

City of Tioga
Water and Sanitary Sewer Impact Fees

Ordinance No. 261

AN ORDINANCE OF THE CITY OF TIOGA, TEXAS, ESTABLISHING WATER AND SANITARY SEWER IMPACT FEES; DEFINING TERMS; REQUIRING AN IMPACT FEE AND PROVIDING FOR EXCEPTIONS; CALCULATING FEES; PROVIDING FOR CREDITS; PROVIDING FOR ACCOUNTING FOR FEES AND INTEREST; PROVIDING FOR REFUNDS; PROVIDING FOR APPEALS; ESTABLISHING PROCEDURES AND REGULATIONS REGARDING IMPACT FEES; AUTHORIZING THE MAYOR TO SIGN THE APPROPRIATE COMPLIANCE STATEMENT; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Tioga, Texas ("City Council") has commissioned the development of a land use plan and land use assumptions; and

WHEREAS, the land use assumptions and land use plan have been completed and adopted by the City Council, after public hearings and input from interested citizens and property owners, pursuant to requirements of Chapter 395 of the Texas Local Government Code, and

WHEREAS, the City Council commissioned the development of a capital improvements plan based on these land use assumptions and the land use plan; and

WHEREAS, the capital improvements plan has been completed and adopted by the City Council, pursuant to requirements of Chapter 395 of the Texas local Government Code; and

WHEREAS, the Tioga Impact Fee Advisory Committee has met and has submitted a written recommendation to the City Council regarding adoption of water and wastewater impact fees before the 5th business day before the date of the public hearing on the imposition of the impact fees;

WHEREAS, within thirty (30) days after the date of the public hearing on the proposed impact fees, the City Council is approving the imposition of an impact fee for water and wastewater for the City of Tioga, Texas (Tioga) as more fully set forth below; and

WHEREAS, Tioga has fully complied with Chapter 395, Local Government Code, to approve the land use assumptions, capital improvement plan, and impact fees for water and wastewater; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of Tioga to adopt such land use assumptions and capital improvement plan and impact fees for water and wastewater; now therefore

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

Section 1. Purpose and Findings Incorporated.

1. This ordinance is adopted pursuant to the provisions of Chapter 395 of the TEXAS LOCAL GOVERNMENT CODE, V.A.T.S., as amended, as well as under the authority of Article XI, section 5 of the Texas Constitution. This ordinance implements a policy of the city to impose fees on each new development project by requiring each such development to pay its share of the costs of constructing capital improvements and facility expansions necessary to serve, and attributable to, such new development.
2. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Definitions.

For purpose of this section, the following definitions apply:

Advisory Committee (also referred to as Impact Fee Advisory Committee). The persons appointed by the City Council to advise the City council regarding impact fees as required by the enabling legislation for this Ordinance.

Assessment. The determination of the amount of the maximum impact fee that can be imposed on new development pursuant to this Ordinance.

Capital Improvement. Any of the following facilities that have a life expectancy of three(3) or more years and are owned and operated by or on the behalf of the city:

1. Water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities, including but not limited to a sanitary sewer facility and a water facility, whether or not they are located within the service area.

Capital Improvements Plan. A plan that identifies capital improvements or facility expansions for which impact fees may be assessed, as adopted by the City from time to time.

City. City of Tioga, Grayson County, Texas.

Facility expansion. The expansion of capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.

Final plat approval of approval of a final plat. The point at which the applicant has complied with all the conditions of approval and the plat has been released for filing with the county clerk.

Impact fees. A charge or assessment imposed against new development in order to generate revenue for funding or recovering the costs of capital improvements or facility expansions necessitated by and attributable to new development. The term does not include:

1. Required dedications of land for public parks or payments made in lieu thereof;
2. Dedication of rights-of-way or easements, or the construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;
3. Lot or acreage fees or pro-rata fees to be placed in trust funds for the purpose of reimbursing developers for constructing or over-sizing water or sewer mains or lines; or
4. Other pro rata fees for reimbursement of water or sewer mains or lines extended by the City.

Land use assumptions. A description of the service area and projections of changes in land uses, densities, intensities, population and employment growth in the service area over at least a ten-year period which has been adopted by the City, as may be amended from time to time, and upon which the capital improvements plan is based.

New development. A project involving the subdivision of land, the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which has the effect of increasing the requirements for capital improvements or facility expansion, measured by the number of service units to be generated by such activity, and which requires either the approval of a plat pursuant to the City's subdivision regulations, the issuance of a building permit or connection to the City's water or wastewater system, and which has not been exempted from this Ordinance. Installation of a larger water meter will constitute new development.

Off-site. An improvement, facility or expansion that is not on-site, as defined herein.

On-site. An improvement, facility or expansion which is 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 capital improvement plan and for which its property owner is solely responsible under subdivision or other applicable resolution or which is located at least partially on the plat which is being considered for impact fee assessment. On-site facility includes that portion of an off-site water or wastewater main, equivalent to a standard size water or wastewater main, which is necessary to connect any new development with

the city's water or wastewater system, the cost of which has not been included in the city's impact fee capital improvements plan.

Service Area. The entire area within the corporate limits of the city and its extraterritorial jurisdiction to be served by the capital improvements or facilities expansions specified in the capital improvements plan.

Service Unit. For purposes of impact fee assessment the applicable standard units of measure shown on the conversion table in the capital improvements plan and impact fees calculation which can be converted to $\frac{3}{4}$ inch water meter equivalents as indicated in the equivalency tables contained in this Ordinance, which serves as the standardized unit of measure of consumption or discharge for water and wastewater facilities, as may be amended from time to time.

Sanitary sewer facility. An improvement for providing wastewater collection and treatment, including, but not limited to, land or easements, lift stations, interceptors or mains or other structures or facilities that are a component to the City's collection and treatment system for wastewater. Sanitary sewer facility excludes wastewater lines or mains which are constructed by a developer, the costs of which are reimbursed from charges paid by subsequent users of such facility.

Water facility. An improvement for providing water supply, treatments and distribution services, including but not limited to, land or easements, water treatment facilities, water supply facilities, water distribution lines, a water interceptor or main, pump station, storage tank or other structures or facilities that are a component to the City's distribution and storage system for water. Water facility excludes water lines or mains which are constructed by a developer, the costs of which are reimbursed from charges paid by subsequent users of such facility.

Section 3. Advisory Committee.

1. The capital improvements advisory committee (advisory committee) consisted of seven persons selected by the City Council, and included at least one representative of the real estate, development or building industry who was not an employee or official of a political subdivision or governmental entity. A representative from the City's extraterritorial jurisdiction was also appointed by the City Council.
2. The advisory committee served in an advisory capacity and was established to:
 - a. Advise and assist the adoption of land use assumptions;
 - b. Review the capital improvements plan and file written comments;
 - c. Monitor and evaluate implementation of the capital improvements plan;
 - d. 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 fees; and

- e. Advise the city staff and Council of the need to update or revise the land use assumptions, capital improvements plan and impact fee.
3. All professional reports concerning the development and implementation of the capital improvements plan shall be or were made available to the advisory committee.
4. The advisory committee shall elect a chair-person to preside at its meetings and a vice-chairperson to serve to serve in their absence.

Section 4. Applicability.

The provisions of this Ordinance regarding water and wastewater impact fees apply to all new development within the corporate boundaries of the City or its extraterritorial jurisdiction (“ETJ”), as they may change from time to time.

Section 5. Impact Fee Adopted.

The City Council finds that impact fees for water and wastewater are hereby adopted at the rates set forth in “Schedule B-Impact Fee Rates” set forth below within this Ordinance.

Section 6. Impact Fee as a Condition of Development Approval/ Permit Issuance.

No final plat for new development shall be released for filing with the appropriate county, or in the cases within the City’s ETJ for which no plat is submitted to the City, no application for a utility connection shall be approved, without assessment of an impact fee pursuant to this ordinance. No building shall be issued, or in the cases within the City’s ETJ for which no plat is submitted to the City, utility connection made, for new development, until the property owner has paid the impact fee imposed by and calculated herein or a contract for payment is approved by the city and executed by the parties.

Section 7. Impact Fee assessment and Collection; Exceptions.

1. Water and sewer impact fees for new development located in the City or the ETJ shall be assessed at the time final plats are released for recordation. Water and sewer impact fees shall be collected at the time a building permit is issued for new development within the City and for new development in the ETJ, the impact fee shall be collected at the time an application is filed for an individual meter connection to the water or wastewater system. Irrigation meters in single family residential are additional service units and will be assessed and fees collected at time of connection to the City’s water or sanitary sewer.
2. Additional impact fees or increases in fees shall not be assessed unless the number of service units to be developed on the tract increases. Should the service units be increased, impact fees shall be increased in an amount equal

to the current impact fee per service unit multiplied by the difference in the number of service units and assessed and collected as set forth herein.

3. Impact fees may be assessed but may not be collected for property where the service the impact fee is for will not be available at the time of collection, unless:
 - a. The City commits to commence construction of necessary facilities identified in the capital improvements plan within two (2) years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide the service and have service available within a reasonable period of time, but in no event longer than five (5) years; or
 - b. The city agrees in writing to allow the owner of the property to construct or finance the capital improvement or facility expansion and agrees that the costs incurred or funds advanced will either:
 - i. be credited against the impact fees otherwise due from new development; or
 - ii. be reimbursed to the owner in the amount of such costs from impact fees paid from other new developments that will use capital improvements of facility expansions, in which case fees shall be reimbursed to the owner at the time collected as other new development plats are recorded; or
 - c. The owner voluntarily requests that the City reserve capacity to serve future development and enters into a valid written agreement.
4. The owner of property for which there is a recorded plat may enter into an agreement with City providing for the time and method of payment of Impact Fees, which agreement shall prevail over the provisions of this Ordinance.

Section 8. Calculation of Impact Fees.

1. Impact fees for water and wastewater shall be determined by multiplying the number of service unit equivalents in the new development by the fee amount per service unit equivalent due by referring to Schedules A–Water/Wastewater Equivalency Table and Schedule B–Impact Fee Rates. The amount of each impact fee due shall be reduced by any allowable credits for that category of capital improvement or facility expansion in the manner provided by this Ordinance. Water meters that are for the sole purpose of fire protection shall not be included when calculating the water impact fee.

Schedule A

Water/Wastewater Equivalency Table

Water Meter size	Service Unit Equivalent	Water Impact Fee	Wastewater Impact Fee
¾"	1.0	\$ 1475.09	\$ 979.29

1"	1.67	\$ 2463.40	\$ 1635.42
1.5"	3.33	\$ 4912.06	\$ 3261.04
2"	5.33	\$ 7862.24	\$ 5219.62
3"	10	\$ 14750.92	\$ 9792.91
4"	16.67	\$ 24589.79	\$ 16324.78
6"	33.33	\$ 49164.83	\$ 32639.77
8"	53.33	\$ 78666.68	\$ 52225.60
10"	76.67	\$ 113095.33	\$ 75082.25

Schedule B

Impact Fee Rates

Facility Category	Service Area	Maximum Impact Fee Per Service Unit Equiv.	Adopted Impact Fee Per Service Unit Equiv.
Water Facilities	All	\$ 1475.09	\$1475.09
Wastewater Facilities	All	\$ 979.29	\$ 979.29

Section 9. Credits.

1. Any construction of, contributions to, or dedications of any facility appearing on the capital improvements plan which is required by the City to be constructed by the owner as a condition of new development shall be credited against the impact fees otherwise due from the new development from same category (water or wastewater). Credit for impact fees due an owner in one category of impact fees may not be used to offset impact fees in another category.
2. As an alternative to the foregoing, the City and owner may enter into an agreement providing that, in addition to the credit, owner will be reimbursed for all or a portion of the costs of such facilities from impact fees received from other new developments that will use such capital improvements of facility expansions.
3. All credits against impact fees shall be subject to the following limitations and shall be granted based on this Ordinance and any additional administrative guidelines that may be adopted by the city.
 - 1) No credit shall be given for the dedication or construction of on-site facilities.
 - 2) No credit shall exceed an amount equal to the assessed impact fee for the same category of improvements.

- 3) If a credit applicable to a final plat has not been exhausted within ten (10) years from the acquisition of the first building permit issued or, in the cases within the City's extraterritorial jurisdiction for which no plat is submitted to the City, utility connection made after the effective date of the adoption of the applicable impact fees, or within such period as may otherwise be designated by contract, such credit shall lapse.
 - 4) In no event will the City reimburse the property owner or developer for a credit when no impact fees for the new development can be collected pursuant to City ordinance or for any amount exceeding the total impact fees due for the new development for the category of capital improvement, unless otherwise agreed to by the City.
4. The available credit associated with new development shall be applied against an impact fee for that same category in the following manner:
1. For single-family residential lots in a new development consisting only of single-family residential development, such credit shall be prorated equally among such lots, to be applied at the time of application of a building permit for each lot, against impact fees to be collected at the time the building permit is issued.
 2. For all other types of new development, including those involving mixed uses, the credit applicable to the new development shall be applied to the impact fee due at the time of approval.
 3. At its sole discretion, the city may authorize alternative credit agreements upon written agreement with the property owner in accordance with the city's administrative guidelines.

Section 10. Accounting for Fees and Interest.

1. All impact fees collected shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee is adopted.
2. Interest earned will be credited to the account and is subject to the same restrictions on expenditures as the funds generating such interest.
3. Impact fees and the interest earned thereon may be expended only for the purposes for which such fees were imposed as shown in the Capital Improvements Plan.
4. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Section 11. Use of Proceeds of Impact Fee Accounts.

1. The impact fees collected for the service area may be used to finance or to recoup the costs of any capital improvements or facility expansion identified in the capital improvements plan for the service area, including but not limited to the construction contract price, surveying and

engineering fees, land acquisition costs (including land purchases, court awards and costs, attorneys fees and expert witness fees). 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 facility expansion.

2. Impact fees collected pursuant to this Ordinance shall not be used to pay for any of the following expenses:
 - 1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;
 - 2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;
 - 3) Upgrade, update, expansion or replacement of existing capital improvements to provide better service to existing development;
or
 - 4) Administrative and operating costs of the City.

Section 12. Refunds.

1. Upon application by an owner of property, any impact fee or portion thereof collected pursuant to the City ordinance, which; (i) has not been expended within the service area within ten (10) years from the date of payment, or (ii) existing facilities are available and service denied, or (iii) the City has, after collecting the impact fee when service was not available, failed to commence construction within two (2) years or service is not available within a reasonable period considering the type of improvement or expansion, but in no event later than five (5) 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 payment to the date of refund at the statutory rate as set forth in the Texas Finance Code, Section 302.002, or its successor statute. The application for refund pursuant to this section must be submitted by the record owner within sixty (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.
2. An impact fee collected pursuant to this Ordinance shall also be considered expended if the total expenditures for capital improvements or facility within the service area within ten (10) years following the date of payment exceed the total fees collected within the service area for such improvements or expansions during such period.
3. If a refund is due pursuant to subsections (a) and (b), 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.

4. Upon completion of all the capital improvements or facility expansions identified in the capital improvements plan for the service area, the City shall recalculate the impact fee per service unit using the actual costs for the improvements or expansions. If the impact fee per service unit based on actual cost is less than the impact fee per service unit paid, the City shall refund the difference, if such difference exceeds the impact fee paid by more than ten (10) percent. If the difference is less than ten (10) percent no refund shall be due. The refund to the record owner shall be calculated by multiplying such difference by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

Section 13. Updates to Plan and Revision of Fees.

1. The City shall update its land use assumptions and capital improvements plans at least every five (5) years, or as required by law, commencing from the date of adoption of such plans, and shall recalculate the impact fees based thereon in accordance with the procedures set forth in Texas Local Government Code Chapter 395 or in any successor statute.
2. The City may review its land use assumptions, impact fees, capital improvements 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 should be updated and the impact fee recalculated accordingly.
3. If, at the time an update is required pursuant to subsection (a), the City Council determines that no change to the land use assumptions, capital improvements plan or impact fee is needed, it may dispense with such update by following the procedures in Texas Local Government Code Section 395.0575 or its successor statute.

Section 14. Use of other financing mechanisms.

- a) The City may finance capital improvements or facility expansion designated in the capital 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 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.

Section 15. Impact fee as additional and supplemental regulation.

Impact fees established by this Ordinance 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 the City's comprehensive land use plan, the capital improvements plan, the zoning ordinance, subdivision regulations and other City policies, ordinances, codes and resolutions by which the City seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

Section 16. Relief Procedures/Appeals.

Any person who has paid an impact fee or an owner of land upon which an impact fee has been paid may petition the City Council to determine whether any duty required by this ordinance 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 sixty (60) days of the request. If the City Council determines that the duty is required pursuant to this Ordinance and is late in being performed, it shall cause the duty to commence within sixty (60) days of the date of the request and to continue until completion.

Section 17. Certificate of Compliance Statement.

The mayor is hereby authorized to sign the appropriate annual compliance statement required under Section 395.082 of the Texas local Government Code or its successor statute acknowledging compliance with the requirements thereof.

Section 18. Savings/ Repealing Clause.

All provisions of any ordinances in conflict with this Ordinance are hereby repealed; but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of any conflicting ordinance shall remain in full force and effect.

Section 19. Severability Clause.

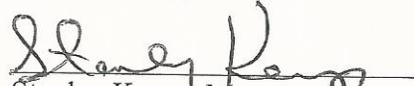
If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. Tioga hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

Section 20. Effective Date.

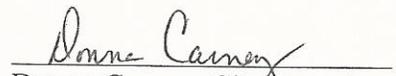
This ordinance shall become effective immediately upon its adoption.

Passed by the City Council of the City of Tioga, Texas this 17 day of June 2007.

APPROVED:


Stanley Kemp, Mayor

ATTEST:


Donna Carney, City Secretary