

CITY OF VERSAILLES  
ORDINANCE NO. 2023-15

TITLE: AN ORDINANCE ESTABLISHING AN IMPACT FEE PROGRAM FOR USERS OF WATER SERVICE PROVIDED BY THE CITY, ESTABLISHING A METHODOLOGY TO DETERMINE THE FEE, REQUIRING THAT THE FEE BE SEGREGATED, ESTABLISHING LIMITATIONS ON THE USE OF THE FUNDS COLLECTED, ESTABLISHING A PROCESS TO APPEAL THE FEES AND PROHIBITING CONNECTION TO CITY WATER SERVICE UNTIL THE IMPACT FEE IS PAID.

Whereas, the City Council desires to establish an impact fee program to equitably recover the capital costs related to its water treatment and distribution facilities;

NOW, THEREFORE, BE IT ORDAINED IN THE CITY OF VERSAILLES, KENTUCKY as follows:

*Section 1. Purpose.* The purpose of the impact fee program is to equitably recover capacity-related capital costs from current and future customers to achieve equity between the different generations of ratepayers (intergenerational equity). Additionally, charging an impact fee is meant to equitably reimburse the existing ratepayers for their investment in oversizing of infrastructure to accommodate future customers.

*Section 2. Impact Fee Charge Established.*

(1) Impact Fee charges shall be established and may be revised by resolution of the city council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

(2) Unless otherwise exempted by the provisions of this ordinance or the other local or state law, an impact fee charge is hereby imposed upon all development within the city limits, upon the act of making a connection to the city water system within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the water facilities of the city.

*Section 3. Definitions.* For purposes of this ordinance, the following mean:

(1) “Capital Improvements” means public facilities or assets used for water distribution, transmission, treatment, or any combination.

(2) “City” means the City of Versailles, Kentucky.

(3) “City clerk” means the clerk of the City of Versailles, Kentucky.

(4) “Council” means the Versailles City Council.

(5) “Development” means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities which have the effect of increasing the demands upon the water utility facilities. Development includes redevelopment of property. Development includes improved open areas such as plaza and walkways, but does not include natural geologic forms or unimproved lands.

(6) “Equivalent Residential Unit”, or its acronym, ERU, is the basis of assigning an impact fee charge. An ERU is the average monthly water demand (usage) by a residential customer. It is calculated, specifically, for Versailles’ water utility.

(7) “Growth-Related Expansion” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 2 of this ordinance.

(8) “Impact Fee” means the a charge comprised of a system wide improvements fee (buy-in), a growth-related expansion fee, or a combination thereof, assessed or collected at the time of increased usage of the water utility, at the time of issuance of a development permit or building permit, or at the time of connection to the water system.

a. An impact fee charge is not payment or reimbursement for the utility’s average cost of inspecting and installing connections with water facilities—that reimbursement is called a “tap fee” and constitutes a separate charge.

b. An impact fee charge does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

(9) "Land Area" means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or for a public scenic or preservation purpose.

(10) "Owner" means the Owner or Owners of record title or the purchaser or purchasers under a recorded land sales agreement, and other persons having an interest of record in the described real property.

(11) "Parcel of Land" means a lot, parcel, block or other tract of land that in accordance with city regulations is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

(12) "Permittee" means the person to whom a building permit, development permit, a permit or plan approval to connect to water system, or right-of-way access permit is issued.

(13) "Qualified Public Improvements" means a capital improvement that is:

a. required as a condition of development approval;

b. identified in the plan adopted pursuant to Section 8 of this Ordinance and either:

1) not located on or contiguous to a parcel of land that is the subject of the development approval; or

2) located in whole or in part on or contiguous to a parcel of land that is the subject of the development approval; or

3) for purposes of this definition, contiguous means in a public way which abuts the parcel.

(14) "Program Administrator" means the Versailles public works director, or his/her designee, is the impact fee program administrator/coordinator.

(15) "Redevelopment" means repurposing an existing structure.

(16) “Systemwide Improvements” (also referred to as “Buy-In”) means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 2 of this Ordinance, and for which the council determines capacity to exist.

(17) “Utility” means the water treatment and distribution system of the City of Versailles, Kentucky.

*Section 4. Factors Quantifying an Increase in Demand.* Whereas the impact fee program assigns a fee to every new customer of the Versailles water utility, it also pertains to existing customers whose water usage has changed to present an increased demand on the water utility. Factors that quantify a new or increased demand on the water system include:

- (1) Meter Size – Impacts by new development, or redevelopment, upon the water system is estimated by the meter size of the proposed or expanded facility. Since the vast majority of single-family residences are served through a  $\frac{3}{4}$  by  $\frac{5}{8}$ -inch water meter, the  $\frac{3}{4}$  by  $\frac{5}{8}$ -inch water meter represents 1 equivalent residential unit (ERU). Other meter sizes are listed on the Impact Fee Charge Schedule and are assigned an ERU factor to estimate their impact on the water system.
- (2) Demand –the ERU represents the typical water demand of a single-family residential unit. As described in item (1), any demand greater than the ERU, as quantified by the potential of a larger meter, is estimated by applying the relevant ERU factor.

*Section 5. Methodology.*

(1) The methodology used to establish or modify the systemwide improvements or buy-in fee shall, where applicable, be based on the value of existing assets at a depreciated replacement cost, accomplished through the use of a construction cost index (as determined by the Engineering News Record) to bring the historical or original costs up to a current-day value. Using this method (replacement cost new less depreciation (RCNLD in AWWA M-1)), reasonably reflects the cost of providing new expansion capacity to customers as if the capacity was added at the time the new

customers connected to the water system. The method fairly compensates existing customers for the carrying costs of the excess capacity built into the system in advance of when the new customers connect to the system.

(2) Unlike the City of Versailles sewer impact fee, there is currently no growth-related expansion fee as sufficient water treatment capacity exists for future customers identified for the five and ten-year planning horizon.

(3) The ERU, the ERU factors, and the impact fee for each factor shall be contained in a resolution adopted by the council.

(4) The water impact fee is calculated by multiplying the ERU (in gallons per day) by the ERU factor, then by the impact fee (in dollars per gallon). The ERU and the impact fee are calculated specific to the Versailles water utility. Both should be recalculated every 5 years, at a minimum.

#### *Section 6. Authorized Expenditures.*

(1) System wide Improvements (Buy-In) fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(2) Growth-Related Expansion fees shall be assigned only for anticipated expansion of the water utility.

(3) Notwithstanding Subsections (1) and (2) of this section, impact fee revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing impact fee charge methodologies and providing an annual accounting of impact fee expenditures.

(4) There is created a dedicated account entitled the "Water Impact Fee Account." All monies derived from the water impact fee shall be placed in the Water Impact Fee Account. Funds in the Water Impact Fee Account shall be used solely to provide the water capital improvements that relate to treatment and storage and transmission that is of benefit to all customers, and eligible administrative costs. In this regard, water impact fee revenues may be used for purposes that include:

- a. design and construction plan preparation;
- b. permitting;

- c. right-of-way acquisition, including any costs of acquisition and condemnation;
- d. construction of new water treatment facilities;
- e. rehabilitation or replacement of filter media in existing filtration system;
- f. construction of raw water transmission lines and finished water transmission lines that are of benefit to all customers of the water utility;
- g. construction of pumping stations;
- h. demolition that is part of the construction of any of the improvements on this list;
- i. repair and replacement of the capital items listed in d., e., and f. above;
- j. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the city to provide money to construct or acquire water facilities;
- k. direct costs of complying with the provisions of any statute that allows or limits impact fees, including the costs of developing impact fee methodologies and providing an annual accounting of impact fee expenditures.

*Section 7. Expenditure Restrictions.*

(1) Impact fee charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

(2) Impact fee charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

*Section 8. Improvement Plan.*

(1) Prior to the establishment of a water impact fee, the council shall adopt a plan that includes a list of:

- a. the capital improvements that the council intends to fund in whole or in part with impact fee revenues;
- b. the estimated cost and time of construction of each improvement and the percentage of that cost eligible

to be funded; and,

c. a description of the process for modifying the plan.

(2) In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

(3) The council may modify such plan and list at any time. If the impact fee charge will be increased by a proposed modification to the list, to include a capacity-increasing public improvement, the council will:

a. at least 30 days prior to adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 13 of this resolution;

b. hold a public hearing if a written request for a hearing is received within 7 days of the date of the proposed modification.

(4) A change in the amount of a system wide improvements fee or a growth-related expansion fee is not a modification of the impact fee charge if the change in amount is based on the periodic application of the Engineering News-Record's (ENR) Construction Cost Index or a modification to any of the factors related to the rate that are incorporated in the established methodology. The council may elect to revise the impact fee annually based of the ENR Construction Cost.

#### *Section 9. Collection of Charge.*

(1) The water impact fee charge is payable upon:

a. a request for water service;

b. a request for wastewater service; or

c. at the time tap fee(s) are collected, whichever is earliest.

(2) If no building, development, or connect permit is required, the impact fee charge is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or orderly fluctuations in usage.

(3) If development is commenced or connection is made to the water system without an appropriate permit, the impact fee charge is immediately payable upon the earliest date that a permit was required.

(4) If requested by the applicant, the city clerk may provide the applicant an estimate of the impact fee charge when a permit that allows building or development of a parcel is issued.

(5) The impact fee program administrator shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to Section 10 of this Ordinance, or unless an exemption is granted pursuant to Section 11 of this Ordinance.

*Section 10. Installment Payment.*

(1) When an impact fee charge based on a meter size of 4 inches or more is due and collectible, the owner of the parcel of land subject to the impact fee may apply for payment in 6 semi-annual installments, to include interest (at 2 points above the prime rate at the time of request) on the unpaid balance.

(2) The impact fee program administrator shall provide application forms for installment payments, which shall include a waiver of all rights to contest validity of the lien, except for the correction of computational errors.

(3) An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.

(4) The impact fee program administrator shall report to the city clerk the amount of the impact fee charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.

(5) The city clerk shall docket the lien. From that time the City shall have a lien upon the described parcel for the amount of the impact fee charge, together with interest on the unpaid balance at the rate established by the council.



(6) For property that has been subject to a cancellation of assessment of impact fees, a new installment payment contract shall be subject to the code provisions applicable to impact fees and installment payment contracts on file on the date the new contract is received by the City.

*Section 11. Exemptions.*

(1) If an organization is exempt from the tap fee(s), the council may vote to exempt them from the impact fee as well.

(2) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the Kentucky Uniform Building Code, are exempt from all portions of the water impact fee.

(3) An alteration, addition, replacement or change in use that does not increase the parcels or structures use of the water utility and its facilities are exempt from all portions of the impact fee charge.

*Section 12. Credits.*

(1) When a redevelopment occurs that is subject to an impact fee charge, the impact fee charge for the existing use, if applicable, shall be calculated and if it is less than the impact fee charge for the use that will result from the development, the difference between the impact fee for the existing use and the impact fee for the proposed use shall be the impact fee charge. If the change in the use results in the impact fee for the proposed use being less than the impact fee for the existing use, no impact fee charge shall be required. Since meter size is used to calculate impact fees, the impact on the water system is assessed by considering the meter size of the existing development versus the meter size of the redevelopment. No refund or credit shall be given unless provided for by another subsection of this section.

(2) If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required by the utilities manager for the City of Versailles to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular

improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City. The City may deny the credit provided for in this section if the City demonstrates that the application does not meet the requirements of this section or if the improvement for which the credit is sought was not included in the improvement plan pursuant to Section 8 of this ordinance.

(3) Notwithstanding Subsections 1-2 above, when establishing a methodology for a water impact fee charge, the City may provide for a credit against the systemwide improvements (buy-in) fee for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.

(4) Credits shall not be transferable from one development to another.

(5) Credits shall not be transferable between utilities (water credit to sewer, or sewer credit to water) to another.

(6) Credits shall be used within 10 years from the date the credit is given.

#### *Section 13. Notice.*

(1) The City shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any impact fee charge other than the initial impact fee charge adopted by the council. Written notice shall be mailed to persons on the list at least thirty days prior to the hearing to establish or modify an impact fee charge. The methodology supporting the impact fee charge shall be available at least 30 days prior to the hearing to adopt or amend an impact fee charge. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.

(2) The City may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

#### *Section 14. Segregation and Use of Revenue.*

(1) All funds derived from the water impact fee charge are to be segregated by accounting practices from all other funds of the City. That portion of the impact fee charge calculated and collected on account of the water system shall be used for no purpose other than set forth in Section 6 of this ordinance.

(2) The city clerk shall provide the city council with an annual accounting for impact fee charges showing the total and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded, in whole or in part, with impact fee charge revenues shall be included in the annual accounting.

#### *Section 15. Refunds.*

(1) Refunds may be given by the impact fee program administrator upon finding that there was a clerical error in the calculation of the impact fee.

(2) Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an alternative impact fee rate calculation at the time of submission of an application for a building permit.

(3) The City shall refund to the applicant any impact fee revenues not expended within 10 years of receipt.

#### *Section 16. Appeal Procedure.*

(1) A person challenging the propriety of an expenditure of impact fee charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city clerk describing, with particularity, the decision of the program administrator or the public works director and the expenditure of which the person appeals. An appeal of expenditure must be filed within 1 year of the date of the alleged improper expenditure.

(2) Appeals of any other decision required or permitted to be made by the public works director under this ordinance must be filed in writing with the city clerk within 30 days of the decision.

(3) After providing notice to the appellant, the council shall determine whether the public works director's decision or the expenditure is in accordance with this ordinance or other applicable law and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of impact fee charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the

account or fund from which it was spent. Any person aggrieved by the decision of the council may appeal its decision to the Woodford Circuit Court within thirty days after adoption.

(4) A legal action challenging the methodology adopted by the council pursuant to Section 5 shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating an impact fee charge only as provided in Subsection 5, and not otherwise.

(5) A person who wishes to challenge an impact fee charge must make a written challenge to the charge and file the challenge with the city clerk within 10 days of receiving the notification of charge. The written challenge must describe with particularity the calculation that the person appeals.

A. the written challenge shall state:

- 1) the name and address of the appellant; and
- 2) the nature of the appeal.

A person who fails to file such a written challenge within the time permitted waives his/her objections, and his/her objections shall be dismissed.

B. After providing timely notice to the challenger, the public works director shall conduct a hearing to determine whether the charge is in accordance with the resolution containing the methodology used to establish or modify the impact fee charge adopted by the city council.

C. Unless the challenger and the City agree to a longer period, a written challenge to the impact fee charge shall be heard by a hearings officer within sixty working days of the receipt of the written challenge. At least ten working days prior to the hearing, the City shall mail notice of the time and location thereof to the person who made the written challenge.

D. The public works director shall hear and determine the challenge on the basis of the person's written challenge and any additional evidence he/she deems appropriate. At the hearing, the challenger may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply.

(6) After exhausting the City's administrative review procedure pursuant to Section 16 (5) of this ordinance, the person challenging the impact fee charge may then petition for review of the final determination to the Woodford Circuit Court within thirty days of issuance of the final decision.

*Section 17. Change in Meter Size.* The size of the water meter (whether the water service provider is Versailles or another water utility) is used to estimate the impact of the facility's water contribution upon the Versailles' water utility. If any customer of the Versailles' water utility installs a water meter that is larger in size or maximum industry-assigned flow capacity, that customer is subject to an impact fee charge. The impact fee charge shall be the difference in the charges associated with the existing and new meter sizes. This section applies to any customer of the water utility, not only those who have previously paid an impact fee.

*Section 18. Prohibited Connection.* No person may connect to the water or wastewater systems of the City unless the appropriate impact fee charge has been paid or the lien or installment payment method has been applied for and applied.

*Section 19. Severability.* The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

*Section 20. Classification of impact fee.* The city council hereby determines that any fee, rates or charges imposed by this Ordinance are not a tax subject to the limitations on ad valorem property taxes.

*Section 21. Effective Date.* This ordinance shall become effective on September 1, 2023.

Introduced and given first reading at a meeting of the City Council of the City of Versailles, Kentucky, held on the 18<sup>th</sup> day of July, 2023, and fully adopted after the second reading at a meeting of said council held on the 1<sup>st</sup> day of August, 2023.

CITY OF VERSAILLES

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BRIAN TRAUGOTT, MAYOR

ATTEST:

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ELIZABETH REYNOLDS, CITY CLERK