

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: City Development Department

AGENDA DATE: Introduction: February 25, 2014
Public Hearing: March 4, 2014

CONTACT PERSON/PHONE: Mathew McElroy, 915-212-1550,
McElroyMX@elpasotexas.gov

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

An Ordinance amending Ordinance 017113 adopting Impact Fees for Water and Wastewater facilities, establishing Impact Fee Service Areas, providing for assessment and collection of Impact Fees; providing for accounts for Impact Fees and use of funds in these accounts; providing for appeals; and providing for other provisions required under state law including procedural provisions; to recodify Title 15 (Public Services), Chapter 15.20 to 15.22 of the El Paso City Code; to amend Section 15.22.060 (Land Use Assumptions and Service Area) to adopt updated Land Use Assumptions and Service Areas, to amend Section 15.22.070 (Capital Improvements Plan) to adopt updated Capital Improvements Plan, and to amend Section 15.22.100 (Maximum Fee and Actual Fee to be Assessed) to update the Impact Fees adopted by City Council.

BACKGROUND/DISCUSSION:

On February 18, 2014, the City Council unanimously voted to adopt the updated Land Use Assumptions and Capital Improvements Plan, contained in the City Development's Land Use Assumptions Technical Report: 2014 Update and El Paso Water Utilities' Preliminary EPWU 2014 Impact Fee Report respectively, and to maintain the existing Impact Fees as adopted under Ordinance 017113.

PRIOR COUNCIL ACTION:

On February 18, 2014, the City Council adopted a Resolution setting a public hearing date to consider an amendment to Ordinance 017113, the City of El Paso's Water and Wastewater Impact Fees.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD/COMMISSION ACTION:

N/A

ATTACHMENTS:

Attachment A: Proposed Ordinance – Title 15 (Public Services)

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required)

FINANCE: (if required)

DEPARTMENT HEAD: Mathew S. McElroy
City Development Director

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

AN ORDINANCE AMENDING ORDINANCE 017113 ADOPTING IMPACT FEES FOR WATER AND WASTEWATER FACILITIES, ESTABLISHING IMPACT FEE SERVICE AREAS, PROVIDING FOR ASSESSMENT AND COLLECTION OF IMPACT FEES; PROVIDING FOR ACCOUNTS FOR IMPACT FEES AND USE OF FUNDS IN THESE ACCOUNTS; PROVIDING FOR APPEALS; AND PROVIDING FOR OTHER PROVISIONS REQUIRED UNDER STATE LAW INCLUDING PROCEDURAL PROVISIONS; TO RECODIFY TITLE 15 (PUBLIC SERVICES), CHAPTER 15.20 TO 15.22 OF THE EL PASO CITY CODE; TO AMEND SECTION 15.22.060 (LAND USE ASSUMPTIONS AND SERVICE AREA) TO ADOPT UPDATED LAND USE ASSUMPTIONS AND SERVICE AREAS, TO AMEND SECTION 15.22.070 (CAPITAL IMPROVEMENTS PLAN) TO ADOPT UPDATED CAPITAL IMPROVEMENTS PLAN, AND TO AMEND SECTION 15.22.100 (MAXIMUM FEE AND ACTUAL FEE TO BE ASSESSED) TO UPDATE THE IMPACT FEES ADOPTED BY CITY COUNCIL.

WHEREAS, Chapter 395 (Impact Fee Statute) of the Texas Local Government Code provides for the establishment and collection of impact fees by Texas municipalities and mandates the specific process Texas municipalities must take in order to adopt impact fees; and,

WHEREAS, on May 12, 2009, the City of El Paso adopted impact fees for water and wastewater in accordance with the provisions of the Impact Fee Statute; and

WHEREAS, in accordance with the Impact Fee Statute, on February 18, 2014, the City amended its Land Use Assumptions, Capital Improvements Plan; and

WHEREAS, Ordinance No. 017113, Section 3, passed May 12, 2009, added a new Chapter 15.20 on impact fees to read as herein set out. Inasmuch that there was already an existing Chapter 15.20 (Stormwater Management), said Ordinance has been redesignated as Chapter 15.22 at the discretion of the El Paso City Code Editor; and

WHEREAS, provisions of Title 15 are being amended to reflect the adoption by City Council of the updated land use assumptions, capital improvements plan, and impact fees.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That the findings and recitations set out in the preambles to this Ordinance are found to be true and correct, and they are hereby adopted by the City Council of the City of El Paso and made a part of this Ordinance for all purposes.

Section 2. Land Use Assumptions, Capital Improvements Plan, Impact Fees Amended. The proposed land use assumptions, capital improvements plan, and impact fees have been reviewed and evaluated, and the City Council finds that the amendments as set forth in this Ordinance and Title 15 are hereby adopted, replacing and superseding any other land use

assumptions, capital improvements plan, or impact fees previously approved and adopted by the City of El Paso.

Section 3. That Title 15 (Public Services) of the El Paso City Code shall be recodified and amended to read as follows:

15.22 Water and Wastewater Impact Fees

15.22.010 Short Title. This ordinance and its subsequent codification shall be known and may be cited as the City of El Paso Impact Fee Ordinance.

15.22.020 Purpose. The purpose of this Chapter is to assure the provision of adequate water and wastewater to serve new development in the City by requiring each new development to contribute payments towards its share of the costs of the facilities necessitated by and attributable to the new development.

15.22.030 Authority. This ordinance is adopted pursuant to Texas Local Government Code Chapter 395. The provisions of this ordinance 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 ordinance.

15.22.040 Definitions.

The following definitions apply to this Chapter:

A. Advisory committee. The capital improvements advisory committee on water and wastewater impact fees designated and appointed by the City Council in accordance with Local Government Code Chapter 395.

B. Capital improvement. A water supply, treatment and distribution facilities or a wastewater collection and treatment facilities, with a life expectancy of three or more years, to be owned and operated by or on behalf of the City whether or not located in the service area.

C. Capital improvements plan. The plan adopted by the City, as may be amended from time to time, that identifies water and wastewater capital improvements or facility expansions and their associated costs which are necessitated by and attributable to new development and will be financed in whole or in part through water and wastewater impact fees imposed under this ordinance.

D. Facility expansion. 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.

E. Impact fee. A charge or assessment imposed by the City 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. 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 definition to fund capital improvements in the capital improvements plan. The term does not include:

1. dedication of land for public parks or payment in lieu of the dedication to serve park needs;
2. 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;
3. 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
4. other pro rata fees for reimbursement of water or wastewater mains or lines extended by the City.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2) of the Texas Local Government Code, and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

F. 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 as may be amended.

G New development. 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 increases the number of service units and is located within a service area.

H. Service area. The area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, Texas Local Government Code, of the City to be served by the capital improvements or facilities expansions specified in the capital improvements plan. The service area does include all or part of the land within the City and its extraterritorial jurisdiction.

I. Service unit. 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 subdivision in which the individual unit of development is located during the previous 10 years. For purposes of compliance with the impact fee statute and this ordinance, a service unit represents the water and wastewater flows in gallons per day (gpd) for a single family residential or equivalent unit with a water meter smaller than 1-inch

15.22.050 Administration and Accounting

A. The El Paso Water Utilities shall administer the provisions of this Chapter. The El Paso Water Utilities shall establish adequate financial and accounting controls to ensure that impact fees disbursed from an account established under this section are utilized solely for the purpose authorized under Chapter 395, Texas Local Government Code.

B. Accounts and funds. All funds 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 impact fee was adopted. Interest earned on impact fee accounts are considered funds of the account on which it is earned. Impact fee funds, to include interest generated from impact fee accounts, may be spent only for the purposes for which the impact fee was imposed as

shown by the capital improvements plan and as otherwise authorized by Chapter 395, Texas Local Government Code. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

C. The El Paso Water Utilities shall maintain and keep adequate financial records for each account to show the source and disbursement of all revenues, which shall account for all monies received and ensure that the disbursement of funds from each account shall be used solely and exclusive for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as otherwise authorized by Chapter 395, Texas Local Government Code.

D. The El Paso Water Utilities shall ensure that any fee collected under the Impact Fee Ordinance is expended within a reasonable period of time but not to exceed ten (10) years from the date the fee is deposited into the impact fee account.

15.22.060 Land Use Assumptions and Service Area

The land use assumptions (LUA) and service areas are those adopted by the El Paso City Council on February 18, 2014.

15.22.070 Capital Improvements Plan

The capital improvements plan (CIP) is the plan adopted by the El Paso City Council on February 18, 2014.

15.22.080. Impact Fee Service Areas.

The Impact Fee Service Areas are those adopted by the El Paso City Council on March 24, 2009 as reflected in Appendix A. Three separate service areas have been established within the City of El Paso and its extraterritorial jurisdiction to be served by the capital improvements or facilities expansions specified in the capital improvements plan. Those service areas are the Westside Service Area, the Eastside Service Area, and the Northeast Service Area.

15.22.090 Impact Fee Schedules.

Appendix B contains the City of El Paso Impact Fee Assessment Schedule. For purposes of compliance with the Impact Fee statute, the City of El Paso has determined that a service unit represents the water and wastewater flows in gallons per day (gpd) for a single family residential or equivalent unit with a water meter smaller than 1-inch.

15.22.100 Maximum fee and actual fee to be assessed.

The maximum allowable impact fee per service unit was calculated in accordance with Section 395.015 of the Texas Local Government Code. In accordance with Section 395.014(7) of the Texas Local Government Code, the City has awarded a credit based on the portion of the 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

improvements plan. Ad valorem taxes will not be used for the payment of improvements contained in the capital improvements plan.

The impact fee to be assessed is the impact fee adopted by the City Council.

WATER IMPACT FEE PER SERVICE UNIT

| | Impact Fee (Before credit) | Maximum Allowable Impact Fee | Impact Fee to be Assessed |
|--------------|-------------------------------|---------------------------------|------------------------------|
| Service Area | | | |
| Northeast | \$3,561.00 | \$3,145.00 | \$1,178.00 |
| Westside | \$1,044.00 | \$922.00 | \$659.00 |
| Eastside | \$2,809.00 | \$2,481.00 | \$697.00 |

WASTEWATER IMPACT FEE PER SERVICE UNIT

| | Impact Fee (Before Credit) | Maximum Allowable Impact Fee | Impact Fee to be Assessed |
|--------------|-------------------------------|---------------------------------|------------------------------|
| Service Area | | | |
| Northeast | \$538.00 | \$429.00 | \$291.00 |
| Westside | \$1,711.00 | \$1,364.00 | \$927.00 |
| Eastside | \$1,698.00 | \$1,354.00 | \$920.00 |

15.22.110 Time of Assessment

1. An “assessment” means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the City is required.
2. For new development which is platted, or re-platted and there is an increase in the number of service units in the development, after the adoption of an impact fee, impact fees shall be assessed on the incremental increase in service units in the development before or at the time of recordation of a subdivision plat or replat in the official records of the county clerk of the county in which the tract is located.
3. For land on which new development occurs or is proposed to occur without platting, impact fees shall be assessed at the time an application for an individual meter connection to the City’s water or wastewater system is filed.

15.22.120 Re- Assessment

Following the initial assessment of an impact fee, the amount of the impact fee per service unit for that development cannot be increased unless the approved final plat expires or lapses under the applicable ordinance or law, and service units increase or meter size is increased

15.22.130 Time of Collection

A. For new development, which is platted in accordance with the provisions of Title 19 before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee ordinance.

B. For new development which is platted, or re-platted and there is an increase in the number of service units after the adoption of impact fee ordinance and if water and/or wastewater capacity is currently available:

1. For land platted within the corporate boundaries of the City, impact fees shall be collected at the time a building permit is issued.
2. For land platted outside the corporate boundaries of the City, impact fees shall be collected at the time an application for an individual meter connection to the City's water or wastewater system is filed.
3. For land on which new development occurs or is proposed to occur without platting, impact fees shall be collected at the time an application is filed for an individual meter connection to the City's water or wastewater system..
4. If the City fails to collect the fee at the time specified above, the City has the option of collecting the fee at the time of connection to the water or wastewater system.

C. For new development which is platted, or re-platted and there is an increase in the number of service units, after the adoption of an impact fee and if water and wastewater capacity is not currently available:

1. Impact fees shall be collected, except as otherwise provided in this ordinance, only if the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the City commits to commence construction of the identified capital improvement within two years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years; or
2. The City has entered into an agreement that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the

impact fees otherwise due from the new development impact fees shall be collect.

15.22.140 Impact fee as Condition of Building Permit approval or Meter Connection

New development occurring in any of the defined service areas shall not be connected to the City's water or wastewater system without payment of an impact fee in accordance with the provisions of this Chapter. No building permit shall be issued without payment of an impact fee in accordance with the provisions of this Chapter. If impact fees have not been collected in accordance with the provision of the Impact Fee Ordinance and the development has been connected to the water and/or wastewater system, the El Paso Water Utilities may disconnect the service per their "Rules and Regulations" until such time as the impact fees are paid.

15.22.145 Affordability Reduction or Waiver

Notwithstanding Section 15.20.130 of this Chapter, the City Manager or designee shall administratively reduce or waive an impact fee for a service unit if the service unit once constructed, qualifies as affordable housing under 42 U.S.C. Section 12745, as amended. In addition to meeting the requirements of 42 U.S.C. Section 12745, the waiver or reduction must comply with the City's adopted fee waiver program established under the provisions of this section and will be subject to an affordability period established by the City and enforced by agreement, restrictive covenant, lien, or other binding obligation, as approved by the City Attorney. However, if affordable housing as defined by 42 U.S.C. Section 12745, is not constructed, the City may reverse its decision to waive or reduce the impact fee, and may assess and collect an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

15.22.150 Refund of Fees

A. Refund if service denied or service not available.

1. On the request of an owner of the property on which an impact fee has been paid, the City shall refund the impact fee paid if
 - (a) existing facilities are available and service is denied; or
 - (b) the City has, after collecting the impact fee when service was not available, failed to commence construction within two years; or
 - (c) service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment of the impact fee
2. A request for a refund shall be submitted to the El Paso Water Utilities on a form provided for by the El Paso Water Utilities for such purpose.
3. Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002 of the Finance Code, or its successor statute.

B. Refund if funds not spent.

1. The City shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.
2. All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.
3. Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002 of the Finance Code, or its successor statute.
4. For purposes of this section, an impact fee collected shall be considered expended if the total expenditures for capital improvements or facility expansions within a service area within ten (10) years following the date of payment of the impact fee, equal or exceed the total impact fees collected within the service area for such improvements or facility expansions during such period.

15.22.160 Appeal Process

A. The property owner or applicant for a new development may appeal the following administrative decisions to the city manager or designee:

1. The applicability of an impact fee to the development or structure;
2. The amount of the impact fee assessed or collected;
3. Amount of a refund due.

15.22.170 Certification of Compliance

A. The City shall submit a written certification verifying compliance with this chapter to the attorney general each year not later than the last day of the City's fiscal year.

B. The certification must be signed by the Mayor and include a statement that reads substantially similar to the following: "This statement certifies compliance with Chapter 395, Local Government Code."

15.22.180 Updates to Plans and Revision of Fees.

A. The City shall update the land use assumptions and capital improvements plan at least every five years, commencing from the date of adoption of such plans, and shall, if necessary, recalculate the impact fees based thereon in accordance with the procedures of Chapter 395 of the Local Government Code or in any successor statute.

B. The City may review its land use assumptions, impact fees, capital improvements plan and other factors more frequently than provided in subsection A above to determine whether the land use assumptions and capital improvements plan should be updated and the impact fees recalculated accordingly.

C. After conducting the review required in subsection A above, the City Council determines that no change to the land use assumptions, capital improvements plan or impact fee is needed at the time of an update under subsection A above, the City Council may dispense with the update in accordance with Local Government Code section 395.0575.

15.22.190 Functions of Advisory Committee.

The Capital Improvements Advisory Committee shall have those duties and responsibilities as established under Chapter 2.80 of the El Paso City Code and Chapter 395 of the Texas Local Government Code.

Section 4. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this ordinance shall be enforced as written.

Section 5. Except as herein amended, Title 15, Public Services, of the El Paso City Code shall remain in full force and effect.

PASSED and APPROVED this _____ day of _____, 2014.

THE CITY OF EL PASO

Oscar Leaser, Mayor

ATTEST

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM

Lauren Ferris
Assistant City Attorney

APPROVED AS TO CONTENT

Mathew S. McElroy, Director
City Development Department

APPENDIX A Service Areas

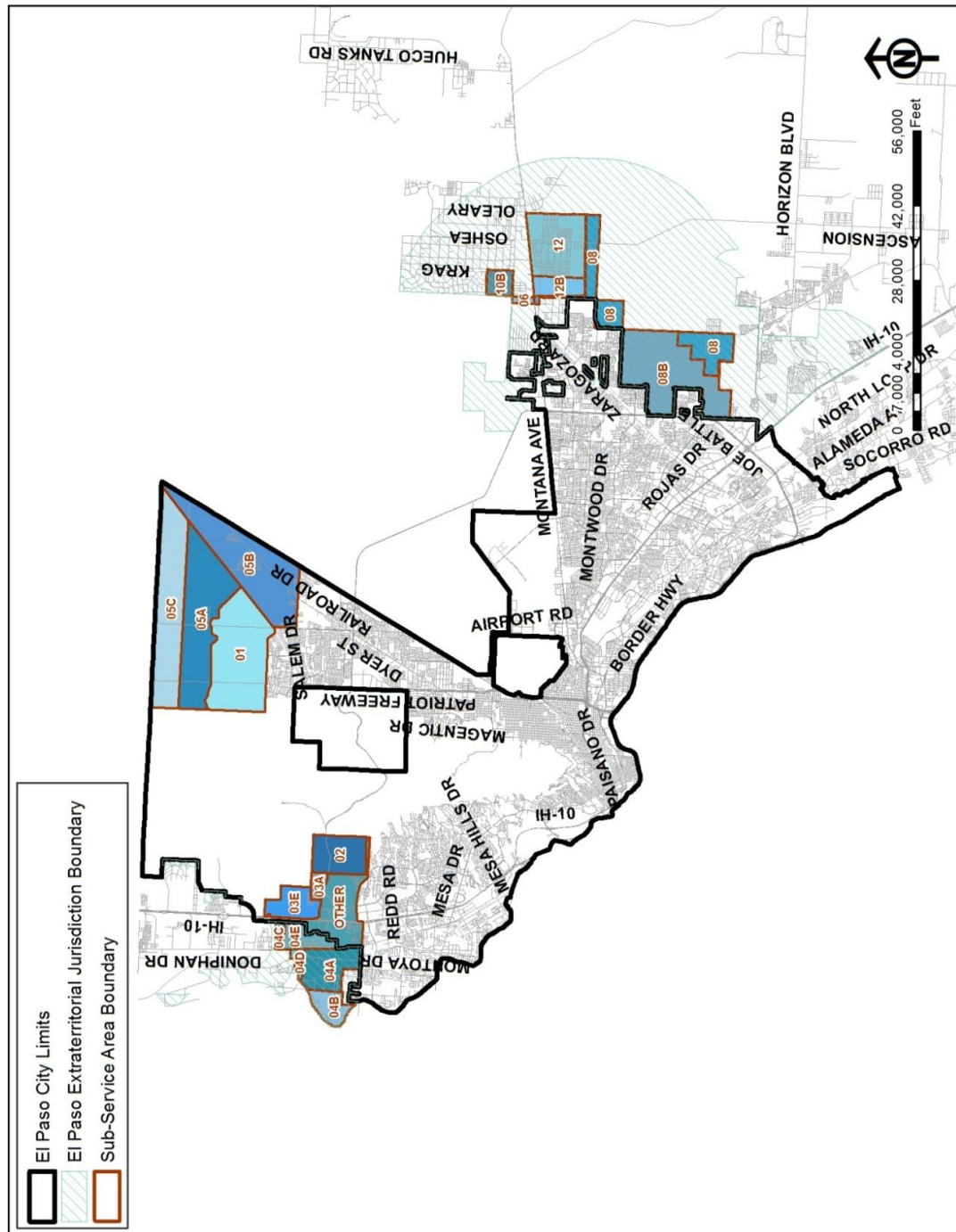


Figure A-1. City of El Paso Water and Sewer Impact Fee Service Area

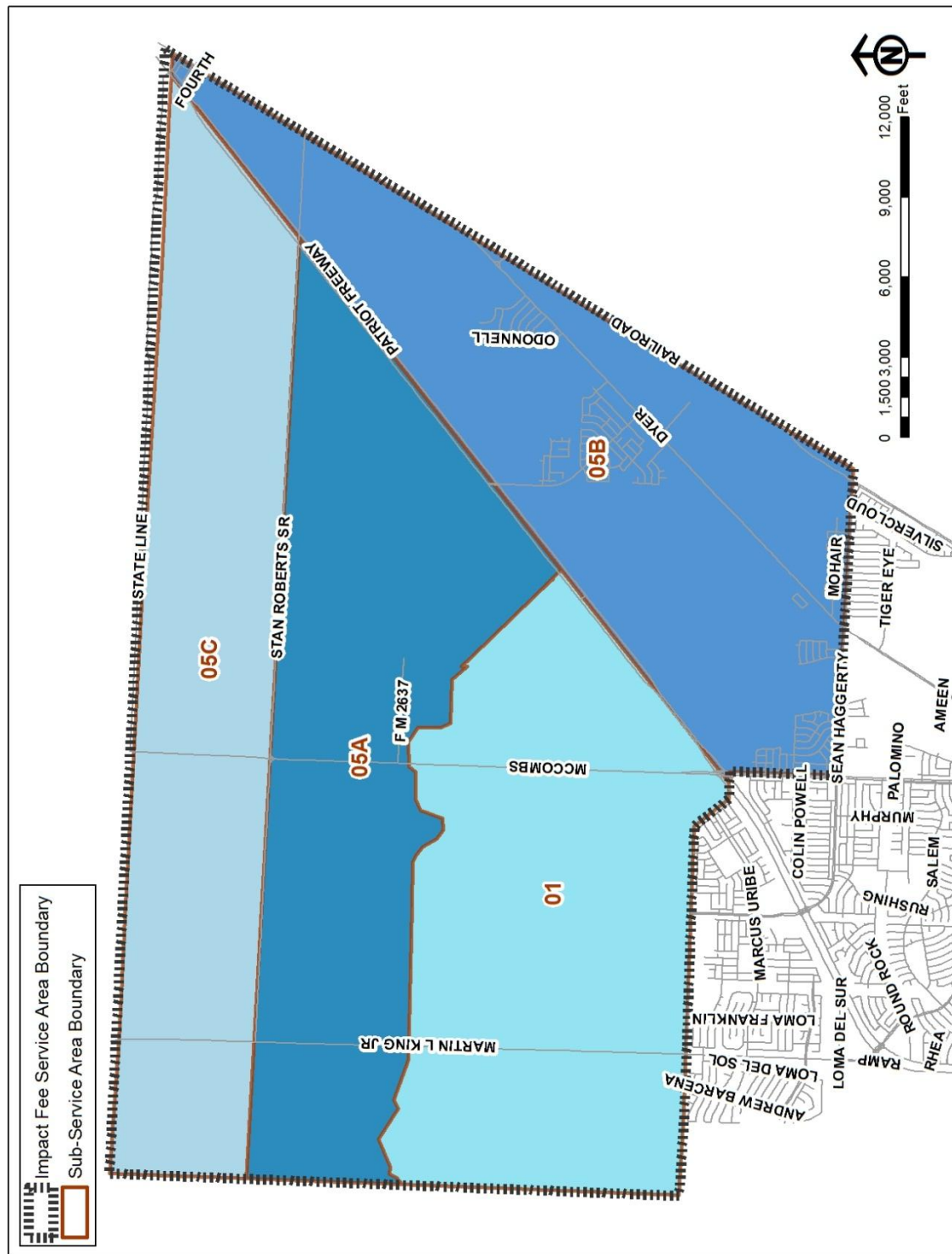


Figure A-2. Northeast Water and Sewer Impact Fee Service Area

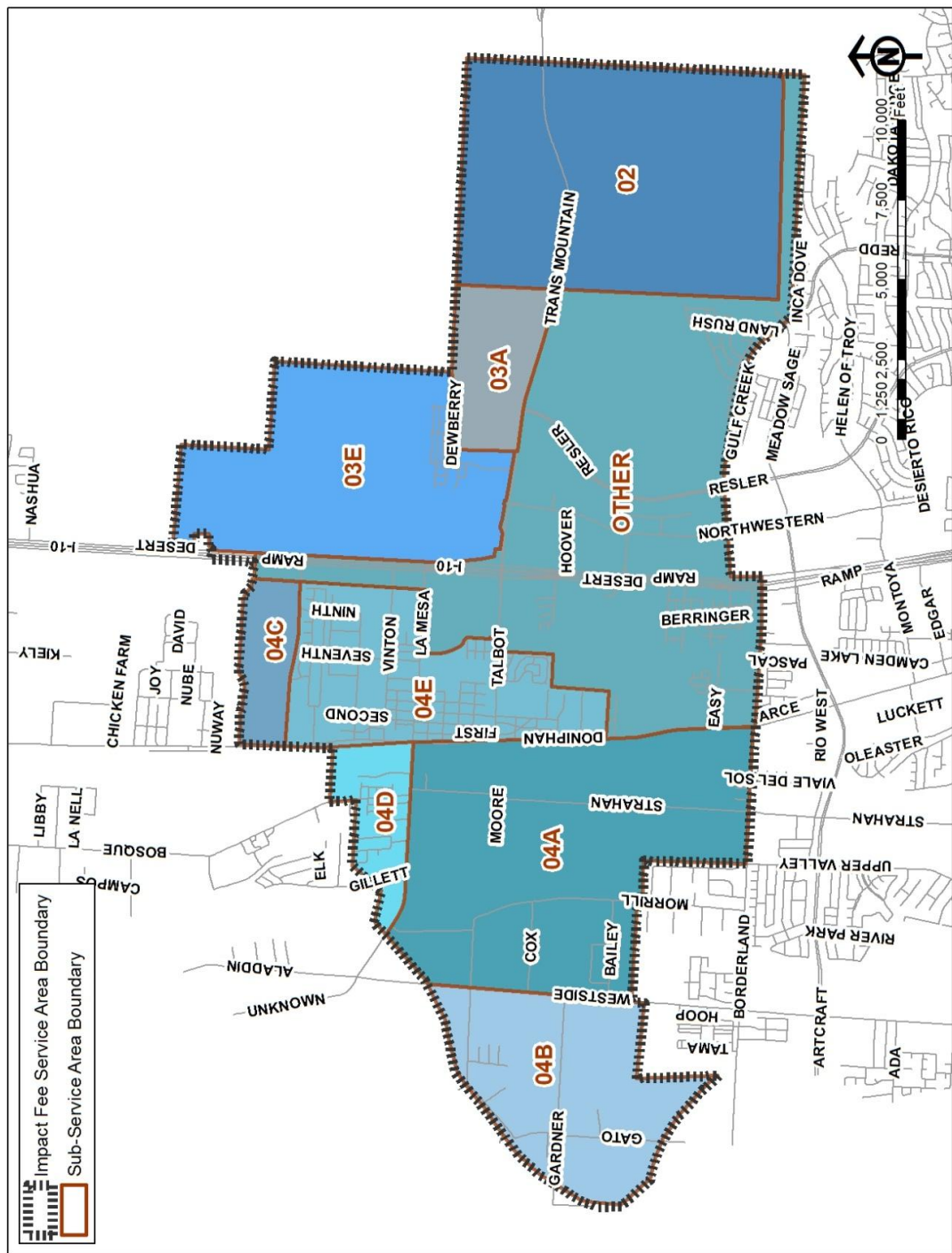


Figure A-3. Westside Water and Sewer Impact Fee Service Area

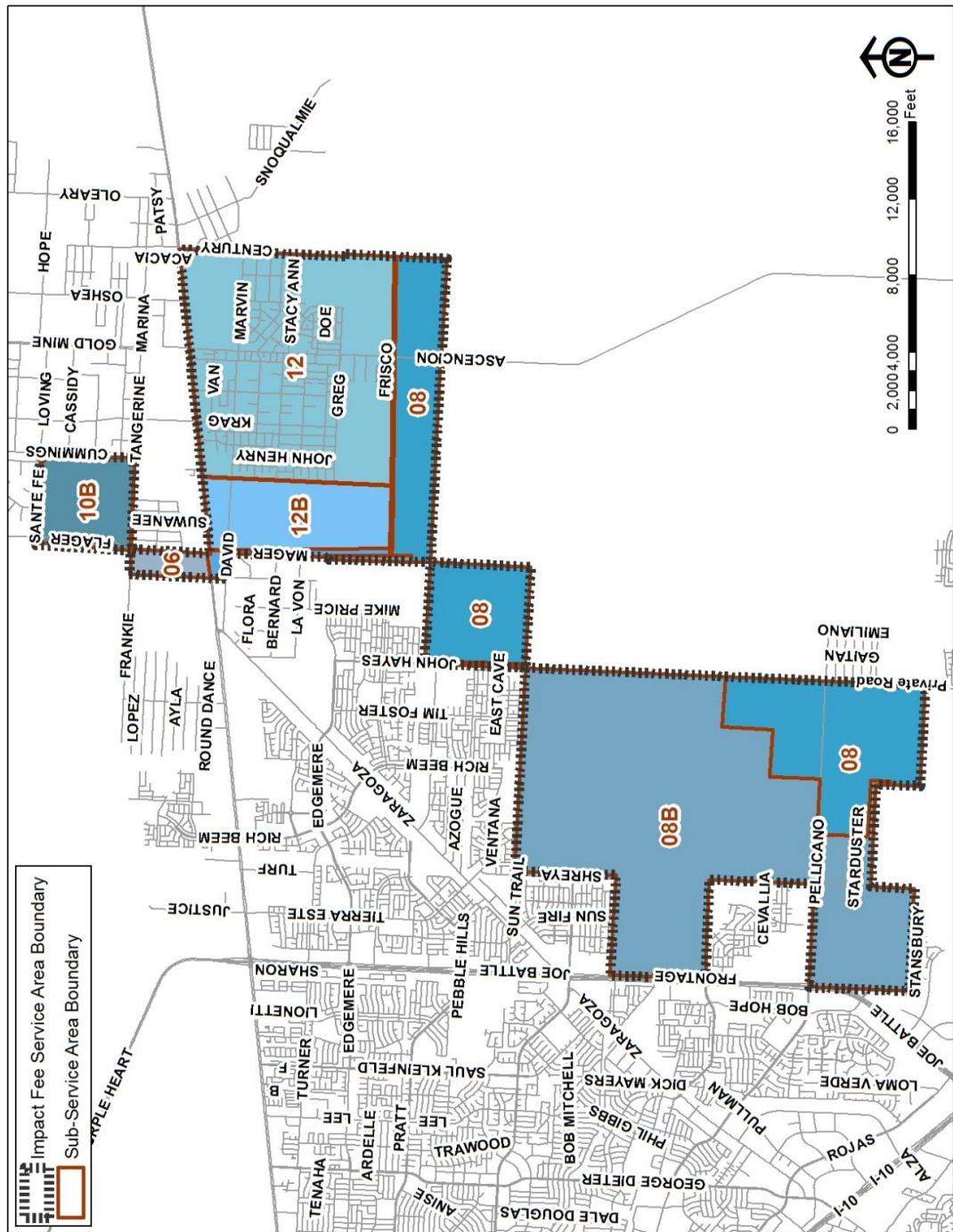


Figure A-4. Eastside Water and Sewer Impact Fee Service Area

APPENDIX B
IMPACT FEE ASSESSMENT SCHEDULES

| Northeast Service Area | | | |
|------------------------|----------------------|--------------|-------------|
| Meter Size | Meter Capacity Ratio | Water* | Wastewater |
| Less than 1 inch | 1.00 | \$ 1,178.00 | \$ 291.00 |
| 1 inch | 1.67 | \$ 1,967.00 | \$ 486.00 |
| 1½ inch | 3.33 | \$ 3,921.00 | \$ 969.00 |
| 2 inch | 5.33 | \$ 6,276.00 | \$ 1,551.00 |
| 3 inch | 10.00 | \$ 11,775.00 | \$ 2,910.00 |
| 4 inch | 16.67 | \$ 19,629.00 | \$ 4,851.00 |
| 6 inch | 33.33 | \$ 39,246.00 | \$ 9,699.00 |
| 8 inch | 53.33 | \$ 62,796.00 | \$15,519.00 |
| 10 inch | 76.67 | \$ 90,279.00 | \$22,311.00 |
| 12 inch | 143.33 | \$168,771.00 | \$41,709.00 |

** Fees do not apply to water meter or connections made for standby fire protection service.*

| Westside Service Area | | | |
|-----------------------|----------------------|-------------|--------------|
| Meter Size | Meter Capacity Ratio | Water* | Wastewater |
| Less than 1 inch | 1.00 | \$ 659.00 | \$ 927.00 |
| 1 inch | 1.67 | \$ 1,101.00 | \$ 1,548.00 |
| 1½ inch | 3.33 | \$ 2,195.00 | \$ 3,087.00 |
| 2 inch | 5.33 | \$ 3,514.00 | \$ 4,941.00 |
| 3 inch | 10.00 | \$ 6,593.00 | \$ 9,270.00 |
| 4 inch | 16.67 | \$10,990.00 | \$ 15,453.00 |
| 6 inch | 33.33 | \$21,973.00 | \$ 30,897.00 |
| 8 inch | 53.33 | \$35,158.00 | \$ 49,437.00 |
| 10 inch | 76.67 | \$50,545.00 | \$ 71,073.00 |
| 12 inch | 143.33 | \$94,490.00 | \$132,867.00 |

** Fees do not apply to water meter or connections made for standby fire protection service.*

| Eastside Service Area | | | |
|-----------------------|----------------------|-------------|-------------|
| Meter Size | Meter Capacity Ratio | Water* | Wastewater |
| Less than 1 inch | 1.00 | \$ 697.00 | \$ 920.00 |
| 1 inch | 1.67 | \$ 1,163.00 | \$ 1,537.00 |
| 1½ inch | 3.33 | \$ 2,321.00 | \$ 3,065.00 |
| 2 inch | 5.33 | \$ 3,714.00 | \$ 4,905.00 |
| 3 inch | 10.00 | \$ 6,968.00 | \$ 9,203.00 |
| 4 inch | 16.67 | \$11,615.00 | \$15,341.00 |
| 6 inch | 33.33 | \$23,223.00 | \$30,672.00 |
| 8 inch | 53.33 | \$37,158.00 | \$49,077.00 |
| 10 inch | 76.67 | \$40,064.00 | \$52,916.00 |
| 12 inch | 143.33 | \$74,899.00 | \$98,924.00 |

** Fees do not apply to water meter or connections made for standby fire protection service.*