

**CITY OF LAVON, TEXAS
ORDINANCE NO. 2019-06-05**

Pro Rata Fees; Sewer Main Extensions

AN ORDINANCE OF THE CITY OF LAVON, TEXAS, AMENDING CHAPTER 12, "UTILITIES", BY ADDING ARTICLE 12.07 TO BE ENTITLED "PRO RATA FEES, EXTENSION OF FACILITIES AND SEWER CONNECTION FEES", TO ADOPT RULES, REGULATIONS, PROCEDURES, RATES AND FEES FOR WASTEWATER UTILITY SERVICES PROVIDED BY THE CITY OF LAVON, INCLUDING THE ADOPTION OF PRO RATA FEES AND THE SUBSEQUENT REIMBURSEMENT TO DEVELOPERS FOR THEIR PRO RATA SHARE; PROVIDING FOR SEVERABILITY, SAVINGS AND REPEALING CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THE ORDINANCE.

WHEREAS, the City Council has reviewed and approved the procedure for Pro Rata Fees and extension of wastewater facilities.

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

SECTION 1. RECITALS:

The City Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. AMENDMENT:

The Code of Ordinances of the City of Lavon, Texas is hereby amended by the addition of Article 12.07, to be entitled "Pro Rata Fees, Extension of Facilities and Sewer Connection Fees" to read entirely as follows:

**ARTICLE 12.07. PRO RATA FEES, EXTENSION OF FACILITIES AND
SEWER CONNECTION FEES**

DIVISION 1. GENERAL PROVISIONS

Section 12.07.001 Definitions.

For the purposes of this article the following words, terms and phrases shall have the meaning given herein.

City means the City of Lavon, Texas.

Consumer means the residents and/or businesses utilizing and paying the city for wastewater services.

Developer means the person, business, partnership, corporation or association responsible for the development of a subdivision or lot and includes the property owner or subdivider.

Development means any man-made change to improved or unimproved real estate, including but not limited to construction of buildings or other structures, which results in demand for wastewater facilities and which requires connection to the city's wastewater system.

General design standards means the design specifications designated by the City of Lavon as standards for construction on all public infrastructure constructed in the city including the City of Lavon Standard Construction Details and NCTCOG "Standard Specifications for Public Works Construction".

Lot means a tract, plot or portion of a subdivision, addition or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or possession, or for development.

Oversize main means a wastewater main required to interconnect property being developed with the existing wastewater system which exceeds the standard size pipeline required for the developed property.

Pro rata means a charge made against an existing lot abutting a wastewater main that is the average per foot cost of the line, multiplied by the front footage of the land, and that is imposed to reimburse the original developer his cost of installing or paying for the main. means a charge made to a lot or tract requesting sanitary sewer service in an existing wastewater main that is a proportional amount of the actual costs of construction of said wastewater main that is payable to the original developer that funded said wastewater main.

Proportional amount means the portion, in percent, of the wastewater main Total Design Capacity utilized by the development requesting sanitary sewer service.

Property owner means the record titleholder of a premises connected to the city's wastewater system.

Subdivider has the meaning given that term in the city's subdivision regulations.

Subdivision has the meaning given that term in the city's subdivision regulations.

Total Design Capacity means the total amount of anticipated wastewater to be conveyed by a wastewater main (pressure or non-pressure) used in design of said wastewater main. This is used in determination of proportional amount.

Total Pipe Capacity means the calculated capacity of a pipeline. This is not used in determination of proportional amount.

Section 12.07.002 Enforcing payment of pro rata costs.

The city shall have the authority to enforce payment of costs by all legal means available including the disconnection of sanitary sewer service to a development or lot. Nothing in this article shall be deemed in any way to be an exclusive method of enforcing the payment of the pro rata cost against the consumers and property owners, and this article

shall not be deemed in any manner to be a waiver of the city's right to assess the property owners and/or consumers concerned for cost of the installation of wastewater mains and to fix and enforce liens against such property, all of which may be done as provided by ordinance in the manner prescribed by law.

DIVISION 2. WASTEWATER MAIN EXTENSIONS

Section 12.07.010 Basic policy.

- (a) *Connection to wastewater systems.* All subdivisions and each lot to be developed within the City of Lavon shall be served by an approved sewage collection and disposal system. No development shall be approved unless adequate assurances are provided that such development will be connected with the city's wastewater system. No building permits shall be issued until satisfactory evidence of such connection has been provided.
- (b) *Responsibility for installation and extensions.* The developer shall install all wastewater facilities needed to serve the development and shall extend all wastewater mains and appurtenances necessary to connect the development with the city's wastewater system. All initial costs of installation shall be borne by the developer subject to city participation in oversize costs pursuant to section 12.07.012 and subject to reimbursement from proceeds of pro rata fees pursuant to section 12.07.020. Requests for city extension of wastewater mains shall be as provided for in section 12.07.013.
- (c) *Condition of granting main extension.* Authority to extend wastewater mains to serve a proposed development shall be granted by the city only upon a determination by the city engineer that all facilities necessary to adequately serve the development are in place or will be in place prior to the issuance of building permits for structures developed on such land.
- (d) *Location of facilities.* The location of all wastewater mains necessary to serve a proposed development shall be in accordance with the city's master plan(s) for wastewater facilities and in accordance with the city's subdivision regulations and general design standards.
- (e) *Construction standards.* All wastewater facilities required by these regulations shall be designed and constructed in accordance with the requirements and specifications contained in the City of Lavon General Design Standards.
- (f) *Permanent lift stations.* Should a lift station be required by the city engineer to provide wastewater service to a subdivision or development that by reason of topography cannot be served by a gravity sanitary sewer system to the City of Lavon Wastewater Treatment Plant, the developer shall design and construct a permanent lift station and all appurtenances thereto at the developer's expense subject to reimbursement of pro rata fees pursuant to division 3. The lift station shall be designed and constructed for the entire drainage area as approved by the city engineer. Once the permanent lift station is constructed and operational and accepted by the City of Lavon, the city shall take ownership and operation as described in the city subdivision ordinance.

- (g) *Pro rata fees for adjacent mains.* When an existing wastewater main lies in a street, alley or easement in or adjacent to an area or tract of land to be subdivided, the developer shall pay all applicable pro rata fees pursuant to division 3 for the wastewater main prior to release of the engineering plans for the subdivision. When the proposed development is to be served by a lift station required under subsection (f), the developer shall pay all applicable pro rata fees for the station pursuant to division 3 prior to release of the engineering plans.

Section 12.07.011 Extension of wastewater mains for development.

Developers shall extend wastewater mains to and through the property that is to be subdivided or developed in accordance with the following procedures and minimum standards:

- (a) *Size of mains.* Wastewater mains shall be sized and designed in accordance with the City's Sanitary Sewer Master Plan.
- (b) *Extensions with property to be developed.* All wastewater mains shall be extended through and/or across the frontage of the property to be developed in streets, alleys, or in easements to the tract or addition in order to provide service to adjacent property where applicable.
- (c) *Acquisition of easements.* The developer must obtain all offsite easements which are necessary for extending wastewater mains to the property being developed. A metes and bounds description of the easements and a drawing of the easements must be submitted to the city engineer along with the proper legal documentation creating the easement. After approval of the metes and bounds description by the city engineer, the document will be returned to the developer for acquisition of the required signatures. The executed document and filing fees will be returned to the city administrator for filing with the county clerk.
- (d) *Agreement required.* Prior to extension of any facility for which there will be a city reimbursement, the developer shall execute an improvement agreement with the city that clearly defines the scope and details of the proposed extension and which contains the developer's agreement to abide by all regulations of the city and to deliver to the city clear and unencumbered title to all proposed improvements prior to the time of acceptance by the city. The agreement shall provide for security in a form of a payment bond by the developer or his contractor for proposed work and will require a release of liens prior to final acceptance by the city.

Section 12.07.012 Participation and reimbursement by city in the cost of oversize wastewater mains.

- (a) *City participation policy.* The city may participate in the reasonable construction costs of oversize wastewater mains and appurtenances thereto that exceed eight (8) inches in diameter. The developer initially shall be responsible for the entire cost of the oversize main.

- (b) *No funds available.* In no event will the city be required to participate in the costs of oversize mains pursuant to this section if there are no funds available for such purposes.
- (c) *Participation and reimbursement requests.* A request for city participation authorized by subsection (a) and (b) hereof shall be initiated through the submission of an application for participation by the developer prior to the initiation of construction. The application shall be accompanied by engineering drawings approved by the city engineering division showing the reimbursable items, a copy of estimated costs for construction, final quantities, oversize calculations for all reimbursable items, performance bond and a project location map.
- (d) *City reimbursement.* If the request for city participation is approved by the city council following dedication and acceptance of a facility or appurtenances in which it has agreed to participate, the city shall refund the costs of oversizing such facility in accordance with the following procedures and standards.
 - (2) *Oversize cost determination.* The extent of the city's participation in the costs of oversized mains shall be determined by comparing costs computed by the following two (2) methods:
 - a. *Method 1.* The developer shall take at least three (3) bids on installation of a system using diameter main required for the development and the larger size that will actually be installed. Copies of the bids, tabulations and figures shall be submitted to the city engineer. Calculations shall delineate the total cost for installation of the oversize mains with appurtenances, along with the cost for installing the required diameter mains with appurtenances, with the differences noted as participation by the city.
 - b. *Method 2.* The city engineer shall establish unit prices for similar types of construction done in the previous twelve (12) months. These unit prices shall establish costs based upon estimates obtained on similar projects within the last twelve (12) months or base unit costs used to determine the maximum difference in cost between the required diameter main size and the cost of oversize mains to be installed. The unit prices shall be incorporated into this section as if fully set forth herein and shall be used to determine the city's participation.
 - c. *City engineer's option.* The city engineer shall have the option to establish the method in subsection b. whenever he considers the results of the method in subsection a. to be unreasonable or whenever the developer fails to submit the proper information as required.
 - d. *Engineering costs.* The city shall pay a maximum of six (6) percent of the city's cost for engineering fees that includes surveying, construction staking and supervision.
 - (3) *Exception to city participation.* The city will not participate in the cost of an oversized main if the development requires a main equal to the line constructed to serve the development.

Section 12.07.013 Extension of mains by city.

- (a) *Extension to serve development.* The city may, but shall not be required to, extend a wastewater main to serve a development in lieu of installation by the developer subject to the following standards and procedures:
 - (1) *Request by developer.* The developer may petition the city to extend a wastewater main to serve the development in lieu of the developer constructing the facilities.
 - (2) *Criteria.* If the city agrees to extend the wastewater main, the city's procedures for competitive bidding and award of contract must be followed. The developer shall execute an improvement agreement with the city prior to the initiation of construction.
 - (3) *Condition of extension.* As a condition of granting the developer's request to extend a wastewater main, the developer shall deposit cash in an amount equal to one hundred (100) percent of the projected costs of the extension, less the cost of the city's oversize participation if applicable, together with easements required by subsection 12.07.011 (c).
 - (4) *Reimbursement from pro rata fees.* The developer shall be entitled to reimbursement from the proceeds of pro rata fees established for the main or mains serving the development pursuant to division 3.

Section 12.07.014 Health and safety extensions to serve individual lots.

For paramount purposes of health and safety, the city may extend a wastewater main to individual residential lots. In such cases, each individual lot owner shall be responsible for a pro rata share of the cost of such main serving the lot, as determined by the city council.

DIVISION 3. PRO RATA FEES

Section 12.07.020 Pro rata fees to be established.

- (a) *Nature of fee.* A charge known as a "pro rata fee" shall be imposed against all undeveloped property abutting an existing wastewater main or for undeveloped property within the drainage area of a permanent lift station or sanitary sewer trunk main for which such fee has been established pursuant to this division, as a condition of connection to such main or lift station, for the purpose of reimbursing the developer who previously installed or paid for the main or lift station.
- (b) *Amount of fee – wastewater main.* The pro rata fee shall be established for each side of the main to which connections are to be made. The fee for each side shall be equivalent to the user's proportionate share of the system, together with all appurtenances, based upon the user's demand and/or verified costs pursuant to section 12.07.021 for that length of the system being utilized by the property being charged.
- (c) *Amount of fee – lift station.* The pro rata fee shall be established for users of a permanent lift station. The fee shall be equivalent to the user's proportionate share of the lift station system, together with all appurtenances, based upon the user's demand and/or verified costs pursuant to section 12.07.021 for that area of the system being utilized by the property being charged.

Section 12.07.021 Procedure for establishing pro rata fees.

- (a) *Request for pro rata fees.* Prior to final acceptance of wastewater main improvements by a developer, the developer shall submit a written request to the city administrator stating whether a pro rata fee will or will not be requested to be established for the main that the developer installed.
- (b) *Submittal requirements.* The request to establish a pro rata fee shall be on a pro rata contract form provided by the city. The request shall include a copy of the actual contract with unit prices. The request must identify the cost of the main including valves, fittings, manholes and other appurtenances which are determined necessary for the construction of the line.
- (c) *Verification of costs by city engineer.* The city engineer shall verify the developer's calculations for the pro rata reimbursement. In the event of a discrepancy, the city engineer shall establish the cost for the pro rata fee based upon verifiable costs.
- (d) *Reimbursement amount.* The maximum amount for which a developer may be reimbursed from the proceeds of pro rata fees for the main installed shall not exceed the costs determined by the city engineer under subsection (c) plus engineering fees, calculated at the rate of six (6) percent of the verified construction cost.
- (e) *Pro rata for permanent lift station or sanitary sewer trunk main.* In the event a permanent lift station or sanitary sewer trunk main that exceeds the area necessary to serve a development is required pursuant to section 12.07.010 and section 12.07.011, the developer must submit a written request for establishment of a pro rata fee for the permanent lift station or sanitary sewer trunk main which shall be on a cost per acre basis to be eligible for pro rata. The costs eligible for reimbursement shall include the lift station, force main and other appurtenances or sanitary sewer trunk main, and other items included in subsection (b). The city engineer shall be responsible for approving the cost submitted by the developer for the drainage area served by the facility, as provided in subsection (c).

Section 12.07.022 Payment of pro rata fees.

- (a) *Obligation to pay fee.* The pro rata fee shall become payable prior to the issuance of a building permit except that for a single-family residential development the pro rata fee shall become payable prior to approval of engineering plans or at an appropriate subsequent date as determined by the city engineer.
- (b) *Calculation of fee.* The amount of the pro rata fee shall be calculated by the city engineer by multiplying the unit cost determined in sections 12.07.020 and 12.07.021 by the number of linear feet of that portion of the property boundary of a lot which abuts a street, alley or easement containing a wastewater main for which pro rata fees have been established, or the user's proportionate per acre fee multiplied by the number of acres in the development.

Section 12.07.023 Pro rata fee account.

A pro rata fee account is hereby established. The city shall deposit all pro rata fees collected pursuant to section 12.07.021 and section 12.07.022 into such account. Expenditures from such account shall be earmarked solely for reimbursement of developers for the reasonable costs of installing wastewater mains for which pro rata fees have been established pursuant to section 12.07.021 and section 12.07.022.

Section 12.07.024 Reimbursement for wastewater main extensions.

- (a) *Reimbursement time limit.* For a period of ten (10) years after dedication to and acceptance by the city of the completed facility, the developer shall be entitled to reimbursement from the proceeds of the pro rata fees established pursuant to section 12.07.021 up to the total cost of the extensions. Payment shall be from the pro rata fee account. The city shall make reimbursements within one hundred eighty (180) days after receipt of the pro rata fee.
- (b) *Unclaimed funds.* If the city is unable to reimburse the developer who installed the main following reasonable attempts to locate such developer, the city shall refund all fees which remain unclaimed ten (10) years following the date of acceptance of the wastewater main, together with interest accrued, to the depositor of the fee. If such depositor cannot be located, the pro rata fees shall be transferred to the city sewer fund for expenditure.

Section 12.07.025 City collection fee.

On all pro rata fees reimbursed to the developer, the city shall deduct two (2) percent of the amount collected plus one hundred dollars (\$100.00) as a collection fee. The city shall deposit collection fees into the city sewer fund for expenditure.

DIVISION 4. SERVICE CONNECTION

Section 12.07.030 Sanitary sewer.

- (a) *Installation of sanitary sewer taps.* The developer shall install all sanitary sewer taps in the streets, alleys and easements for new residential and all nonresidential properties. Such taps shall be installed from the main to the property line when the sewer main is located in an alley or street right-of-way; if the sewer main is in an easement, the service connection shall be installed from the sewer main to the easement boundary line. The developer responsible for a structure on a lot shall make final connection from the yard line to the service line. The city shall charge for each sewer tap the rates adopted by the City Council in the City's Fee Schedule, as amended.
- (b) *Service line.* The property owner shall install a service line at his expense to the city's lateral in accordance with regulations and subject to the inspection of the city and shall thereafter be responsible for normal maintenance of said service line from the house or building to the property line.
- (c) *Separate connections required.* Each house or building within the city shall be served by a separate and independent sanitary sewer connection. Where the service laterals

have been installed by a developer to serve a lot or tract of land, said lot or tract of land shall be exempt from a connection charge.

- (d) *Charges outside the city.* Water service connection charges for property within corporate limits of the city shall be determined and set forth in a specific agreement with the governmental entity involved.

Section 12.07.031 Refunding procedure.

All refunds provided for in this division shall be made within one hundred eighty (180) days of determination. The city shall not be liable for payment of interest on any deposits or refunds provided for in this division.

SECTION 3. SAVINGS/REPEALING CLAUSE:

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4. SEVERABILITY:

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Lavon hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences clauses and phrases be declared unconstitutional or invalid.

SECTION 5. EFFECTIVE DATE:

This Ordinance shall become effective immediately upon its adoption and its publication as required by law.


SECTION 6. OPEN MEETINGS:

That it is hereby found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Article 551.041, Texas Government Code.

PASSED AND APPROVED by the City Council of the City of Lavon,
Texas this 16th day of April 2019.


Vicki Sanson
Mayor

ATTEST:



Kim Dobbs
City Administrator/ City Secretary

