

ORDINANCE NO. 280

**AN ORDINANCE TO ENACT SYSTEM DEVELOPMENT  
WASTEWATER IMPACT FEES AND AMEND THE  
GREENLAND MUNICIPAL CODE.**

WHEREAS, the City of Greenland, Arkansas, has contracted with the City of Fayetteville for Fayetteville to operate and maintain the Greenland wastewater system which includes collecting, transporting and treating wastewater from Greenland.

WHEREAS, the Cities of Elkins, Farmington, Fayetteville and Greenland entered into an agreement with duncan/associates, and others, to develop capital plans, levels of service and perform an analysis of potential impact fees for the individual cities and the system as a whole.

WHEREAS, the cost of increasing the capacity of the existing Fayetteville wastewater collection and transportation system to accommodate anticipated growth in the Cities of Farmington, Fayetteville, Elkins and Greenland should be borne by those who make such increases necessary.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF GREENLAND, ARKANSAS, That:

Section 1: That the Greenland Municipal Code is hereby amended by adding a Chapter to be numbered 10.07, which Chapter reads as hereinafter set forth.

**Chapter 10.07  
Fayetteville Wastewater System Impact Fees**

**10.07.01 Impact Fee.**

A Fayetteville Wastewater System Impact Fee is hereby established for the City of Greenland for facilities/improvements to meet increased demand, hereinafter referred to as the "System".

**10.07.03 Short Title, Authority and Applicability.**

a) Short Title. This ordinance shall be known and may be cited as the "Fayetteville Wastewater System Impact Fee Ordinance".

b) Authority. This ordinance is enacted pursuant to the authority granted to the City by Arkansas Code Annotated §§14-56-103 and other relevant laws and judicial interpretations of the State.

c) Applicability. The provisions of this ordinance shall apply to all of the territory within the City's wastewater service area, including the corporate limits of Greenland, any unincorporated area of Washington County served by the system and all future additions to said City or system service area.

d) The following types of development shall be required to pay a Fayetteville wastewater system impact fee:

- i. New and existing development seeking a new connection to the City's wastewater system resulting in increased demand from Fayetteville's wastewater system facilities. This shall not apply to existing development that is connecting to the wastewater system in order to eliminate an individual sewage disposal system.
- ii. Nonresidential or residential redevelopment seeking a larger capacity or additional water meter.

#### **10.07.05 Definitions.**

For the purpose of this Ordinance, the following terms shall have the following meanings:

- a. City Council. The duly elected/appointed city council of the City of Greenland, Arkansas.
- b. Capital wastewater facilities. Fayetteville's wastewater collection system, any treatment facilities, lift lines, lift stations, interceptors, buildings, improvements to land, land and related equipment used to provide wastewater services, as defined in the study, to the Greenland wastewater system. The costs of capital wastewater facilities also include the costs of related planning and design for these facilities.
- c. Certificate of occupancy. A certificate issued by the City permitting the occupancy of a structure connected to the City's wastewater system. Said certificate may be limited to the structure's wastewater system for those structures located outside the corporate limits of Greenland.
- d. City. The City of Greenland, Arkansas, including, but not limited to, its municipal utilities department.
- e. Developer. Any person, firm or corporation commencing a development who is obligated to pay an Impact Fee in accordance with the terms of this ordinance, or who would be obligated to pay such a fee except for an exemption, refund, or credit provided for in this ordinance.

- f. Development. Any residential, multifamily, mixed-use, commercial, or industrial improvement to lands within the system service area.
- g. Impact fee study (the study). A study that sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the Fayetteville's capital wastewater system facilities, and that determines the cost of the facilities necessary to meet the demands created by new development.
- h. Impact fees. The system wastewater impact fees established by this ordinance pursuant to Ark. Code Ann. §§14-56-103 for system utilities/improvements that meet increased demand.
- i. System impact fee trust fund. The trust fund established by this ordinance. The system impact fee trust fund is also called the system trust fund.
- j. Improvements. The results of planning, engineering, design, construction inspection, on-site construction, off-site construction, land, the purchase of related equipment, and financing associated with new or expanded capital wastewater facilities, buildings, and equipment that expand the capacity of capital wastewater facilities, but not including maintenance, operations, or improvements that do not expand capacity.
- k. Independent fee calculation study. A study prepared by duncan/associates in association with Rosenthal Associates, Inc. (including but not limited to all plans and studies referenced therein), calculating the cost of expansions or improvements to the capital wastewater facilities required to serve the developer's proposed development, that is based on the established level of service standard, performed on an average cost (not marginal cost) methodology, that uses the service units and unit construction costs stated in the study, and is performed in compliance with any criteria for such studies established by this ordinance or by the City.
- l. Person. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity.
- m. State. The State of Arkansas.
- n. Successor in interest. A person, as defined by this ordinance, who gains a fee simple interest in land for which an impact fee is paid or a credit is approved pursuant to the terms of this ordinance.

- o. System. The City of Fayetteville overall municipal wastewater system including capital wastewater facilities.

**10.07.07 Legislative findings.**

The City Council of Greenland, 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 requires that Fayetteville's capital sewer facilities be expanded and improved to accommodate growth and development within the City.

b) System demand. New residential and nonresidential development imposes increased and excessive demands upon the existing system facilities and often overburdens the existing system facilities. Provided, further, new development is expected to continue, and will place ever-increasing demands on the system to provide these facilities to serve new development.

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

d) Study conducted. In order to implement an equitable Fayetteville wastewater system impact fee system, the City in cooperation with the Cities of Fayetteville, Farmington and Elkin's caused to be prepared a Water and Wastewater Capital Plan and Impact Fee Analysis, hereinafter termed "study". Said study is incorporated herein by reference, and sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the System's capital facilities, and for determining the cost 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 (LOS) standards referenced in the study as part of its current plans for future expansions to the Fayetteville's system capital wastewater 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 nor shall such fees to be used to correct existing deficiencies for these capital facilities, or to replace or rehabilitate existing improvements. This is intended to be a Fayetteville Wastewater System Impact Fee for system facilities/improvements that meet increased demands proportionate to growth in the City.

g) Benefit. Those capital wastewater facilities/improvements listed in the study will benefit all new development in cities of Farmington, Fayetteville, Elkins and Greenland that depend on wastewater services provided by Fayetteville, and it is therefore appropriate to treat the entire system as a single service area for purposes of calculating, collecting, and spending the Fayetteville Wastewater System Impact Fee funds.

h) Impact fee relationship. There is both a rational nexus and a 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.

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

j) System fee adopted by Fayetteville. The City of Fayetteville, by ordinance, determined the appropriate system fee to be charge to each development (as defined in 10.07.03 d) above) in Fayetteville, Farmington, Greenland and Elkins from and after March 31, 2009, to be \$872.00 per service limit.

**10.07.09 Intent.**

a) Capital improvement plan. This ordinance is adopted to assist in the implementation of the capital improvement plan (CIP) for wastewater system projects of the Fayetteville Wastewater System. To that end, the intent of this ordinance is to ensure that new development bears a proportionate share of the cost of improvements to capital wastewater facilities; to ensure that such proportionate share does not exceed the cost 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 the further intent of this ordinance that new development pay for its fair share of the cost of improvements for capital wastewater facilities required to accommodate new development in Greenland through the imposition of a Fayetteville wastewater system impact fee that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the System to construct improvements to the capital 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 wastewater facilities.

c) Funds restricted. It is not the intent of this ordinance that any monies collected from the Fayetteville wastewater system impact fee deposited in the System fee trust fund ever be commingled with monies from any other trust fund 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.

**10.07.11 Fayetteville Wastewater System Impact Fee Imposed.**

a) Fayetteville wastewater System impact fee obligation. After the effective date of this ordinance, any person, firm or corporation who commences any development, except those exempted hereinafter, shall be obligated to pay a Fayetteville wastewater system impact fee upon commencement of such activity. The amount of the fees shall be determined in accordance with this ordinance, and shall be paid to the City or the City of Fayetteville as provided hereinafter. All monies paid by a developer pursuant to this ordinance shall be identified as Fayetteville system impact fees and shall be promptly deposited into the wastewater system trust fund described hereinafter.

b) System impact fee collection. The Fayetteville wastewater system impact fee imposed by this ordinance shall be collected in connection with and as a condition to the installation of a water meter serving the development or of the connection to the wastewater system, whichever comes first. Development projects which have obtained building permits prior to the effective date of this ordinance shall not have to pay Fayetteville’s wastewater system impact fee if the building is completed with water and sewer hookups installed and certificate of occupancy issued prior to March 31, 2009.

c) Fayetteville wastewater system impact fee calculation. Fayetteville’s wastewater system impact fee shall be based on water meter size. The impact fees established hereinafter may be revised from time to time by the City Council.

d) Fee determination.

1) Schedule of Fees. The Impact Fee Administrator shall determine the amount of the wastewater local impact fees for residential uses based on the type or size of the water meter and for nonresidential uses based on the size of the water meter using the following schedule:

Property Type	Unit of Measure	Service Unit Generation Rate (EDU)	Greenland
Net Cost per Service Unit (EDU)			\$872.00
Single-Family	dwelling unit	1.00	\$872.00
Multi-Family	dwelling unit	0.71	\$620.00
Mobile Home	dwelling unit	1.00	\$872.00
Nonresidential 5/8" x 3/4" meter	water meter	1.00	\$872.00

1" meter	water meter	2.50	\$2180.00
1 1/2" meter	water meter	5.00	\$4360.00
2" meter	water meter	8.00	\$6976.00
3" meter	water meter	16.00	\$13,952.00
4" meter	water meter	25.00	\$21,800.00
6" meter	water meter	50.00	\$43,600.00
8" meter	water meter	80.00	\$69,760.00
10" meter	water meter	116.00	\$100,280.00

- 2) **Redevelopment, Reconstruction, Change of Use.** In the event of a redevelopment, reconstruction or change of use from an existing development or use, the fee shall be the difference between what the fee would be for the entire redevelopment or reconstruction project and what the fee would have been for the existing development or use. Existing development must be connected to the wastewater system at the time of redevelopment in order to apply this credit.
  
- 3) **Mixed Use.** If the proposed development includes a mix of the residential land uses and/or nonresidential meter sizes that are listed in the impact fee schedule, the fee shall be determined by adding up the Fayetteville's wastewater system impact fee that would be applicable for each residential land use type and/or nonresidential meter size as if it was a freestanding land use type.
  
- 4) **Fire Suppression/Low Pressure.** It is the intent of this ordinance to base Fayetteville's wastewater system impact fee on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; to allow adequate fire flow to sprinklers and internal hydrants at some large and at-risk properties, it may be necessary for fire protection purposes to install a larger water meter than would be necessary to meet day-to-day needs of that facility. In addition, a larger meter may be required in areas of low water pressure than in areas of normal water pressure for the same type of use. In those cases, it is the policy of the City that the impact fee for wastewater should be based on the meter size needed by that facility for its typical usage, without regard to fire-flow or unusual pressure conditions.
  
- 5) **Irrigation.** Any separate water meter installed for irrigation purposes only shall not be included in the calculation of the Fayetteville wastewater system impact fee.
  
- 6) **Affordable Housing Exemption.**
  - a) **Single family and non-profit multifamily supportive housing.**  
Construction of single family and non-profit multi-family supportive housing

funded wholly or primarily by federal Community Development Block Grants, non-profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable, owner-occupied, single family residences to low income individuals and non-profit multi-family supportive housing may be exempted from payment of Fayetteville's wastewater system impact fee pursuant to this ordinance by the City Council.

- 7) Master Meters. In the event that a water master meter is utilized for any development including multi-family or mixed use, the Fayetteville wastewater system impact fee shall be based on the Master Meter size.

#### **10.07.13 Use of system impact fee funds.**

a) System trust fund. A Fayetteville wastewater system impact fee trust fund (hereinafter "system trust fund") is hereby established for the purpose of ensuring that the Fayetteville's wastewater system impact fees collected pursuant to this ordinance are designated for the accommodation of impacts reasonably attributable to new development that paid the Fayetteville wastewater system impact fee.

b) System trust fund management. All Fayetteville's wastewater system impact fee collected by the City or Fayetteville pursuant to this ordinance shall be promptly deposited into the system trust fund. The system trust fund shall be maintained in an interest bearing account. Monies in the system trust fund shall be considered to be spent in the order collected, on a first-in/first-out basis. This system fund shall contain only those Fayetteville's wastewater system impact fees collected pursuant to this ordinance plus any interest which may accrue from time to time on such funds.

c) System trust fund limitations. The following limitations shall apply to the use and expenditure of Fayetteville Wastewater System impact fees collected and deposited in the system trust fund:

- 1) The Fayetteville wastewater system impact fee imposed pursuant to this ordinance may be assessed, collected and expended only for the planning, design and construction of new system wastewater facilities or of system capital improvements to existing wastewater facilities that expand the system's capacity or for the recoupment of prior system capital improvements to wastewater facilities that created system capacity available to serve new development.
- 2) The Fayetteville wastewater system impact fee may be pledged to the payment of bonds issued by the City and/or Fayetteville to finance wastewater capital improvements or wastewater facilities for which the Fayetteville wastewater system impact fee may be imposed.



- 3) No Fayetteville wastewater system impact fee shall be assessed for or expended upon the operation or maintenance of any wastewater facility or for the construction or improvement of wastewater facilities that do not create additional capacity.
- 4) No monies from the system trust fund shall be spent for periodic or routine maintenance, rehabilitation, or replacement of any facility of any type or to cure deficiencies in capital wastewater facilities existing on the effective date of this ordinance.
- 5) As described in Section 10.07.15 Refunds.

**10.07.15 Refund of impact fees paid.**

a) When refund due. The City shall refund the portion of collected development Fayetteville's wastewater system impact fees, including the accrued interest, that has not been expended seven (7) years from the date the fees were paid. The refund shall be made on a pro rata basis and shall be paid in full not later than ninety (90) days after the date certain upon which the refund becomes due.

b) Refund notice. When due, 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. 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. The sending by regular mail of the notices to all present owners of record shall be sufficient to satisfy the requirement of notice.

c) Refund payment. The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.

d) Notice of refund rights. At the time of payment of the Fayetteville wastewater system impact fee under this ordinance, the Impact Fee Administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this Ordinance.

**10.07.17 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 Recorder-Treasurer within ten (10) 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 Recorder/Treasurer shall mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in such notice given by the Recorder/Treasurer. The determination of the City Council shall be final.

#### **10.07.19 Capital plan and level of service standards.**

a) Plan Adoption. The capital wastewater facilities to be financed by the Fayetteville's wastewater system impact fee shall be those facilities identified in the system capital plan and level of service standards as presented in the study prepared by duncan/associates in association with Rosenthal Associates, Inc., dated November 15, 2007. In this regard, the applicable sections of said studies as they pertain to the Fayetteville "System Improvements" are hereby adopted as the official capital plan and level of service by the City of Greenland, Arkansas.

b) Plan Revisions. Provided, further that said plan and standards may be revised from time to time by resolution of the City Council. To this end, periodically, the Mayor or engineers hired by the City or Fayetteville may present to the City Council a proposed capital improvements program. The system capital improvements program shall assign monies from the trust fund to specific projects and related expenses for capital wastewater facilities. Any monies, including any accrued interest not assigned to specific projects within such capital improvements program and not expended, shall be retained in the system trust fund subject to the refund provisions above.

#### **10.07.21 Penalty.**

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

#### **10.07.23 Administration.**

a) Impact Fee Administrator. The City Council shall assign to a city employee the responsibilities of the Impact Fee Administrator hereinabove set forth. Failure of the Council to make such assignment or in case of a lapse in such responsibility after assignment by the Council the responsibility shall be on the Recorder-Treasurer to fulfill such responsibilities.

b) All monies collected as Fayetteville's wastewater system impact fee, all funds held as Fayetteville's wastewater system impact fee in the above-mentioned system trust fund,

all accounts created to hold the Fayetteville's wastewater system impact fee and all refunds of unexpended Fayetteville wastewater system impact fee (including interest thereon) shall be by the duly elected/appointed City Recorder-Treasurer or appropriate Fayetteville official.

PASSED AND APPROVED this 9<sup>th</sup> day of February, 2009.

  
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JOHN GRAY, Mayor

ATTEST:

  
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DONNA CHEEVERS, Recorder-Treasurer

