

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING TITLE XI, "PLANNING AND DEVELOPMENT", OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING CHAPTER 14, "IMPACT FEES"; ESTABLISHING WATER, WASTEWATER, AND ROADWAY IMPACT FEES; ESTABLISHING PROCEDURES FOR THE ASSESSMENT, COMPUTATION, COLLECTION, DEPOSIT, REFUND, EXPENDITURE AND GENERAL ADMINISTRATION OF SAID IMPACT FEES; ESTABLISHING AN APPEAL PROCEDURE; ESTABLISHING AN EFFECTIVE DATE OF OCTOBER 1, 2019; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION**

**WHEREAS**, Chapter 395, Tex. Loc. Gov't Code (the "Statute") provides the requirements and procedures for the adoption of land use assumptions, a capital improvements plan, and impact fees; and

**WHEREAS**, after notice of a public hearing was given as required by the Statute, the City Council held a public hearing on March 26, 2019, and by Resolution No. 2019-136 approved the land use assumptions and capital improvements plan; and

**WHEREAS**, the Capital Improvement Advisory Committee of the City of Midland, created pursuant to Sec. 395.058, Tex. Loc. Gov't Code, filed its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the impact fees; and

**WHEREAS**, after notice of a public hearing was given as required by the Statute, the City Council held a public hearing on July 23, 2019, to discuss the imposition of the impact fees by this ordinance; and

**WHEREAS**, the City Council finds that the City has fully complied with the Statute in adopting and imposing the impact fees in this ordinance; and

**WHEREAS**, the City Council finds it to be in the best interest of the citizens of the City of Midland to adopt and approve the impact fees and related administrative processes described herein;

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

**SECTION ONE.** That the recitals stated above are hereby adopted and approved and incorporated into the body of this ordinance as if fully set forth herein, and the impact fees set forth in this ordinance are hereby approved.

**SECTION TWO.** That the Midland City Code Title XI, "Planning and Development", shall be amended by adding Chapter 14, "Impact Fees", which shall read as follows:

**11-14-1. Purpose.**

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

**11-14-2. Definitions.**

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

- (A) *Assessment* means the determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this Chapter.
- (B) *Capital improvement* means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of the City:
  - (1) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and
  - (2) roadway facilities.
- (C) *Capital improvements plan* means a plan approved by the City Council that identifies capital improvements or facility expansions for which impact fees may be assessed.
- (D) *City* means the City of Midland, Texas.
- (E) *City Council* means the City Council of the City of Midland, Texas.
- (F) *City Manager* means the City Manager of the City of Midland, Texas, or his or her designee.

- (G) *Director* means the Director of the Development Services Department of the City of Midland, Texas, or his or her designee.
- (H) *Effective date* means October 1, 2019.
- (I) *Facility expansion* means 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.
- (J) *Impact fee* means a charge or assessment imposed as set forth in this Chapter 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 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 sewer mains or lines extended by the political subdivision.
- (K) *Land use assumptions* means 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 and approved by the City Council.
- (L) *New development* means 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.
- (M) *Owner* means an owner of real property that is subject to this Chapter, or an agent, employee, or representative thereof who is authorized to act of the real property owner's behalf, or a person who has paid an impact fee under this Chapter.
- (N) *Roadway facilities* means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the City, together with all necessary appurtenances. The term includes the City's share of costs for roadways and associated improvements designated on the federal or Texas 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.

- (O) *Service area* means:
- (1) for purposes of water and wastewater, the area within the corporate boundaries of the City; and
  - (2) for purposes of roadways, an area within the corporate boundaries of the City that does not exceed six miles within which roadway impact fees for capital improvements will be collected for new development, and within which fees so collected will be expended for those capital improvements identified in the capital improvements plan to be located therein. The roadway service areas are more fully described in the study.
- (P) *Service unit* means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the City during the previous 10 years. The service units for purposes of roadways, water, and wastewater are more fully described in the study.
- (Q) *Site-related facility* means 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 improvements plan and for which the owner is solely responsible under subdivision or other applicable regulations or which is located at least partially on the plat which is being considered for impact fee assessment. This term includes that portion of an off-site water or wastewater main, equivalent to a standard size water or wastewater main, which is necessary to connect any new development with the City's water or wastewater system, the cost of which has not been included in the City's impact fee capital improvements plan.
- (R) *Study* means, collectively, the roadway impact fee study and the water and wastewater impact fee study that are on file in the office of the City's Development Services Department.
- (S) *System-related facility* means a capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. This term may include a capital improvement which is located off-site or within or on the perimeter of the development site.
- (T) *Wastewater facility* means 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. This term includes land, easements or structures associated with such facilities. This term excludes a site-related facility.

- (U) *Water facility* means 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. This term includes, but is not limited to, land, easements or structures associated with such facilities. This term excludes site-related facilities.

**11-14-3. Study Adopted.**

The study is hereby approved and adopted for all purposes consistent with this Chapter.

**11-14-4. Applicability.**

The provisions of this Chapter apply to all new development within the corporate boundaries of the City.

**11-14-5. Impact Fees Adopted.**

- (A) A pre-credit water impact fee of \$3,312.24 per service unit shall be assessed and charged against new development in the service area as set forth below.

For final plats approved before the effective date and for final plats recorded on or after the effective date:

Water Meter Size	Service Unit Equivalents	Maximum Assessed Impact Fee	Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))
1"	1.0	\$3,312.24	\$1,656.12
2"	4.0	\$13,248.97	\$6,624.48
3"	9.0	\$29,810.18	\$14,905.09
4"	20.0	\$66,244.85	\$33,122.42
6"	40.0	\$132,489.70	\$66,244.85

- (B) A pre-credit wastewater impact fee of \$1,676.82 per service unit shall be assessed and charged against new development in the service area as set forth below.

For final plats approved before the effective date and for final plats recorded on or after the effective date:

Water Meter Size	Service Unit Equivalents	Maximum Assessed Impact Fee	Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))
1"	1.0	\$1,676.82	\$838.41
2"	4.0	\$6,707.27	\$3,353.63
3"	9.0	\$15,091.35	\$7,545.67
4"	20.0	\$33,536.33	\$16,768.16
6"	40.0	\$67,072.66	\$33,536.33

- (C) A pre-credit roadway impact fee of:

- (1) \$2,034.00 per service unit in Service Area A;
- (2) \$1,562.00 per service unit in Service Area B;
- (3) \$1,410.00 per service unit in Service Area C;
- (4) \$2,052.00 per service unit in Service Area D; and

(5) \$0.00 per service unit in Service Area E

shall be assessed and charged against new development in such service areas as set forth below.

For final plats approved before the effective date and for final plats recorded on or after the effective date:

Land Use Category	ITE Land Use Code	Development Unit	Maximum Assessed Impact Fee				Maximum Impact Fee after Application of Credit (see Section 11-14-8(A))			
			Service Area A	Service Area B	Service Area C	Service Area D	Service Area A	Service Area B	Service Area C	Service Area D
<b>PORT AND TERMINAL</b>										
Truck Terminal	030	1,000 SF GFA	\$ 22,821.48	\$ 17,525.64	\$ 15,820.20	\$ 23,023.44	\$ 11,410.74	\$ 8,762.82	\$ 7,910.10	\$ 11,511.72
Park-and-Ride	090	Parking Spaces	\$ 5,247.72	\$ 4,029.96	\$ 3,637.80	\$ 5,294.16	\$ 2,623.86	\$ 2,014.98	\$ 1,818.90	\$ 2,647.08
<b>INDUSTRIAL</b>										
General Light Industrial	110	1,000 SF GFA	\$ 7,688.52	\$ 5,904.36	\$ 5,329.80	\$ 7,756.56	\$ 3,844.26	\$ 2,952.18	\$ 2,664.90	\$ 3,878.28
Industrial Park	130	1,000 SF GFA	\$ 4,881.60	\$ 3,748.80	\$ 3,384.00	\$ 4,924.80	\$ 2,440.80	\$ 1,874.40	\$ 1,692.00	\$ 2,462.40
Manufacturing	140	1,000 SF GFA	\$ 8,176.68	\$ 6,279.24	\$ 5,668.20	\$ 8,249.04	\$ 4,088.34	\$ 3,139.62	\$ 2,834.10	\$ 4,124.52
Warehousing	150	1,000 SF GFA	\$ 2,318.76	\$ 1,780.68	\$ 1,607.40	\$ 2,339.28	\$ 1,159.38	\$ 890.34	\$ 803.70	\$ 1,169.64
Mini-Warehouse	151	1,000 SF GFA	\$ 2,074.68	\$ 1,593.24	\$ 1,438.20	\$ 2,093.04	\$ 1,037.34	\$ 796.62	\$ 719.10	\$ 1,046.52
Data Center	160	1,000 SF GFA	\$ 1,098.36	\$ 843.48	\$ 761.40	\$ 1,108.08	\$ 549.18	\$ 421.74	\$ 380.70	\$ 554.04
<b>RESIDENTIAL</b>										
Single-Family Detached Housing	210	Dwelling Unit	\$ 6,040.98	\$ 4,639.14	\$ 4,187.70	\$ 6,094.44	\$ 3,020.49	\$ 2,319.57	\$ 2,093.85	\$ 3,047.22
Multifamily Housing (Low-Rise)	220	Dwelling Unit	\$ 3,417.12	\$ 2,624.16	\$ 2,368.80	\$ 3,447.36	\$ 1,708.56	\$ 1,312.08	\$ 1,184.40	\$ 1,723.68
Multifamily Housing (Mid-Rise)	221	Dwelling Unit	\$ 2,684.88	\$ 2,061.84	\$ 1,861.20	\$ 2,708.64	\$ 1,342.44	\$ 1,030.92	\$ 930.60	\$ 1,354.32
Multifamily Housing (High-Rise)	222	Dwelling Unit	\$ 2,196.72	\$ 1,686.96	\$ 1,522.80	\$ 2,216.16	\$ 1,098.36	\$ 843.48	\$ 761.40	\$ 1,108.08
Mobile Home Park / Manufactured Home	240	Dwelling Unit	\$ 2,806.92	\$ 2,155.56	\$ 1,945.80	\$ 2,831.76	\$ 1,403.46	\$ 1,077.78	\$ 972.90	\$ 1,415.88
Senior Adult Housing-Detached	251	Dwelling Unit	\$ 1,830.60	\$ 1,405.80	\$ 1,269.00	\$ 1,846.80	\$ 915.30	\$ 702.90	\$ 634.50	\$ 923.40
Senior Adult Housing-Attached	252	Dwelling Unit	\$ 1,586.52	\$ 1,218.36	\$ 1,099.80	\$ 1,600.56	\$ 793.26	\$ 609.18	\$ 549.90	\$ 800.28
Assisted Living	254	Beds	\$ 1,586.52	\$ 1,218.36	\$ 1,099.80	\$ 1,600.56	\$ 793.26	\$ 609.18	\$ 549.90	\$ 800.28
<b>LODGING</b>										
Hotel	310	Room	\$ 3,661.20	\$ 2,811.60	\$ 2,538.00	\$ 3,693.60	\$ 1,830.60	\$ 1,405.80	\$ 1,269.00	\$ 1,846.80
Motel / Other Lodging Facilities	320	Room	\$ 2,318.76	\$ 1,780.68	\$ 1,607.40	\$ 2,339.28	\$ 1,159.38	\$ 890.34	\$ 803.70	\$ 1,169.64
<b>RECREATIONAL</b>										
Golf Driving Range	432	Tee	\$ 7,627.50	\$ 5,857.50	\$ 5,287.50	\$ 7,695.00	\$ 3,813.75	\$ 2,928.75	\$ 2,643.75	\$ 3,847.50
Golf Course	430	Acre	\$ 1,708.56	\$ 1,312.08	\$ 1,184.40	\$ 1,723.68	\$ 854.28	\$ 656.04	\$ 592.20	\$ 861.84
Bowling Alley	437	1,000 SF GFA	\$ 7,078.32	\$ 5,435.76	\$ 4,906.80	\$ 7,140.96	\$ 3,539.16	\$ 2,717.88	\$ 2,453.40	\$ 3,570.48
Recreational Community Center	495	1,000 SF GFA	\$ 14,095.62	\$ 10,824.66	\$ 9,771.30	\$ 14,220.36	\$ 7,047.81	\$ 5,412.33	\$ 4,885.65	\$ 7,110.18
Ice Skating Rink	465	1,000 SF GFA	\$ 8,115.66	\$ 6,232.38	\$ 5,625.90	\$ 8,187.48	\$ 4,057.83	\$ 3,116.19	\$ 2,812.95	\$ 4,093.74
Miniature Golf Course	431	Hole	\$ 2,013.66	\$ 1,546.38	\$ 1,395.90	\$ 2,031.48	\$ 1,006.83	\$ 773.19	\$ 697.95	\$ 1,015.74
Multiplex Movie Theater	445	Screens	\$ 83,780.46	\$ 64,338.78	\$ 58,077.90	\$ 84,521.88	\$ 41,890.23	\$ 32,169.39	\$ 29,038.95	\$ 42,260.94
Racquet / Tennis Club	491	Court	\$ 23,309.64	\$ 17,900.52	\$ 16,158.60	\$ 23,515.92	\$ 11,654.82	\$ 8,950.26	\$ 8,079.30	\$ 11,757.96
Health/Fitness Club	492	1,000 SF GFA	\$ 21,051.90	\$ 16,166.70	\$ 14,593.50	\$ 21,238.20	\$ 10,525.95	\$ 8,083.35	\$ 7,296.75	\$ 10,619.10
<b>INSTITUTIONAL</b>										
Church	560	1,000 SF GFA	\$ 2,989.98	\$ 2,296.14	\$ 2,072.70	\$ 3,016.44	\$ 1,494.99	\$ 1,148.07	\$ 1,036.35	\$ 1,508.22
Day Care Center	565	1,000 SF GFA	\$ 20,156.94	\$ 15,479.42	\$ 13,973.10	\$ 20,335.32	\$ 10,078.47	\$ 7,739.71	\$ 6,986.55	\$ 10,167.66
Primary/Middle School (1-8)	522	Students	\$ 1,037.34	\$ 796.62	\$ 719.10	\$ 1,046.52	\$ 518.67	\$ 398.31	\$ 359.55	\$ 523.26
High School	530	Students	\$ 854.28	\$ 656.04	\$ 592.20	\$ 861.84	\$ 427.14	\$ 328.02	\$ 296.10	\$ 430.92
Junior / Community College	540	Students	\$ 671.22	\$ 515.46	\$ 465.30	\$ 677.16	\$ 335.61	\$ 257.73	\$ 232.65	\$ 338.58
University / College	550	Students	\$ 915.30	\$ 702.90	\$ 634.50	\$ 923.40	\$ 457.65	\$ 351.45	\$ 317.25	\$ 461.70
<b>MEDICAL</b>										
Clinic	630	1,000 SF GFA	\$ 18,753.48	\$ 14,401.64	\$ 13,000.20	\$ 18,919.44	\$ 9,376.74	\$ 7,200.82	\$ 6,500.10	\$ 9,459.72
Hospital	610	1,000 SF GFA	\$ 5,552.82	\$ 4,264.26	\$ 3,849.30	\$ 5,601.96	\$ 2,776.41	\$ 2,132.13	\$ 1,924.65	\$ 2,800.98
Nursing Home	620	Beds	\$ 1,261.08	\$ 968.44	\$ 874.20	\$ 1,272.24	\$ 630.54	\$ 484.22	\$ 437.10	\$ 636.12
Animal Hospital/Veterinary Clinic	640	1,000 SF GFA	\$ 14,115.96	\$ 10,840.28	\$ 9,785.40	\$ 14,240.88	\$ 7,057.98	\$ 5,420.14	\$ 4,892.70	\$ 7,120.44
<b>OFFICE</b>										
Corporate Headquarters Building	714	1,000 SF GFA	\$ 3,661.20	\$ 2,811.60	\$ 2,538.00	\$ 3,693.60	\$ 1,830.60	\$ 1,405.80	\$ 1,269.00	\$ 1,846.80
General Office Building	710	1,000 SF GFA	\$ 7,017.30	\$ 5,388.90	\$ 4,864.50	\$ 7,079.40	\$ 3,508.65	\$ 2,694.45	\$ 2,432.25	\$ 3,539.70
Medical-Dental Office Building	720	1,000 SF GFA	\$ 21,112.92	\$ 16,213.56	\$ 14,635.80	\$ 21,299.76	\$ 10,556.46	\$ 8,106.78	\$ 7,317.90	\$ 10,649.88
Single Tenant Office Building	715	1,000 SF GFA	\$ 10,434.42	\$ 8,013.06	\$ 7,233.30	\$ 10,526.76	\$ 5,217.21	\$ 4,006.53	\$ 3,616.65	\$ 5,263.38
Office Park	750	1,000 SF GFA	\$ 6,529.14	\$ 5,014.02	\$ 4,526.10	\$ 6,586.92	\$ 3,264.57	\$ 2,507.01	\$ 2,263.05	\$ 3,293.46
<b>COMMERCIAL</b>										
<b>Automobile Related</b>										
Automobile Care Center	942	1,000 SF GFA	\$ 8,481.78	\$ 6,513.54	\$ 5,879.70	\$ 8,556.84	\$ 4,240.89	\$ 3,256.77	\$ 2,939.85	\$ 4,278.42
Automobile Parts Sales	843	1,000 SF GFA	\$ 12,692.16	\$ 9,746.88	\$ 8,798.40	\$ 12,804.48	\$ 6,346.08	\$ 4,873.44	\$ 4,399.20	\$ 6,402.24
Gasoline/Service Station	944	Vehicle Fueling Position	\$ 9,925.92	\$ 7,622.56	\$ 6,880.80	\$ 10,013.76	\$ 4,962.96	\$ 3,811.28	\$ 3,440.40	\$ 5,006.88
Gasoline/Service Station w/ Conv Market and Car Wash	945	Vehicle Fueling Position	\$ 7,525.80	\$ 5,779.40	\$ 5,217.00	\$ 7,592.40	\$ 3,762.90	\$ 2,889.70	\$ 2,608.50	\$ 3,796.20
New Car Sales	841	1,000 SF GFA	\$ 8,807.22	\$ 6,763.46	\$ 6,105.30	\$ 8,885.16	\$ 4,403.61	\$ 3,381.73	\$ 3,052.65	\$ 4,442.58
Quick Lubrication Vehicle Shop	941	Service Positions	\$ 13,200.66	\$ 10,137.38	\$ 9,150.90	\$ 13,317.48	\$ 6,600.33	\$ 5,068.69	\$ 4,575.45	\$ 6,658.74
Self-Service Car Wash	947	Stall	\$ 4,047.66	\$ 3,108.38	\$ 2,805.90	\$ 4,083.48	\$ 2,023.83	\$ 1,554.19	\$ 1,402.95	\$ 2,041.74
Tire Store	848	1,000 SF GFA	\$ 13,017.60	\$ 9,996.80	\$ 9,024.00	\$ 13,132.80	\$ 6,508.80	\$ 4,998.40	\$ 4,512.00	\$ 6,566.40
<b>Dining</b>										
Drinking Place	925	1,000 SF GFA	\$ 42,510.60	\$ 32,645.80	\$ 29,469.00	\$ 42,886.80	\$ 21,255.30	\$ 16,322.90	\$ 14,734.50	\$ 21,443.40
Fast Food Restaurant with Drive-Thru Window	934	1,000 SF GFA	\$ 61,162.38	\$ 46,969.34	\$ 42,398.70	\$ 61,703.64	\$ 30,581.19	\$ 23,484.67	\$ 21,199.35	\$ 30,851.82
Fast Food Restaurant without Drive-Thru Window	933	1,000 SF GFA	\$ 53,026.38	\$ 40,721.34	\$ 36,758.70	\$ 53,495.64	\$ 26,513.19	\$ 20,360.67	\$ 18,379.35	\$ 26,747.82
High Turnover (Sit-Down) Restaurant	932	1,000 SF GFA	\$ 31,954.14	\$ 24,539.02	\$ 22,151.10	\$ 32,236.92	\$ 15,977.07	\$ 12,269.51	\$ 11,075.55	\$ 16,118.46
Quality Restaurant	931	1,000 SF GFA	\$ 25,058.88	\$ 19,243.84	\$ 17,371.20	\$ 25,280.64	\$ 12,529.44	\$ 9,621.92	\$ 8,685.60	\$ 12,640.32
Coffee/Donut Shop with Drive-Thru Window	937	1,000 SF GFA	\$ 48,693.96	\$ 37,394.28	\$ 33,755.40	\$ 49,124.88	\$ 24,346.98	\$ 18,697.14	\$ 16,877.70	\$ 24,562.44
<b>Other Retail</b>										
Free-Standing Store	815	1,000 SF GFA	\$ 20,624.76	\$ 15,838.68	\$ 14,297.40	\$ 20,807.28	\$ 10,312.38	\$ 7,919.34	\$ 7,148.70	\$ 10,403.64
Nursery (Garden Center)	817	1,000 SF GFA	\$ 29,655.72	\$ 22,773.96	\$ 20,557.80	\$ 29,918.16	\$ 14,827.86	\$ 11,386.98	\$ 10,278.90	\$ 14,959.08
Home Improvement Superstore	862	1,000 SF GFA	\$ 7,383.42	\$ 5,670.06	\$ 5,118.30	\$ 7,448.76	\$ 3,691.71	\$ 2,835.03	\$ 2,559.15	\$ 3,724.38
Pharmacy/Drugstore w/o Drive-Thru Window	880	1,000 SF GFA	\$ 24,408.00	\$ 18,744.00	\$ 16,920.00	\$ 24,624.00	\$ 12,204.00	\$ 9,372.00	\$ 8,460.00	\$ 12,312.00
Pharmacy/Drugstore w/ Drive-Thru Window	881	1,000 SF GFA	\$ 32,035.50	\$ 24,601.50	\$ 22,207.50	\$ 32,319.00	\$ 16,017.75	\$ 12,300.75	\$ 11,103.75	\$ 16,159.50
Shopping Center	820	1,000 SF GLA	\$ 15,316.02	\$ 11,761.86	\$ 10,617.30	\$ 15,451.56	\$ 7,658.01	\$ 5,880.93	\$ 5,308.65	\$ 7,725.78
Supermarket	850	1,000 SF GFA	\$ 36,062.82	\$ 27,694.26	\$ 24,999.30	\$ 36,381.96	\$ 18,031.41	\$ 13,847.13	\$ 12,499.65	\$ 18,190.98
Toy/Children's Superstore	864	1,000 SF GFA	\$ 21,357.00	\$ 16,401.00	\$ 14,805.00	\$ 21,546.00	\$ 10,678.50	\$ 8,200.50	\$ 7,402.50	\$ 10,773.00
Department Store	875	1,000 SF GFA	\$ 8,359.74	\$ 6,419.82	\$ 5,795.10	\$ 8,433.72	\$ 4,179.87	\$ 3,209.91	\$ 2,897.55	\$ 4,216.86
<b>SERVICES</b>										
Walk-In Bank	911	1,000 SF GFA	\$ 33,011.82	\$ 25,351.26	\$ 22,884.30	\$ 33,303.96	\$ 16,505.91	\$ 12,675.63	\$ 11,442.15	\$ 16,651.98
Drive-In Bank	912	Drive-in Lanes	\$ 80,058.24	\$ 61,480.32	\$ 55,497.60	\$ 80,766.72	\$ 40,029.12	\$ 30,740.16	\$ 27,748.80	\$ 40,383.36
Hair Salon	918	1,000 SF GLA	\$ 4,617.18	\$ 3,545.74	\$ 3,200.70	\$ 4,658.04	\$ 2,308.59	\$ 1,772.87	\$ 1,600.35	\$ 2,329.02

**11-14-6. Assessment of Impact Fees as a Condition of Development.**

No final plat for new development shall be released for recordation and no building permit shall be issued without the assessment of applicable impact fees pursuant to this Chapter. Except as otherwise provided in this Chapter, no building permit shall be issued until the owner has paid the applicable impact fees.

**11-14-7. 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 effect at the time of assessment. No specific 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.
- (C) For a new development which has received final plat approval on or after the effective date, assessment of impact fees shall occur at the time of recordation of the final plat.
- (D) 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 imposed are limited to the amount attributable to the additional service units.

**11-14-8. Credits Against Impact Fees.**

- (A) *General credit.* The City shall apply against assessed impact fees a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan. The maximum impact fees after application of this credit are identified in Section 11-14-5.
- (B) *Housing credit.* If a new development is a single-family home, a townhouse, or a duplex, the City shall apply against the impact fees for such new development a credit equal to 25 percent of the impact fees after the application of the credit described in (A) above. This subsection shall expire and be of no further force or effect on the fifth anniversary of the effective date.
- (C) *Roadway credit.* Any construction of, contributions to, or dedications of roadway facilities that are system-related facilities and that are agreed to or required by the City as a condition of development approval shall be credited against assessed roadway impact fees. To the extent that a credit under this subsection exceeds the roadway impact fees for service units attributable to an owner's new development, the credit shall be applied against the roadway impact fees for service units attributable to each other new development of the owner that is located on a tract of land that was contained in the same preliminary plat of the new development for which the credit was granted.

- (D) *Water credit.* Any construction of, contributions to, or dedications of water facilities that are system-related facilities and that are agreed to or required by the City as a condition of development approval shall be credited against assessed water impact fees. To the extent that a credit under this subsection exceeds the water impact fees for service units attributable to an owner's new development, the credit shall be applied against the water impact fees for service units attributable to each other new development of the owner that is located on a tract of land that was contained in the same preliminary plat of the new development for which the credit was granted.
- (E) *Wastewater credit.* Any construction of, contributions to, or dedications of wastewater facilities that are system-related facilities and that are agreed to or required by the City as a condition of development approval shall be credited against assessed wastewater impact fees. To the extent that a credit under this subsection exceeds the wastewater impact fees for service units attributable to an owner's new development, the credit shall be applied against the wastewater impact fees for service units attributable to each other new development of the owner that is located on a tract of land that was contained in the same preliminary plat of the new development for which the credit was granted.
- (F) *Credit by agreement.* The City and the owner of a new development may agree in writing that the owner may construct or finance system-related facilities and that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development. The City Manager is authorized to negotiate and execute such an agreement.
- (G) *No credit for rights-of-way or easements.* Rights-of-way and easements are not included in the study, and no credit 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.

**11-14-9. Collection of Impact Fees.**

- (A) Impact fees shall be collected at the time of issuance of a building permit.
- (B) For a new development that received final plat approval before the effective date:
  - (1) Impact fees may not be collected on any service unit for which a valid building permit is issued within one year after the effective date if the new development is not a single-family home, a townhouse, or a duplex; provided, however, that such a service unit shall be subject to the collection of impact fees upon the submission of a subsequent application for a building permit if the subsequent application is not submitted and approved within one year after the effective date.
  - (2) Impact fees may not be collected on any service unit for which a valid building permit is issued within two years after the effective date if the new development is a single-family home, a townhouse, or a duplex;

provided, however, that such a service unit shall be subject to the collection of impact fees upon the submission of a subsequent application for a building permit if the subsequent application is not submitted and approved within two years after the effective date.

**11-14-10. Refund for Affordable Housing.**

To the extent that the City collects an impact fee for a service unit that qualifies as affordable housing under 42 U.S.C. Section 12745, as amended, the City may refund the impact fee for such service unit following completion of construction. An owner who seeks a refund under this Section shall provide to the Director sufficient proof that the service unit qualifies as affordable housing under 42 U.S.C. Section 12745, as amended, before the City may issue the refund.

**11-14-11. Deposit; Interest; Expenditure of Funds.**

- (A) *Deposit of funds.* All funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.
- (B) *Interest.* Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under Chapter 395 of the Texas Local Government Code.
- (C) *Expenditure of funds.* Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by Chapter 395 of the Texas Local Government Code.

**11-14-12. Appeal Procedure; Remedies.**

- (A) *Decisions subject to appeal.* An owner may, in accordance with this Section, appeal the following decisions:
  - (1) The applicability of an impact fee to the owner's new development;
  - (2) The amount of an impact fee due;
  - (3) The availability of, the application of, or the amount of a credit against an impact fee due;
  - (4) The amount of an impact fee due in proportion to the benefit of the services for which the impact fee was assessed that are received by the new development; or
  - (5) The amount of any refund due.
- (B) *Notice of appeal.* Within 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. If the notice of appeal is accompanied by cash or a letter of credit issued by a financial institution that has an office for presentment located in in Midland, Texas, in an amount equal to the original determination of the impact fee due, the building permit associated with the matter being appealed may be issued while the appeal is pending.

(C) *Burden of proof.* The burden of proof shall be on the owner to demonstrate that the owner is entitled to relief.

(D) *Resolution of appeal by the City Manager.*

(1) Within 10 days of receipt of the notice of appeal, the City Manager shall issue a written decision granting relief, granting partial relief, or denying relief and shall send the decision to the owner by certified mail, return receipt requested, or by e-mail if the owner's e-mail address is provided on the notice of appeal or the building permit application that gave rise to the matter being appealed. The City Manager's written decision shall ask the owner to respond in writing within 10 days of the date of the written decision regarding whether the owner agrees or disagrees with the City Manager's decision.

(2) Upon issuing the written decision, the City Manager shall refer the appeal to the City Council for a hearing. The owner shall be provided written notice of the date, time, and location of the hearing.

(3) If prior to the City Council hearing the owner agrees in writing with the City Manager's written decision:

(a) the appeal shall be considered resolved;

(b) the City Manager's referral of the notice of appeal to the City Council for a hearing shall be withdrawn;

(c) to the extent that the City Manager's decision grants relief or partial relief to the owner, the City Manager shall ensure that the owner receives such relief or partial relief; and

(d) to the extent that the City Manager's decision requires the owner to pay an impact fee, the owner shall promptly pay the impact fee. The owner's failure to pay the impact fee within five business days after agreeing with the City Manager's decision shall serve as authority for the City to present the letter of credit to the financial institution for performance with no other or further notice or contact with the owner.

(E) *Consideration of appeal by City Council.*

(1) If the owner disagrees in writing with the City Manager's written decision or otherwise fails to agree in writing with the City Manager's written decision, the City Council shall hold a hearing to consider the appeal and shall act on the appeal within 60 days of the City Manager's receipt of the notice of appeal.

- (2) The City Council shall act on the appeal by granting relief, granting partial relief, or denying relief.
  - (3) To the extent that the City Council grants relief or partial relief to the owner, the City Manager shall ensure that the owner receives such relief or partial relief.
  - (4) 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. The owner's failure to pay the impact fee within five business days after the date of the City Council's action on the appeal shall serve as authority for the City to present the letter of credit to the financial institution for performance with no other or further notice or contact with the owner.
  - (5) The City Council's action on the appeal shall constitute the City's final decision on the matter appealed.
- (F) *Costs.* An owner shall bear all costs of the owner's appeal under this Section.

**11-14-13. Other Relief; Variance; Waiver.**

- (A) *Failure to perform a duty.*
  - (1) A person who has paid an impact fee or an owner of land on which an impact fee has been paid may submit to the City Manager a written request for the City Council to determine whether the City has failed to perform a duty imposed under Chapter 395 of the Texas Local Government Code within the prescribed period. The written request must state the nature of the unperformed duty and request that it be performed within 60 days after the date of the request.
  - (2) The City Council shall consider the request, and if the City Council finds that the duty is required under Chapter 395 of the Texas Local Government Code and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.
- (B) *Variance or waiver.* The City Council may grant a variance or waiver from any requirement of this Chapter, upon written request by an owner, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation or an unconstitutional taking of the property.

**SECTION THREE.** The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

**SECTION FOUR.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**SECTION FIVE.** The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2019; and passed to second reading on motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member \_\_\_\_\_, seconded by Council member \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2019, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2019.

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Jerry F. Morales, Mayor

ATTEST:

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Amy M. Turner, City Secretary

APPROVED AS TO CONTENT  
AND COMPLETENESS:

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Robert Patrick, Assistant City Manager

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Jose Ortiz, Engineering Services Director

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Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

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John Ohnemiller, City Attorney