

**CITY OF EVERMAN, TEXAS**

**ORDINANCE NO. 781**

**AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS, ADOPTING IMPACT FEES FOR WATER AND SANITARY SEWER IMPROVEMENTS THAT ARE ATTRIBUTABLE TO NEW DEVELOPMENT IN THE CITY'S PROPOSED WATER AND SANITARY SEWER IMPACT FEE SERVICE AREA; PROVIDING FOR IMPACT FEE COLLECTION AND ACCOUNTING FOR FEES AND INTEREST; PROVIDING FOR IMPACT FEE WAIVERS; PROVIDING FOR SEMI-ANNUAL REVIEW OF IMPACT FEES BY THE CAPITAL IMPROVEMENT ADVISORY COMMITTEE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Everman, Texas (the "City") is responsible for and committed to the provision of public services, including water and sanitary sewer services, at levels necessary to provide service for customers connecting to the water and sanitary sewer system; and

**WHEREAS**, new residential and non-residential development imposes increased demands upon the City's public services, including water and sanitary sewer facilities, that would not otherwise be imposed; and

**WHEREAS**, the City's growth to date indicates that such development will continue and will place ever-increasing demands on the City to provide necessary public facilities; and

**WHEREAS**, to the extent that such new development places demands upon the public infrastructure, such demands should be satisfied by allocating the responsibility for financing the provision of new infrastructure by the development creating such demands;

**WHEREAS**, CobbFendley prepared a professional engineering report, which is attached hereto as **Exhibit A** and incorporated into this Ordinance, for land use assumptions and a capital improvements plan and for the implementation of impact fees on water and sanitary sewer improvements in the City's proposed impact fee service area; and

**WHEREAS**, on March 15, 2022, the City Council of Everman appointed five members to the City's Capital Improvements Advisory Committee to review and make recommendations for the 2022-2032 Land Use Assumptions and Capital Improvement Plan; and

**WHEREAS**, the Committee members consisted of the members of the Planning and Zoning Commission; and

**WHEREAS**, Texas Local Government Code Section 395.045 states that to impose water and sanitary sewer impact fees, the City Council of Everman must, after holding a public hearing, approve land use assumptions and a capital improvements plan for the City's proposed water and sanitary sewer impact fee service area; and

**WHEREAS**, the City Council of Everman finds and determines that the City has complied with the requirements in Tex. Loc. Gov't Code Sections 395.042 and 395.043 for publicizing the 2022-2032 Water and Sanitary Sewer Impact Fee Study including the land use assumptions and

capital improvements plan prior to holding public hearings; and

**WHEREAS**, the City's Impact Fee Advisory Committee met and approved the Impact Fee Report finding that the land use assumptions used in the report are reasonable; the Capital Improvements Plan used in the report is reasonable; and the method to calculate the maximum impact fee is reasonable; and

**WHEREAS**, the City's Impact Fee Advisory Committee recommended to City Council of Everman approval of the land use assumptions and capital improvement plan recommended by the preliminary Water and Sanitary Sewer Impact Fee Study for the possible imposition of impact fees for water and sanitary sewer improvements in the impact fee service area on March 28, 2022; and

**WHEREAS**, pursuant to Tex. Loc. Gov't Code Section 395.044, the City Secretary of the City of Everman timely published on the notice of public hearing (attached as in the City of Everman's official newspaper of general circulation concerning the public hearing to consider approval of the land use assumptions and capital improvements plan associated with the imposition of impact fees for water and sanitary sewer improvements in the impact fee service area; and

**WHEREAS**, the City Council of Everman held a public hearing on April 19, 2022, to consider the land use assumptions and capital improvement plan associated with the Water and Sanitary Sewer Impact Fee Study for the possible imposition of impact fees for water and sanitary sewer improvements in the impact fee service area; and

**WHEREAS**, the City Council of Everman adopted a Ordinance on April 19, 2022, after the public hearing and adopted and approved the land use assumptions and capital improvement plan recommended by the Water and Sanitary Sewer Impact Fee Study for the possible imposition of impact fees for water and sanitary sewer improvements in the impact fee service area; and

**WHEREAS**, pursuant to Tex. Loc. Gov't Code Section 395.044, the City Secretary of the City of Everman timely published on the notice of public hearing in the City of Everman's official newspaper of general circulation concerning the public hearing to consider the calculation of the maximum impact fee amounts and imposition of impact fees for new or expanded water and sanitary sewer utility services from the City's water and sanitary sewer utilities; and

**WHEREAS**, the City Council of Everman held a public hearing on June 7, 2022, to consider the calculation of the maximum impact fee amounts and possible imposition of impact fees for new or expanded water and sanitary sewer utility services from the City; and

**WHEREAS**, the City Council of Everman, after careful consideration of the matter, hereby finds and declares that it is in the best interests of the general welfare of the City and its residents to adopt this ordinance relating to the adoption of impact fees for water and sanitary sewer utilities.

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

**SECTION 1. FINDINGS.** The facts and recitations found in the preamble of the Ordinance are true and correct and incorporated herein for all purposes.

**SECTION 2. ENACTMENT.** The Impact Fee Ordinance, including the impact fees

recommended by the Impact Fee Advisory Committee is enacted so to read in accordance with **Exhibit B**, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

**SECTION 3. ORDINANCE CUMULATIVE.** This ordinance is cumulative of all other ordinances of the City and shall not operate to repeal or affect any of such other ordinances except as to provisions that are in conflict with the provisions of this ordinance, in which event the conflicting provisions are hereby superseded.

**SECTION 4. SEVERABILITY.** In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconditional; and the City Council of Everman of the City of Everman, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**SECTION 5. HEADINGS.** Any headings or titles set forth in this ordinance, including the title hereof, are included for purposes of convenience only and shall not be used in the interpretation, construction, or definition of the provisions of this ordinance.

**SECTION 6. CODIFICATION.** The City Secretary is hereby directed to record and publish the attached rules, regulations, and policies in the City's Code of Ordinances as authorized by Section 52.013 of the Texas Local Government Code.

**SECTION 7. OPEN MEETINGS.** That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chap. 551, Tex. Loc. Gov't. Code.

**SECTION 8. EFFECTIVE DATE.** This Ordinance is in full force and effect immediately upon its passage and publication, if required and when such a requirement is satisfied.

**PASSED AND APPROVED** this, the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by a vote of \_\_\_\_\_ (ayes) to \_\_\_\_\_ (nays) to \_\_\_\_\_ (abstentions) of the City Council of Everman, Texas.

CITY OF EVERMAN, TEXAS

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Ray Richardson, Mayor

ATTEST:

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Mindi Parks, City Secretary

**EXHIBIT A**

**2022-2032 LAND USE ASSUMPTIONS  
AND  
CAPITAL IMPROVEMENTS PLAN**

## **EXHIBIT B**

### **IMPACT FEES**

#### **CHAPTER 21. – WATER AND SANITARY SEWER IMPACT FEES**

##### **ARTICLE I. – GENERAL PROVISIONS**

Sec. 21-01. Short title. This Section shall be known and cited as the City of Everman Impact Fee Ordinance.

Sec. 21-02. Purpose. The purpose of this Section is to help ensure that adequate water and sanitary sewer facilities are available to serve new growth and development, and to provide for new growth and development to bear a proportionate share of the cost of water and sanitary sewer facilities that serve the new growth and development.

Sec. 21-03. Authority; implementing guidelines.

(a) This Section is adopted pursuant to Chapter 395 of the Texas Local Government Code.

(b) Guidelines to implement and administer this Section may be developed and approved by ordinance or resolution of the City Council.

Sec. 21-04. Definitions. In this Section:

*Advisory Committee* means the City Planning and Zoning Commission, designated as the Capital Improvements Advisory Committee on Impact Fees in accordance with Chapter 395 of the Texas Local Government Code.

*Capital improvement* means a water facility or sanitary sewer facility, with a life expectancy of three or more years that is owned and operated by or on behalf of the City, whether or not the facility is within the impact fee service area.

*Capital improvements plan* means the plan approved by the City Council which describes the water and sanitary sewer capital improvements or facility expansions and their costs which are necessitated by and attributable to development in the impact fee service area based on the approved land use assumptions. The initial capital improvements plan is the 2022-2032 Land Use Assumptions and Capital Improvements Plan for Water and Sanitary Sewer Impact Fees prepared by CobbFendley for the City of Everman, Texas, which was approved by the City Council by Ordinance No. 779, dated April 19, 2022.

*City* means the City of Everman, Texas.

*Development* means the subdivision of land, or 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 increases the number of service units that may be used on the land or in conjunction with the structure. “Development” includes the conversion of an existing use from on-site water or sanitary sewer facilities to the use of City water facilities or sanitary sewer facilities.

*Facility expansion* means an expansion of the capacity of any 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.

*Impact fee* means a charge or assessment imposed as set forth in this Section on development in order to generate revenue to fund or recoup the costs of capital improvements or facility expansions necessitated by and attributable to development. “Impact fee” does not include:

- (a) Dedication of land for public parks or payment in lieu of the dedication to serve park needs;
- (b) Dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, sanitary sewer 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;
- (c) 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;
- (d) Other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision; or
- (e) Charges for water or sanitary sewer services to a wholesale customer such as a water district, political subdivision of the state, or other wholesale utility customer.

*Impact fee rate* means the amount of the impact fee per service unit.

*Impact fee service area* means the area designated in Article 1, Subsection E within which impact fees will be collected in connection with the development, and for which impact fees will be expended for capital improvements or facility expansions.

*Land use assumptions* mean a report describing the impact fee service area and projections of changes in land uses, densities, intensities, and population in the service area. The initial land use assumptions are contained in the report on Land Use Assumptions for the Implementation of Impact Fees prepared for the City by the CobbFendley, which was approved by the City Council by Ordinance No. 779, dated April 19, 2022.

*Property owner* means any person, corporation, legal entity, or agent thereof having a legal or equitable interest in the land for which an impact fee becomes due. “Property owner” includes the developer for a development.

*Sanitary sewer facility* includes a wastewater interceptor or main, lift station, or other facility or improvement used for providing wastewater collection and treatment included within the City’s collection, transmission, and treatment system for wastewater. “Sanitary sewer facility” includes land, easements, and structures associated with such facilities.

*Service unit* means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the City during the previous 10 years. “Service unit” for the purposes of calculation of water and sanitary sewer impact fee rates means a standardized measure of consumption, use or discharge based upon a  $\frac{5}{8}$ ” by  $\frac{3}{4}$ ” displacement-type water meter.

*Water facility* includes a water transmission line or main, pump station, storage tank, water supply facility, treatment facility or other facility included within and comprising an integral component of the City’s water production, supply, storage, or distribution system. “Water facility” includes land, easements and structures associated with such facilities.

A. Impact fee service area; applicability of Section.

1. The impact fee service area for water facilities and sanitary sewer facilities is depicted on a map included in the report on land use assumptions and capital improvements plan for the implementation of impact fees prepared for the City by CobbFendley. A copy of this map shall be retained on file in the office of the City Secretary.
2. This Section applies to all development within the impact fee service area. The provisions of this Section shall apply uniformly within the impact fee service area.

B. Land use assumptions and capital improvements plan.

1. The land use assumptions are incorporated by reference in this Section.
2. The capital improvements plan is incorporated by reference in this Section.

C. Impact fees in relation to other fees and development regulations.

1. Impact fees established by this Section are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land, the issuance of building permits or certificates of occupancy, and any tap or utility connection fees. Such Impact Fees are intended to be consistent with and to further the policies of the Comprehensive Plan, the Capital Improvements Plan, the

zoning ordinance, subdivision regulations and other City policies, ordinances, and resolutions by which the City seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

2. For each development to which impact fees apply, the payment of impact fees as described in this Section will constitute a condition of plat, construction permit, utility connection and other development approvals.

3. This Section shall not affect the permissible uses of property, the density of development, public improvement standards and requirements, or any other aspect of City development regulations.

D. Functions of advisory committee. The advisory committee may perform the following functions:

1. Advise and assist the City Council and City staff in reviewing, adopting, and updating the land use assumptions and the capital improvements plan;

2. File written comments on the land use assumptions and the capital improvements plan;

3. Monitor and evaluate implementation of the capital improvements plan;

4. Advise the City of the need to update or revise the land use assumptions, capital improvements plan and impact fees; and

5. File periodic reports evaluating the progress of the capital improvements plan and identifying perceived inequities in implementing the plan or administering the impact fees.

E. Updates to plans and revision of fees.

1. The City shall update the land use assumptions and capital improvements plan at least every five years, and shall recalculate the maximum impact fee rates based on the update, unless the City Council determines that an update is not needed under Chapter 395 of the Texas Local Government Code. The initial five-year period will run from the June 7, 2022, date of the City Council's adoption of the capital improvements plan.

2. The City may review its land use assumptions, impact fees, capital improvements plan and other factors such as market conditions more frequently as allowed by Chapter 395 of the Texas Local Government Code to determine whether the land use assumptions and capital improvements plan should be updated, and the maximum impact fee rates recalculated.

3. If the City Council determines that no changes to the land use assumptions, capital improvements plan or impact fee are needed at the time an update is required under Chapter 395 of the Texas Local Government Code, the City Council will provide notice

of this determination as described in Texas Local Government Code § 395.0575. If no person submits a timely request for an update of the land use assumptions, capital improvements plan or impact fee, no update will be necessary.

(d) The City Council may amend the actual impact fee rates in accordance with Chapter 395 of the Texas Local Government Code at any time without revising the land use assumptions and capital improvements plan. The actual impact fee rates may not, however, exceed the maximum impact fee rates set in Article 2, Subsection A.2.

## ARTICLE 2. - WATER AND SANITARY SEWER IMPACT FEES

### A. Actual and maximum impact fee rates.

1. The actual impact fee rate charged by the City for each category of capital improvements is set as follows:

(a) Water: \$2,000.00

(b) Sanitary Sewer: \$2,000.00

2. The maximum impact fee rate allowed by state law for each category of capital improvements is calculated in the capital improvements plan to be as follows:

(a) Water: \$3,193.00 (per EDU)

(b) Sanitary Sewer: \$2,410.00 (per EDU)

### B. Determination of impact fee rates.

1. The impact fee rates will be those in effect at the time an application for a building permit, plumbing permit, or utility connection is submitted to the City, except as provided in Article 2, Subsection B.2 below.

2. For development on property platted or replatted after the original effective date of this Section, the impact fee rates will be those in effect at the time the plat or replat of the property was recorded. The applicant for a building or plumbing permit shall submit evidence of the date of plat or replat recording with the application for a building or plumbing permit.

### C. Computation of service units.

1. Water service units. The number of water service units for a development shall be based on the size of the water meter necessary to serve the development, as confirmed by the City.

2. Sanitary sewer service units. The number of sanitary sewer service units for a development shall be based on the size of the water meter necessary to serve the

development, as confirmed by the City. If the City allows a development to connect to the sanitary sewer system without connecting to the water system, the property owner shall submit information to support a determination of the water meter size that would be required if the development connected to the City water system. The number of sanitary sewer service units associated with various water meter sizes is based on the water meter size determined by the City as referenced in Article 2, Subsection C.1 above.

D. Payment of impact fees.

1. Impact fees shall be paid at the following times:

- a. For land within the City Limits, at the time the City issues a building permit, or if no building permits are needed, at the time the City approves a utility connection application.
- b. For land outside the City Limits, at the time the City issues a plumbing permit, or if no plumbing permit is needed, at the time the City approves a utility application.

2. The City Council may approve an agreement with a property owner for a different time, manner of computation, or payment of impact fees for development on the owner's property.

E. Offsets and credits.

1. If a property owner, in connection with a development, constructs a capital improvement or facility expansion included in the capital improvements plan, and the improvement or expansion exceeds minimum City standards and provides capacity in excess of the needs of the property owner's development, the property owner will be entitled to an offset or credit against impact fees that would otherwise be assessed against the development.

2. If impact fees for a development are to be paid in a lump sum, the allowable costs will be calculated and offset against impact fees at the normal time of collection. If impact fees for a development will be paid incrementally as uses are initiated or constructed on the property, the City will enter into a capital improvement agreement with the property owner under Subsection E that describes the manner in which the allowable costs will be credited towards impact fee payments.

3. The amount of an offset or credit will be based on the extent to which the capacity of the capital improvement or facility expansion exceeds the capacity represented by minimum City standards for the type of facility, or the capacity needs of the property owner's development, whichever is greater. The property owner shall submit evidence of the actual, fair-market cost of the capital improvement or facility expansion. The cost shall be subject to verification by the City.

4. An offset or credit shall only be applicable against the impact fees for the type of facility (water facility or sanitary sewer facility) constructed by the property owner.

5. A credit shall expire 10 years from the date the credit was created.

F. Capital improvement agreements. A property owner entitled to a credit under Article 2, Subsection E may request to enter into a capital improvement agreement with the City. The agreement will provide for the credit to run with the land and be used to reduce the amount of the impact fee that would otherwise be owed for each use initiated or constructed on the property. The agreement will be on a form approved by the City, and it must include the estimated cost of the improvement or expansion, the schedule for commencing and completing construction, and other terms and conditions deemed necessary by the City. The agreement shall describe the method to be used to determine the amount of the credit each time impact fees are due for development on the property.

G. Refunds.

1. At the written request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund all or part of the impact fee, together with interest calculated from the date of collection to the date of refund, if any of the following apply:

a. Existing facilities are available to serve the development and service is denied for any reason;

b. Existing facilities were not available to serve the development when the fee was paid, and the City has failed to commence construction of facilities to provide service within two years of payment of the fee; or

c. Existing facilities were not available to serve the development when the fee was paid, and the City has failed to make service available within a reasonable period considering the type of facilities to be constructed, but in no event later than five years from the date of payment.

2. Upon written request of an owner of the property on which an impact fee has been paid, the portion of an impact fee which has not been expended within 10 years from the date of payment shall be refunded. The application for refund under this section shall be submitted within 60 days after the expiration of the ten-year period. Under this subsection, impact fees will be deemed expended on a first-in, first-out basis. An impact fee collected under this Section will be deemed expended if the total expenditures for capital improvements or facility expansions within ten years after the date of payment exceeds the total amount of fees collected for the category of improvements or expansions (water or sanitary sewer) during that period.

3. If a refund is due under Article 2, Subsections G.1 or G.2, 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 identified in the land use assumptions for the service area to determine the refund due per service unit. The refund 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 the interest due shall be calculated on that

amount. Refunds shall be made to the record owner of the property at the time of the refund.

- H. Rebates. If a building or plumbing permit or an approval of a utility application in a development expires after an impact fee has been paid, and no utility connection has been made under the permit or approval, and a modified or new application has not been filed within six months of the expiration, and the property owner submits a written request to the City within six months of the expiration, the City shall rebate the amount of the impact fee to the record owner of the property at the time of the refund. If no request for a rebate is submitted within this period, no rebate shall become due.

### ARTICLE 3. ACCOUNTING AND USE OF IMPACT FEES

#### A. Accounting for impact fees.

1. The City shall establish separate interest-bearing accounts for water system impact fees and sanitary sewer system impact fees.
2. Interest earned on each account shall be credited to that account and shall be used solely for the purposes authorized in this Section.
3. The City shall establish and maintain financial and accounting controls to ensure that impact fees disbursed from an account are used solely for the purposes authorized in this Section. 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 Section.
4. The City shall maintain financial records for each account which show the source and disbursement of all funds. The records shall be open for public inspection during ordinary business hours.

#### B. Use of impact fee accounts.

1. Impact fees collected under this Section shall be used to pay or recoup the costs of constructing capital improvements or facility expansions identified in the capital improvements plan. Water system impact fees will be used only for water system capital improvements or facility expansions. Sanitary sewer system impact fees will be used only for sanitary sewer system capital improvements or facility expansions. Construction costs include the construction contract price, surveying and engineering costs, and land acquisition costs (including purchase price, court awards and costs, attorney's fees, and expert witness fees).
2. Impact fees may be used to pay the principal and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the City to finance capital improvements or facility expansions identified in the capital improvements plan.

3. Impact fees may be used to pay fees to an independent qualified engineer or financial consultant (i.e., an engineer or consultant who is not an employee of the City) for preparing or updating the capital improvements plan.

4. Impact fees collected under this Section shall not be used to pay for any of the following:

- a. Construction or acquisition of capital improvements or facility expansions other than those identified in the capital improvements plan;
- b. Repair, operation, or maintenance of existing or new capital improvements or facility expansions;
- c. Upgrade, expansion or replacement of existing capital improvements that serve existing uses in order to meet stricter safety, efficiency, environmental or regulatory standards;
- d. Upgrade, expansion, or replacement of existing capital improvements to provide better service to existing uses; or
- e. Administrative and operating costs of the City.

5. The City may pledge impact fee revenues as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or facility expansion identified in the capital improvements plan if the City Council certifies in an ordinance or resolution that none of the revenues will be used or expended for an improvement or expansion not identified in the plan.

C. Exceptions and exemptions.

1. Impact fees shall not be collected from any local taxing unit, as defined in the state tax code, which is authorized to impose and is imposing ad valorem taxes on the property.

2. No sanitary sewer impact fee shall be charged for an irrigation meter.

3. No impact fee shall be charged for a fire line meter that serves only a fire suppression system.