

**ORDINANCE NO. 329**

**AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS, AMENDING THE CITY'S LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, AND IMPACT FEES FOR WATER AND WASTEWATER FACILITIES; DEFINING CERTAIN TERMS; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF SUCH IMPACT FEES; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; REPEALING CITY OF MAGNOLIA ORDINANCE NO. 262, PASSED AND APPROVED THE 23RD DAY OF OCTOBER, 1998, AND ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.**

\* \* \* \* \*

**WHEREAS**, the City Council of the City of Magnolia, Texas (the "City") has reviewed and evaluated its land use assumptions, capital improvements plan, and impact fees for water and wastewater facilities in the time and manner required by law; and

**WHEREAS**, the City Council has employed qualified professionals to prepare updates to its land use assumptions, capital improvements plan, and impact fees for water and wastewater facilities for the City, and each was considered by the City's advisory committee, and such assumptions, plan, and proposed fees were filed with the City, along with the advisory committee's comments; and

**WHEREAS**, the City Council has called, given notice of, and conducted a public hearing on such amendments, in the time and manner required by law; and

**WHEREAS**, the City Council now desires to adopt such land use assumptions, the capital improvement plan, and such impact fees for water and wastewater facilities, all in accordance with said Chapter 395, Texas Local Government Code; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:**

**Section 1.**     **Findings.**    The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

**Section 2.**     **Title.**    This Ordinance shall be known and cited as the "City of Magnolia Water and Wastewater Impact Fee Ordinance."

**Section 3.**     **Purpose.**    This Ordinance is intended to impose and levy water and wastewater impact fees on new development, as established in this Ordinance, in order to finance public facilities, the demand for which is generated by new development in the designated service areas.

**Section 4.**     **Authorization.**    The City is authorized to enact this Ordinance in accordance with Chapter 395, Texas Local Government Code, which authorizes cities to enact or impose impact fees (capital recovery fees) on land within their corporate boundaries or extraterritorial jurisdictions, as charges or assessments imposed 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 such new development.

**Section 5.**     **Land Use Assumptions.**    The land use assumptions included in the "City of Magnolia Infrastructure Master Plan and Capital Recovery Fee Determination 2003 to 2013," prepared by PBS&J Engineers, Inc., same being attached hereto as Exhibit "A" and made a part hereof for all purposes, are hereby in all things approved and adopted.

**Section 6.**     **Capital Improvements Plan.**    The capital improvements plan included in the "City of Magnolia Infrastructure Master Plan and Capital Recovery Fee Determination 2003 to 2013," prepared by PBS&J Engineers, Inc., attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby in all things approved and adopted.

**Section 7.**     **Impact Fees.**     The impact fees set forth in the “City of Magnolia Infrastructure Master Plan and Capital Recovery Fee Determination 2003 to 2013,” prepared by PBS&J Engineers, Inc., attached hereto and made a part hereof for all purposes, are hereby levied against new non-exempt development on lands located within the corporate boundaries of the City .

**Section 8.**     **Assessment of Impact Fees.**

A.     Assessment of impact fees for new development shall be made as follows:

1.     For land which is unplatted at the time of application for a building permit or utility connection, or for a new development which has received final plat approval prior to the effective date of this Ordinance, and for which no replatting is required pursuant to the City’s subdivision regulations prior to development, assessment shall occur at the time application is made for the building permit or utility connection, whichever occurs first, and shall be the amount of the maximum impact fee per service unit applicable to the respective service area(s) in which the development is located.

2.     For new developments that have filed applications for approval pursuant to the City’s subdivision regulations after the effective date of this Ordinance, or for which replatting results in an increase in the number of service units after such date, assessment shall be at the time of final plat approval, and shall be the amount of the maximum impact fee per service unit applicable to the respective service area(s) in which the development is located.

B.     Following initial assessment of impact fees for a new development pursuant to subsection A, the amount of the maximum impact fee per service unit for any such development may not be increased unless the owner proposes to change the approved development and

increase the number of service units, in which case the impact fee shall be reassessed and the impact fee then in effect shall be imposed for such additional service units.

C. Following the lapse or expiration of approval of a new development, a new assessment shall be performed at the time a new application for such development is filed.

**Section 9.     Collection of Impact Fees.**

A. For residential developments platted after the effective date of this Ordinance, the impact fees due shall be collected prior to the recording of the subdivision plat.

B. For all other new developments, the impact fees due shall be collected at the time of application for a building permit, or at the time of application for a utility connection, whichever occurs first. If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees due shall be computed using the impact fee then in effect, and previous payments of impact fees shall be credited against the new fees due.

**Section 10.     Establishment of Accounts.**

A. The City shall establish an account to which interest is allocated for each type of capital facility for which an impact fee is imposed pursuant to this Ordinance. Each impact fee collected within the service area shall be deposited in such account.

B. Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in Section 11 below.

C. The City shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in Section

11. Disbursement of funds shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance.

D. The City shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended within the service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

**Section 11.** Use of Proceeds of Impact Fee Accounts. The impact fees collected pursuant to this Ordinance may be used to finance or to recoup the costs of any capital improvements or facility expansion identified in the applicable capital improvements plan for the service area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees). Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes, or other obligations issued by or on behalf of the City to finance such capital improvements or facility expansion. Impact fees also may be used to pay fees actually contracted to be paid to an independent qualified engineer or financial consultant for preparation of or updating the impact fee capital improvements plan.

**Section 12.** Refunds and Rebates.

A. Upon application, any impact fee, or portion thereof, collected pursuant to this Ordinance, which has not been expended within the service area within ten (10) years from the date of payment, shall be refunded to the record owner of the property for which the impact fee was paid or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the

statutory rate as set forth in Section 302.002, Finance Code, or its successor statute. An impact fee shall be considered expended on a first in, first out basis.

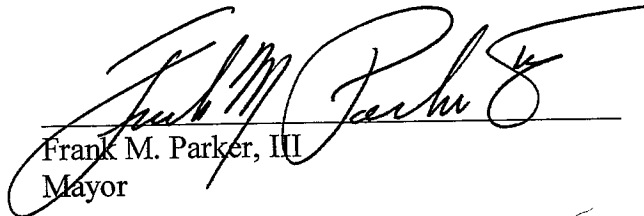
B. Upon application, any impact fee collected pursuant to this Ordinance shall be refunded if:

1. Existing service is available and service is denied; or
2. Service was not available when the fee was collected and the City has failed to commence construction of facilities to provide service within two (2) years of fee payment; or
3. Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event later than five (5) years from the date of fee payment.

**Section 13.** **Repeal Clause.** City of Magnolia Ordinance No. 262, passed and approved the 23rd day of October, 1998, is hereby repealed. All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 14.** **Severability Clause.** In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 14<sup>TH</sup> day of October, 2003.



Frank M. Parker, III  
Mayor

ATTEST:



Jane H. Miller  
City Secretary