

RULES AND REGULATIONS NO. 16

RULES AND REGULATIONS ADMINISTRATION OF WATER AND WASTEWATER IMPACT FEES

PURSUANT TO THE AUTHORITY GRANTED TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, TRUSTEES, UNDER TEXAS GOVERNMENT CODE SECTION 1502.070, CITY ORDINANCE 752, PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS MAY 22, 1952 AND CHAPTER 15.12 WATER AND SEWER SYSTEM OF THE EL PASO MUNICIPAL CODE; BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CITY OF EL PASO, THAT THE FOLLOWING RULES AND REGULATIONS NO. 16 CONCERNING WATER AND WASTEWATER IMPACT FEES ARE ESTABLISHED AND EFFECTIVE.

SECTION I GENERAL

The City of El Paso, El Paso Municipal Code Section 15.12.010 sets out that the El Paso Water Utilities Public Service Board is authorized to promulgate Rules and Regulations on all subjects relevant to the operation of the City's water and sewer systems, which Rules and Regulations shall have like effect as if adopted by ordinance.

The City of El Paso, in accordance with Texas Local Government Code Chapter 395, duly established and implemented Impact Fees for water and wastewater facilities by City of El Paso Ordinance No. 017113, Impact Fee Ordinance, passed and approved May 12, 2009 amending Title 15 (Public Services) of the El Paso City Code. The Ordinance adopted impact fees for water and wastewater facilities, established impact fee service areas, provided for accounts for impact fees and use of funds in the accounts, provided for appeals and other requirements of State Law.

The purpose of Impact Fees is to assure the provision of adequate water and wastewater to serve new development in the City by requiring each new development to contribute payments towards its share of the costs of facilities necessitated by and attributable to the new development.

The Capital Improvements Advisory Committee (CIAC) shall have those duties and responsibilities as established under Chapter 2.80 of the El Paso City Code and Chapter 395 of the Texas Local Government Code. Administrative support shall be with the City's Development Services Department or as may be delegated by the City Manager. The El Paso Water Utilities will provide requested information and recommendations to assist the CIAC.

SECTION II. ADOPTION OF IMPACT FEES

The El Paso Water Utilities Public Service Board, pursuant to Chapter 395 of the Texas Local Government Code and City of El Paso Ordinance No. 017113, Impact Fee Ordinance, hereby adopts the City's Impact Fee Ordinance as its Rules & Regulations No. 16. This Rule on Impact Fees for water and wastewater facilities, identifies impact fee service areas, provides

for the assessment and collection of impact fees, provides for accounts for the fees and use of funds in the accounts and adopts other provisions as required by State law, all as may be amended by duly authorized authority from time to time.

Should there be any conflict between this Rule and Regulation No. 16 or any of its provisions and City Ordinance Number 017113, Impact Fee Ordinance, the City Ordinance shall be controlling.

SECTION III. DEFINITIONS.

The following definitions apply to this Chapter:

A. Advisory committee:

The capital improvements advisory committee on water and wastewater impact fees designated and appointed by the City Council in accordance with Local Government Code Chapter 395.

B. Capital improvement:

A water supply, treatment and distribution facilities or a wastewater collection and treatment facilities, with a life expectancy of three or more years, to be owned and operated by or on behalf of the City whether or not located in the service area.

C. Capital improvements plan:

The plan adopted by the City, as may be amended from time to time, that identifies water and wastewater capital improvements or facility expansions and their associated costs which are necessitated by and attributable to new development and will be financed in whole or in part through water and wastewater impact fees.

D. Facility expansion:

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.

E. Impact fee:

A charge or assessment imposed by the City 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 includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition to fund capital improvements in the capital improvements plan. 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 wastewater mains or lines extended by the City.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2) of the Texas Local Government Code, and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

F. Land use assumptions:

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 as may be amended.

G. New development:

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 and is located within a service area.

H. Service area:

The area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, Texas Local Government Code, of the City to be served by the capital improvements or facilities expansions specified in the capital improvements plan. The service area does include all or part of the land within the City and its extraterritorial jurisdiction.

I. Service unit:

A standardized measure or 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 subdivision in which the individual unit of development is located during the previous 10 years. For purposes of compliance with the impact fee statute and this ordinance, a service unit represents the water and wastewater flows in gallons per day (gpd) for a single family residential or equivalent unit with a water meter smaller than 1-inch.

The definitions as set forth in Ordinance No. 017113, Impact Fee Ordinance are hereby adopted and incorporated herein by this reference for all purposes.

SECTION IV. ADMINISTRATION AND ACCOUNTING.

- A. The El Paso Water Utilities Public Service Board shall administer the Impact Fee Ordinance. El Paso Water Utilities Public Service Board shall establish adequate financial and accounting controls to ensure that fees disbursed from an account

established under the Impact Fee Ordinance are utilized solely for the purpose authorized under Chapter 395, Texas Local Government Code.

B. Accounts and funds.

All funds collected shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the impact fee was adopted. Interest earned on impact fee accounts are considered funds of the account on which it is earned. Impact fee funds, to include interest generated from impact fee accounts, may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as otherwise authorized by Chapter 395, Texas Local Government Code. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

C. The El Paso Water Utilities shall maintain and keep adequate financial records for each account to show the source and disbursement of all revenues, which shall account for all monies received and ensure that the disbursement of funds from each account shall be used solely and exclusive for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as otherwise authorized by Chapter 395, Texas Local Government Code.

D. The El Paso Water Utilities shall ensure that any fee collected under the Impact Fee Ordinance is expended within a reasonable period of time but not to exceed ten (10) years from the date the fee is deposited into the impact fee account.

E. Other conditions of service not in conflict with this Rule and Regulation are applicable including Rules and Regulations No. 1 and 11.

SECTION V. LAND USE ASSUMPTIONS AND SERVICE AREA.

For purposes of the Impact Fees, the Land Use Assumptions and Service Areas are those as adopted by the El Paso City Council on March 24, 2009.

SECTION VI. CAPITAL IMPROVEMENTS PLAN

A. The Capital Improvements Plan for the Impact Fees is the plan which was adopted by the El Paso City Council on March 24, 2009 and which may be amended by the City Council from time to time in accordance with Chapter 395, Texas Local Government Code.

B. The City Council of the City of El Paso is responsible for supervising the implementation of the Capital Improvements Plan in a timely manner. The City has delegated the administrative responsibility for the Impact fee Ordinance to the EPWU PSB, including implementation of the Capital Improvements Plan. Therefore, the El Paso Water Utilities Public Service Board shall have the additional responsibility to file reports on the status of the implementation of said Plan at least annually. The reports shall be of sufficient detail to enable the City Council to discharge its supervisory responsibilities.

- C. The improvements set forth in the Capital Improvements Plan and the corresponding provisions of water and wastewater service in the Service Areas were forecast over a ten (10) year time period. Although the El Paso Water Utilities Public Service Board is not required, or intends to build all of the improvements or make service available immediately to all potential service units within the Service Areas, the El Paso Water Utilities Public Service Board will provide, within ninety (90) days of the adoption of this Rule and Regulation and on an annual basis thereafter; a general schedule, including maps, of service availability proposed within the (10) year time period. The general schedule and maps shall be a part of the reports required to be submitted in paragraph "B" above.
- D. If water and/or wastewater services are not then currently available, impact fees may be assessed but not collected except as provided in 395.019 of Chapter 395, Texas Local Government Code.

SECTION VII. IMPACT FEE SERVICE AREAS

The Impact Fee Service Areas are those as adopted March 24, 2009 as reflected in Appendix A. and which may be adjusted by City Council from time to time in accordance with the Ordinance and Chapter 395, Texas Local Government Code. Three separate service areas have been established within the City of El Paso and its extraterritorial jurisdiction to be served by the capital improvements or facilities expansions specified in the capital improvements plan. Those service areas are the Westside Service Area, the Eastside service Area, and the Northeast Service Area.

SECTION VIII. IMPACT FEES TO BE ASSESSED

Impact Fee Assessment Schedules Northeast Service Area

Meter Size	Meter Capacity Ratio	Water*	Wastewater
Less than 1 inch	1.00	\$1,178	\$291
1 inch	1.67	\$1,967	\$486
11 inch	3.33	\$3,921	\$969
2 inch	5.33	\$6,276	\$1,551
3 inch	10.00	\$11,775	\$2,910
4 inch	16.67	\$19,629	\$4,851
6 inch	33.33	\$39,246	\$9,699
8 inch	53.33	\$62,796	\$15,519
10 inch	76.67	\$90,279	\$22,311
12 inch	143.33	\$168,771	\$41,709

***Fees do not apply to water meter or connections made for standby fire protection service**

Westside Service Area

Meter Size	Meter Capacity Ratio	Water*	Wastewater
Less than 1inch	1.00	\$ 659	\$927
1 inch	1.67	\$1,101	\$1,548
11 inch	3.33	\$2,195	\$3,087
2 inch	5.33	\$3,514	\$4,941
3 inch	10.00	\$6,593	\$9,270
4 inch	16.67	\$10,990	\$15,453
6 inch	33.33	\$21,973	\$30,897
8 inch	53.33	\$35,158	\$49,437
10 inch	76.67	\$50,545	\$71,073
12 inch	143.33	\$94,490	\$132,867

***Fees do not apply to water meter or connections made for standby fire protection service**

Eastside Service Area

Meter Size	Meter Capacity Ratio	Water*	Wastewater
Less than 1inch	1.00	\$697	\$920
1 inch	1.67	\$1,163	\$1,537
11 inch	3.33	\$2,321	\$3,065
2 inch	5.33	\$3,714	\$4,905
3 inch	10.00	\$6,968	\$9,203
4 inch	16.67	\$11,615	\$15,341
6 inch	33.33	\$23,223	\$30,672
8 inch	53.33	\$37,158	\$49,077
10 inch	76.67	\$40,064	\$52,916
12 inch	143.33	\$74,899	\$98,924

***Fees do not apply to water meter or connections made for standby fire protection service**

The Schedules of Impact Fees shall be as set out in City Ordinance No. 017113, Impact Fee Ordinance adopted May 12, 2009 and as may be amended from time to time in accordance with Chapter 395, Texas Local Government Code.

SECTION IX. TIME OF ASSESSMENT OF IMPACT FEE

An “assessment” means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the City is required.

For new development which is platted, or re-platted and there is an increase in the number of service units in the development, after the adoption of an impact fee, impact fees shall be assessed on the incremental increase in service units in the development before or at the time of recordation of a subdivision plat or replat in the official records of the county clerk of the county in which the tract is located.

For land on which new development occurs or is proposed to occur without platting, impact fees shall be assessed at the time an application for an individual meter connection to the City’s water or wastewater system is filed.

Following the initial assessment of an impact fee, the amount of the impact fee per service unit for that development cannot be increased unless the approved final plat expires or lapses under the applicable ordinance or law, and service units increase or meter size is increased.

SECTION X. TIME OF COLLECTION OF IMPACT FEE

- A. For new development which is platted in accordance with City Codes before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one (1) year after the date of adoption of the impact fee ordinance.
- B. For new development which is platted, or re-platted and there is an increase in the number of service units after the adoption of an impact fee ordinance and if water and/or wastewater capacity is currently available:
 - 1. For land platted within the corporate boundaries of the City, impact fees shall be collected at the time a building permit is issued.
 - 2. For land platted outside the corporate boundaries of the City, impact fees shall be collected at the time an application for an individual meter connection to the City’s water or wastewater system is filed.
 - 3. For land on which new development occurs or is proposed to occur without platting, impact fees shall be collected at the time an application is filed for an individual meter connection to the City’s water or wastewater system.
 - 4. If the impact fee is not collected at the time specified above for any reason, the El Paso Water Utilities Public Service Board reserves the option of collecting the fee at the time of connection to the water or wastewater system.

C. For new development which is platted, or re-platted and there is an increase in the number of service units, after the adoption of an impact fee and if water and wastewater capacity are not currently available:

1. Impact fees shall be collected, except as otherwise provided in the Impact Fee Ordinance, only if the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the City commits to construction of the identified capital improvement within two (2) years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five (5) years; or,
2. The City has entered into an agreement that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development.

SECTION XI. IMPACT FEE AS A CONDITION OF BUILDING PERMIT APPROVAL OR METER CONNECTION

New development occurring in any of the defined service areas shall not be connected to the City's water or wastewater system without payment of an impact fee in accordance with the City's Impact Fee Ordinance.

No building permit shall be issued without payment of an impact fee in accordance with the City's Impact Fee Ordinance.

If impact fees have not been collected in accordance with the City's Impact Fee Ordinance and the development has been connected to the water and/or wastewater system, the El Paso Water Utilities Public Service Board may, upon written notice to the developer or owner, disconnect the service pursuant to its Rules and Regulations No. 5, until such time as the impact fees are paid.

SECTION XII. AFFORDABILITY REDUCTION OR WAIVER

Notwithstanding Section 15.20.130 of this Chapter, the City Manager or designee shall administratively reduce or waive an impact fee for a service unit if the service unit once constructed, qualifies as affordable housing under 42 U.S.C. Section 12745, as amended. In addition to meeting the requirements of 42 U.S.C. Section 12745, the waiver or reduction must comply with the City's adopted fee waiver program established under the provisions of this section and will be subject to an affordability period established by the City and enforced by agreement, restrictive covenant, lien, or other binding obligation, as approved by the City Attorney. However, if affordable housing as defined by 42 U.S.C. Section 12745, is not constructed, the City may reverse its decision to waive or reduce the impact fee, and may assess and collect an impact fee at any time during the development approval or building

process or after the building process if an impact fee was not already assessed.

SECTION XIII. REFUNDS

Refunds of impact fees collected may be made under the following conditions:

A. Refund if service is denied or not available.

1. On the request of an owner of the property on which an impact fee has been paid, the El Paso Water Utilities Public Service Board shall refund the impact fee if: a) existing facilities are available and service is denied; or, b) the El Paso Water Utilities Public Service Board has, after collecting the impact fee when service was not available, failed to commence construction within two (2) years; or, c) service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five (5) years from the date of payment of the impact fee.
2. A request for refund shall be submitted to the El Paso Water Utilities Public Service Board on a form provided for by the El Paso Water Utilities Public Service Board for such purpose.
3. Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002 of the Finance Code, or its successor statute.

B. Refund if funds not spent.

1. Except as otherwise provided above, the El Paso Water Utilities Public Service Board shall refund any impact fee or part of it that is not spent as authorized by the City's Impact Fee Ordinance within within ten (10) years after the date of payment if not .
2. All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.
3. Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002 of the Finance Code, or its successor statute.
4. For purposes of this section, an impact fee collected shall be considered expended if the total expenditures for capital improvements or facility expansions within a service area within ten (10) years following the date of payment of the impact fee, equal or exceed the total impact fees collected within the service area for such improvements or facility expansions during such period.

SECTION XIV. APPEAL PROCESS

The Property Owner or applicant for a new development has the right of appeal Pursuant to the El Paso Water Utilities Public Service Board Rules and Regulations No. 8 of any adverse determination

Should the Property Owner or applicant for a new development not agree with the result of the El Paso Water Utilities Public Service Board appeal, he or she may appeal the following administrative decisions to the City Manager or designee: 1. The applicability of an impact fee to the development or structure; 2. The amount of the impact fee assessed or collected; and 3. The amount of a refund due.

Appeals must be in written form and submitted within thirty (30) days of the assessment or collection of an impact fee. The City Manager or designee shall give a written decision to the one making an appeal within forty-five (45) days of the appeal. Decisions on an appeal shall become final and binding to the maximum extent allowed by law thirty (30) days after being given.

A person who has exhausted all administrative remedies as stated above may appeal determination of the impact fee in accordance with Texas Local Government Code Section 395.077.

SECTION XV. DELETED

SECTION XVI. UPDATES TO PLANS AND REVISION OF FEES

The City shall update the Land Use Assumptions and Capital Improvements Plan at least every five (5) years, commencing from the date of adoption of such plans; and shall, if necessary, recalculate the impact fees based thereon in accordance with Chapter 395, Texas Local Government Code as provided for therein

The City may review its land use assumptions, impact fees, capital improvements plan and other factors more frequently than provided in the Impact Fee Ordinance to determine whether the land use assumptions and capital improvements plan should be updated and the impact fees recalculated accordingly.

After conducting the review required in the Impact Fee Ordinance, if the City Council determines that no change to the land use assumptions, Capital Improvements Plan or impact fee is needed at the time of an update under the Impact Fee Ordinance, the City Council may dispense with the update in accordance with Local Government Code Section 395.0575.

The El Paso Water Utilities Public Service Board, having been delegated administrative responsibility for the Impact Fee Ordinance, shall provide such information, reports and recommendations on its own initiative or as required by the City to enable timely completion of Updates and Revisions as may be necessary in this Section and in accordance with Chapter 395, Texas Local Government Code.

SECTION XVII. SEVERABILITY

If any provision, paragraph, word or section of this Rule and Regulation is invalidated by a court of competent jurisdiction, the remaining provisions, paragraphs, words or sections shall remain in full force and effect and shall be read or interpreted so as to give effect to the purpose of this Rule and Regulation as expressed in Section I.

SECTION XVIII. SAVINGS.

This Rule and Regulation is a part of the other Rules and Regulations adopted by the El Paso Water Utilities Public Service Board, and, save and except as amended hereby, the remaining provisions of the El Paso Water Utilities Public Service Board's Rules and Regulations shall remain in full force and effect.

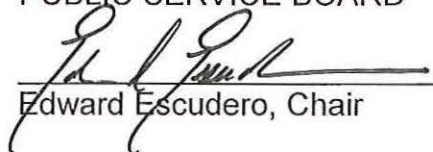
SECTION XXIV. EFFECTIVE DATE.

This Rule and Regulation shall be and become effective from and after its adoption hereby and shall remain in effect until otherwise amended by the El Paso Water Utilities Public Service Board or operation of law.


PASSED, APPROVED and ADOPTED RULES AND REGULATIONS NUMBER 16, CONCERNING WATER AND WASTEWATER IMPACT FEES at a regularly scheduled meeting of the El Paso Water Utilities Public Service Board, this 12th day of August, 2009 at which meeting a quorum was present, said meeting being held in accordance with the provisions of V.T.C.A., Government Code, Sections 551.001 et. seq.

RULES AND REGULATIONS NO. 16, Section VI(B), modified, Section XV deleted, APPROVED AND ADOPTED this 12th day of October, 2011.

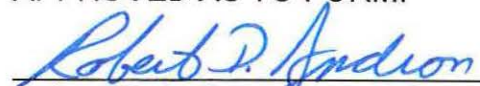
EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD


Edward Escudero, Chair

ATTEST:


Richard T. Schoephoerster, P.E., PhD.
Secretary-Treasurer

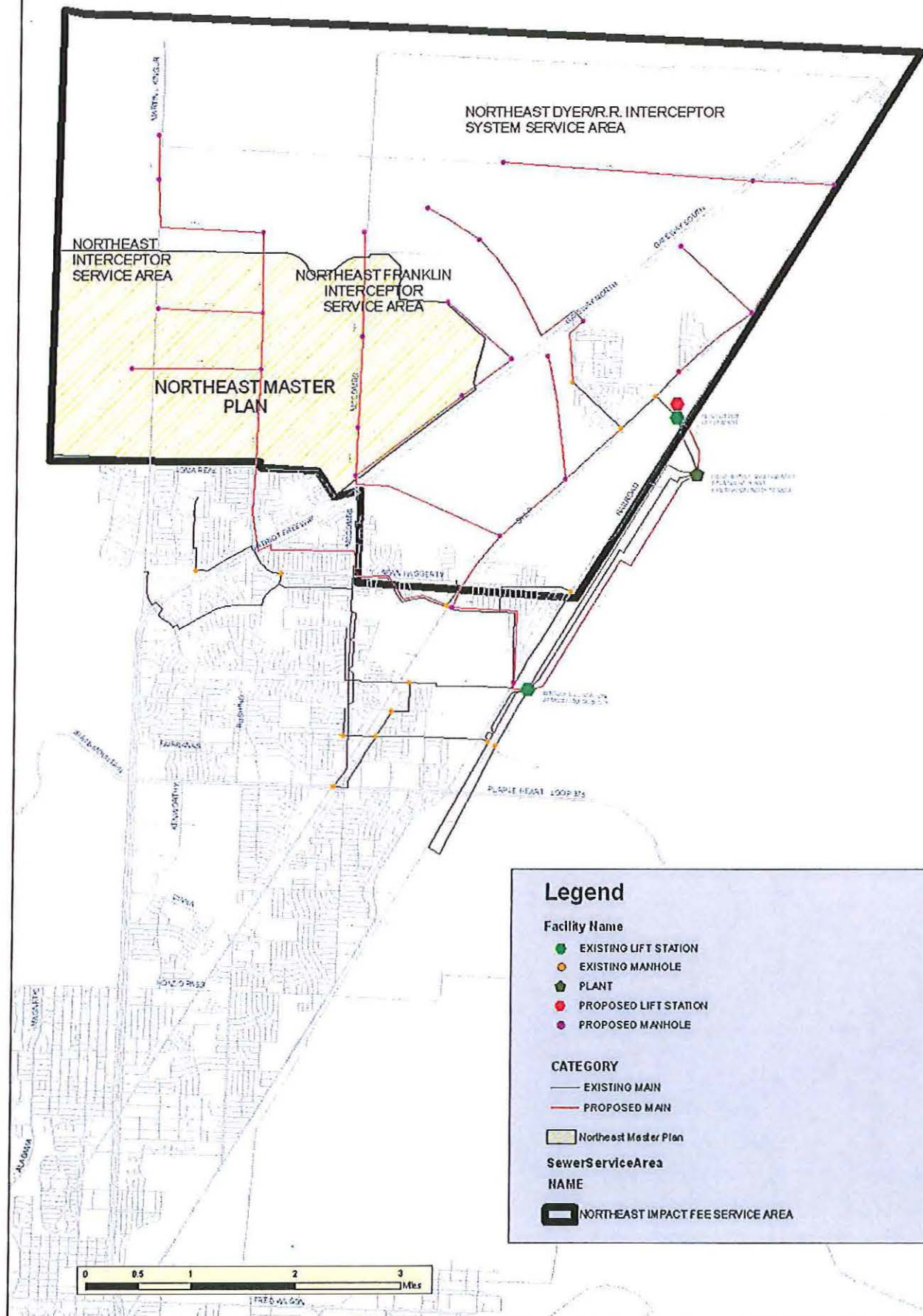
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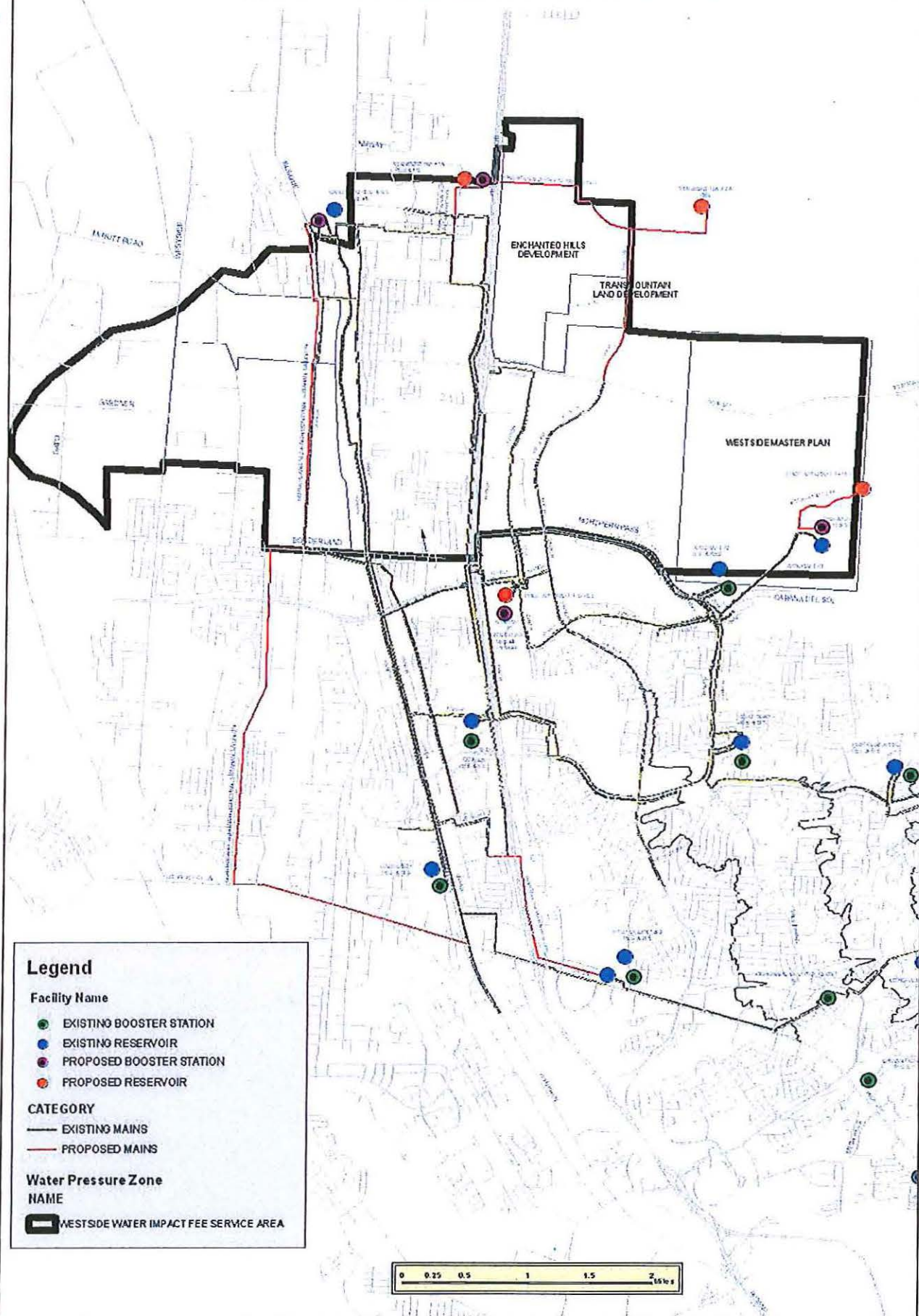

Robert D. Andron, General Counsel

APPENDIX A
Service Areas

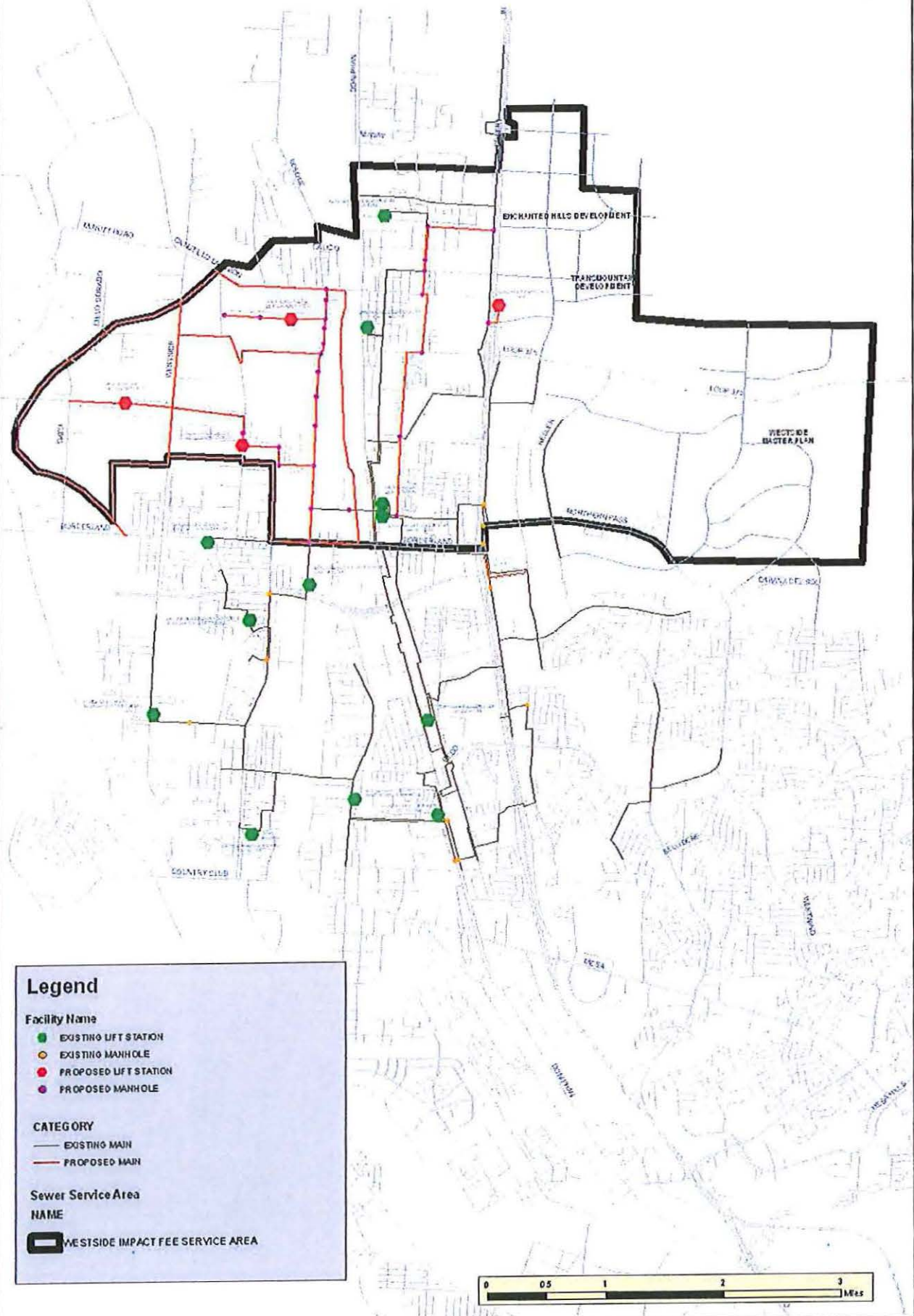
6 maps attached separately

NORTHEAST SEWER IMPACT FEE SERVICE AREA MAP





WESTSIDE SEWER IMPACT FEE SERVICE AREA MAP



EASTSIDE WATER IMPACT FEE SERVICE AREA MAP

