

**ARTICLE 10-4
IMPACT FEES**

**DIVISION 1
General Provisions**

§ 10-4-1. Purpose.

This article is intended to assure the provision of adequate public facilities to serve new development in the city by requiring each such new development to pay its share of the costs of such improvements necessitated by and attributable to such new development.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-2. Authority.

This article is adopted pursuant to the general legislative and governmental authority of the city as provided by the Texas Constitution and the general laws of the state, including, but not limited to, Texas Local Government Code chapter 395. This article shall not be construed to limit the power of the city to utilize other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-3. Definitions.

Terms defined herein are specific to this article and shall not be construed as conflicting with similar terms in other parts of the code.

Assessment/assess/assessed. The determination of the amount of the impact fee per service unit to be imposed on new development pursuant to this article.

Capital improvement(s). Any water supply, treatment, and distribution, wastewater collection and treatment, or roadway that has a life expectancy of three or more years and is owned and operated by or on behalf of the city including the city's share of costs for infrastructure and associated improvements designated on a city's master plan but constructed by another entity.

Capital improvement advisory committee (CIAC). The advisory committee created in compliance with Texas Local Government Code, section 395.058.

Capital improvement plan(s). A plan recommended by capital improvements advisory committee and approved by the city council that identifies capital improvements or facility expansions for which impact fees may be assessed. This is the equivalent of the capital improvements plan as described in Texas Local Government Code chapter 395.

City. The City of Odessa, Texas.

City council. The city council of the City of Odessa, Texas.

City manager. The city manager of the City of Odessa, Texas, or his or her designee.

Collection rate(s). The amount assessed per service unit, which is equal to the maximum assessable impact fee as reduced accordingly in compliance with section 10-4-33.

Credit. An amount equal to the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvement plans in accordance with Texas Local Government Code, section 395.014 (credit is not an offset, defined below).

Effective date. September 9, 2021.

Facility expansion(s). The expansion of the 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. The point at which the plat has been filed with the county. This term applies to both original plats and replats.

Impact fee(s).

- (1) A charge or assessment imposed as set forth in this article against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development.
- (2) The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction and any other fee that functions as described by this article. The term is inclusive of both the maximum assessable impact fee and the impact fee collection rate as herein described. The term 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, 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;
 - (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; or
 - (D) Other pro rata fees for reimbursement of water or sewer mains or lines extended by the city.
- (3) An item included in the Capital Improvement Plans may not be required to be constructed except in accordance with Texas Local Government Code, section 395.019(2), and an owner may not be required to construct or dedicate facilities and

to pay impact fees for those facilities.

Land use assumptions. A description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.

Land use vehicle-mile equivalency table or LUVMET. Are tables set forth in the impact fee study that provide the standardized measure of consumption or use of roadway facilities attributable to a new development. The LUVMET expresses the number of service units consumed by each individual land use application as vehicle miles per development unit based on regionalized city values.

Maximum assessable impact fee. The impact fee that is established for each service area computed by calculating the total projected costs of capital improvements necessitated by and attributable to new development and subtracting a credit in accordance with Texas Local Government Code, section 395.015. The maximum impact fee shall be established and reflected in section 10-4-33. The city may adopt an impact fee collection rate that is less than this amount, but in no instance shall the impact fee exceed the maximum assessable impact fee except by amendment of this article.

New development. 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, measured by an increase in the number of service units.

Owner. An owner of real property, or an agent, employee, applicant or representative thereof who is authorized to act on the real property owner's behalf, or a person who is subject to and/or has paid an impact fee.

Offset(s). The amount of a reduction of an impact fee reflecting the value of any construction of, contribution to, or dedication of a system-related facility agreed to or required by the city as a condition of development approval, pursuant to rules herein established or pursuant to administrative guidelines which value shall be credited on an actual cost basis against capital improvements (offset is not a credit, defined above).

Roadway facilities. An arterial that has been designated on the adopted master thoroughfare plan of the city, together with all necessary appurtenances (excluding rights-of-way). The term includes the city's share of costs for roadways and associated improvements designated on the federal or state highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

Service area(s). The area(s) of the city to be served by the capital improvements or facilities expansions specified in the capital improvement plans. The map of City of Odessa Service Areas adopted is contained within the impact fee study and incorporated herein.

(1) For water and wastewater impact fees: One (1) service area covers the city and extraterritorial jurisdiction.

(2) For roadway impact fees: The term means the three (3) service areas within the

city's corporate limits, which:

- (A) Do not exceed six (6) miles; and
- (B) In which roadway impact fees shall be assessed for the cost of new development.

Service unit(s). 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 ten (10) years. (For water and wastewater this is measured by meter size and for roadway this equals one vehicle mile of travel in the afternoon peak hour of traffic and is also referred to as a "vehicle mile").

Site-related facility. An improvement or facility which is for the primary use or benefit of a new development, or which is for the primary purpose of safe and adequate provision of roadway, water, or wastewater facilities to serve the new development, and which is not included in the capital improvement plans.

System-related facility. Is designated in the capital improvement plans for purpose of impact fees. This term may include a capital improvement, which is located off-site, within, or on the perimeter of the new development site.

Wastewater facility. Includes, but is not limited to, 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 system for wastewater as illustrated on the city's master plan. This term includes land, easements, or structures associated with such facilities. This term excludes a site-related facility.

Water facility. Includes, but is not limited to, a water interceptor or main, pump station, storage tank, or other facility or improvement used for providing water supply, treatment, and distribution service included within the city's water storage or distribution system as illustrated on the city's master plan. This term includes, but is not limited to, land, easements, or structures associated with such facilities. This term excludes site-related facility.

Water meter(s). A device owned by the city for measuring the flow of water to a service unit(s), whether for domestic or irrigation purposes.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-4. through § 10-4-30. (Reserved)

**DIVISION 2
Study and Fees Adopted**

§ 10-4-31. Study adopted.

The impact fee study dated July 2021 is hereby approved, adopted, and incorporated herein for all purposes consistent with this article.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-32. Service areas.

For water and wastewater impact fees the city is included as one (1) service area. For roadway impact fees, the city is hereby divided into three (3) service areas as shown on the official service area map identified within the adopted study. The official service area maps, which, together with all explanatory matter thereon, are hereby adopted by reference and declared to be a part of this article.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-33. Impact fees adopted.

- (a) A wastewater impact fee shall be assessed and charged against new development in the service area as set forth below.

Meter Size (Based on Water Meter)	Maximum Impact Fee	Collection Rate (Single Family, Townhome, Duplex)	Collection Rate (CDBG) (All Land Use Types)	Collection Rate (Non-Residential)
3/4"	\$1,662.00	\$831.01	\$415.49	\$1,662.00
1"	\$2,770.00	\$1,385.02	\$692.48	\$2,770.00
1-1/2"	\$5,540.00	\$2,770.03	\$1,384.97	\$5,540.00
2"	\$8,864.00	\$4,432.05	\$2,215.95	\$8,864.00
3"	\$19,390.00	\$9,695.12	\$4,847.38	\$19,390.00
4"	\$33,240.00	\$16,620.20	\$8,309.80	\$33,240.00
6"	\$74,790.00	\$37,395.45	\$18,697.05	\$74,790.00
8"	\$99,720.00	\$49,860.60	\$24,929.40	\$99,720.00

- (b) A water impact fee shall be assessed and charged against new development in the service area as set forth below.

Water Meter Size	Maximum Impact Fee	Collection Rate (Single Family, Townhome, Duplex)	Collection Rate (CDBG) (All Land Use Types)	Collection Rate (Non-Residential)
3/4"	\$778.00	\$389.01	\$194.49	\$778.00
1"	\$1,296.67	\$648.35	\$324.15	\$1,296.67
1-1/2"	\$2,593.33	\$1,296.70	\$648.30	\$2,593.33
2"	\$4,149.33	\$2,074.72	\$1,037.28	\$4,149.33
3"	\$9,076.67	\$4,538.45	\$2,269.05	\$9,076.67
4"	\$15,560.00	\$7,780.20	\$3,889.80	\$15,560.00
6"	\$35,010.00	\$17,505.45	\$8,752.05	\$35,010.00
8"	\$46,680.00	\$23,340.60	\$11,669.40	\$46,680.00
10"	\$181,533.33	\$90,769.00	\$45,381.00	\$181,533.33

- (c) A roadway impact fee shall be assessed and charged against new development in the service areas as set forth below. The number of service units applicable are identified in the LUVMET table contained within the adopted study.

Service Area	Maximum Fee Per Service Unit (per Vehicle-Mile)	Collection Rate (Single Family, Townhome, Duplex)	Collection Rate (CDBG) (All Land Use Types)	Collection Rate (Non-Residential)
One	\$2,726.00	\$599.32	\$131.32	\$861.73
Two	\$1,240.00	\$262.62	\$131.32	\$533.57
Three	\$2,155.00	\$599.32	\$131.32	\$861.73

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-34. through § 10-4-60. (Reserved)

DIVISION 3
Requirement, Assessment, Credits and Offsets

§ 10-4-61. Impact fees required.

Except as otherwise provided in this article, no building permit or water meter shall be issued until the owner has paid the city all applicable impact fees due.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-62. Assessment of impact fees.

- (a) Assessment of the impact fees for any new development shall be based on the applicable impact fees per service unit in the applicable service area in effect at the time of assessment. No act by the city is required to assess impact fees.
- (b) For a new development which has received final plat approval before the effective date, assessment of impact fees shall occur on the effective date and shall be in the amount established in section 10-4-33. No impact fees shall be paid by new development if a valid building permit or water meter application is properly submitted within one (1) year of the effective date of the article, except as provided for in section 10-4-91(b).
- (c) For land that is not required to be platted at time of the application for a building permit or water meter, assessment of impact fees shall be assessed at the time of application for building permit or water meter and shall be in the amount established in section 10-4-33.
- (d) For a new development which has received final plat approval on or after the effective date of this article, assessment of impact fees shall be assessed at the time of final approval of the final plat.
- (e) After assessment of the impact fees attributable to a new development, or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract unless, the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be assessed are limited to the amount attributable to the additional service units.
- (f) The director of public works, or his or her designee, shall compute the impact fees for new development. The total amount of impact fees assessed for the new development shall be attached to the building permit and/or water meter application, and payment of the impact fees shall be required as a condition of issuance.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-63. Credits and offsets against impact fees.

The city may offset the improvements or funding for construction of any system-related

facility included on the identified capital improvement plans that is required or agreed to by the city, pursuant to rules established in this section and administrative guidelines. Any agreements entered into hereunder shall be subject to the approval of the city council.

- (1) General credit. The city shall apply against assessed impact fees a credit equal to the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvement plans. This credit is already reflected in the maximum assessable impact fee.
- (2) Offsets by developer. Before impact fees can be reduced by offsets authorized under this section, the owner of the property shall apply for offsets based on actual costs with the city. Unless an agreement specifies otherwise, an offset associated with a plat shall be applied when the first building permit is submitted and to each subsequent building permit application to reduce the impact fees due until the amount associated with the offset is exhausted.
- (3) Roadway offsets. Any construction of, contributions to, or dedications of roadway facilities that are system-related facilities included on the identified capital improvement plans and that are agreed to or required by the city as a condition of development approval shall be offset against roadway facilities impact fees otherwise due from the new development.
- (4) Water offsets. Any construction of, contributions to, or dedications of water facilities that are system-related facilities included on the identified capital improvement plans and that are agreed to or required by the city as a condition of development approval shall be offset against water facility impact fees otherwise due from the new development.
- (5) Wastewater offsets. Any construction of, contributions to, or dedications of wastewater facilities that are system-related facilities included on the identified capital improvement plans and that are agreed to or required by the city as a condition of development approval shall be offset against wastewater facility impact fees otherwise due from the new development.
- (6) No offsets for rights-of-way or easements. Rights-of-way and easements are not included in the study, and no offsets shall be granted for the dedication of rights-of-way or easements. Rights-of-way and easements are dedicated as required by the ordinances of the city, necessitated by and attributable to a new development, and do not exceed the amount required for infrastructure improvements that are roughly proportionate to the new development.
- (7) Master planned projects. Master planned projects, including subdivisions containing multiple phases, and whether approved before or after the effective date of the impact fee regulations, may apply for offsets against impact fees for the entire project based upon improvements or funds toward construction of system-related facilities, or other capital improvements supplying excess capacity. Offsets shall be spent within the same service area utilizing a methodology approved by

the city and be approved in an agreement.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-64. through § 10-4-90. (Reserved)

DIVISION 4
Collection and Exemptions

§ 10-4-91. Collection of impact fees.

- (a) Impact fees shall be collected and paid at the time of issuance of a building permit and/or application for a water meter for a new development.
- (b) For a new development that received final plat approval before the effective date, impact fees may not be collected on any service unit for which a valid building permit or water meter application is properly submitted within one (1) year after the effective date of this article; except additional impact fees shall be assessed in accordance with section 10-4-62(e) when:
 - (1) A subsequent application(s) for a building permit or water meter is submitted more than one (1) year after the effective date of this article; or
 - (2) The number of service units to be developed increases.
- (c) For land that does not have to be platted, an impact fee may not be collected on any service unit for which a valid building permit or water meter application is properly submitted within one (1) year after the effective date.
- (d) The city shall compute the roadway impact fees to be paid and collected for the new development in the following manner:
 - (1) Determine the number of development units for each land use category in the new development using the LUVMET then in effect.
 - (2) Multiply the number of development units for each land use category in the new development by the vehicle miles (per development unit) for each such land use category also found in LUVMET then in effect to determine the number of service units attributable to the new development.
 - (3) The amount of roadway impact fees to be collected shall be determined by multiplying the number of service units for the new development by the roadway impact fee per service unit for the applicable service area and applicable land use and shall be collected with the issuance of a building permit.
 - (4) The amount of the roadway impact fees to be collected shall be calculated as described in section 10-4-33(c) of this article.
 - (5) If an agreement as described in section 10-4-63 of this article providing for offsets is entered, the amount of the offsets based on actual costs shall be deducted from the roadway impact fees as calculated above.
- (e) Where an application for a building permit is for a “shell” or speculative building, the amount of the roadway impact fee shall be assessed assuming that the entire building will be used as either “general office,” “light industrial,” or “shopping center” as shown in the LUVMET. Where a subsequent application for a building

permit is made for the finish-out of the shell building, or portion thereof, for the ultimate use, an additional roadway impact fee shall be assessed and collected if the ultimate use is different from “general office,” “light industrial,” or “shopping center.”

- (f) An applicant may submit an alternative service unit computation based upon a trip generation study as defined by the Institute of Transportation Engineers for the proposed land use not included in the LUVMET.
- (g) The city may enter into a payment agreement for impact fees based on administrative guidelines. All impact fees shall be paid prior to the issuance of a building permit or water meter.
- (h) The city shall compute the water and wastewater impact fees by water meter size. The amount of water and wastewater impact fees shall be collected as set forth in section 10-4-33(a) and (b) of this article.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-92. Impact fee exemptions.

- (a) Pursuant to Texas Local Government Code chapter 395, a public school district is not required to pay an impact fee imposed under this article unless the board of trustees of the district consents to the payment of the fees by entering a contract with the city imposing the fees.
- (b) Affordable housing. Development that qualifies as affordable housing under 42 U.S.C. § 12745, as amended, and is participating in an affordable housing development program, is exempt from impact fee collection. An applicant for affordable housing exemption shall make application for same by letter to the director of public works or his/her designee. The letter shall describe the development, its location and number of housing units, and shall include written verification from the responsible agency that the subject property is an active participant in an affordable housing development program as described above. If the fee is not paid and the affordable housing is not built or the new development subsequently is not qualified as affordable housing, the city shall assess and collect the impact fees that were applicable at the time of the issuance of the building permit(s) or water meter for the new development.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-93. through § 10-4-120. (Reserved)

DIVISION 5
Administration

§ 10-4-121. Administration of impacts fees.

- (a) The impact fees collected within each service area may be used to finance, pay for or to recoup the costs of any capital improvements identified in the capital improvement plans for the service area, including the construction contract price, surveying, and engineering fees.
- (b) Impact fees may be used to pay for the contract services of an independent qualified engineer or financial consultant preparing or updating the capital improvement plans who is not an employee of the political subdivision.
- (c) Impact fees also may 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 in the capital improvement plans.
- (d) The city's finance department shall establish an account to which interest is allocated for each service area which interest earned on the impact fees shall be considered funds of the account and shall be used solely for the purposes authorized in this article.
- (e) The city's finance department shall maintain and keep financial records for impact fees which show the source and disbursement of all fees collected in or expended from each service area to be provided in the semiannual report to the CIAC.
- (f) The city will present the financial records for impact fees to the CIAC twice a year and shall be open for public inspection.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-122. Impact fees as additional and supplemental regulation.

Impact fees established by this article 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, water meters, or certificates of occupancy. Such impact fees are intended to be consistent with and to further the policies of the Envision Odessa 2016 Comprehensive Master Plan, the Master Thoroughfare Plan, Transportation Master Plan, Water Master Plan, Wastewater Master Plan, 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.

This article shall not affect, in any manner, the permissible use of property, density of development, design, and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations and policies of the city, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-123. Update to plans and revision of fees.

- (a) The city shall update its land use assumptions and capital improvement plans in accordance with Texas Local Government Code chapter 395.
- (b) The collection rates in section 10-4-33 of this article may be amended without revising the land use assumptions and capital improvement plans at any time provided the public hearing process is followed as outlined in Texas Local Government Code chapter 395 and collection rates do not exceed the maximum assessable impact fees. Any update to the collection rate or impact fee ordinance shall require a public hearing following the process outlined with Texas Local Government Code chapter 395, including a collection rate review by the CIAC.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)

§ 10-4-124. Refunds and appeals.

- (a) Refunds. On the written request of an owner on which an impact fee has been paid, the city will refund the impact fee if: (1) the impact fee has not been expended within ten (10) years after payment; or (2) existing facilities are available and service is denied; or (3) the city has, after collecting the fee when service was not available, failed to commence construction of facilities required for service within two (2) years of payment of the impact fee, or if such construction is not completed within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event later than five (5) years from the date of the impact fee payment.
- (b) Persons entitled to refunds. All refunds for paid impact fees shall be made to the record owner at the time the refund is paid. However, if impact fees were paid by another governmental entity, then the refund shall be made to the governmental entity.
- (c) Application for refunds. The application for a refund pursuant to this division shall be submitted to the city within sixty (60) days after the expiration of the ten (10) year period for expenditure of the fee. An impact fee shall be considered expended on a first-in, first-out basis.
- (d) Refunds not available for impact fees expended. An impact fee collected pursuant to this division shall also be deemed expended if the total expenditures for capital improvements or facility expansions 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.
- (e) Calculation of refunds. If a refund is due pursuant to this section, the city shall prorate the same by dividing 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 total refund payable to any such owner shall be calculated by multiplying the refund due per service unit by the number of service units for the property for which the fee was paid, and shall include interest upon that amount, to be calculated from the date of payment to the date of the refund at the statutory rate as set forth in the Texas Finance Code section 302.002 or its successor statute.

- (f) Appeals. The owner for new development may appeal the applicability or amount of the impact fee or the availability of offsets or refunds to the city manager using the following:
- (1) Burden of proof. The burden of proof shall be on the owner to demonstrate that the owner is entitled to relief.
 - (2) Notice of appeal. Within thirty (30) days following the decision being appealed, the owner shall submit to the city manager a written notice of appeal that states the basis for the appeal with particularity. To the extent the owner relies on any studies or other documents as evidence that the owner is entitled to relief, the owner shall submit such studies and documents with the notice of appeal.
 - (3) Resolution of appeal. The city manager or his/her designee will respond to the appeal within thirty (30) days of receipt of completed appeal packet as described above.
 - (4) Consideration of appeal by city council. Following the determination of the city manager, the owner may petition the city council. The petition of appeal to city council shall be filed within thirty (30) days of the city manager's written decision on the appeal submitted in accordance with subsection (f)(2) above. To the extent that the city council's action on the appeal requires the owner to pay an impact fee, the owner shall promptly pay the impact fee within five (5) business days after the city council's action on the appeal. The city council's action on the appeal shall constitute the city's final decision on the matter appealed.

(Ordinance 2021-27 adopted 8/10/21; Ordinance 2022-12 adopted 5/24/22)