# Chapter 27.82

# IMPACT FEES

**Sections:**


| | |
|---|---|
| **27.82.010** | **Short Title, Authority and Applicability.** |
| **27.82.020** | **Legislative Findings and Purpose.** |
| **27.82.030** | **Intent.** |
| **27.82.040** | **Definitions.** |
| **27.82.050** | **Imposition of Impact Fees.** |
| **27.82.060** | **Exemptions From Impact Fees.** |
| **27.82.070** | **Impact Fee Funds.** |
| **27.82.080** | **Refunds of Impact Fees Paid.** |
| **27.82.090** | **Post-Ordinance Developer Agreements Regarding Impact Fee Facilities.** |
| **27.82.100** | **Developer Reimbursement for Pre-Ordinance Participation in Financing or Construction of Impact Fee Facilities.** |
| **27.82.110** | **Miscellaneous Provisions.** |
| **Appendix 1** | **Downtown/Antelope Valley Arterial Street Fee Exclusion Area Map** |
| **Appendix 2** | **Water Distribution Impact Fee Benefit Areas Map** |
| **Appendix 3** | **Arterial Street Impact Fee Benefit Areas Map** |
| **Appendix 4** | **Neighborhood Park & Trail Impact Fee Benefit Areas Map** |


## 27.82.010 Short Title, Authority and Applicability.

(a) This ordinance may be known and cited as the "Impact Fee Ordinance," and is referred to herein as "this ordinance."

(b) This ordinance is enacted pursuant to the authority granted to the City by the Constitution of the State of Nebraska, the Nebraska revised statutes, and the City's home rule charter.

(c) The provisions of this ordinance shall apply to all of the territory within the corporate limits of the City. (Ord. 18113 §1; January 13, 2003).

## 27.82.020 Legislative Findings and Purpose.

The City Council of Lincoln, Nebraska finds that:

(a) Both population and employment within the City are growing, and are creating demands for new residential and nonresidential development.

(b) New development within the City is creating additional demand and need for public facilities, including water and wastewater systems, arterial streets, and neighborhood parks and trails. The Comprehensive Plan's land use assumptions indicate that new development will continue and will place ever increasing demands on the City to provide such facilities.

(c) The protection of the health, safety, and general welfare of the citizens of the City requires that the public facilities of the City be expanded to meet the demand of new development for public facilities.

(d) Under the City's current laws, taxes, fees, utility charges, and other forms of revenue generated from new development do not generate sufficient funds to provide those public facilities required to serve the new development.

(e) It is only proper that those property owners who benefit by the expansion of public facilities for new development should bear their proportionate share of the cost of that expansion.

(f) The creation of an equitable impact fee system would enable the City to impose a more proportionate share of the costs of required improvements to the water and wastewater systems, arterial streets, and neighborhood parks and trails on those developments that create the need for them.

(g) All types of development that are not explicitly exempted from the provisions of this ordinance will generate demand for the types of facilities for which impact fees are being imposed pursuant to this ordinance.

(h) The Lincoln Impact Fee Study prepared by Duncan Associates dated October 2002 sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the City's public facilities, and for determining the cost of acquiring land and the cost of acquiring or constructing facilities and equipment necessary to serve new development.

(i) The assumptions and service standards referenced in the Lincoln Impact Fee Study are those used by the City in evaluating the need to expand or construct public facilities.

(j) The impact fees described in this ordinance are based on the Lincoln Impact Fee Study, and do not exceed the costs of acquiring additional land and the costs of acquiring or constructing additional facilities or equipment required to serve the new developments that will pay the fees.

(k) The types of improvements to each type of public facility considered in the Lincoln Impact Fee Study will benefit all new development in the City, and it is therefore appropriate to treat the entire City as a single service area for purposes of calculating the impact fees for each type of facility. However, the service area may be divided into multiple benefit areas in order to show a greater link between fees paid and benefit received.

(l) It is in the public interest and consistent with the Comprehensive Plan and other public policies of the City to promote the construction and preservation of Low Income Housing and therefore impact fees should be waived in whole or part for such development.

(m) The City recognizes that new development in certain areas of the City was previously approved and regulated on a case-by-case basis by agreements between the City and the developer wherein the City and the developer made individualized determinations of the projected impact full development and operation of the property would have on the City's arterial streets, water or wastewater facilities, and neighborhood parks and trails and agreed upon the necessary improvements to be paid for and/or constructed by the developer as said developer's proportionate share of the cost of providing public facilities for the proposed development. Therefore, the City finds that impact fees should be categorically waived for those specific types of impact fee facility improvements which were paid for or constructed by such developers under said agreements.

(n) There is both a rational nexus and a rough proportionality as required by *Nollan v. California Costal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) 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.

(o) There is a reasonable relationship or nexus as required by *Simpson v. City of North Platte*, 206 Neb. 240, 292 N.W.2d 297 (1980) 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.

(p) This ordinance creates a system by which impact fees paid by new developments will be used to expand or improve the type of public facility for which the fee was paid, so that the new development that pays each fee will receive a corresponding benefit within a reasonable period of time after the fee is paid.

(q) This ordinance creates a system under which impact fees will not be used to cure existing deficiencies in public facilities; nor used for their maintenance and operation.

(r) The City recognizes that under Nebraska law the power of eminent domain is superior to the zoning power and that the City, under its zoning authority, is not permitted to prevent or place limitations upon a public use of property in the furtherance of which a governmental entity has been granted condemnation power by the State Legislature. Therefore, the City finds that impact fees cannot be collected for governmental projects for the construction of which the agency in question has the power to condemn or appropriate lands by eminent domain.

(s) Under the legislative findings in the Nebraska Housing Agency Act (*Neb. Rev. Stat.* §§ 71-1572 to 71-15,168 (2000 Cum. Supp.) the Nebraska Legislature declares that there exists in this state a shortage of residential housing that is decent, safe, sanitary, and affordable to persons of low and moderate income which cannot be remedied by the ordinary functioning of private enterprise alone; that the provision of such affordable housing is a public purpose which can best be carried out by affording local housing agencies the necessary powers to enable them to carry out their purposes. Under the Act, a local housing agency is declared to be a political subdivision of the State and is granted the power to condemn property for the purpose of providing affordable housing subject to local planning, zoning, and building codes. The Housing Authority of the City of Lincoln was established by the City in 1946 and is a local housing agency under the Act and as such is subject to the City's zoning regulations. However, the Act encourages intergovernmental cooperation between the Housing Authority of the City of Lincoln and the City and specifically authorizes the City to grant exceptions from its zoning regulations in order to facilitate development in furtherance of the purposes of the Act. The Act further authorizes the City of Lincoln incur the entire expense of any public improvements made by the City for the purpose of aiding and cooperating with the Housing Authority of the City of Lincoln's provision of affordable housing pursuant to the Act. Therefore, in consideration of the State's policy that the City cooperate with the Housing Authority of the City of Lincoln in order to promote and facilitate the Housing Authority of the City of Lincoln's construction of decent, safe and sanitary housing which is affordable to persons of low and moderate income, all impact fees should be waived for such development.

(t) Due to the shortfall of funds necessary to address the community's existing and future public infrastructure needs, the Mayor has created the Mayor's Infrastructure Finance Committee ("Committee") to develop a comprehensive financial package in addition to impact fees that ensures maintenance of the City's existing public infrastructure and the delivery of future public infrastructure to facilitate community growth. The Committee is responsible for preparing an integrated package of recommendations for the Mayor and City Council that combines the work product of three work groups: infrastructure cost savings/efficiencies, financial options and state legislation, operating under the Committee's direction as outlined in the Mayor's Infrastructure Finance Committee: Charge to the Committee dated October 3, 2002, as the same may be amended from time to time ("Charge to the Committee"). The Charge to the Committee calls for the Committee's overall work to be completed no later than June 1, 2003. (Ord. 18113 §2; January 13, 2003).

**27.82.030 Intent.**

(a) The intent of this ordinance is to ensure that adequate water and wastewater systems, arterial streets, and parks and trails are available to serve new growth and development in the City of Lincoln and to regulate the use and development of land so as to ensure that new growth and development bears its proportionate share of the cost of improvements to the City's water and wastewater systems, arterial streets, and neighborhood parks and trails needed to serve such new growth and development; to ensure that the proportionate share for each type of public facility does not exceed the cost of providing that type of public facility to the new development that paid the fee; and to ensure that funds collected from new developments are actually used to construct pubic facilities that benefit such new developments.

(b) 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 demands generated by that new development for the type of public facility for which the fee was paid.

(c) It is not the intent of this ordinance that any monies collected from any impact fee and deposited in an impact fee account ever be co-mingled with monies from a different impact fee account or ever be used for a type of public facility different from that for which the fee was paid.

(d) It is the intent of this ordinance to base water and wastewater impact fees on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; maintaining pressure and flow to serve fire-fighting needs is a part of the system overhead that is calculated into system costs in general and should not be charged to a particular site or location. 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 those cases, it is the policy of the City that the impact fee for water and wastewater should be based on the meter size needed by that facility for its typical usage, without regard to fire-flow. (Ord. 18113 §3; January 13, 2003).

**27.82.040 Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

**Building permit**. The City permit required to erect, construct, enlarge, alter, repair, remove, convert, or demolish any building, structure, swimming pool, or parking lot pursuant to the Lincoln Building Code.

**Connection**. The physical tie-in of a private water or wastewater service or system to the City's public water or wastewater system.

**Cost of construction**. All design costs, construction costs, engineering fees, testing expenses, inspection fees, and related miscellaneous costs.

**Developer**. Any person or legal entity undertaking development.

**Development**. Any construction expansion or conversion of a building, structure or use which creates additional demand for Impact Fee Facilities, any change in use of a building or structure which creates additional demand for Impact Fee Facilities, or any change in the use of land, which creates additional demand for Impact Fee Facilities, or any connection to the City's public water or wastewater system which creates additional demand for Impact Fee Facilities.

**Downtown/Antelope Valley Exclusion Area.** The area established and shown on the Downtown/Antelope Valley Exclusion Area Map.

**Duplex**. Shall have the same meaning as two-family dwelling, as defined in section 27.03.200.

**Encumber**. To legally obligate by contract or otherwise commit to use by appropriation or other official act of the City.

**Fee payor**. That person or entity who pays an impact fee.

**Gross Floor Area.** The floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.

**Impact Fee Administrator**. The person or persons designated by the City to be responsible for administering this ordinance.

**Impact Fee Facility**. One or more elements of the City's water and wastewater systems, arterial streets, and neighborhood parks and trails included in the calculations of the impact fees in the Impact Fee Study.

**Impact Fee Facility Improvement.** Planning, engineering design, construction inspection, on-site construction, off-site construction, equipment purchases, and financing costs including the issuance of bonds or other obligations of indebtedness associated with new or expanded facilities, buildings, and equipment that expand the capacity of an Impact Fee Facility and that have an average useful life of at least fifteen (15) years, but not including maintenance, operations, or improvements that do not expand capacity. An Impact Fee Facility Improvement shall also include land acquisition for water storage reservoirs, water pumping stations, wastewater trunk lines, and neighborhood parks.

**Lincoln Impact Fee Study or Impact Fee Study**. The Lincoln Impact Fee Study prepared by Duncan Associates dated October 2002.

**Low-to-Moderate-Income Area.** An area determined by the United States Department of Housing and Urban Development (HUD) to be a low-to-moderate-income area based upon census data.

**Low-to-Moderate-Income Owner-Occupied Housing.** An owner-occupied unit which is sold to or built by a household whose adjusted gross income is 80% or less of the area median income adjusted for household size.

**Low-to-Moderate Income Rental Housing.** A tenant-occupied unit which is rented to a household whose adjusted gross income is 80% or less of the area median income adjusted for household size and which is rent restricted under local, state or federal regulations, to households whose adjusted gross income is 80% or less of the area median income adjusted for household size, and which restrictions through means of a land use restriction agreement or similar legal document runs with the property for an initial period of at least fifteen years.

**Mobile home**. Shall be defined as in Section 27.03.430.

**Mobile home court.** The use of land for sites for mobile homes not located on individual platted lots.

**Multi-family**. Shall have the same meaning as multiple dwelling, as defined in Section 27.03.210, except that it excludes townhouses.

**Neighborhood Park and Trail Impact Fee Exclusion Area.** The area established and shown on the Neighborhood Park and Trail Impact Fee Benefit Areas Map as the Existing Neighborhood Park and Trail Impact Fee Exclusion Area.

**Person** shall include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.

**Present Value.** The current value of past, present, or future payments, contributions or dedications of goods, materials, construction or money, taking into account when appropriate depreciation and inflation.

**Qualified Professional.** A professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education, or experience.

**Single-family detached**. A single-family dwelling, as defined in Section 27.03.190, that is not attached to any other dwelling by any means and that is the only dwelling unit on the lot. This term shall include a mobile home located on a separately platted lot.

**Site-related improvements**. All site specific improvements primarily planned, designed, or built to provide necessary access and service to the proposed development, including all site driveways and local and collector streets leading only to the proposed development; all traffic control devices that primarily give access to the development; acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning movements into or out of the development from site driveways and local and collector streets.

**Tap**. The act of connecting to a public water main or public wastewater collector.

**Tap fee**. The permit fee required pursuant to Lincoln Municipal Code Section 17.10.040 to cover the City's cost in making the tap and of furnishing the required supply connection, water meter with meter stops, and meter couplings, and other required meter apparatus.

**Townhouse**. Shall have the same meaning as townhouse, as defined in Section 27.03.630. (Ord. 18324 §1; March 15, 2004; prior Ord. 18113 §4; January 13, 2003).

**27.82.050 Imposition of Impact Fees.**

(a) Requirement. On and after June 2, 2003 and the adoption of impact fee schedules by resolution of the City Council, any person who applies for a building permit for a development or who applies for any other permit for a development where a building permit is not required, or who seeks to engage in a development for which no permit is required, shall pay a water system impact fee, water distribution impact fee, wastewater impact fee, arterial street impact fee, and neighborhood park and trail impact fee unless the type of development described in the permit or to be engaged in is specifically exempted, waived or subsidized by this ordinance, or unless the type of development described in the permit or to be engaged in is not located in an impact fee benefit district for the above-described impact fees.

(b) Payment of Impact Fees. A person applying for any of the permits for a development listed in subsection (a) above shall pay each impact fee required by this ordinance to the Impact Fee Administrator prior to the issuance of any such permit. If the issuance of a permit is not required for the development (e.g. golf course, park, change of use, etc), then the person seeking to engage in the development shall pay each impact fee required by this ordinance prior to the occurrence of any one of the following events, whichever occurs first:

(1) Completion of any connection to the City's water and wastewater systems; or

(2) The date when any part of the development opens for business or goes into use.

No such permits shall be issued, no such connections shall be made, and no such other development shall be opened for business or allowed to go into use until each impact fee require by this ordinance has been paid.

All impact fees paid by a person pursuant to this ordinance shall be promptly deposited in the appropriate impact fee accounts described in Section 27.82.070.

(c) Calculation of Impact Fees from Impact Fee Schedules.

(1) Unless the person applying for any of the permits for a development listed in subsection (a) above or the person seeking to engage in a development for which no permit is required requests that the City determine the amount of such fee pursuant to an independent fee calculation study, the Impact Fee Administrator shall determine the amount of each required impact fee through the use of impact fee schedules adopted by the City Council.

(2) If the type of development or meter size that a permit is applied for or the type of development to be engaged in for which no permit is required is not listed in a schedule, then the Impact Fee Administrator shall use the fee applicable to the most nearly comparable type, land use, or meter size in such schedule. In the case of arterial street impact fees, decisions about what use is most nearly comparable shall be guided by the most recent edition of "Trip Generation" and the companion "Trip Generation Manual" prepared by the Institute of Transportation Engineers, or if such publications are no longer available, then by a similar publication.

(3) If the type of development or meter size that a permit is applied for or the type of development to be engaged in for which no permit is required includes a mix of those uses or meter sizes listed in a schedule, then the fee shall be determined by adding up the fees that would be payable for each use or meter size if it was a free-standing use pursuant to such schedule.

(4) If a person is applying for a permit to allow a change of use or meter size or for the expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the fee for the new use or meter size as compared to the previous use, provided that the previous use was in operation within fifteen years prior to the first building permit for the redevelopment.

(5) If no use was in operation on the site within the last fifteen years, the redevelopment shall be treated the same as a new development.

(6) If the proposed change of use, meter size, expansion, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use, meter size, or development, there shall be no refund of or credit for impact fees previously paid.

(7) In the case of a demolition or termination of an existing use or structure, the impact fee for future redevelopment of that site shall be based upon the net increase in the impact fee for the new or proposed land use as compared to the previous use. Credit for the prior use shall not be transferable to another location, except that if the old location was acquired by the City for use for an Impact Fee Facility and will not be redeveloped, the City will receive a credit against future impact fees equal to the impact fee that would have been assessed against the relocated use which may be transferred by the City to a community redevelopment project in another location within the same benefit area..

(8) In the case of a relocation of a use, an impact fee shall be assessed to the relocated use at its new location. Credits from the old location shall not be transferable to the new location. Future redevelopment of the old location from which the use was removed will receive a credit against the impact fee assessed equal to the impact fee that would have been assessed against the relocated use.

(d) Calculating Fees Through an Independent Fee Calculation Study.

(1) General Provisions. If in the judgment of the Impact Fee Administrator there is no comparable type, land use or meter size in such fee schedules which can be used to accurately

describe the impacts resulting from any proposed development, the person applying for a permit for such development or the person seeking to engage in such development for which no permit is required shall provide to the Administrator for the Administrator's review and evaluation an independent fee calculation prepared at City expense by a qualified professional in the preparation of an impact fee analysis. In addition, if such person elects not to have the impact fee determined according to the impact fee schedules, such person may request that the Impact Fee Administrator determine the amount of a required impact fee for the proposed development by reference to an independent fee calculation study prepared at such person's cost by a qualified professional in the preparation of such analysis. Any such study shall be based on the same service standards and unit costs for facilities used in the Impact Fee Study, and shall document the methodologies and assumptions used. Any independent fee calculation study submitted by such person may be accepted, rejected, or accepted with modifications by the impact Fee Administrator as the basis for calculating an impact fee. If such study is accepted or accepted with modifications as a more accurate measure of the demand for Impact Fee Facilities created by the proposed development than the applicable impact fee shown in the appropriate impact fee schedules, then the impact fee due under this ordinance shall be calculated according to such study.

(2) Additional Requirements for Arterial Street Impact Fee Studies. In addition to those requirements listed in subsection (d)(1) above, any independent fee calculation study submitted by a person for purposes of calculating an arterial street impact fee shall show the traffic engineering and economic methodologies and assumptions used, including but not limited to the following forms of documentation:

(i) Such studies must include documentation of trip generation rates, trip lengths, the percentage of trips from the site that represent net additions to current trips from the site (if any), the percentage of trips that are new trips as opposed to pass-by or diverted-link trips, and any other trip data for the proposed land use.

(ii) Such studies must include documentation of any special factors that such person believes will reduce the traffic volumes otherwise attributable to the proposed land uses. (Ord. 18113 §5; January 13, 2003).

**27.82.060 Exemptions From Impact Fees.**

(a) Exemptions From All Impact Fees. The following types of development shall be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

(1) Replacement of a destroyed or partially destroyed residential building or structure with a new building or structure of the same use, and with the same number of residential units, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(2) Replacement of a destroyed or partially destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(3) Installation or replacement of a mobile home on a lot or site where all impact fees for such lot or site have previously been paid pursuant to this ordinance or where a mobile home legally existed on such lot or site on or prior to June 2, 2003.

(4) Room additions, remodeling, rehabilitation or other improvements to an existing structure, provided that there is no increase in the number of dwelling units for residential use or in the amount of gross square footage for nonresidential use.

(5) Construction pursuant to a building permit based upon a complete application filed with the City prior to June 2, 2003, provided the construction proceeds according to the terms of the building permit. If said building permit application expires, application for a new building permit shall be treated the same as a new development. A building permit application shall not be deemed to be complete until the application, together with all required attachments, information, or other accompanying documents, are filed with the City.

(6) Low-to-Moderate Income Owner-Occupied Housing; provided that:

(i) The housing unit has an initial purchase price that does not exceed the FHA mortgage limit for the Lincoln Area as determined by the United States Department of Housing and Urban Development (HUD);

(ii) The housing unit is the principal residence of an owner whose household has an adjusted gross income which is 80% or less of the area median income adjusted for household size; and

(iii) Neither the owner nor any member of the owner's household whose combined adjusted gross income is 80% or less of the area median income adjusted for household size has purchased housing which qualified for a Low-Income Owner-Occupied Housing exemption within the immediately preceding five years.

An Owner-Occupied unit which is sold to a household whose adjusted gross income is 60% or less of the area median income adjusted for a household size shall be entitled to a 100% exemption from all Impact Fees.

An Owner-Occupied unit which is sold to a household whose adjusted gross income is more than 60% but is 80% or less of the area median income adjusted for household size shall be entitled to a 50% exemption from all Impact Fees.

(7) Low-to-Moderate Income Rental Housing located outside of a low or moderate income area.

(i) A Tenant-Occupied unit which is restricted to rental to a household whose adjusted gross income is 60% or less of the area median income adjusted for household size shall be entitled to a 100% exemption from all Impact Fees.

(ii) A Tenant-Occupied unit which is restricted to rental to a household whose adjusted gross income is 80% or less of the area median income adjusted for household size shall be entitled to a 50% exemption from all Impact Fees.

(8) Development or construction by any governmental entity for which the governmental entity has the statutory power of eminent domain shall not pay any impact fees since these entities are exempt from local zoning.

(9) Development or construction by the Housing Authority of the City of Lincoln pursuant to the Nebraska Housing Agency Act.

(b) Exemptions From Specific Impact Fees. The following types of projects shall be exempted from the following types of impact fees:

(1) Development, pursuant to a written agreement or other approval between the City and a developer which was entered into prior to June 1, 2002, and which specifically included or required the participation by the developer in the financing or construction of the Impact Fee Facilities for the approved development shall be exempt from the impact fee charged for those specific types of Impact Fee Facilities the developer agreed to finance or construct in whole or in part. The Impact Fee Administrator shall determine in writing whether or not any other agreement or other approval qualifies for an exemption. The Impact Fee Administrator shall maintain a record

of the agreements or other approvals that qualify for category exemptions. A copy of said record shall be filed in the Office of the City Clerk.

Notwithstanding the above, the exemption shall not apply to any amendment, modification, or change to the approved development to allow a change of use, an increase in meter size, an increase in the amount of gross square footage for nonresidential use, or an increase in the number of dwelling units for residential use that increases the impact on the Impact Fee Facility in question. In such case, the fee shall be based on the net increase in the fee for the new use, meter size, gross square footage for nonresidential use or number of dwelling units for residential use as compared to the previous use, meter size, gross square footage for nonresidential use and number of dwelling units for residential use.

(2) Where the Bureau of Fire Prevention requires that a water meter be increased in size above that required for the ordinary usage of a building or other facility for the purposes of maintaining fireflow to internal lines, the water and wastewater fees for that building or other facility shall be based on the meter size that would be required without regard to the fireflow requirements.

(3) Any separate water meter connected only to an irrigation system and not to any building or other facility designed for human occupancy shall not be included in the calculation of the wastewater impact fee.

(4) Other types of development shall be exempted from payment of specific impact fees otherwise due pursuant to this ordinance if the person applying for a permit for such development or the person seeking to engage in such development for which no permit is required can demonstrate that the proposed land use and development will produce no additional demand for a specific Impact Fee Facility beyond what was generated from such site prior to the proposed development, using an average cost (not marginal cost) methodology. The fact that a proposed development has direct access to, or is located close to, an existing facility of the type covered by an impact fee, shall not by itself be evidence that the proposed development will have no impact on the need for Impact Fee Facilities of the type covered by the impact fee.

(c) Request for Exemption Required. If a permit is required for the proposed development, any such claim for exemption must be made no later than the date of the application for the permit for the proposed development except that a claim of exemption for Low-to-Moderate Income Owner-Occupied Housing must be made no later than ten days following execution of the purchase contract. If the issuance of a permit is not required for the development, then any such claim for exemption must be made no later than the occurrence of any one of the following events, whichever occurs first:

(1) Completion of any connection to the City's water and wastewater systems; or

(2) The date when any part of the development opens for business or goes into use.

Any claim for exemption not made at or before that time provided above shall be deemed waived.

(d) Determination of Validity. The Impact Fee Administrator shall determine the validity of any claim for exemption pursuant to the criteria set forth in this ordinance.

(e) Funding of Exemptions. The proportionate share of any Impact Fee Facility or Impact Fee Facility Improvement cost directly related to the exemptions granted pursuant to Subsection (a)(6), (7), and (8) above shall be funded from a revenue source other than impact fees. (Ord. 18324 §2; March 15, 2004: prior Ord. 18283 §1A; December 8, 2003: Ord. 18113 §6; January 13, 2003).

**27.82.070 Impact Fee Funds.**

(a) Creation of Benefit Districts. Impact fees shall be spent only within the benefit district in which they were collected, except that (1) water system impact fees, water distribution impact fees, and wastewater impact fees may be spent for water system impact fee facility improvements, water distribution impact fee facility improvements, and wastewater impact fee facility improvements, respectively, outside the corporate limits of the City which benefit the district in which they were collected; and (2) any arterial street used as a boundary between two arterial street benefit districts shall be considered as included within both benefit districts and may be improved with fees collected in either benefit district. The following benefit districts are hereby created:

(1) Water System Impact Fee Benefit District shall be the area served by the Lincoln water system;

(2) Water Distribution Benefit District Nos. 1 through 7, inclusive, shall be the respective incorporated areas of the City established and shown on the Water Distribution Impact Fee Benefit Areas Map as Water Distribution Benefit Area Nos. 1 through 7, inclusive.

(3) Wastewater Impact Fee Benefit District shall be the area served by the Lincoln Wastewater System;

(4) Arterial Street Impact Fee Benefit District Nos. 1 through 7, inclusive, shall be the respective incorporated areas of the City established and shown on the Arterial Street Impact Fee Benefit Areas Map as Arterial Street Benefit Area Nos. 1 through 7, inclusive, except for that portion of the Downtown/Antelope Valley Exclusion Area located within any of areas.

(5) Neighborhood Park and Trail Impact Fee Benefit District Nos. 1 through 7, inclusive, shall be the respective incorporated areas of the City established and shown on the Neighborhood Park and Trail Impact Fee Benefit Areas Map as Neighborhood Park and Trail Benefit Area Nos. 1 through 7, inclusive, except for that portion of the Neighborhood Park and Trail Impact Fee Exclusion Area located within said areas.

(b) Creation of Impact Fee Fund. An Impact Fee Fund is hereby created and shall include a separate impact fee account for each impact fee benefit district as an interest bearing account distinct from the General Fund of the City:

(c) Monies in an Impact Fee Account. Each impact fee account shall contain only those impact fees collected pursuant to this ordinance for the types of Impact Fee Facilities reflected in the title of the account plus any interest which may accrue from time to time on such amounts.

(d) Use of Monies in an Impact Fee Account. The monies in each impact fee account shall be used only:

(1) To acquire or construct Impact Fee Facilities or Impact Fee Facility Improvements of the type reflected in the title of the account and in the location specified in Section 27.82.070(a); or

(2) As described in Section 27.82.080 (Refunds) or as described in Section 27.82.090 (Post-Ordinance Agreements), or as described in Section 27.82.100 (Pre-Ordinance Reimbursements), or

(3) To retire bonds, or other obligations of indebtedness issued to fund the construction of Impact Fee Facility Improvements.

(4) To pay consultant fees to update the impact fees.

(5) To pay the expenses of collecting the fee and administering this ordinance, except that no more than two percent (2%) of the impact fees collected may be used to compensate the City for such expenses. In the case of refunds of impact fees under Section 27.82.080, or reimbursements under Sections 27.82.090 and 27.82.100, the City shall be entitled to retain up to two percent (2%)

of the impact fee payments made by the applicant or the reimbursement due the applicant as payment for the expenses of processing the refund or reimbursement request. (Ord. 18283 §1B; December 8, 2003: prior Ord. 18113 §7; January 13, 2003).

**27.82.080 Refunds of Impact Fees Paid.**

(a) Passage of Time. Any monies in any impact fee account that have not been spent or encumbered within eight years after the date on which such fee was paid shall, upon application to the Impact Fee Administrator by the fee payor, be returned to such person with interest since the date of payment at the rate earned by the City on the fees. Fees shall be deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within six months of the end of the eight-year period from the date on which the unspent impact fee was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at the address listed with the Impact Fee Administrator. In order to receive such refund, the fee payor shall be required to submit an application for such refund within twelve months after the expiration of such eight-year period. Any monies in an impact fee account for which no application for a refund has been timely made shall be retained by the City and expended on the type of Impact Fee Facilities reflected in the title of the account without further limitation as to time of expenditure.

(b) Expiration of Permit. If a person has paid an impact fee required by this ordinance and has obtained a building permit or any other permit for a development or extensions thereto, and the permit or extension for which the fee was paid later expires without the possibility of further extension, and the development activity for which the impact fee was imposed did not occur and no impact has resulted, then such fee payor shall be entitled to a refund of the fee paid, with interest. In order to be eligible to receive such refund, such fee payor shall be required to submit an application for such refund within six months after the expiration of the permit or extension for which the fee was paid.

(c) Approval of Low-to-Moderate Income Owner-Occupied Housing Exemption. If, after an impact fee has been paid pursuant to this ordinance for a development which subsequently qualifies for a Low-to-Moderate Owner-Occupied Housing Exemption pursuant to Section 27.82.060(a)(6), then such purchaser shall be entitled to a reimbursement of the fee paid, without interest. In order to be eligible to receive such reimbursement, such purchaser shall be required to submit an application for such exemption and reimbursement no later than ten days following the execution of the purchase contract.

(d) No Refund for Altered Development. After an impact fee has been paid pursuant to this ordinance, no refund of any part of such fee shall be made if the development for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

(e) Notice to Fee Payor. At the time of payment of any impact fee under this ordinance, the Impact Fee Administrator shall provide the person 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. (Ord. 18324 §3; March 15, 2004: prior Ord. 18283 §1C; December 8, 2003: Ord. 18113 §8; January 13, 2003).

**27.82.090 Post-Ordinance Developer Agreements Regarding Impact Fee Facilities.**

(a) General Provision. On and after June 2, 2003, where a proposed development includes or requires the construction of Impact Fee Facilities in connection with such development, the City and developer may agree in writing to have the developer participate in the financing or construction of part or all of such Impact Fee Facilities.

Such agreement may provide for future cash reimbursements to the developer for the developer's participation in the financing or construction of the Impact Fee Facilities consistent with the following requirements:

(1) Reimbursement for each type of Impact Fee Facility financed or constructed by the developer may be paid with interest at the rate earned by the City or its impact fee fund account.

(2) No reimbursement shall be paid from impact fees received for a different type of Impact Fee Facility or against any other monies due to the City from such development and any reimbursement to be paid from impact fees shall not constitute general liability of the City nor shall impact fees paid in one Benefit District be used to reimburse for construction of Impact Fee Facilities in another Benefit District..

(3) The reimbursement shall be calculated and documented as follows:

(i) The value of land dedicated or donated for water storage reservoirs, water pumping stations, wastewater trunk lines, and neighborhood parks shall, at such person's option, be valued at (a) 100% of the most recent assessed value for such land as shown in the records of the County Assessor, or (b) the land's fair market value based on its appraised land value on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by such person, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the Impact Fee Administrator may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by such person and the City. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.

(ii) If only a portion of a parcel of land is dedicated or donated for the uses described in 3(i) above, the value of such land shall, at such person's option, be valued at (a) 100% of the land's assessed value for such land based upon the most recent assessed value for the parent parcel as shown in the records of the County Assessor, or (b) the land's fair market value based on the appraised land value of the parent parcel on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by such person, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the Impact Fee Administrator may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by such person and the City. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.

(iii) The value of Impact Fee Facilities constructed by the developer shall be based upon the actual cost of construction as verified by receipts submitted by the developer.

(4) The reimbursement shall only be paid to the developer who participated in the financing or construction of part or all of the Impact Fee Facilities or the developer's legal successor in interest with an express right or entitlement to any reimbursement which has been expressly transferred or assigned to the successor in interest.

(5) In the absence of an express transfer or assignment of the right or entitlement to the reimbursement, the right or entitlement shall be deemed "not to run with the land." (Ord. 18113 §9; January 13, 2003).

**27.82.100 Developer Reimbursement for Pre-Ordinance Participation in Financing or Construction of Impact Fee Facilities.**

(a) General Provisions. On and after June 2, 2003, where a pre-ordinance development not subject to an exemption from impact fees pursuant to Section 27.82.060(b)(1) included or required the participation by the developer in the financing or construction of Impact Fee Facilities, said developer or the developer's legal successor in interest with the right or entitlement to a reimbursement which has been expressly transferred or assigned to the successor in interest will be entitled to a cash reimbursement for the present value of land dedicated or donated for water storage reservoirs, water pumping stations, wastewater trunk lines and neighborhood parks and/or the present value of the Impact Fee Facilities constructed by said developer as provided in (b) below.

(b) Reimbursement shall be calculated as follows:

(1) No reimbursement shall be provided under this section for dedications, contributions, payments or construction made more than fifteen (15) years prior to June 2, 2003.

(2) The present value of land dedicated or donated shall, at such person's option, be valued at (a) 100% of the most recent assessed value for such land as shown in the records of the County Assessor, or (b) the land's present fair market value based on its appraised land value on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by such person, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the Impact Fee Administrator may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by such person and the City. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.

(3) If only a portion of a parcel of land is dedicated or donated, the present value of such land shall, at such person's option, be valued at (a) 100% of the land's assessed value for such land based upon the most recent assessed value for the parent parcel as shown in the records of the County Assessor, or (b) the land's present fair market value based on the appraised land value of the parent parcel on the date of transfer of ownership to the City, as determined by a certified appraiser who was selected and paid for by such person, and who used generally accepted appraisal techniques. If the City disagrees with the appraised value, the Impact Fee Administrator may engage another appraiser at the City's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by such person and the City. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.

(4) The amount of the reimbursement for a contribution payment or construction made to an Impact Fee Facility prior to the effective date of the ordinance shall be the present value of the contribution payment or the cost of construction, less the total amount of impact fees for the same type of Impact Fee Facility that would have been due and payable for development already undertaken within the whole development had that development been subject to the impact fees imposed pursuant to Section 27.82.050.

(c) Procedure. No reimbursement shall be provided unless the developer who participated in the financing or construction of the Impact Fee Facilities or the developer's legal successor in interest makes application on forms provided by the City for the reimbursement within one year following the effective date of this ordinance or such developer's claim for the reimbursement shall be deemed waived. The application for reimbursement must contain a statement under oath of the facts that qualify such developer or the developer's legal successor in interest to receive a reimbursement, and must be accompanied by documents evidencing the developer, at the request and demand of the City, dedicated specific parcels of land for specific Impact Fee Facilities, or contributed to the cost of constructing specific Impact Fee Facilities, or constructed specific Impact Fee Facilities in accordance with all applicable state or city design and construction standards.

(d) Payment of the Reimbursement. Reimbursements for each type of Impact Fee Facility shall be paid from and shall not exceed the impact fees which become due and payable under this ordinance within the development for that same type of Impact Fee Facility or against any other monies due to the City from such development and the reimbursement shall not constitute a general liability of the City. (Ord. 18113 §10; January 13, 2003).

**27.82.110 Miscellaneous Provisions.**

(a) Interest. Interest earned on monies in any impact fee account shall be considered part of such account, and shall be subject to the same restrictions on use applicable to the impact fees deposited in such account.

(b) First-In/First-Out Accounting. Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(c) No Operation or Maintenance. No monies from any impact fee account shall be spent for periodic or routine operation or maintenance of any facility of any type.

(d) No Restriction on Development Conditions. Nothing in this ordinance shall restrict the City from requiring a person to construct reasonable project improvements required to serve such person's project, whether or not such improvements are of a type for which reimbursements are available under Section 27.82.090.

(e) Records. The Impact Fee Administrator shall maintain accurate records of the impact fees paid, including the name and address of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the Impact Fee Administrator deems appropriate or necessary to the accurate accounting of such fees, and such records shall be available for review by the public during City business hours.

(f) Assignment of Impact Fee Account Monies. The approved Capital Improvement Program which includes any Impact Fee Facilities scheduled for construction shall assign monies to fund in whole or in part such Impact Fee Facilities from the Impact Fee Fund Account of the type for which the fees in that account were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to Section 27.82.080 (Refunds) or 27.82.090 (Reimbursements) shall be retained in the same impact fee account until the next fiscal year.

(g) Mistake or Misrepresentation. If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a person shall be refunded by the City to such person within thirty days after the City's acceptance of the recalculated amount, with interest since the date of such overpayment at the rate earned by the City on the funds. Any amounts underpaid by such person shall be paid to the City within thirty days after the Impact

Fee Administrator's acceptance of the recalculated amount, with interest since the date of such underpayment at the rate then earned by the City on its impact fee funds. In the case of an underpayment to the City, the City may refuse to issue any additional permits or approvals for the project for which the impact fee was previously underpaid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty-day period, the City may also repeal any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then current owner of the land.

(h) Reimbursement of Impact Fees to Promote Economic Development. In order to promote the economic development of the City, the City shall reimburse a developer for some or all of the arterial street impact fees imposed on a proposed development or redevelopment from other funds of the City that are not restricted to other uses. Notwithstanding the above, no such reimbursement of arterial street impact fees shall be made except in conformance with specific economic development criteria and qualifications adopted by resolution of the City Council which, if met, entitle a developer to a reimbursement of some or all of the arterial street impact fees imposed on the development.

(i) Appeals. Any determination made by any official of the City charged with the administration of any part of this ordinance may be appealed by the aggrieved party to the City Council by filing (1) a written Notice of Appeal on a form provided by the City, and (2) a written explanation of why the appellant feels that a determination was in error. Appeals must be filed with the City Clerk within ten days after the determination for which the appeal is being filed. At the regular meeting following the filing of the appeal, the City Council shall fix a time and place for hearing the appeal, and the City Clerk 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 City Council. In an appeal of an impact fee, the Council shall not waive the fees, although the fees may be reduced pursuant to subsection (h) above or may be reduced upon a finding that the impact fee was incorrectly calculated, or that unusual circumstances of the development demonstrate that application of the fee to the development would be unfair or unjust. In exercising its appellate jurisdiction, the action appealed from shall be deemed advisory and the City Council may make such decision as ought to be made. The City Council shall make specific and detailed findings of fact with respect to each controverted issue on appeal. The determination of the City Council shall be final.

(j) Periodic Review. The impact fees and the administrative procedures established by this ordinance shall be reviewed at least once every three fiscal years to ensure that:

(1) The demand and cost assumptions underlying such fees are still valid,

(2) The resulting fees do not exceed the actual cost of constructing Impact Fee Facilities of the type for which the fee was paid and that are required to serve new development,

(3) The monies collected or to be collected in each impact fee fund have been or are expected to be spent for Impact Fee Facilities of the type for which such fees were paid, and

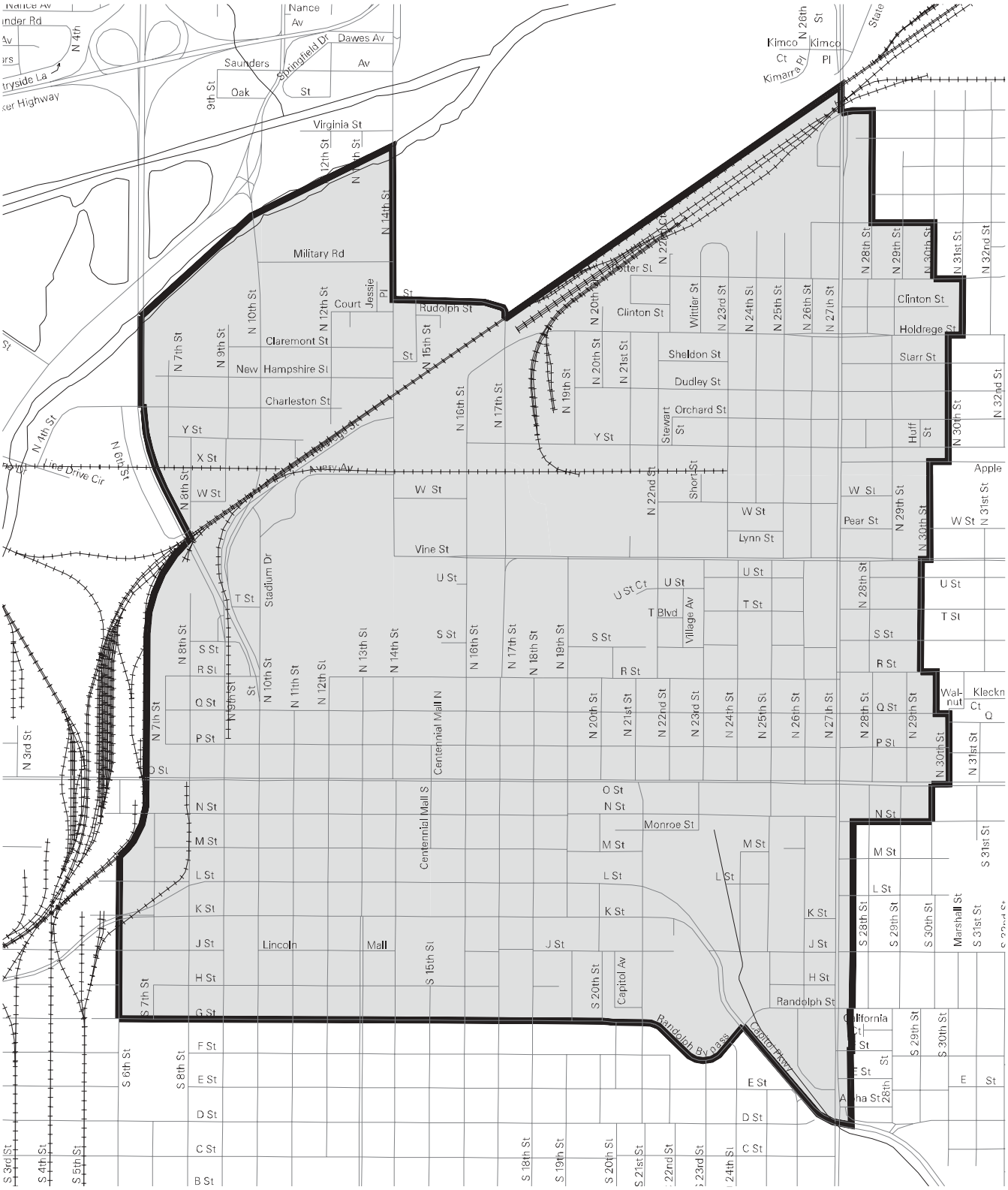
(4) That such Impact Fee Facilities will benefit those developments for which the fees were paid.

(k) Adjustments for Inflation. Beginning on January 1, 2005, and on January 1 of each following year unless and until the impact fee schedules are otherwise revised or replaced by City Council, each fee amount set forth in each schedule shall be adjusted to reflect the effects of inflation on those costs set forth in the Impact Fee Study by multiplying such amount by a fraction, the numerator of which is the U.S. Consumer Price Index for All Items for the most recent month

of August, and the denominator of which is U.S. Consumer Price Index for All Items for the period one year prior to the period reflected in the numerator.

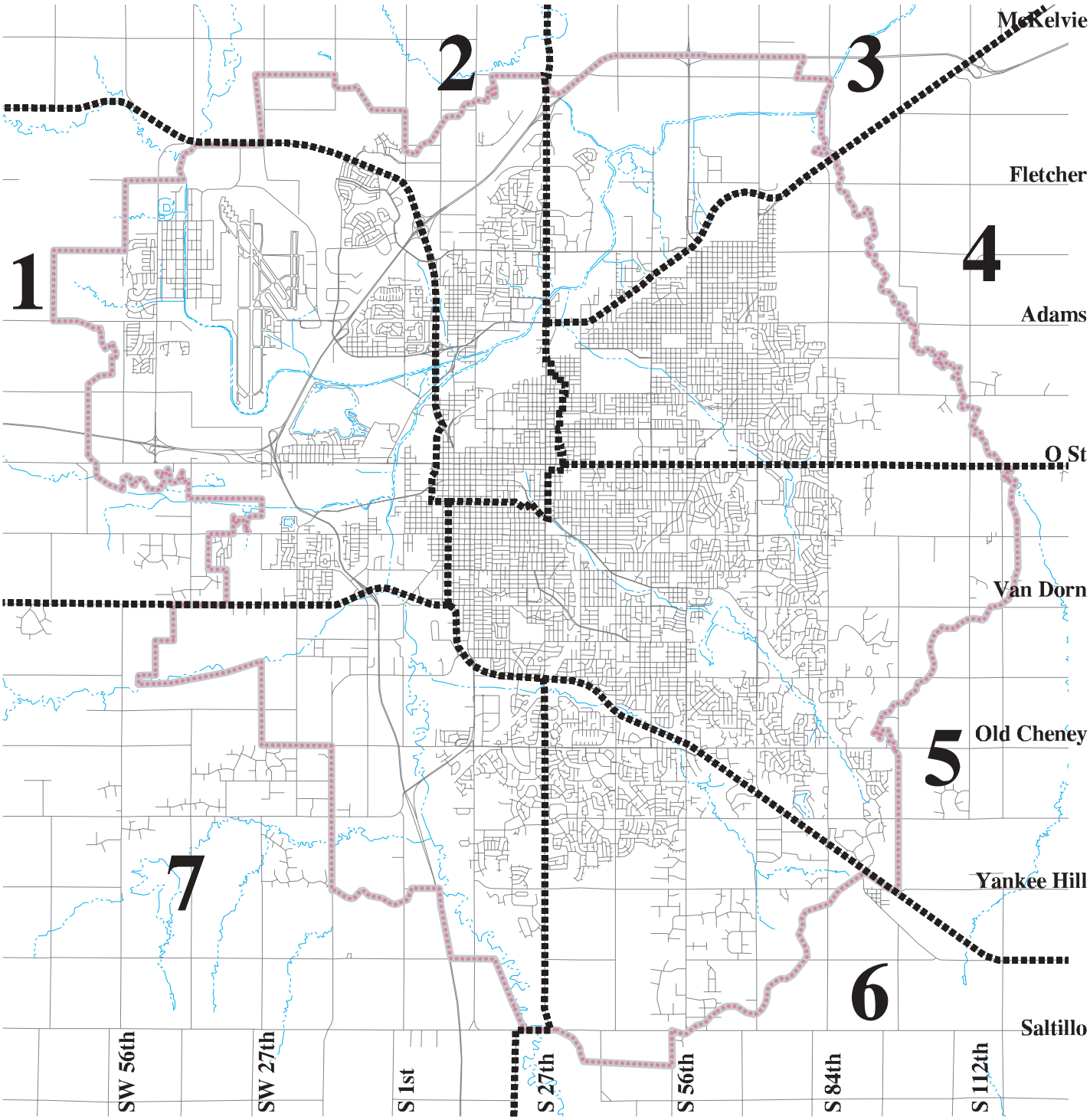
(l) Violations. Violation of this ordinance shall be a misdemeanor and shall be subject to those remedies provided in Section 27.81.070. Knowingly furnishing false information to any official of the City charged with the administration of this ordinance on any matter relating to the administration of this ordinance, including without limitation to knowingly furnishing false information regarding the expected size, use, or traffic impacts from a proposed development, shall be a violation of this ordinance. In addition to or in lieu of any criminal prosecution, the City or any person applying for a permit of the types described in Section 27.82.050(a) or any person seeking to engage in a development for which no permit is requested shall have the right to sue in civil court to enforce the provisions of this ordinance. (Ord. 18633 §8; October 24, 2005: prior Ord. 18449 §1; October 11, 2004: Ord. 18283 §1D; December 8, 2003: Ord. 18113 §11; January 13, 2003).

# DOWNTOWN / ANTELOPE VALLEY
# ARTERIAL STREET FEE EXCLUSION AREA MAP




Approved January 13, 2003

# WATER DISTRIBUTION IMPACT FEE BENEFIT AREAS MAP

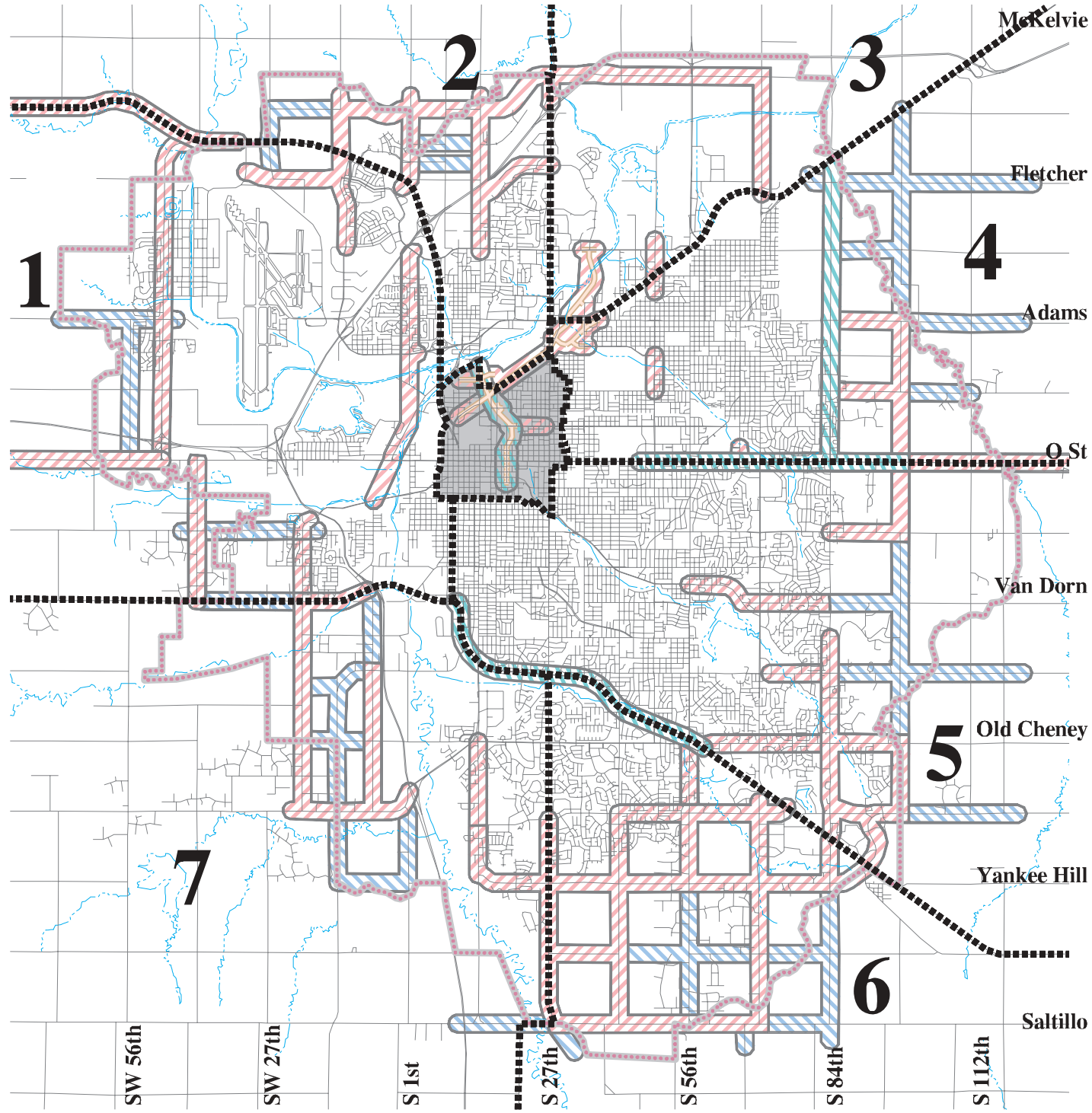



Future Service Limit

Benefit Area Boundary

SCALE:
1 In = 11,500 Ft

# ARTERIAL STREET IMPACT FEE BENEFIT AREAS MAP




Future Service Limit

Benefit Area Boundary

Downtown/Antelope Valley Impact Fee Exclusion Area

2 Lanes + Center Turn Lane

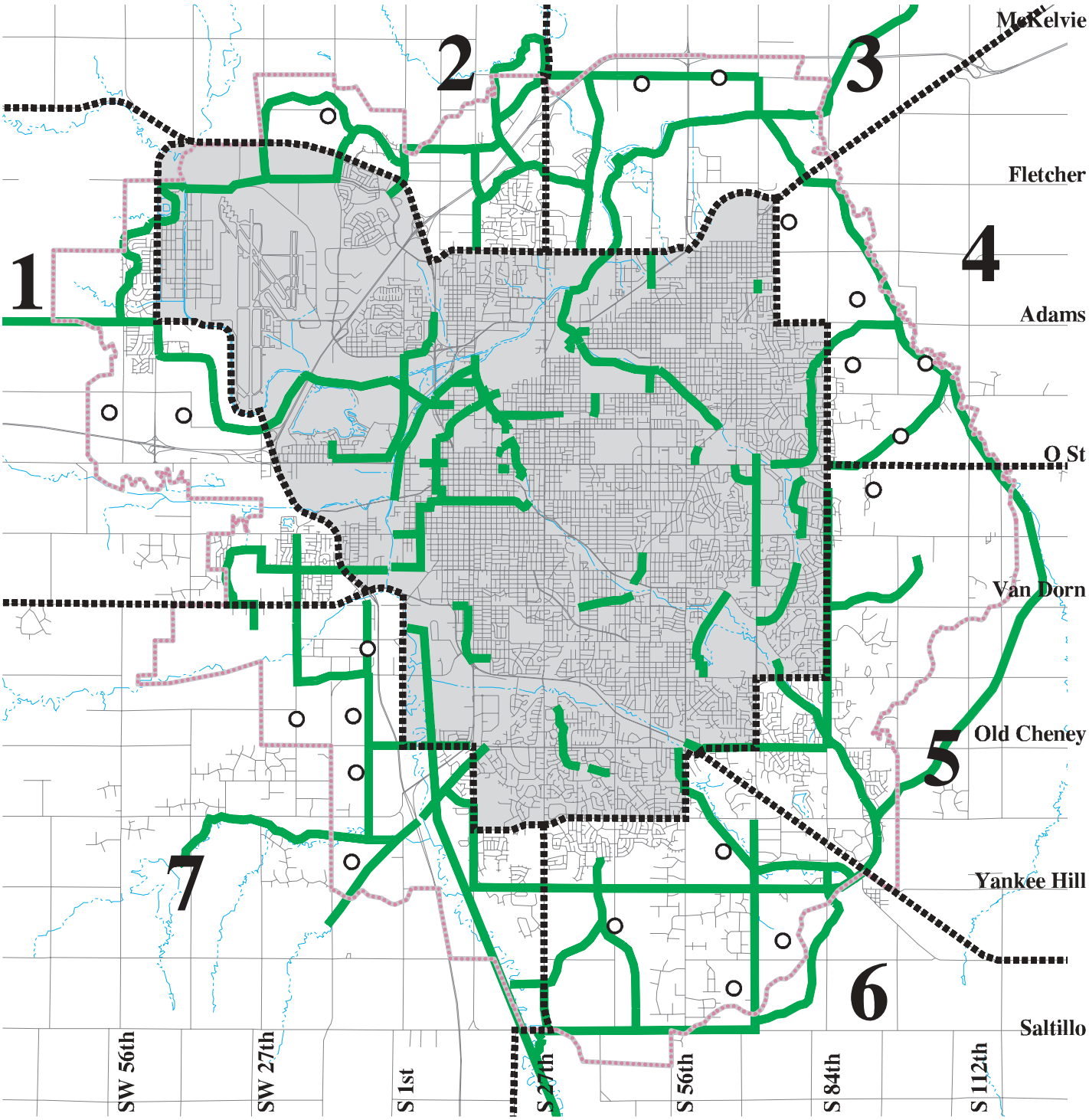
4 Lanes + Center Turn Lane

6 Lanes + Center Turn Lane

N
W
E
S

SCALE:
1 In = 11,500 Ft

# NEIGHBORHOOD PARK & TRAIL IMPACT FEE BENEFIT AREAS MAP




Future Service Limit

Benefit Area Boundary

Existing Neighborhood Park & Trail Impact Fee Exclusion Area

Future Trail

Future Neighborhood Park

N
W
E
S

SCALE:
1 In = 11,500 Ft