

ORDINANCE NO. 04-02-2009 A

**AN ORDINANCE TO ENACT LOCAL DEVELOPMENT  
WATER AND WASTEWATER IMPACT FEES AND  
AMEND THE ELKINS MUNICIPAL CODE.**

WHEREAS, the City of Elkins, Arkansas, has contracted with the City of Fayetteville for Fayetteville to provide fresh potable water to the City through a master meter and to provide wastewater treatment and discharge for the City as a single customer;

WHEREAS, the Elkins Water and Sewer Department distributes and transports water from the master meter throughout the City to customers and collects wastewater from customers of the City and transport it to a pump station where it is transported to Fayetteville for further transport, treatment and discharge;

WHEREAS, the cost of increasing the capacity of the existing wastewater collection and transportation system and the distribution of fresh potable water within the City of Elkins to accommodate anticipated growth in the City should be borne by those who make such increases necessary.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF ELKINS, ARKANSAS,  
That:

Section 1: That the Elkins' Municipal Code is hereby amended by adding a Chapter to be numbered 10.30, which Chapter reads as hereinafter set forth.

**Chapter 10.30  
Water and Wastewater Impact Fees**

**10.30.01 Impact Fee.**

A local water impact fee and local wastewater impact fee is hereby established for the City of Elkins water and wastewater system for in-town facilities/improvements that meet in-town demand, hereinafter referred to as the "System".

**10.30.03 Short Title, Authority and Applicability.**

a) Short Title. This ordinance shall be known and may be cited as the "Elkins Water and Wastewater Impact Fee Ordinance".

b) Authority. This ordinance is enacted pursuant to the authority granted to the City by Arkansas Code Annotated §§14-56-103 and other relevant laws and judicial interpretations of the State.

c) Applicability. The provisions of this ordinance shall apply to all of the territory within the City's water and wastewater service area, including the corporate limits of Elkins, any unincorporated area of Washington County served by the system and all future additions to said areas.

d) The following types of development shall be required to pay a local water and wastewater impact fee:

- i. New and existing development seeking a new connection to the City's water or wastewater system resulting in increased demand from water or wastewater facilities. This shall not apply to existing development that is connecting to the water and wastewater system in order to eliminate an individual water source or sewage disposal system.
- ii. Nonresidential or residential redevelopment seeking a larger capacity or additional water meter.

**10.30.05 Definitions.**

For the purpose of this Ordinance, the following terms shall have the following meanings:

- a. City Council. The duly elected/appointed city council of the City of Elkins, Arkansas.
- b. Capital water and wastewater facilities. The City's water distribution system, pumps, wastewater collection system, any treatment facilities, lift lines, lift stations, interceptors, buildings, tanks, improvements to land, land and related equipment used to provide City water and/or wastewater services as defined in the study. The costs of capital water and wastewater facilities also include the costs of related planning and design for these facilities.
- c. Certificate of occupancy. A certificate issued by the City permitting the occupancy of a structure connected to the City's water and/or wastewater system. Said certificate may be limited to the structure's water and wastewater system for those structures located outside the corporate limits of Elkins.

- d. City. The City of Elkins, Arkansas, including, but not limited to, its water and sewer department.
- e. Developer. Any person, firm or corporation commencing a development who is obligated to pay an Impact Fee in accordance with the terms of this ordinance, or who would be obligated to pay such a fee except for an exemption, refund, or credit provided for in this ordinance.
- f. Development. Any residential, multifamily, commercial, or industrial improvement to lands within the system service area.
- g. Impact fee study (the study). A study that sets forth reasonable methodologies and analyses for determining the impact of various types of development on the City's capital water and wastewater facilities, and that determines the cost of the facilities necessary to meet the demands created by new development.
- h. Impact fees. The local water and wastewater impact fees established by this ordinance pursuant to Ark. Code Ann. §§14-56-103 for in-town utilities/improvements that meet increased in-town demand.
- i. Impact fee trust fund. The trust funds established by this ordinance. There shall be a water impact fee trust fund and a wastewater impact fee trust fund with fees collected segregated into the respective impact fee trust fund.
- j. Improvements. The results of planning, engineering, design, construction inspection, on-site construction, off-site construction, land, the purchase of related equipment, and financing associated with new or expanded capital water or wastewater facilities, buildings, and equipment that expand the capacity of capital water or wastewater facilities, but not including maintenance, operations, or improvements that do not expand capacity.
- k. Independent fee calculation study. A study prepared by Duncan/Associates in association with Rosenthal Associates, Inc. (including but not limited to all plans and studies referenced therein), calculating the cost of expansions or improvements to the capital water and wastewater facilities required to serve the developer's proposed development, that is based on the established level of service standard, performed on an average cost (not marginal cost) methodology, that uses the service units and unit construction costs stated in the study, and is performed in compliance with any criteria for such studies established by this ordinance or by the City.

- l. Person. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity.
- m. State. The State of Arkansas.
- n. Successor in interest. A person, as defined by this ordinance, who gains a fee simple interest in land for which an impact fee is paid or a credit is approved pursuant to the terms of this ordinance.
- o. System. The City of Elkins municipal water and wastewater system including capital water or wastewater facilities.

**10.30.07 Legislative findings.**

The City Council of Elkins, Arkansas, finds, determines and declares that:

a) System expansion required. The protection of the health, safety, and general welfare of the citizens of the City requires that the City's capital water and wastewater facilities be expanded and improved to accommodate growth and development within the City.

b) System demand. New residential and nonresidential development imposes increased and excessive demands upon the existing system facilities and often overburdens the existing system facilities. Provided, further, new development is expected to continue, and will place ever-increasing demands on the system to provide these facilities to serve new development.

c) System revenues. System revenues generated from new development often does not generate sufficient funds to provide the necessary capital water and wastewater facilities to accommodate new development; therefore, the creation of an equitable local water impact fee system and local wastewater impact fee system would enable the City to impose a proportionate share of the costs of the needed improvements to system capital facilities to accommodate new development.

d) Study conducted. In order to implement an equitable local impact fee system, the City in cooperation with the Cities of Fayetteville, Farmington and Greenland caused to be prepared a Water and Wastewater Capital Plan and Impact Fee Analysis, hereinafter termed "study". Said study is incorporated herein by reference, and sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the City's system capital facilities, and for determining the cost of acquiring the improvements necessary to meet the demands for such services created by new development.

e) Standards established. The City hereby establishes as City standards the assumptions and level of service (LOS) standards referenced in the study as part of its current plans for future expansions to the City's system capital facilities.

f) Impact fee use limited. The impact fees described in this ordinance are based on the study, and do not exceed the costs of improvements to serve new development that will pay the impact fees nor shall such fees to be used to correct existing deficiencies for these capital facilities, or to replace or rehabilitate existing improvements. This is intended to be a local improvement impact fee (for in-town facilities/improvements that meet in-town demands) both as to water and wastewater.

g) Benefit. Those in-town capital water facilities/improvements and wastewater facilities/improvements listed in the study will benefit all new development that depends on City services, and it is therefore appropriate to treat the entire system as a single service area for purposes of calculating, collecting, and spending the local improvement impact fees as to both water and wastewater.

h) Impact fee relationship. There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this ordinance and the impact fees that such development will be required to pay for water and/or wastewater.

i) Impact fee purpose. This ordinance creates a system by which wastewater impact fees paid by new development will be used to finance, defray or reimburse all or a portion of the costs incurred by the City to construct improvements for system's capital wastewater facilities in ways that benefit the development that paid each fee within a reasonable period of time after the fee is paid. This ordinance also creates a system by which water impact fees paid by new development will be used to finance, defray or reimburse all or a portion of the costs incurred by the City to construct improvements for system's capital water facilities in ways that benefit the development that paid each fee within a reasonable period of time after the fee is paid.

### **10.30.09 Intent.**

a) Capital improvement plan. This ordinance is adopted to assist in the implementation of the City's capital improvement plan (CIP) for water and wastewater system projects as set forth in the 09-06-2006 letter from McClelland Consulting Engineers, Inc. to Mr. Kevin Caler of the Elkins' water and sewer department which plan was adopted by the Elkins' Water and Sewer Committee and City Council and used in the independent fee calculation study. To that end, the intent of this ordinance is to ensure that new development bears a proportionate share of the cost of improvements to capital water and wastewater facilities; to ensure that such proportionate share does not exceed the cost of improvements for capital water or wastewater facilities required to accommodate new development; and to ensure that funds collected from new development are actually used for improvements for capital water or wastewater facilities that benefit such new development.

b) Impact fee purpose. It is the further intent of this ordinance that new development pay for its fair share of the cost of local improvements for capital water and wastewater facilities required to accommodate new development through the imposition of impact fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the City to construct improvements to the City capital water or wastewater facilities that serve or benefit such new development. It is not the intent of this ordinance to collect any money from any new development in excess of the actual amount necessary to offset new demands for capital water or wastewater facilities.

c) Funds restricted. It is not the intent of this ordinance that any monies collected from any local impact fee deposited in the water impact fee trust fund or in the wastewater impact fee trust fund ever be commingled with monies from any other city trust fund or account, or ever be used for a type of facility or equipment different from that for which the fees are paid, or are ever used to replace or rehabilitate existing improvements.

#### **10.30.11 Local Impact fee imposed.**

a) Local Impact fee obligation. After the effective date of this ordinance, any person, firm or corporation who commences any development, except those exempted hereinafter, shall be obligated to pay local impact fees upon commencement of such activity. The amount of the fees shall be determined in accordance with this ordinance, and shall be paid to the City as provided hereinafter. All monies paid by a developer pursuant to this ordinance shall be identified as local water impact fees or local wastewater impact fees and shall be promptly deposited into the water impact fee trust fund or the wastewater impact fee trust fund described herein.

b) Local impact fee collection. The local impact fees imposed by this ordinance shall be collected in connection with and as a condition to the installation of a water meter serving the development or of the connection to the water or wastewater system, whichever comes first. Development projects which have obtained building permits prior to the effective date of this ordinance shall not have to pay local impact fees if the building is completed with water and sewer hookups installed and certificate of occupancy issued no later than January 1, 2010.

c) Local impact fee calculation. Local impact fees shall be based on water meter size. The impact fees established hereinafter may be revised from time to time by the City Council provided such revisions are based upon the independent fee calculation study or a subsequent independent fee calculation study.

d) Fee determination.

1) Schedule of Fees. The Impact Fee Administrator shall determine the amount of the water local impact fees and the wastewater local impact fees for residential

uses based on the type or size of the water meter and for nonresidential uses based on the size of the water meter using the following schedule:

Property Type/Land Use	Unit of Measure	Service Unit Generation Rate		
		(EDU)	Water	Wastewater
Net Cost per Unit (EDU)			\$500.00	\$750.00
Single-Family	dwelling unit	1.00	\$500.00	\$750.00
Multi-Family	dwelling unit	0.71	\$355.00	\$532.50
Mobile Home	dwelling unit	1.00	500.00	\$750.00
Nonresidential				
5/8" x 3/4" meter	water meter	1.00	\$500.00	\$750.00
1" meter	water meter	2.50	\$1,250.00	\$1,875.00
1 1/2"	water meter	5.00	\$2,500.00	\$3,750.00
2" meter	water meter	8.00	\$4,000.00	\$6,000.00
3" meter	water meter	16.00	\$8,000.00	\$12,000.00
4" meter	water meter	25.00	\$12,500.00	\$18,750.00
6" meter	water meter	50.00	\$25,000.00	\$37,500.00
8" meter	water meter	80.00	\$40,000.00	\$60,000.00
10" meter	water meter	116.00	\$58,000.00	\$87,000.00

- 2) **Redevelopment, Reconstruction, Change of Use.** In the event of a redevelopment, reconstruction or change of use from an existing development or use, the fee shall be the difference between what the fee would be for the entire redevelopment or reconstruction project and what the fee would have been for the existing development or use. Existing development must be connected to the water and wastewater system at the time of redevelopment in order to apply this credit.
- 3) **Mixed Use.** If the proposed development includes a mix of the residential land uses and/or nonresidential meter sizes that are listed in the local impact fee schedule, the fee shall be determined by adding up the water local impact fees and the wastewater local impact fees that would be applicable for each residential land use type and/or nonresidential meter size as if it was a freestanding land use type.
- 4) **Fire Suppression/Low Pressure.** It is the intent of this ordinance to base the water local impact fees and the wastewater local impact fees on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; to allow adequate fire flow to sprinklers and internal hydrants at some large and at-risk properties, it may be necessary for fire protection purposes to install a

larger water meter than would be necessary to meet day-to-day needs of that facility. In addition, a larger meter may be required in areas of low water pressure than in areas of normal water pressure for the same type of use. In those cases, it is the policy of the City that the impact fees for water and wastewater should be based on the meter size needed by that facility for its typical usage, without regard to fire-flow or unusual pressure conditions.

- 5) Irrigation. Any separate water meter installed for irrigation purposes only shall not be included in the calculation of the wastewater local impact fee.
- 6) Affordable Housing Exemption. Single family and non-profit multifamily supportive housing.

Construction of single family and non-profit multi-family supportive housing funded wholly or primarily by federal Community Development Block Grants, non-profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable, owner-occupied, single family residences to low income individuals and non-profit multi-family supportive housing may be exempted from payment of local impact fees pursuant to this ordinance by the City Council.

- 7) Master Meters. In the event that a water master meter is utilized for any development including multi-family or mixed use, the water local impact fees and the wastewater local impact fee shall be based on the Master Meter size.
- 8) Impact fee correction. If a local impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a developer shall be refunded by the City within thirty (30) days after the City's acceptance of the recalculated amount, with accrued interest since the date of such overpayment. Any amounts underpaid by the developer shall be paid to the City within thirty (30) days after the City's acceptance of the recalculated amount, with accrued interest since the date of such underpayment. In the case of an underpayment to the City, the City shall not issue any additional permits or approvals for the development for which the local impact fee was previously paid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty (30) day period, the City may also rescind any permits issued in reliance on the previous payment of such local impact fee and refund such fee to the then current owner of the land.

### **10.30.13 Impact fee exceptions.**

The following types of development shall be exempted from payment of the local water impact fees and the local wastewater impact fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first water and wastewater connection



permit for the proposed development that creates the obligation to pay the local impact fees. Any claim for exemption not made at or before that time shall have been waived. The City Council or a designee shall determine the validity of any claim for exemption pursuant to the standards set forth below.

- a) Reconstruction, expansion, or replacement of a previously existing residential unit that does not create any additional residential units or installation of a larger water meter.
- b) The replacement of a destroyed or partially destroyed non-residential building or structure with a new non-residential building or structure of the same use as the original structure and with no more than a five percent (5%) increase in floor area from the original structure and no increase in the size or number of water meters.
- c) Construction of unoccupied accessory structures related to a residential unit.
- d) Developments for which local impact fees for each type of facility covered by this Ordinance has previously been paid in an amount that equals or exceeds the local impact fees that would be required by this ordinance.
- e) Developments built by the federal government and the State.
- f) Public schools.
- g) Construction within a duly established redevelopment district or improvement district for which the local impact fees have specifically been waived by resolution of the City Council prior to commencement of the improvements.
- h) Such other economic or community development projects for which the local impact fees have specifically been waived by resolution of the City Council prior to commencement of the development.

#### **10.30.15 Use of impact fee funds.**

a) Trust fund. A local water impact fee trust fund and a local wastewater impact fee trust fund are hereby established for the purpose of ensuring that the local impact fees collected pursuant to this ordinance are designated for the accommodation of impacts reasonably attributable to new development that paid the local impact fees.

b) Trust fund management. All local impact fees collected by the City pursuant to this ordinance shall be promptly deposited into the local water impact fee trust fund or the local wastewater impact fee trust fund as appropriate. The impact fee trust funds shall be maintained in interest bearing accounts. Monies in the trust funds shall be considered to be spent in the order collected, on a first-in/first-out basis. These funds shall contain only local water impact

fees or wastewater impact fees collected pursuant to this ordinance plus any interest which may accrue from time to time on each such fund.

c) Trust fund limitations. The following limitations shall apply to the use and expenditure of local impact fees collected and deposited in the trust funds:

- 1) Each local impact fee imposed pursuant to this ordinance may be assessed, collected and expended only for the planning, design and construction of new water or wastewater facilities or of capital improvements to existing water or wastewater facilities that expand the system's capacity or for the recoupment of prior capital improvements to water or wastewater facilities that created capacity available to serve new development.
- 2) The local impact fees (water or wastewater) may be pledged to the payment of bonds issued by the City to finance water or wastewater capital improvements or water or wastewater facilities for which the local impact fees may be imposed.
- 3) No local impact fee shall be assessed for or expended for the operation or maintenance of any water or wastewater facility or for the construction or improvement of water or wastewater facilities that do not create additional capacity.
- 4) No monies from the trust funds shall be spent for periodic or routine maintenance, rehabilitation, or replacement of any facility of any type or to cure deficiencies in capital water or wastewater facilities existing on the effective date of this ordinance.
- 5) As described in Section 10.30.17 Refunds.

#### **10.30.17 Refund of impact fees paid.**

a) When refund due. The City shall refund the portion of collected development local water or wastewater impact fees, including the accrued interest, that has not been expended seven (7) years from the date the fees were paid. The refund shall be made on a pro rata basis and shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.

b) Refund notice. When due, a refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date on which the refund becomes due. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

c) Refund payment. The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.

d) Notice of refund rights. At the time of payment of the local water or wastewater impact fee under this ordinance, the Impact Fee Administrator shall provide the applicant paying such fees with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this Ordinance.

### **10.30.19 Appeals.**

Any determination made by an official of the City charged with the administration of any part of this ordinance may be appealed to the City Council by filing with the Recorder-Treasurer within ten (10) days of the date of the determination being appealed: (1) a written notice of appeal on a form provided by the City, (2) a written explanation of why the appellant feels that a determination was in error, and (3) an appeal fee established by the City, if any. The City Council shall promptly fix a time and place for hearing the appeal, and the Recorder/Treasurer shall mail notice of the hearing to the appellant at the address given in the notice of appeal by first-class mail with postage prepaid. The hearing shall be conducted at the time and place stated in such notice given by the City Council. The determination of the City Council shall be final.

### **10.30.21 Capital plan and level of service standards.**

a) Plan Adoption. The capital water and wastewater facilities to be financed by the water and wastewater impact fees shall be those facilities identified in the capital plan and level of service standards as presented in the study prepared by duncan associates in association with Rosenthal Associates, Inc., dated November 15, 2007, as adopted by Resolution 2009-10, and the Preliminary Cost Estimates/Water and Sewer Master Plan prepared by McClelland Consulting Engineers, Inc., dated September 6, 2006 as adopted by the Elkins' Water and Sewer Committee and City Council and used in the independent fee calculation study. In this regard, the applicable sections of such study and letter and hereby adopted as the official capital plan and level of services of the City of Elkins, Arkansas, water and wastewater system.

b) Plan Revisions. Provided, further that said plan and standards may be revised from time to time by resolution of the City Council. To this end, periodically, the Mayor or engineers hired by the City may present to the City Council a proposed capital improvements program for the City capital water or wastewater facilities, and such capital improvements program shall assign monies from the trust funds as appropriate to specific projects and related expenses for capital water or wastewater facilities. Any monies, including any accrued interest not assigned to specific projects within such capital improvements program and not expended, shall be retained in the trust funds subject to the refund provisions above.

**10.30.23 Penalty.**

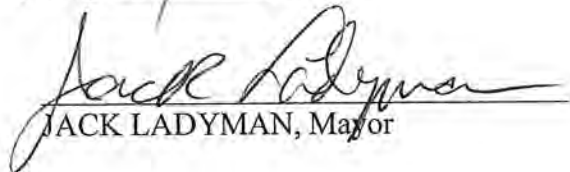
The penalty for violation of this ordinance shall, upon conviction in the Elkins' District Court, or any other court of competent jurisdiction, be such fines and penalties as established by the general penalty clause for the Elkins Municipal Code as may now or hereafter be enacted by the City Council.

**10.30.25 Administration.**

a) Impact Fee Administrator. The City Council shall assign to a city employee the responsibilities of the Impact Fee Administrator hereinabove set forth. Failure of the Council to make such assignment or in case of a lapse in such responsibility after assignment by the Council the responsibility shall be on the Recorder-Treasurer to fulfill such responsibilities.

b) All monies collected as local wastewater impact fees, all funds held as local water or wastewater impact fees in the above-mentioned trust funds, all accounts created to hold the local water or wastewater impact fees and all refunds of unexpended local wastewater impact fees (including interest thereon) shall be by the duly elected/appointed City Recorder-Treasurer.

PASSED AND APPROVED this 7th day of May, 2009.

  
JACK LADYMAN, Mayor

ATTEST:

  
SUNNY LEDFORD, Recorder-Treasurer