



**DATE:** April 4, 2018

**TO:** City Council, CMO

**FROM:** Jennifer Schneier, Assistant City Attorney

**SUBJECT:** Chapter 29 Ordinance: System Development Fees for Water-Sewer Utility

At the June 19, 2018 Council meeting, Council will be presented with an ordinance enabling the City to charge System Development Fees. System Development Fees are newly created under state law, and they allow a water-sewer utility to partially recover directly from new customers the costs of the capacity of the utility system to serve them.

Historically, water-sewer utilities in North Carolina have had the right to impose certain fees on new customers to fund the expansion of water and sewer facilities needed to serve those new customers. The fees have a variety of names (impact fees, capacity fees, system expansion fees, etc.), but in general the fees are a one-time charge implemented to recover the costs associated with the capital investments and improvements made by a utility to enable it to serve future customers without placing the full cost burden on existing users. This is often referred to as “growth paying for growth.”

Currently, the City of Greensboro imposes “Capacity Use Fees” for new users to connect to the water-sewer utility system. The fees apply to both new and existing development that connect to the system, and the purpose of the fee is to partially recover directly from those new customers the costs associated with serving them.

In 2016, the North Carolina Supreme Court heard a case challenging the Town of Carthage’s impact fees. There were many factors involved in the decision, yet predominant among them was the fact that the Town never actually used the impact fees for their intended purpose - which was to expand its system. Therefore the Court invalidated the Town’s impact fees. The result generated confusion among utility systems across the state, and the League of Municipalities and the General Assembly took an interest in the matter.

In response to the Town of Carthage case, the General Assembly enacted Session Law 2017-138 (HB 436) to authorize cities to charge the necessary fees needed to maintain a properly-run utility system. This law created NCGS §162A-200 *et seq.* and enables cities to charge “System Development Fees” for new developments that connect to the city’s water-sewer utility. Accordingly, Greensboro should adopt System Development Fees for *new* developments. Greensboro will continue to use Capacity Use Fees for *existing* developments that connect to the system pursuant to the authority granted in §160A-314(a). As discussed further below, City staff recommends that the fees parallel each other, so the expected revenues received from the new

System Development Fees should track closely with what the City historically expected to receive with the Capacity Use Fees.

In order to implement System Development Fees, the City was required to complete a study of its utility system. The study is available on the City's website and is attached hereto. Interestingly, the study found that an appropriate System Development Fee could actually be higher than what the City currently charges for its Capacity Use Fee. Despite the numbers, City staff supports having System Development Fees match the Capacity Use Fees because the current fees are carefully measured and sustainable. The fees are not meant to be a profit center for the City but are meant to recover the costs involved in system expansion.

The City undertook outreach efforts to the development community, in particular TREBIC, regarding the System Development Fees. The feedback indicated support for the fees so long as they were not higher than the original Capacity Use Fees. Accordingly, City staff recommends that the System Development Fees match the Capacity Use Fees.

Timeline:

March 16, 2018: Website posting of the water-sewer utility study for a minimum 45 day period

May 15, 2018: Public Hearing on the adoption of System Development Fees

June 19, 2018: City Council vote on the System Development Fee ordinance (with Budget)

July 1, 2018: Deadline to adopt System Development Fees per §160A-200 *et seq.*