for domestic or for irrigation purposes.

*Water meter size ("meter size")* provides the expression of the magnitude of the water and wastewater demand created by each land use planned within a particular development based on the use of the ¾-inch water meter as the basic service unit. Other water meter sizes are compared to the ¾-inch water meter through a ratio of water flows. This same ratio is then used to determine the proportional impact fee amount for each meter size.

**Sec. 33-23. - Applicability.**

The provisions of this article concerning water and wastewater impact fees apply to all new development within the corporate boundaries of the City and within its extraterritorial jurisdiction. The provisions of this article apply uniformly within each service area.

**Sec. 33-24. - Impact fees per service unit.**

- (a) The maximum assessable impact fee per service unit for wastewater and water facilities shall be:

Water	\$1161
Wastewater	\$418

The geographic boundaries of the impact fee service area for water and wastewater facilities is a single service area boundary as shown in the adopted Water and Wastewater Impact Fee Study, as it may be updated from time to time.

The maximum assessable impact fee per service unit (that is assessed to new development), as may be amended from time to time, is declared to be the roughly proportionate measure of the impact(s) generated by a new unit of development on the City's utility system. To the extent that the impact fee per service unit collected is less than the maximum assessable impact fee per service unit, such difference is hereby declared to be founded on policies unrelated to the measurement of the actual impacts of the development on the City's utility system. The maximum assessable impact fee per service unit may be used in evaluating any claim by an applicant, developer, or property owner that the dedication, construction, or contribution of a capital improvement imposed as a condition of development approval pursuant to the City's regulations is not roughly proportionate to the impact(s) of the new development on the City's utility system.

- (b) The service unit equivalent to ¾" meter for each such meter size shall be:

Meter Size	Service Unit Equivalent to ¾" Meter
¾"	1.0
1"	1.67
1½"	3.33
2"	5.33
3"	11.67
4"	20.00
6"	45.00

8"	60.00
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**Sec. 33-25. - Assessment of impact fees.**

(a) Assessment of the impact fee per service unit for any new development shall be made as follows:

- (1) For a new development for which recordation of the final plat occurred before April 14, 2021 and a building permit is issued within one year of said date, no impact fees shall be collected. If no building permit is issued by April 13, 2022, assessment of impact fees shall be at the time of application for a building permit.
- (2) For a new development for which recordation of the final plat occurred on or after April 14, 2021 assessment of impact fees shall occur at the time of final plat recordation.
- (3) For land on which new development occurs or is proposed to occur without platting, assessment of impact fees shall occur at the time application is made for the building permit.

(b) The assessment of impact fees is calculated by multiplying the amount of the maximum assessable water and wastewater impact fee per service unit by the service unit equivalent for each meter size as set forth in Sec. 33-24(b).

(c) Water impact fees shall be assessed as follows:

Meter Size	Water Impact Fee
¾"	\$1,161
1"	\$1,939
1 ½"	\$3,867
2"	\$6,189
3"	\$13,549
4"	\$23,220
6"	\$52,245
8"	\$69,660

(d) Wastewater impact fees shall be assessed as follows:

Meter Size	Wastewater Impact Fee
¾"	\$418
1"	\$699
1 ½"	\$1,392

2"	\$2,228
3"	\$4,879
4"	\$8,360
6"	\$18,810
8"	\$25,080

- (e) Following assessment of the impact fee pursuant to subsection (a), the amount of the impact fee assessed 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 replat approval or proposes to increase the meter size for any use within that development, in which case new assessment shall occur.
- (f) Following the vacating of any plat or submittal of any replat, a new assessment must be made in accordance with section 33-25(a)(2).
- (g) Approval of an amending plat pursuant to Ch. 26 of the City of Killeen Code of Ordinances is not subject to reassessment of an impact fee hereunder provided that the use of the property remains the same and there is no increase in meter size.

**Sec. 33-26. - Payment and collection of impact fees.**

- (a) For all new developments, impact fees shall be collected at the time of application for and in conjunction with the issuance of a building permit. The City reserves the right to enter into an agreement with a developer for a different time and manner of payment of impact fees, in which case the agreement shall determine the time and manner of payment.
- (b) The City shall compute the impact fees for the new development in the following manner:
  - (1) Multiply the number of each meter size in the new development by the impact fee assessed pursuant to section 33-25.
    - a. Water impact fees shall be computed based on both domestic and irrigation meters.
    - b. Wastewater impact fees shall be computed based on domestic meters only.
  - (2) The amount of each impact fee shall be reduced by any allowable offsets for that category of capital improvement.
  - (3) The total amount of the impact fees for the new development shall be calculated and attached to the development application or request for connection as a condition of approval.
- (c) Whenever the property owner proposes to increase the number of meters for a development or increase the meter size for any use within that development, the additional impact fees collected for such new service units shall be determined by using the formula above, and such additional fee shall be collected at the times prescribed by this section.



- (d) No application for new development shall be approved within the City without assessment of an impact fee pursuant to this article, and no building permit shall be issued unless the applicant has paid the impact fee imposed by and calculated hereinunder.
- (e) Impact fees shall not be collected from the City for property owned by the City.

**Secs. 33-27 – 33-40. – Reserved.**

### **ARTICLE III. – IN GENERAL**

#### **DIVISION 1. – ADMINISTRATION**

##### **Sec. 33-41. - Establishment of accounts.**

- (a) The City's finance department shall establish an account to which interest is allocated for each category of capital facility in each service area for which an impact fee is imposed pursuant to this chapter. 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.
- (c) The City's finance department shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized. 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 chapter; provided, however, that any 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 finance department shall maintain and keep financial records for 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.

##### **Sec. 33-42. - Use of proceeds of impact fee accounts.**

- (a) The impact fees collected for each service area pursuant to this chapter may be used to finance or to recoup the costs of any capital improvements or facilities expansions identified in the applicable capital improvements plan for impact fees for the service area, including the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees), and the fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan for impact fees who is not an employee of the political subdivision. 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.

- (b) Impact fees collected pursuant to this chapter shall not be used to pay for any of the following expenses:
  - (1) Construction, acquisition or expansion of capital improvements or assets other than those identified in the applicable capital improvements plan for impact fees;
  - (2) Repair, operation, or maintenance of existing or new capital improvements or facilities expansions;
  - (3) Upgrading, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
  - (4) Upgrading, expanding or replacing existing capital improvements to provide better service to existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development;
  - (5) Administrative and operating costs of the City.

**Sec. 33-43. - Use of other financing mechanisms.**

- (a) The City may finance capital improvements or facilities expansions designated in the capital improvements plan for impact fees through the issuance of bonds, through the formation of public improvement 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 an 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 may pay all or part of impact fees due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

**Sec. 33-44. - Impact fee as additional and supplemental regulation.**

Impact fees established by this chapter 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 plan, the capital improvements plan for impact fees, 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.

**Sec. 33-45. - Functions of advisory committee.**

- (a) The advisory committee shall perform the following functions:
  - (1) Advise and assist the City in adopting land use assumptions;

- (2) Review the capital improvements plan for impact fees and file written comments thereon;
  - (3) Monitor and evaluate implementation of the capital improvements plan for impact fees;
  - (4) Advise the City of the need to update or revise the land use assumptions, capital improvements plan for impact fees and impact fees; and
  - (5) File a semiannual report evaluating the progress of the City in achieving the capital improvements plan for impact fees and identifying any problems in implementing the plans or administering the impact fees.
- (b) The City Council shall adopt, by resolution, procedural rules by which the advisory committee may carry out its duties.

**Sec. 33-46. - Updates to plans and revision of fees.**

- (a) The City shall update its land use assumptions and capital improvements plan for impact fees and shall recalculate its impact fees not less than once every five years in accordance with the procedures set forth in chapter 395 of the Texas Local Government Code, or in any successor statute.
- (b) The City may review its land use assumptions, capital improvements plan for impact fees, plans, and other factors such as market conditions more frequently than provided in subsection (a) to determine whether the land use assumptions and capital improvements plan for impact fees should be updated and the impact fee recalculated accordingly.

**Secs. 33-47 – 33-50. – Reserved.**

**DIVISION 2. – OFFSETS, REFUNDS, APPEALS, AND OTHER RELIEF**

**Sec. 33-51 . - Offsets and credits against impact fees.**

- (a) The City shall offset the reasonable value of any system facility which is on the impact fee capital improvements plan and which has been dedicated to and has been accepted by the City on or after April 14, 2021, or credit the amount of any monetary contribution to such facility, against the amount of the impact fee for that category of capital improvement.
- (b) All offsets and credits against impact fees shall be subject to the following limitations and shall be granted based on this article and additional standards promulgated by the City Council, which may be adopted as City Council-approved administrative guidelines.
  - (1) No offset or credit shall be given for the dedication of land or easements for or the construction of site-related facilities.
  - (2) No offset or credit shall exceed the documented and City approved costs to the developer of the system facility which was dedicated to and accepted by the City, or the amount of the monetary contribution actually made.

- (3) The costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the capital improvements plan for impact fees for the category of facilities within the service area for which the impact fee is imposed.
  - (4) Offsets or credits given for system facilities for a development which has received final plat approval prior to the effective date of any amendatory ordinance shall be discounted taking into consideration the number of existing service units within such development.
  - (5) An offset or credit created pursuant to prior impact fee ordinances for which a specific termination date was not established shall expire no later than ten years after the date the ordinance under which such offset or credit was created was amended, repealed or replaced. Offsets or credits created pursuant to this article shall expire within ten years from the date the offset or credit was created.
  - (6) In no event will the City reimburse the property owner or developer for an offset or credit when no impact fees for the new development can be collected pursuant to this chapter or for any amount exceeding the total impact fees due for the development for that category of capital improvement, unless otherwise agreed to by the City.
  - (7) No offset shall be given for a site-related or system facility or any facility which is not identified within the applicable impact fees capital improvements plan, unless the City agrees that such improvement supplies capacity to new developments other than the development paying the impact fee and provisions for offsets are incorporated in an agreement for capital improvements and an amendment is adopted adding such improvement to the impact fees capital improvements plan.
  - (8) A provision stating that in those instances where the City determines the projected cost to construct a system facility is not roughly proportionate to the dollar value of the impact fee credits which may be awarded for that system facility the City may consider, upon request of the developer, awarding impact fee credits based on the lesser of a percentage of the City's projected costs for that system facility or a percentage of the documented and City-approved costs to the developer of the system facility which was dedicated to and accepted by the City with the City's projected costs or the documented and City-approved costs to the developer being reduced by the same percentage of reduction as applied to the maximum impact fee per service unit (pre-credit) to arrive at the maximum assessable impact fee per service unit (post-credit).
- (c) An applicant for new development must apply for an offset or credit against impact fees due for the development either at the time of application for final plat approval or at the time of connection(s) to the utility system, unless the City otherwise agrees. The applicant shall file a petition for offsets or credits with the City on a form provided for such purpose. The City must provide the applicant, in writing, with a decision on the offset or credit request, including the reasons for the decision within ninety (90) days.

- (d) The available offset or credit associated with the plat shall be applied against an impact fee in the following manner:
- (1) For single family residential lots in a new development consisting only of single-family residential lots which have received final plat approval, such offset or credit shall be applied at the time of issuance of the building permit or connection to the City's utility system by the first lot and thereafter for each subsequent lot within the final plat at the time of plat recordation in the order in which building permits or utility connections are issued for such lots until the offset or credit has been exhausted, unless stipulated otherwise in a binding facilities agreement or a binding impact fee credit agreement.
  - (2) For all other types of new development, including those involving mixed uses, which have received final plat approval, the offset or credit applicable to the plat shall be applied to the impact fee due at the time of issuance of the first building permit or connection to which the offset or credit is applicable, and thereafter to all subsequently issued building permits or connections, until the offset or credit has been exhausted, unless stipulated otherwise in a binding facilities agreement or a binding impact fee credit agreement.
  - (3) At its sole discretion, the City may authorize alternative credit or offset agreements upon petition by the owner in accordance with guidelines promulgated by the City Council.
- (e) An owner of a new development may construct or finance a capital improvement or facility expansion designated in the capital improvements plan for impact fees, if required or authorized by the City, by entering into a facilities agreement with the City prior to the issuance of any building permit for the development. The agreement shall be on a form approved by the City, and shall identify the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to City standards and such other terms and conditions as deemed necessary by the City. The facility agreement shall provide for the method to be used to determine the amount of the offset to be given against impact fees due for the development.

In the event that the cost of any improvements constructed pursuant to this section exceeds the impact fee to be collected for the new development, the City shall within ten years reimburse the owner for the dedication, construction or financing of a capital improvement or facility expansion designated in the capital improvements plan for impact fees. The terms of reimbursement shall be incorporated in the agreement. Such reimbursement agreements shall take into account the proximity of the new development to existing infrastructure and may require a repayment schedule which is based upon actual connections to the improvements constructed. Reimbursement agreements shall further be based on and made subject to the availability of City funds from all sources including current and projected impact fee fund accounts.

### **Sec. 33-52. Refunds.**

- (a) An impact fee collected pursuant to this chapter shall be considered expended and spent if the total expenditures for capital improvements authorized in the capital improvements plan within the ten years following the date of payment exceed the total fees collected for such improvements during that time period.
- (b) On the request of an owner of the property on which an impact fee has been paid, the City shall refund the impact fee if existing facilities are available and service is denied or the City has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment.
- (c) The City shall refund any impact fee or part of it that is not spent as authorized within 10 years after the date of payment.
- (d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002, Finance Code, or its successor statute.
- (e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

### **Sec. 33-53. Appeals.**

- (a) The property owner or applicant for a new development may appeal the following administrative decisions to the City Manager or designee:
  - (1) The applicability of an impact fee to the new development;
  - (2) The amount of the impact fee due;
  - (3) The availability of, the amount of, or the expiration of an offset or a credit;
  - (4) The application of an offset against an impact fee due;
  - (5) The amount of the impact fee in proportion to the benefit received by the new development; or
  - (6) The amount of a refund due, if any.
- (b) The appellant shall appeal to the City Manager or designee within 30 days of the event giving rise to the appeal and state the basis for the appeal in writing with particularity. The burden of proof shall be on the appellant to demonstrate that the amount of the fee or the amount of the offset was not calculated according to the rules set forth in this ordinance or by administrative guideline adopted by the City Council. The appellant shall submit any study or other documents upon which he relies to the City with the request for appeal.
- (c) The appellant may appeal the decision of the City Manager to the City Council. The appellant must file a notice of appeal with the City Manager or designee within 30

days following the decision. If the notice of appeal is accompanied by a bond or other sufficient surety with offices for local presentment in a form satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal is pending.

- (d) The appellant shall promptly pay to the City the full amount of the impact fee determined to be due by the City Council regarding such appeal. Failure to promptly pay such impact fee within five business days after the City Council's determination on the appeal shall serve as authority for the City to present the bond or other surety to the bonding company or financial institution for performance with no other or further notice or contact with the appellant.

**Secs. 33-54 – 33-80. – Reserved.**

**SECTION II.** That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

**SECTION III.** That should any section or part of any section, paragraph or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

**SECTION IV.** That the Code of Ordinances of the City of Killeen, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**SECTION V.** That this ordinance shall be effective after its passage and publication according to law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas, this 13th day of April, 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 *et seq.*

**APPROVED**

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Jose L. Segarra, MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lucy C. Aldrich, CITY SECRETARY

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Traci S. Briggs, CITY ATTORNEY

ORD \_\_\_\_\_

Date: \_\_\_\_\_