

ORDINANCE NO. 2023- D9-1074

TONTITOWN, WASHINGTON COUNTY, ARKANSAS

**AN ORDINANCE TO ENACT WATER AND WASTEWATER IMPACT FEES; ADOPTING RULES AND REGULATIONS RELATED THERETO; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Tontitown operates a water and wastewater system for the citizens of the City of Tontitown and for certain properties outside of the municipal limits of the City of Tontitown;

**WHEREAS**, the City of Tontitown is experiencing substantial growth in population, business and industry which has put a strain on existing water and wastewater services and facilities and has created a need for the expansion of such water and wastewater services and facilities;

**WHEREAS**, Ark. Code. Ann. § 14-56-103 allows a city to enact development impact fees upon or against a development in order to generate revenue for funding for recouping expenditures of the municipality that are reasonably attributable to the use and occupancy of the development;

**WHEREAS**, the City Council of the City of Tontitown finds that the cost of increasing the capacity of existing wastewater distribution systems within the City of Tontitown to accommodate the anticipated growth in the City of Tontitown should be borne by those developments that make such increases necessary; and

**WHEREAS**, the City Council of the City of Tontitown finds that such development impact fees are necessary for the health, safety and welfare of the citizens of the City of Tontitown as well as for other reasons set forth in this Ordinance.

**NOW THEREFORE, BE IT ENACTED**, by the City Council of the City of Tontitown, as follows:

**Section 1. Legislative Findings.**

The City Council of Tontitown, Arkansas, finds, determines and declares that:

- a) System expansion required. The protection of the health, safety, and general welfare of the citizens of the City of Tontitown requires that the City's water and wastewater facilities be expanded and improved to accommodate growth and development with the city.
- b) System demand. New residential and nonresidential development imposes increased and excessive demands upon the existing water and wastewater facilities and often overburdens the existing system facilities. Provided, further, new development is

expected to continue, and will place ever-increasing demands on the city to provide these facilities to serve new development.

c) Revenues. Revenues generated from new development often does not generate sufficient funds to provide the necessary water and wastewater facilities to accommodate new development; therefore, the creation of an equitable local water and wastewater impact fee system would enable the city to impose a proportionate share of the costs of the needed improvements to capital facilities to accommodate new development.

d) Study conducted. In order to implement equitable local impact fees, the city caused to be a prepared Water and Wastewater Impact Fee Study with a Capital Plan contained therein, hereinafter termed "Technical Report." Said Technical Report is incorporated herein by reference and sets forth reasonable methodologies and analysis for determining the impacts of various types of development on the City's system capital facilities, and for determining the costs of acquiring the improvements necessary to meet the demands for such services created by new development.

e) Standards established. The City hereby establishes as City standards the assumptions and level of service standards in the study as part of its current plans for future expansions to the City's system capital facilities.

f) Impact fee use limited. The impact fees described in this ordinance are based on the study, and do not exceed the costs of improvements to serve new development that will pay the impact fees. This is intended to be a local improvement impact fee as to water and wastewater.

g) Benefit. Those capital water and wastewater facilities/improvements listed in the Technical Report will benefit all new development that depends on City Services, and it is therefore appropriate to treat the entire system as a single service area for purposes of calculating, collecting, and spending the local government impact fees as to water and wastewater.

h) Impact fee relationship. There is both a rational nexus and rough proportionality between the development impacts created by each type of development covered by this ordinance and the impact fees that such development will be required to pay for water and wastewater.

i) Impact fee purpose. This ordinance creates a system by which water and wastewater impact fees paid by new development will be used to finance, defray or reimburse all or a portion of the costs incurred by the City to construct improvements for system's capital water and wastewater facilities in ways that benefit the development that paid each fee within a reasonable period of time after the fee is paid.

## **Section 2. Intent.**



a) Capital improvement plan. This ordinance is adopted to assist in the implementation of the Capital Improvement Plan for water and wastewater as set forth in the Technical Report, which plan was reviewed and approved by the City Council and used in the independent fee calculation study. To that end, the intent of this ordinance is to ensure that new development bears a proportionate share of the costs of improvements to capital wastewater facilities; to ensure that such proportionate share does not exceed the costs of improvements for capital wastewater facilities required to accommodate new development; and to ensure that funds collected from new development are actually used for improvements for capital wastewater facilities that benefit such new development.

b) Impact Fee purpose. It is further intent of this ordinance that new development pays for its fair share of the costs of local improvements for capital water and wastewater facilities required to accommodate new development through imposition of impact fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the City to construct improvements to the City capital water and wastewater facilities that serve or benefit such new development. It is not the intent of this ordinance to collect any money from any new development in excess of the actual amount necessary to offset new demands for capital water and wastewater facilities.

c) Funds restricted. It is not the intent of this ordinance that any monies collected from any local impact fee deposited in the wastewater impact fee trust ever be commingled with monies from any other city trust funds or account, or ever be used for a type of facility or equipment different from that for which the fees are paid, or are ever used to replace or rehabilitate existing improvements.

### **Section 3. Water and Waste Water Impact Fee Imposed.**

Water and Wastewater Impact Fees are hereby adopted with such regulations as set forth in the attached Exhibit "A" and which shall be codified as a new § 155.03 Water and Wastewater Impact Fees section in the Tontitown Municipal Code.

### **Section 4. Penalty.**

The penalty for violation of this ordinance shall, upon conviction in the Tontitown District Court, or any other court of competent jurisdiction, be such fines and penalties as established by the general penalty clause for the Tontitown Municipal Code as may now or hereafter be enacted by the City Council.

### **Section 5. Declaration of Emergency.**

It is hereby found and determined that there is an immediate need to institute development impact fees for the City of Tontitown water and wastewater system and facilities in accordance with Ark. Code Ann. § 14-56-103 as amended, in order to address and accommodate the substantial residential, commercial and industrial growth experienced by the City of Tontitown and in order to offset costs to the city's water and wastewater system which is attributable to the new development. Therefore, an

emergency is declared to exist, and this Ordinance being immediately necessary for the above-stated purposes, shall become effective immediately from and after the date of its passage, to take effect as provided by the terms of this Ordinance.

**PASSED AND APPROVED** this 19 day of Sept, 2023.

**APPROVED:**

Angela Russell  
Angela Russell, Mayor

**ATTEST:**

Rhonda Ardemagni  
Rhonda Ardemagni, City Clerk-Treasurer  
(SEAL)



## EXHIBIT A

### § 155.03 WATER AND WASTEWATER IMPACT FEES.

The provisions of this section shall apply to all of the territory within the jurisdiction of the City of Tontitown and areas outside of the City's jurisdiction where the City provides water and wastewater service.

#### (A) Definitions

When used in this section, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural.

“City” means the City of Tontitown, Arkansas or its authorized representative.

“City Council” means the governing body of the incorporated City of Tontitown.

“Eligible Improvements” means improvements that enhance the capacity of the water or wastewater system, including planning, engineering, acquisition, construction, and interest on debt incurred to finance capital improvements, but does not include the operation, maintenance, replacement, or repair of existing improvements. Eligible improvements do not include water distribution lines of less than 12 inches in diameter, wastewater gravity lines of less than 12 inches in diameter, or wastewater force mains of less than 6 inches in diameter. A replacement of an existing improvement or facility with a new improvement or facility of greater capacity shall be partially eligible based on the increase in capacity.

“Technical Report” means the “City of Tontitown Water and Wastewater Impact Fee Study” prepared by Duncan Associates in March 2023 and adopted by the City, or a subsequent similar study, which serves as the basis for the calculation of the water and wastewater impact fees and is hereby adopted and incorporated by reference.

“Wastewater System” means the set of eligible wastewater collection facilities owned and operated by the City.

“Water System” means the set of eligible water distribution facilities owned and operated by the City.

#### (B) Fee Assessment and Collection

(1) No water meter shall be installed or wastewater connection made until the applicable water and wastewater impact fees have been paid based on the size of the water meter according to the following schedule. These represent 25 percent of the maximum fees calculated in the Technical Report. The fees will be adjusted annually to account for cost inflation, as provided in subsection (B)(2).

<u>Meter Size</u>	<u>Water</u>	<u>Wastewater</u>
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5/8" x 3/4"	\$ 1160	\$ 872
1"	\$ 3480	\$ 2615
2"	\$ 11600	\$ 8715

(2) To account for cost inflation, effective July 1 of each year following the year of adoption, the impact fees shall be multiplied by the ratio of the *Engineering News-Record's* Construction Cost Index for the most recent month for which it is available to the index for the same month from the previous year. If the cited index is no longer available, an equivalent index shall be used. The calculation and assessment of the inflation-adjusted fees shall be done administratively, and shall not require approval by the City Council.

(3) In the event of the replacement of an existing water meter with a larger one, the applicable impact fee shall be the difference between the fees for the two meter sizes.

(4) In the event that the proposed water meter size is not shown in the schedule set forth in subsection (B)(1) above, the City shall calculate the appropriate impact fee using the same methodology used in the Technical Report.

(5) No wastewater impact fee shall be assessed for meters that are dedicated exclusively for irrigation purposes.

(6) The amount of the fees due will be net of the value of available credits pursuant to subsection (E) requested at time of payment.

(C) Accounting and Expenditure of Funds

(1) For both water and wastewater, a special interest-bearing impact fee account that is distinct from the general fund of the City is created, and the impact fees received shall be deposited in the special account, along with accrued interest. No other revenues or funds shall be deposited in the impact fee account.

(2) The funds in the water and wastewater impact fee accounts shall be used only for the following purposes:

(a) to acquire or construct Eligible Improvements;

(b) to pay debt service on the portion of any current or future general obligation bond or revenue bond used to finance Eligible Improvements and attributable to excess capacity available to serve new water or wastewater customers;

(c) to pay fees to an independent qualified professional, who is not an employee of the City, for the preparation or updating of the Technical Report; or

(d) to make refunds pursuant to subsection (D).

(3) The City shall maintain accurate records of each impact fee paid, including the name of the person paying the fee, the tax parcel number and address for which the fee was paid, the date of payment, and the amount received in payment.

(D) Refunds

(1) Fees not spent within seven (7) years after the date on which the fee was paid shall be eligible for refund according to the following provisions. Money in each impact fee account shall be considered to be spent in the order collected on a first-in/first-out basis.

(2) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(3) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date on which the refund becomes due.

(4) The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

(5) The refund shall be made on a pro rata basis.

(6) The refund shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.

(E) Credits

(1) An applicant may obtain credit for up to 100 percent of impact fees otherwise due or to become due by offering to dedicate land and/or construct Eligible Improvements. To receive a credit, applicants must file an impact fee credit application and provide required information and documentation as required by this section or as determined necessary by the City. Any claim to utilize credits must be made no later than the time of payment of the impact fee. Credits shall expire if not used within seven (7) years of the date of creation. Credits shall only be available for use against fees otherwise due for the development project for which the dedication or improvement is made, and shall not be transferrable to another development project, unless otherwise provided in the credit agreement.

(2) An offer to make capital improvements or dedicate land in lieu of paying impact fees shall be made in an application filed with the City identifying the capital improvements and/or land dedications for which credits are requested. The applicant shall specify the dollar amount of the credit requested. The credit claimed by the applicant as the basis for the credit requested shall be no more than fair market value as determined by the City. It is the obligation of the applicant to submit documentation to the satisfaction of the City that supports the amount of the credit requested and indicates the basis on which the amount requested was calculated.

(3) If the City accepts such an offer, the credit shall be determined and provided in the following manner.

(a) The City shall determine credits for the dedication of land on the following values: 115 percent of the most recent assessed value for purposes of property taxation; or at the option of the applicant, by fair market value determined by the City, based on an appraisal accepted by the City.

(b) The City shall determine credits for the construction of a capital improvement from the engineering criteria and construction cost estimates as provided by the applicant and accepted by the City.

(4) Once the City has made a credit determination, a credit agreement shall be provided to the applicant. The applicant shall sign and date the agreement and return the document to the City, which shall be binding on the applicant as to the terms and conditions of the credit.

(5) Once the amount and terms of the credit are determined, credits for land dedication will be provided following delivery of a fully executed deed or other appropriate conveyance document, and acceptance of the dedication by the City Council. Credits for construction will be made upon completion in compliance with all applicable local state and federal design specifications, laws and regulations and acceptance by the City Council.

(6) Any person who offers land and/or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question and pay the full impact fees required by this section.

#### (G) Appeals

Any determination made by an official of the City charged with the administration of any part of this ordinance may be appealed to the City Council by filing with the Clerk within fifteen (15) days of the date of the determination being appealed: (1) a written notice of appeal on a form provided by the City, (2) a written explanation of why the appellant feels that a determination was in error, and (3) an appeal fee established by the City, if any. The City Council shall promptly fix a time and place for hearing the appeal, and the City Clerk or designee shall mail notice of the hearing to the appellant at the address given in the notice of appeal by first-class mail postage prepaid. The hearing shall be conducted at the time and place stated in such notice given by the City Council. The determination of the City Council shall be the final administrative determination of the City.

#### (H) Effective Date

The provisions of this section shall be effective on and after September 6, 2023.