



City of Enid  
401 W. Owen K. Garriott Road  
Enid, Oklahoma 73701  
580-234-0400

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BOARD OF COMMISSIONERS

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**NOTICE OF STUDY SESSION**

**Mayor and Board of Commissioners of the City of Enid, Oklahoma, the Trustees of the Enid Municipal Authority, a Public Trust, the Trustees of the Enid Economic Development Authority, a Public Trust, and the Trustees of the Enid Public Transportation Authority, a Public Trust.**

Notice is hereby given that the Mayor and Board of Commissioners of the City of Enid, Oklahoma, the Trustees of the Enid Municipal Authority, a Public Trust, the Trustees of the Enid Economic Development Authority, a Public Trust, and the Enid Public Transportation Authority, a Public Trust will meet in regular session at 5:00 p.m. on the 21st day of March, 2017, in the Lower Level Conference Room of the City Administration Building, located at 401 W. Owen K. Garriott Road in said city, and the agenda for said meeting is as follows:

**- AGENDA -**

**REGULAR STUDY SESSION AGENDA**

1. **CALL TO ORDER/ROLL CALL.**
2. **AT THE COMMISSIONERS' REQUEST, DISCUSS ANY ITEM OF CONCERN ON THE REGULAR SESSION AGENDA OF MARCH 21, 2017.**
3. **PRESENT AND DISCUSS KAW LAKE PHASE II UPDATE.**
4. **DISCUSS RETIREMENT PLAN CHANGES.**
5. **DISCUSS PROPOSED CAPITAL RECOVERY ORDINANCE.**
6. **DISCUSS ACTING MUNICIPAL JUDGE ORDINANCE.**
7. **ADJOURN.**

**City Commission Study Session**

**5.**

**Meeting Date:** 03/21/2017

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**SUBJECT:**

**DISCUSS PROPOSED CAPITAL RECOVERY ORDINANCE.**

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**Attachments**

Ordinance

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## ORDINANCE NO. 2017-\_\_

AN ORDINANCE REPEALING THE ENID MUNICIPAL CODE, 2014, TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 4, ENTITLED “CAPITAL IMPROVEMENTS AND RECOVERY,” AN ORDINANCE CREATING THE ENID MUNICIPAL CODE, 2014, TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 4, ENTITLED “CAPITAL IMPROVEMENTS AND RECOVERY,” CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-2, ENTITLED “DEFINITIONS,”; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-3, ENTITLED “CAPITAL IMPROVEMENT REQUIREMENTS,”; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-4, ENTITLED “CAPITAL RECOVERY FOR PUBLIC IMPROVEMENTS,”; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-5, ENTITLED “CAPITAL RECOVERY SPECIAL CONDITIONS FOR SANITARY SEWER IMPROVEMENTS,”; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-6, ENTITLED “CAPITAL RECOVERY SPECIAL CONDITIONS FOR STORMWATER IMPROVEMENTS; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-7, ENTITLED “CAPITAL RECOVERY SPECIAL CONDITIONS FOR TRANSPORTATION,”; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-8, ENTITLED “CAPITAL RECOVERY SPECIAL CONDITIONS FOR WATER IMPROVEMENTS,”; CREATING TITLE 10, ENTITLED “PLANNING AND DEVELOPMENT,” CHAPTER 10, ENTITLED “CAPITAL IMPROVEMENT RECOVERY,” SECTION 10-4-9, ENTITLED “CITY/AUTHORITY AS DEVELOPER,” PROVIDING FOR REPEALER, SAVINGS CLAUSE, SEVERABILITY AND CODIFICATION.

ORDINANCE

BE IT ORDAINED BY THE MAYOR AND BOARD OF COMMISSIONERS OF THE CITY OF ENID, OKLAHOMA:

Section I: That Title 10, Chapter 4, of the Enid Municipal Code, 2014, is hereby repealed in it’s entirety:

~~Chapter 4~~

~~CAPITAL IMPROVEMENT AND RECOVERY~~

~~**10-4-1: PURPOSE:**~~

~~The purpose of this chapter is to encourage uniform and comprehensive improvement of the city's public infrastructure systems; to provide for the equitable distribution of costs of these improvements; and to protect the general health, safety, and welfare of the residents of the~~

city. (Ord. 2010-14, 12-14-2010)

#### **10-4-2: DEFINITIONS:**

~~As used in this chapter, the following terms shall have the meanings indicated:~~

~~ALLOWABLE RECOVERY COST (ARC): The amount, in dollars, of money subject to collection based on an excess capacity improvement project.~~

~~APPRAISED VALUE: The value of real property as determined by an independent appraiser who is certified by the state of Oklahoma.~~

~~AREA OF IMPACT (AI): The area that receives a benefit from the installation of the improvement.~~

~~BUA: The undeveloped area in a particular drainage basin in acres.~~

~~efs: Cubic feet per second.~~

~~CAPITAL IMPROVEMENT: An improvement of the public infrastructure with a value of fifty thousand dollars (\$50,000.00) or more.~~

~~CONNECTION: The tapping into a public utility line, or physical work that allows a capital improvement to be used and will permit the usage of the capital improvement.~~

~~DEVELOPER: The person, company, or firm that is making the capital improvement to service a development site. The city of Enid and its trusts may be considered the developer when the referenced entity makes the improvement. In the case where a public entity makes the improvement and there is no identified development site, all of the improvement cost shall be considered for recovery.~~

~~DEVELOPMENT: The act of improving property by subdividing, site planning, construction on lot, or building permitting.~~

~~DEVELOPMENT SITE: The subdivision area, site plan area, building site, or tract of land that will directly benefit from the capital improvement.~~

~~DRAINAGE AREA: The area of land that drains to or through a capital improvement.~~

~~DRAINAGE SUBBASIN: An area within a drainage area to which drainage would contribute to a submain of a sewer.~~

~~EXCESS CAPACITY: Capacity of a capital improvement project beyond the capacity required for the development site providing the improvement.~~

~~EXCESS CAPACITY AGREEMENT: The contract between the city of Enid, or authority, and the "developer", as herein defined, concerning the construction, operation, and maintenance of an excess capacity capital improvement system, and payment of excess capacity fees.~~

~~EXCESS CAPACITY FEE: The amount of money to be paid by the user of excess capacity that exists when a developer installs a required improvement. The fee is paid to the city of~~

~~Enid, for the user's benefit of excess capacity of the improvement. Such fee shall be based upon the cost of providing the excess capacity to the user.~~

~~EXCESS CAPACITY WATER LINE: Water lines that are ten inches (10") or larger diameter and have the capacity to serve users beyond the development site.~~

~~FLOW CAPACITY: The flow rate of water that a channel will transfer within its banks.~~

~~FLOW OR Q: Volume over time calculated in cubic feet per second.~~

~~FULLY DEVELOPED: A condition where the acreage within the associated drainage basin is considered to have been altered from its natural state to a use that is consistent with the use identified in the most recent version of the city of Enid comprehensive plan.~~

~~gpd: Gallons per day.~~

~~I: The percent of impervious surface of a lot or tract divided by 0.7.~~

~~IMPROVEMENT: The project that the developer created to connect an area where city water, sewer, and/or stormwater drainage systems was or were previously unavailable or a developer's upgrade to the existing system(s).~~

~~IMPROVEMENT COST: The actual cost of construction of the required capital improvement including any approved change orders based upon bidding in compliance with the Oklahoma public competitive bidding act including none collusion standards, the cost of easements and rights of way not to exceed the appraised value, the cost of advertising and recording, the cost of inspection by the city of Enid, and the cost of engineering as provided in this chapter.~~

~~LATERAL SEWER: A gathering sewer main of eight inches (8") in diameter or more and which function is to convey sewage from user service lines to the submain or main sewer.~~

~~MAIN DRAINAGE CHANNELS: Those channels identified by FEMA and those channels designated in this chapter.~~

~~100-YEAR STORM EVENT: A rain event that has a one percent (1%) chance of occurring in any year.~~

~~PEAK HOURLY WASTEWATER FLOW RATE: The maximum flow rate sustained for one hour during a twenty four (24) hour period.~~

~~PEAK STORMWATER DISCHARGE: The maximum flow rate that a particular development will discharge based upon a 100 year storm event, as determined by the engineer's drainage report approved by the city of Enid.~~

~~POSTIMPROVEMENT DEVELOPMENT: After the improvement is in place, any development in the area of impact or any development that receives direct benefit from the improvement is a postimprovement development.~~

~~PROJECTED TOTAL BASIN IMPACT: Total increase in the peak stormwater discharge of a basin from its existing condition prior to the stormwater main channel improvement to the full development condition.~~

~~SERVICE LINE: That portion of a water or sanitary sewer line extending from the public utility line or water meter to serve the customer.~~

~~SEWER CAPACITY: The quantity of sewage that can be conveyed through a given sewer flowing at its design peak level.~~

~~SEWER MAIN: A sewer whose function is to convey sewage gathered from a number of lateral sewers or submain sewers to a trunk line or treatment plant.~~

~~SEWER SUBMAIN: Any sewer whose function is to convey sewage from lateral sewers to a sewer main.~~

~~STORMWATER: Stormwater runoff, snowmelt runoff, surface runoff, street wash waters related to street cleaning and maintenance, infiltration other than infiltration contaminated by seepage from sanitary sewers or other discharges and drainage.~~

~~STORMWATER CHANNELS: All natural and manmade structures, which convey surface flood runoff water within the jurisdictional boundaries of the city of Enid.~~

~~WATER LINE: All water mains, valves, hydrants, and public service lines and connections which are laid, placed, or constructed in a public street, alley or easement and form a part of the water system of the city.~~

~~WATER MAIN CAPACITY: The quantity of water that can be conveyed through a water main, flowing at its designed peak level. (Ord. 2010-14, 12-14-2010)~~

### ~~10-4-3: CAPITAL IMPROVEMENT REQUIREMENTS:~~

~~The purpose of this section is to identify capital improvements required to support the efficient and effective growth and development of the city of Enid, limit financial impact on the city of Enid and establish development responsibility to provide capital improvements.~~

#### ~~A. Water System:~~

- ~~1. New development sites shall extend the public water system across the length of the subdivision or developed site.~~
- ~~2. Water system improvements shall comply with section 8-2-14 of this code.~~

#### ~~B. Sanitary Sewer System:~~

- ~~1. New development sites shall extend the public sanitary sewer system to the site.~~
- ~~2. Sanitary sewers shall be constructed to the size requirement specified in the city of Enid sanitary sewer master plan, but not less than the capacity required for development site.~~

#### ~~C. Stormwater System:~~

- ~~1. New development shall provide improvement of the public stormwater system to transport stormwater through the development site in accordance with title 12, "Subdivisions", of this code.~~
- ~~2. New development shall mitigate the impact from the development site by improving the downstream drainageways to comply with title 12, "Subdivisions", of this code, or include an improvement plan to mitigate the impact by on-site detention or other acceptable means. The mitigation shall cover the impact from the development site to the main drainage channel as defined in the city of Enid stormwater master plan.~~

~~D. Transportation System:~~

- ~~1. New development shall provide that public roads within the development must be in compliance with title 12, "Subdivisions", of this code.~~
- ~~2. Subdivision development on arterial streets shall provide acceleration and deceleration lanes, per title 12 of this code.~~
- ~~3. Development, under title 11, chapter 11, "Site Plan Review", of this code, shall provide public infrastructure improvements as required by the site plan process to provide for adequate and safe vehicular access to adjacent streets.~~

~~E. Sidewalks:~~

- ~~1. New development and redevelopment shall provide sidewalks in accordance with section 10-6-1 of this title and section 12-8-7 of this code.~~

~~F. Fire Protection System:~~

- ~~1. New development and redevelopment shall provide fire hydrants in accordance with the international fire code as adopted by the city. (Ord. 2014-37, 11-18-2014)~~

~~**10-4-4: CAPITAL RECOVERY FOR WATER PUBLIC IMPROVEMENTS:**~~

~~A. Approval Of Excess Capacity Capital Improvements:~~

- ~~1. Application For Excess Capacity Capital Improvement: A developer desiring to make an excess capacity capital improvement under this chapter shall apply in writing to the city engineering department for consideration of the improvement for capital recovery prior to beginning construction on the improvement. The application shall contain the following information:
  - ~~a. The name and address of the developer making the application.~~
  - ~~b. A detailed drawing of the proposal, indicating the area to be served, proposed location of the new improvement, location of existing services in close proximity, and the proposed point of connection.~~
  - ~~c. Estimates of improvement cost, allowable recovery cost, and proposed~~~~

- ~~excess capacity fee.~~
- d. ~~Proposed area to be served (area of impact), with a map and necessary legal descriptions.~~
- e. ~~Any other information pertinent to the proposal.~~
- f. ~~Estimate of excess capacity to be provided by the project.~~
- g. ~~Proposed routing of capital improvements with coordination of drainage and other public services.~~
2. ~~Review And Approval Procedure: After the application has been reviewed and found to be acceptable and complete, the application will be forwarded to the mayor and board of commissioners for action.~~
3. ~~Excess Capacity Development Agreement Conditions: Upon approval of the application by the city commission, an increased capacity development agreement should be entered into between the initial developer and the city of Enid, which should address the following items:~~
- a. ~~The developer will prepare and furnish plans, profiles, contract documents, and specifications for the qualified improvements, all in accordance with the ordinances, regulations and specifications of the city.~~
- b. ~~All construction will be of the size, type and depth in accordance with city standards and of sufficient capacity to serve the anticipated need for the area being served, as defined by the city of Enid master plans, for the life of the improvements.~~
- c. ~~The developer shall acquire easements and rights of way necessary to construct improvements. The easements shall be dedicated to the city, approved by the city and recorded at the expense of the developer. The easements will be located so as to be reasonably accessible to all parties that may be anticipated to access the improvement.~~
- d. ~~The developer shall file with the city a sealed estimate of the cost of construction of said improvements, prepared by a registered engineer as called for in this chapter.~~
- e. ~~The developer shall deposit with the city the estimated amount of all inspection and administration fees, if and when such fees are required.~~
- f. ~~The developer shall furnish a "record drawing" on compatible digital format, approved by the city prior to acceptance of improvements.~~
- g. ~~After completion and acceptance of the developer's improvement, said improvements shall become a part of the city system, under its exclusive control and operation.~~



- ~~h. The developer shall, within thirty (30) days after completion of the construction, furnish to the city a certified, itemized statement of the cost of the improvements, including the actual cost of construction, engineering, inspections, easements, rights of way and recording fees.~~
- ~~i. The developer shall provide a map and boundary description of all property in the improvement area (area of impact) covered by the agreement.~~
- ~~j. The developer shall provide a one year warranty on all qualified improvements.~~

~~B. Qualified Improvements:~~

- ~~1. Improvement To System: The project must be an improvement to the city public infrastructure system and provide excess capacity for use beyond the amount required for the development site that is undertaking the qualified improvement.~~
- ~~2. Public Benefit: The improvement must provide a public benefit and provide a benefit or service to other property.~~
- ~~3. Project Requirements: The project must be consistent with the: a) city of Enid master plans; or b) encourage infill development.~~
- ~~4. Standards, Size, Depth Requirements: The project shall conform to the standards, size and depth requirements of the city of Enid master plans on file in the engineering department of the city and the city of Enid standards.~~
- ~~5. Minimum Size Requirements: Only ten inch (10") and larger water line projects shall qualify for water capital recovery projects.~~

~~C. Allowable Recovery Cost: This section sets out how the developer's costs for excess capacity in an improvement is calculated for the purpose of establishing an amount of money from which recovery by postimprovement developers can be derived, as well as determination of the district boundary for recovery.~~

- ~~1. Allowable Cost: The aggregate cost of the qualified portion of the improvement cost, including the developer's actual cost of construction, inspection fees, easements and rights of way acquisition cost not to exceed appraised value, advertising and recording cost and engineering fees capped at seven percent (7%) of the bid construction amount for a qualified project. The allowable cost shall not exceed the actual funds expended by the developer for the allowed project.~~
- ~~2. Allowable Recovery Cost: The allowable recovery cost (ARC) shall be the allowable cost less the original developer's proportional cost. Proportional cost shall be based on the original development's area compared to the area of impact.~~
- ~~3. District Boundary (Area Of Impact): A district boundary shall be determined~~

~~for each qualified project based on the properties that benefit or could reasonably benefit from the improvement.~~

~~a. Water System Capital Improvement: Where the water line improvement follows road right of way the district boundary shall generally include the area to a line one-half (1/2) of the distance to the next existing or planned water line, of equal size or larger, on both sides of the improvement, but not more than one-half (1/2) mile from the improvement. The district shall begin and end at the ends of the improvement. The area covered by the district boundary shall be the area of impact.~~

~~4. Determinations Final And Binding: The determination of the district boundary (area of impact), the allowable recovery cost, and the development site's cost obligations as approved by the city, shall be final and binding upon all parties.~~

~~D. Excess Capacity Capital Improvement; Payback Contract With Developer:~~

~~1. Upon approval of an excess capacity capital improvement, the city may enter into a contract with the developer concerning the construction, operation, or maintenance of the capital improvement and a payment of excess capacity fees in an amount not to exceed the allowable recovery cost to the developer of the excess capacity capital improvement.~~

~~2. After the completion and acceptance by the city of the developer's capital improvement constructed pursuant to this chapter, and upon connection of the improvement to the city's infrastructure, said improvement shall thereupon be and become a part of the city of Enid's capital improvement system, under the city's exclusive ownership, control and operation, including the right to make all such connections and cross connections as it may deem necessary for the proper management and utilization of the improvement as an integrated part of the city's infrastructure.~~

~~3. Unless sooner terminated by the provisions of the payback contract, the term of any excess capacity contract shall run for a period of twelve (12) years, commencing with the date of acceptance by the city of the improvement.~~

~~4. The sole and only obligation of the city to the developer hereunder, after the capital improvement has been constructed, accepted and becomes a part of the city's infrastructure, shall be to require the appropriate distribution of the capital recovery sums actually paid by others. In the event the fees are not collected, the city shall not be liable for payment.~~

~~5. The city shall, during the term of any excess capacity contract, require any postimprovement developer, within the area of impact, which desires to connect to or extend any excess capacity improvement or otherwise use the system, to pay to the city, for the benefit of the developer of the excess capacity improvement, that portion of the allowable costs, as calculated herein, for payment to developers which hold excess capacity capital improvement contracts on that portion of the city's infrastructure which serves the property to be connected to the system.~~

- ~~6. Neither the contract nor any right contained therein may be sold, assigned, transferred or encumbered by the developer without the advance written consent of the city.~~
- ~~7. Nothing contained in the language of the contract shall prohibit the city from making any connections or cross connections with the capital improvement constructed by the developer at any location, and no payment or fee shall be required.~~
- ~~E. Excess Capacity Fee Calculation: The postimprovement development site's share of an excess capacity capital improvement cost shall be calculated as follows:~~
  - ~~1. Basis For Calculation: The allowable recovery cost shall be the cost of the project minus the developer's cost of share. Where:~~
    - ~~a. Developer's share of the project shall be the area of the original development site divided by the area of impact.~~
    - ~~b. Developer's cost of share shall be the developer's share of project multiplied by the allowable cost of the project.~~
  - ~~2. Postimprovement Development Sites: The postimprovement development site share of an excess capacity capital improvement shall be calculated as follows:~~
    - ~~a. Postimprovement development share shall be the postimprovement development area divided by the area of impact.~~
    - ~~b. Postimprovement development cost share shall be the postimprovement development share multiplied by the allowable cost, inflated by four percent (4%) for each whole year from the date of acceptance of the capital improvement as a capital recovery project.~~
- ~~F. Postimprovement Development Sites:~~
  - ~~1. Excess Capacity Fees: When postimprovement development occurs within the area of impact and makes use of, or receives a benefit of, a portion of the excess capacity capital improvement covered under this chapter, the developer of the postimprovement development shall pay the excess capacity set out in this chapter. Fees shall be due and payable to the city before issuance of the plat, or in cases where there are no plats issued, before issuance of any permit for the postimprovement development site. When a postimprovement development occurs outside of the area of impact, but makes use of and receives fifty percent (50%) or more of the development's benefit from an excess capacity improvement covered under this chapter, the postdevelopment shall pay excess capacity fees as if in the area of impact.~~
  - ~~2. Site Requirements: Postdevelopment sites that fall within an excess capacity capital improvement district or districts, or which will use an improvement covered by an excess capacity agreement as their primary water source, shall provide the following:~~
    - ~~a. Area: Area of the postdevelopment site.~~

~~b. — Payment Of Fees: Payment of excess capacity fee or fees with plat submission, or with other permits when a plat is not involved.~~

~~G. — Capital Recovery Payments:~~

~~1. — Excess Capacity Fees: The city shall account for the excess capacity fees for each capital recovery improvement separately. Five percent (5%) of all fees collected shall be retained by the city for administration. The city shall provide notice to developers of record of active improvement districts of fees collected for amounts of one thousand dollars (\$1,000.00) or more. Developers of record may then file a claim for payment of fees, less the city's five percent (5%) administrative fee.~~

~~2. — Unclaimed Fees: Fees not claimed by the developer within one year of the second notice of fees on file shall become the property of the city, but failure to collect fees in one year does not terminate the developer's right to collect in subsequent years.~~

~~3. — Nonliability Or Obligation Of The City: The city shall not be liable for payment of any excess capacity fees not collected. The sole obligation of the city to any developer shall be to require the payment of excess capacity fees as required by this chapter.~~

~~H. — Term Of Capital Recovery District: Recovery of capital recovery fees is available for a term of twelve (12) years from the date of acceptance of the improvements by the city. Provided, however, that recovery will be terminated prior to the term of twelve (12) years whenever the entire allowable recovery cost has been collected.~~

~~I. — City Use: The city shall have the right to make such connections or use of any public improvement, as it may deem necessary, without payment of fees.~~

~~J. — Variances: Prior to payment of capital recovery fees, any person that can show that they have an interest in property in an area of impact of a capital improvement project, and that such property is substantially unique, and that the capital improvement fee is a substantial hardship due to the unique qualities, may file a request for variance with the board of adjustment. The board, upon hearing a request, must determine that there is a substantially unique condition that makes the proposed capital improvement fee a substantial hardship on the property before taking any action. The actions that may be taken include reduction of the capital improvement fee, waiving of the fee, deferring the fee or taking no action. The decision of the board shall be final.~~

~~K. — Restrictions And Reservations: The following restrictions and reservations apply to projects proposed under this chapter:~~

~~1. — Limitation On Effect Of Provisions: Nothing herein shall be construed to obligate the city to give or continue to give service to any person, firm or corporation, or to any particular tract of land, other than pursuant to its other ordinances and regulations. (Ord. 2010-14, 12-14-2010)~~

**~~10-4-5: CAPITAL RECOVERY FOR SANITARY SEWER IMPROVEMENTS:~~****~~A. — Approval Of Excess Capacity Capital Improvements:~~**

- ~~1. — Application For Excess Capacity Public Improvement: A developer desiring to make an excess capacity public improvement under this chapter shall apply in writing to the city engineering department for consideration of the improvement for capital recovery prior to beginning construction on the improvement. The application shall contain the following information:~~
  - ~~a. — The name and address of the developer making the application.~~
  - ~~b. — A detailed drawing of the proposal, indicating the drainage area to be served, proposed location of the new improvement, location of existing services in close proximity, and the proposed point of connection.~~
  - ~~c. — Estimates of improvement cost, allowable recovery cost, and sewer contribution.~~
  - ~~d. — Proposed drainage area with map and legal description.~~
  - ~~e. — Any other information pertinent to the proposal.~~
  - ~~f. — Estimate of excess capacity to be provided by the project.~~
  - ~~g. — List of properties and owners within drainage area.~~
  - ~~h. — Proposed routing of sewer with coordination of drainage and other public services.~~
- ~~2. — Review And Approval Procedure: After the application has been reviewed and found to be acceptable and complete, the application will be forwarded to the metropolitan area planning commission for approval and then to the mayor and board of commissioners for action. Notice of the metropolitan area planning commission meeting and mayor and board of commissioners meeting when the application will be considered will be mailed to the property owners within the drainage area.~~
- ~~3. — Excess Capacity Development Agreement; Conditions: Upon approval of the application by the mayor and board of commissioners, an excess capacity development agreement should be entered into between the developer and the city which should address the following items:~~
  - ~~a. — The developer will prepare and furnish plans, profiles, contract documents, and specifications for the qualified improvements, all in accordance with the ordinances, regulations and specifications of the city and state.~~
  - ~~b. — All construction will be of the size, type, depth and capacity sufficient to serve the anticipated need for the area being served as defined by the Enid sanitary sewer master plan for the life of the improvements.~~

- ~~e. The developer shall acquire easements and rights of way necessary upon which to construct improvements. The easements shall be dedicated to the city, approved by the city, and recorded at the expense of the developer. The easement will be located so as to be reasonably accessible to all parties who may be assessed the capital recovery fee, and the sewer easement location and size will be coordinated with drainage and other city services.~~
  - ~~d. The developer shall file with the city a sealed estimate of the cost of construction of said improvements, prepared by a registered engineer as called for in this chapter.~~
  - ~~e. The developer shall deposit with the city, the estimated amount of all inspection and administration fees, said fees determined by the city.~~
  - ~~f. After completion and acceptance of the developer's improvement, said improvements shall become a part of the city system, under its exclusive control and operation.~~
  - ~~g. The developer shall furnish "record drawing" on compatible digital format, approved by the city prior to acceptance of improvements.~~
  - ~~h. The developer shall, within thirty (30) days after completion of the construction, furnish to the city, a certified, itemized statement of cost of the improvements, including the actual cost of construction, engineering, inspections, easements, rights of way, and recording fees.~~
  - ~~i. The developer shall provide a map, boundary description, and list of all property owners that are in the improvement district covered by the agreement.~~
- ~~4. Agreement Provided To Property Owners: Notice of the executed excess capacity agreement will be mailed to the property owners within the drainage area and placed on their title records at the Garfield County Courthouse.~~
  - ~~5. Notice Of Costs To Property Owners: Within sixty (60) days following the acceptance by the city of the completed improvements, notice of the total allowable recovery costs for the project will be mailed to the affected property owners within the boundary district. Notice of the affected property owner's obligation to pay their pro rata share of the improvements' costs upon development of their property shall be placed on the title records at the Garfield County Courthouse.~~

~~B. Qualified Improvements:~~

- ~~1. Improvement To System: The project must be an improvement to the public sanitary sewer system that provides excess capacity for the collection of wastewater beyond the amounts required for the development site that is undertaking a qualified improvement.~~
- ~~2. Public Benefit: Improvement must be a public benefit and provide a benefit or service to other private property.~~

- ~~3. Project Requirements: The project must be consistent with the: a) Enid sanitary sewer master plan; or b) serve an existing subdivision; or c) encourage infill or development.~~
  - ~~4. Standards, Size, Depth Requirements: The project shall conform to the standards, size, and depth requirements of the Enid sanitary sewer system master plan on file in the city engineering department.~~
- ~~C. Allowable Recovery Cost: This section sets out how the developer's costs for excess capacity in an improvement are calculated for the purpose of establishing an amount of money from which recovery by postimprovement developers can be derived, as well as determination of the district boundary for recovery.~~
- ~~1. Allowable Recovery Cost: The aggregate cost of the qualified portion of the improvement cost including the developer's actual cost of construction, inspection fees, easements and rights of way acquisition cost not to exceed appraised value, advertising and recording cost and engineering fees capped at seven percent (7%) of the bid construction amount shall be the allowable cost.~~
  - ~~2. District Boundary: A district boundary shall be determined for each qualified project based on the properties that benefit or could reasonably benefit from the improvement. The district shall generally follow the contour of the land and conform to the sanitary sewer master plan.~~
  - ~~3. Determinations Final And Binding: The determination of the drainage area or district boundary, the allowable recovery cost, and the development site's cost obligations as approved by the city shall be final and binding upon all parties.~~
- ~~D. Excess Capacity Fee Calculation: The postimprovement development site's share of an excess capacity sanitary sewer improvement cost shall be calculated as follows:~~
- ~~1. Basis For Calculation: The allowable recovery cost shall be proportioned out based on the postdevelopment site's projected peak hourly wastewater flow compared to the established design peak hourly wastewater flow, less the peak hourly wastewater flow established for the original development site. This calculation shall be made for each improvement district the postdevelopment site is within.~~
  - ~~2. Hourly Wastewater Flow Designations: The postdevelopment projected peak hourly wastewater flow shall be:~~
    - ~~a. Nine hundred fifty (950) gpd for each single residence;~~
    - ~~b. Four hundred (400) gpd for each motel unit, hotel, or other transient living unit;~~
    - ~~c. Six hundred fifty (650) gpd for each trailer space, mobile home, or apartment living unit;~~
    - ~~d. One hundred (100) gpd for each student of any nonboarding type school;~~



- e. ~~Twenty eight (28) gpd for each person that may be accommodated in a main assembly hall, with restroom facilities only;~~
  - f. ~~Six hundred sixty (660) gpd for each bed of a hospital.~~
3. ~~Other Developments: The postdevelopment projected peak hourly wastewater flow for any development not covered above shall be equal to four (4) times the development site's projected average water use contributing to the sanitary sewer system, but in no case shall the flow be less than four hundred (400) gpd.~~
- E. ~~Postimprovement Development Sites:~~
- 1. ~~Excess Capacity Fees: When postimprovement development sites occur that make use of, or receive a benefit of, a portion of the excess capacity improvement covered under this chapter, the developer of the postimprovement development site shall pay the excess capacity fees as set out in this chapter. Fees shall be due and payable to the city before the issuance of the plat, or in cases where there are no plats issued, before issuance of the permit for the postimprovement development site.~~
  - 2. ~~Site Requirements: Postimprovement development sites that fall within an excess capacity improvement district or districts or will use an improvement covered by an excess capacity agreement shall provide the following:~~
    - a. ~~Sanitary Sewer Improvement District: Number and type of living units, lots, sleeping units, or participants projected for the site. The projected peak day wastewater flow for the site when required, and the method that the flow was calculated on.~~
    - b. ~~Payment Of Fees: Payment of excess capacity fee or fees with plat submission, or with other permits when a plat is not involved.~~
- F. ~~Capital Recovery Payments:~~
- 1. ~~Excess Capacity Fees: The city shall account for the excess capacity fees for each capital recovery improvement separately. Five percent (5%) of all fees collected shall be retained by the city for administration. The city shall provide notice to developers of record, of active improvement districts of fees collected for amounts of one thousand dollars (\$1,000.00) or more. Developers of record may then file a claim for payment of fees, less the city's five percent (5%) administrative fee.~~
  - 2. ~~Unclaimed Fees: Fees not claimed by the developer within one year of the second notice of fees on file shall become the property of the city, but failure to collect fees in one year does not terminate the developer's right to collect in subsequent years.~~
  - 3. ~~Nonliability Or Obligation Of City: The city shall not be liable for payment of any excess capacity fees not collected. The sole obligation of the city to any developer shall be to require the payment of excess capacity fees as required~~



by this chapter.

- ~~G. — Term Of Capital Recovery District: Recovery of capital recovery fees is available for a term of twenty (20) years from the date of acceptance of the improvement by the city. Provided, however, that recovery will be terminated prior to the term of twenty (20) years whenever the entire allowable recovery cost has been collected.~~
- ~~H. — City Use: The city shall have the right to make such connections or use of any public improvement, as it may deem necessary.~~
- ~~I. — Variances: Prior to payment of capital recovery fees, any person that can show they have an interest in property in a drainage area of a capital recovery project and that such property is substantially unique, and that the capital recovery fee is a substantial hardship due to the unique qualities, may file a request for variance with the mayor and board of commissioners. The commission, upon hearing a request, must determine that there is a substantial unique condition that makes the proposed capital recovery fee a substantial hardship on the property before taking any action. The actions that may be taken include reduction of the capital recovery fee, waiving the fee, deferring the fee or taking no action. The decision of the commission shall be final.~~
- ~~J. — Restrictions And Reservations: The following restrictions and reservations apply to projects proposed under this chapter:~~
- ~~1. — Project Restrictions:~~
- ~~a. — Diversion of wastewater flow from one drainage area to another by gravity may not be approved if such diversion would cause the capacity of any eight inch (8") sewer under gravity flow to exceed a peak daily flow of four hundred sixty thousand (460,000) gallons or if the diverted peak daily flow would exceed two hundred thirty thousand (230,000) gallons.~~
- ~~(1) — For tracts or lots that are within the drainage area, but are abutting or adjoining a sewer system not covered by the capital recovery improvement, an owner may connect to either system, provided it does not conflict with subsection A1 of this section and adequate capacity exists in the receiving line.~~
- ~~(2) — For tracts or lots that are within the drainage area but do not abut or adjoin a separate sewer line, but are so situated that a separate sewer system would provide a lower sewer service line elevation at the building, the owner may extend a public line in order to connect to the separate sewer system; provided, that:~~
- ~~(A) — Subsection A1 of this section is complied with;~~
- ~~(B) — The separate sewer system has adequate capacity; and~~
- ~~(C) — The extension does not cross, parallel or otherwise conflict with the covered sewer system or the Enid~~

~~sanitary sewer master plan.~~

- ~~b. If the owner connects to sewer not covered by the capital recovery improvement, then no capital recovery fee shall be due.~~
- ~~2. Limitation On Effect Of Provisions: Nothing herein shall be construed to obligate the city to give or continue to give sewer service to any person, firm or corporation, or to any particular tract of land, other than pursuant to its other ordinances and regulations.~~
- ~~3. Exemption: Subsection 8-3A-5C of this code will not apply to properties within a capital recovery for sanitary sewer boundary district until the recovery of capital recovery fees is terminated. (Ord. 2015-27, 9-1-2015)~~

~~**10-4-6: CAPITAL RECOVERY FOR STORMWATER MAIN DRAINAGE CHANNEL IMPROVEMENTS:**~~

~~A. Approval Of Excess Capacity Capital Improvements:~~

- ~~1. A developer desiring to make an increased capacity public improvement shall make application in writing to the city of Enid engineering department for consideration of the improvement for capital recovery prior to beginning construction on the improvement. The application shall contain the following information:
  - ~~a. The name and address of the developer;~~
  - ~~b. A detailed drawing of the proposal, indicating the drainage area to be served, and the proposed location of the new improvement;~~
  - ~~c. Estimates of improvement cost, allowable recovery cost, and amount of increased capacity the improvement will provide, and amount of increased drainage flow that the development will contribute;~~
  - ~~d. Proposed drainage area and the BUA of that drainage area, with a map and its legal description;~~
  - ~~e. A list of properties and owners within the drainage area;~~
  - ~~f. The proposed change in routing of stormwater if any; and~~
  - ~~g. Any other information pertinent to the proposal.~~~~
- ~~2. After the application has been reviewed and found to be acceptable and complete, the application and an increased capacity agreement will be forwarded to the metropolitan area planning commission for approval and then to the city commission for action. Notice of the metropolitan area planning commission and city commission's meetings when the application and agreement will be considered will be mailed to the property owners within the drainage area.~~

- ~~3. Upon approval of the application by the city commission, an increased capacity development agreement should be entered into between the initial developer and the city of Enid, which should address the following items:
  - ~~a. The city will furnish the initial developer any available drainage studies for the applicable area.~~
  - ~~b. The initial developer will prepare and furnish plans, profiles, contract documents, and specifications for the qualified improvement all in accordance with the ordinances, regulations and specifications of the city of Enid and state of Oklahoma.~~
  - ~~c. All construction will be of the size, type, depth and capacity sufficient to serve the anticipated need for the area when it is fully developed, unless circumstances are such that construction at a partial developed standard is warranted due to the cost of the improvement and the pace of development.~~
  - ~~d. Easements and rights of way necessary upon which to construct improvements must be acquired. The easements shall be dedicated to the city of Enid, approved by the city, and recorded at the expense of the developer. The easements shall be located to coordinate with drainage and other city services.~~
  - ~~e. The developer shall file with the city, an estimate of the cost of construction of said improvements, prepared by a registered engineer as called for in this chapter.~~
  - ~~f. The developer shall furnish a "record drawing" on compatible digital format, approved by the city prior to acceptance of improvements.~~
  - ~~g. The developer shall, within thirty (30) days after completion of the construction, furnish to the city an itemized statement of the cost of the improvements, including the actual cost of construction, engineering, inspections, easements, rights of way, and recording fees.~~~~
- ~~4. If the city of Enid is the initial developer, an increased capacity report containing the relevant information will be approved by the city commission and will serve the same purpose as the agreement.~~
- ~~5. Notice of the executed increased capacity agreement or report will be mailed to the property owners within the drainage area and placed on their title records at the Garfield County Courthouse.~~
- ~~6. Within sixty (60) days following the acceptance by the city of the completed improvement, notice of the total allowable recovery costs for the project will be mailed to the affected property owners within the boundary district. Notice of the affected property owners' obligations to pay their pro rata share of the improvement costs upon development of their property shall be placed on the title records at the Garfield County Courthouse.~~

~~B. Qualified Improvements:~~

- ~~1. The project must be a channel improvement that provides increased capacity to the stormwater system beyond the amount of mitigation required for the development that is undertaking the improvement.~~
- ~~2. The project shall conform to the standards, size, and depth requirements of the Enid master drainage plan, the subdivision regulations, and this title.~~

~~C. Allowable Recovery Cost:~~

- ~~1. The allowable recovery cost shall be calculated by including:
 
  - ~~a. The actual construction cost of the channel improvement to include any approved change orders based upon bidding in compliance with the Oklahoma public competitive bidding act, including none collusion standards;~~
  - ~~b. The cost of any easements and rights of way required by the project not donated by the developer, not to exceed the appraised values; and~~
  - ~~c. Engineering fees, capped at seven percent (7%) of the bid construction costs.~~~~
- ~~2. The allowable recovery cost shall be adjusted by the time factor when calculating the increased capacity fee for postdevelopers. The time factor is multiplied by the number of years since the initial development and is added to the allowable recovery cost to determine a specific increased capacity fee for a future developer.~~
- ~~3. The determination of the allowable recovery cost shall be final and binding on all parties once approved by the city of Enid.~~

~~D. Drainage Area: The drainage area shall be determined for each qualified project based on the properties that benefit from the improvement. The area shall generally follow the contour of the land and conform to the Enid master drainage plan. The determination of the drainage area shall be final and binding upon all parties when approved by the city of Enid.~~

~~E. Increased Capacity Fee Calculation:~~

- ~~1. For subdivisions, plats, and site plans:~~

<del>Post Q – pre Q = Postdeveloper increase of impact –</del>
<del>Increase divided by projected total basin impact = Developer's share expressed in percent, or DS –</del>
<del>DS x ARC = Increased capacity fee –</del>

- ~~a. The postimprovement development site's increased peak stormwater~~

~~discharge shall be determined by the stormwater drainage report prepared by the developer. The allowable recovery cost adjusted by the time factor shall be proportioned based upon the postdevelopment site's increase in the peak stormwater discharge flow compared to the projected total increase in the peak stormwater discharge for the fully developed drainage area using these equations:~~

~~b. These calculations shall be made for each drainage area the postdevelopment site is within.~~

~~2. For individual lots or tracts of land not covered by subsection E1 of this section, the increased capacity fees will be calculated based upon the type of development using this equation:~~

<del>Increased capacity fee (ICF) = ARC divided by BUA x Lot size x I.</del>	
<del>-</del>	<del>-</del>
<del>Agricultural and R-1 estate</del>	<del>ARC divided by BUA x Lot size x I</del>
<del>Residential</del>	<del>ARC divided by BUA x Lot size x I</del>
<del>Multi-family</del>	<del>ARC divided by BUA x Lot size x I</del>
<del>Commercial/other</del>	<del>ARC divided by BUA x Lot size x I</del>

~~As in subsection E1 of this section, the time factor is multiplied by the number of years since the initial development and added to the actual recovery cost (ARC) before making the calculation required above.~~

~~F. Postimprovement Development Site: When a postimprovement development occurs that makes use of a stormwater drainage channel improvement covered under this chapter, the developer of the postimprovement development site shall pay the increased capacity fee. Fees shall be due and payable to the city of Enid before the issuance of the plat or the approval of a site plan or before the issuance of a building permit for new construction of the principal structure on said lot or tract of land, unless the property is within a platted subdivision.~~

~~G. Postimprovement Development Site Requirements: Postimprovement development sites, other than individual lots, that fall within an increased capacity improvement drainage area shall provide a professional engineering drainage report which determines the increase in peak stormwater discharge.~~

~~H. Capital Recovery Payments:~~

~~1. The city of Enid shall account for the increased capacity fees for each increased capacity improvement separately. Five percent (5%) of all fees collected shall be retained by the city of Enid for administration. The city of Enid shall provide notice to the developers of record, of fees collected in the amount of one thousand dollars (\$1,000.00) or more for improvement drainage areas. Developers of record may then file a claim for payment of fees, less the~~

~~city's five percent (5%) administrative fee.~~

- ~~2. Fees not claimed by the initial developer within one year of the notice of fees on file shall become the property of the city of Enid, but failure to collect fees in one year does not terminate the developer's right to collect in subsequent years.~~
- ~~3. The city of Enid shall not be liable for payment of any increased capacity fees not collected. The sole obligation of the city to any developer shall be to require the payment of increased capacity fees as required by this chapter.~~
- ~~I. Term Of Capital Recovery: Recovery will be terminated whenever the entire recoverable cost has been collected and dispersed or forty (40) years from the approval of the channel improvement, whichever occurs first.~~
- ~~J. City Use: The city shall have the right to make use of any improvement made under this capacity, as it may deem necessary.~~
- ~~K. Appeals: Prior to payment of a capital recovery fee, a postdeveloper may file an appeal to the metropolitan area planning commission, asserting its development is unique and the fee would create substantial hardship. The commission upon hearing a request must determine that there is a substantially unique condition that makes the fee a substantial hardship before taking any action to waive, defer, or reduce the fee. The decision of the commission shall be final. (Ord. 2010-14, 12-14-2010)~~

#### **~~10-4-7: CITY/AUTHORITY AS DEVELOPER:~~**

- ~~A. The city of Enid or any of its authorities may act as the developer for the purpose of capital recovery. When the city of Enid or one of its authorities acts as the developer, the following provisions apply:
 
  - ~~1. Predevelopment Site: No development site is required.~~
  - ~~2. Allowable Recovery Cost: The allowable cost may be used as the allowable recovery cost.~~
  - ~~3. Resolution Of Area Of Benefit/Impact Area: The city of Enid may file a resolution in place of a "payback contract" to establish the area of benefit (area of impact), estimated allowable recovery cost and any other items necessary and usually covered by the contract. (Ord. 2010-14, 12-14-2010)~~~~

Section II: That Title 10, Chapter 4, of the Enid Municipal Code, 2014, is hereby created to read as follows:

### **Chapter 4**

### **CAPITAL IMPROVEMENT AND RECOVERY**

Section III: That Title 10, Chapter 4, Section 10-4-1 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-1: PURPOSE:**

The purpose of this chapter is to encourage uniform and comprehensive improvement of the City's public infrastructure systems; to provide for the equitable distribution of costs of these improvements; and to protect the general health, safety, and welfare of the residents of the City.

Section IV: That Title 10, Chapter 4, Section 10-4-2 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-2: DEFINITIONS:**

As used in this chapter, the following terms shall have the meanings indicated:

**ALLOWABLE RECOVERY COST (ARC)**: The amount, in dollars, of money subject to collection based on an excess capacity improvement project.

**APPRAISED VALUE**: The value of a real property as determined by an independent appraiser certified in the State of Oklahoma.

**AREA OF IMPACT (AI)**: The area of land established as receiving benefit from the installation of the improvement.

**BUA**: The undeveloped area in a particular area of impact in acres.

**CFS (cfs)**: Cubic feet per second.

**CAPITAL IMPROVEMENT**: An improvement of the public infrastructure with a value of fifty thousand dollars (\$50,000.00) or more.

**CONNECTION**: The tapping into of a public utility line, or physical work, that allows a capital improvement to be used.

**DEVELOPER**: The person, company, or firm that is making a capital improvement to service a development site. The City of Enid and its trusts may be considered the developer when the referenced entity makes the improvement.

**DEVELOPMENT**: The act of improving property by subdividing, site planning, constructing on lot, or building permitting.

**DEVELOPMENT SITE**: The subdivision area, site plan area, building site, or tract of land that development takes place.

**DRAINAGE AREA**: The area of land that stormwater would drain to or through at a specified point.

**DRAINAGE SUBBASIN**: An area within a drainage area to which drainage would contribute to the main channel or sewer of the drainage area.

**EXCESS CAPACITY**: Capacity of a capital improvement project beyond the capacity required for the development site providing the improvement.

**EXCESS CAPACITY AGREEMENT**: The contract between the City of Enid, or its trusts, and the "developer", as herein defined, concerning the construction, operation, and maintenance of an

excess capacity capital improvement system and payment of excess capacity fees.

**EXCESS CAPACITY FEE:** The amount of money to be paid by the user of excess capacity that exists when a developer installs an improvement under Section 10-4-4. The fee is paid to the City of Enid, for the user's benefit of excess capacity of the improvement. Such fee shall be based upon the cost of providing the excess capacity to the user.

**FLOW CAPACITY:** The flow rate of water that a channel will transfer within its banks or the design capacity of utility line or transportation system

**FLOW (Q):** Volume over time calculated in cubic feet per second for stormwater, water or waste water.

**FULLY DEVELOPED:** A condition where the acreage within the associated area of impact is considered to have been altered from its natural state to a state that is consistent with the use identified in the most recent version of the City of Enid comprehensive plan.

**GPD (gpd):** Gallons per day.

**IMPROVEMENT:** The construction of a public infrastructure that connects an area where City water, sewer, transportation system and/or stormwater drainage systems was or were previously unavailable, or an upgrade, or increased capacity, to an existing system.

**IMPROVEMENT COST:** The actual cost of construction of the required capital improvement including any approved change orders based upon bidding in compliance with the Oklahoma Public Competitive Bidding Act including non-collusion, standards, the cost of easements and rights-of-way at or below the appraised values, the cost of advertising and recording, the cost of inspection by the City of Enid, and the cost of engineering as provided in this chapter.

**INDEX NUMBER (I):** The variable used to calculate the increase capacity fee for stormwater post-developments where a drainage report is not available. "I" is based on the "C" factor at 1% slope in the City of Enid's graph, representing percent of impervious surface of a lot or tract, divided by 0.7.

**LATERAL SEWER:** A gathering sewer main of eight inches (8") in diameter or more and which function is to convey sewage from a user service line to a submain or main sewer.

**MAIN DRAINAGE CHANNELS:** Those channels identified by FEMA, Stormwater Master Plan, or as otherwise designated in this chapter.

**100-YEAR STORM EVENT:** A designed rain event that has a one percent (1%) chance of occurring in any year.

**PEAK HOURLY WASTEWATER FLOW RATE:** The maximum flow rate sustained for one hour during a twenty four (24) hour period.

**PEAK STORMWATER DISCHARGE:** The maximum flow rate that a particular development or developments will discharge based upon a 100-year storm event, as determined by the engineer's drainage report approved by the City Engineer.

**POST-IMPROVEMENT DEVELOPMENT:** Development in the area of impact or any development that receives direct benefit from an excess capacity improvement after the establishment of an excess capacity agreement.



**PROJECTED TOTAL BASIN IMPACT:** The total increase in the peak flow or use of a infrastructure compared to full development condition.. For stormwater it is the peak discharge of a basin from its existing condition prior to the stormwater improvement compared to the full development condition

**SERVICE LINE:** That portion of a water or sanitary sewer line extending from the public utility line or water meter to serve the customer.

**SEWER CAPACITY:** The quantity of sewage that can be conveyed through a given sewer flowing at its designed peak level.

**SEWER MAIN:** A sewer whose function is to convey sewage gathered from a number of lateral sewers, or submain sewers, to a trunk line or treatment plant.

**SEWER SUBMAIN:** Any sewer whose function is to convey sewage from lateral sewers to a sewer main.

**STANDARDS:** The current engineering design standards of the City of Enid.

**STORMWATER:** Rain runoff, snowmelt runoff, surface runoff, street wash waters related to street cleaning and maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or other discharges) and drainage.

**STORMWATER CHANNELS:** All natural and manmade structures, which convey surface runoff water.

**WATER LINE:** All water mains, valves, hydrants, which are laid, placed, or constructed in a public street, alley or easement and form a part of the water system of the City.

**WATER MAIN CAPACITY:** The quantity of water that can be conveyed through a water main, flowing at its designed peak level.

Section V: That Title 10, Chapter 4, Section 10-4-3 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-3: CAPITAL IMPROVEMENT REQUIREMENTS:**

The purpose of this section is to identify capital improvements required to support the efficient and effective growth and development of the City of Enid, limit financial impact on the City of Enid and establish development responsibility to provide capital improvements.

A. Water System:

1. New development sites shall extend the public water system across the length of the subdivision or developed site.
2. Water system improvements shall comply with section 8-2-14 of this code.
3. Water system improvements shall comply with City of Enid Engineering design standards.

B. Sanitary Sewer System:

1. New development sites shall extend the public sanitary sewer system to the site and to 10' within all lots.
2. Sanitary sewers shall be constructed to the size requirement specified in the City of Enid sanitary sewer master plan, but not less than the capacity required for development site
3. Sanitary sewers shall comply with City of Enid Engineering design standards.

C. Stormwater System:

1. New development shall provide improvement of the public stormwater system to transport stormwater through the development site in accordance with Title 12, "Subdivisions", of this code.
2. New development shall mitigate the impact of the development site by improving the downstream drainage ways to comply with Title 12, "Subdivisions", of this code, or include an improvement plan to mitigate the impact by on-site detention or other acceptable means. The mitigation shall cover the impact from the development site to the main drainage channel as defined in the City of Enid stormwater master plan.

D. Transportation System:

1. New development shall provide that public roads within the development be in compliance with Title 12, "Subdivisions", of this code.
2. Subdivision development on arterial streets shall provide acceleration and deceleration lanes, per Title 12 of this code, on paved roads and shall provide the paving of unpaved roads in place of acceleration and deceleration lanes.
3. Development, under Title 11, Chapter 11, "Site Plan Review", of this code, shall provide public infrastructure improvements as required by the site plan process to provide for adequate and safe vehicular access to adjacent streets.

E. Sidewalks:

1. New development and redevelopment shall provide sidewalks in accordance with Section 10-6-1 of this title and Section 12-8-7 of this code.

F. Fire Protection System:

1. New development and redevelopment shall provide fire hydrants in accordance with the international fire code as adopted by the City.

Section VI: That Title 10, Chapter 4, Section 10-4-4 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-4: CAPITAL RECOVERY FOR PUBLIC IMPROVEMENTS:**

A. Approval of Excess Capacity Capital Improvements:

1. Application for Excess Capacity Capital Improvements: A developer desiring to make an excess capacity capital improvement under this chapter shall apply in writing to the City engineering department for consideration of the improvement for capital recovery prior to beginning construction on the improvement. The application shall contain the following information:
  - a. The name and address of the developer making the application.
  - b. A detailed drawing of the proposal, indicating the area to be served, proposed location of the new improvement, location of existing services in close proximity, and the proposed point of connection.
  - c. Estimates of improvement cost, allowable recovery cost, and proposed excess capacity fee.
  - d. Proposed area to be served (area of impact), with a map and necessary legal descriptions.
  - e. Proposed routing of capital improvements with coordination of drainage and other public utility services.
  - f. Any other information pertinent to the proposal.
2. Additional requirements as set out in the sections for Water, Sanitary Sewer, Stormwater and Transportation Review and Approval Procedure: After the application has been reviewed and found to be acceptable and complete by the engineering department, the application will be forwarded to the mayor and board of commissioners for action.
3. Excess Capacity Development Agreement Conditions: Upon approval of the application by the City Commission, an increased capacity development agreement should be entered into between the initial developer and the City of Enid, which should address the following items:
  - a. The developer will prepare and furnish plans, profiles, contract documents, and specifications for the qualified improvements, all in accordance with the ordinances, regulations and specifications of the City.
  - b. All construction will be of the size, type and depth in accordance with the current City standards and of sufficient capacity to serve the anticipated need for the area being served, as defined by the City of Enid master plans, for the design life of the improvements.
  - c. The developer shall acquire easements and rights-of-way necessary to construct improvements. The easements shall be dedicated to the City, approved by the City and recorded at the expense of the developer. The easements will be located so as to be reasonably accessible to all parties that may be anticipated to access the improvement.
  - d. The developer shall file with the City an engineer's estimate for the cost of construction of said improvements, prepared by a licensed engineer, registered in the State of Oklahoma, as called for in this chapter.

- e. The developer shall deposit with the City the estimated amount of all inspection and administration fees, if and when such fees are required.
- f. The developer shall furnish a "record drawing" on compatible digital format, approved by the City prior to acceptance of improvements.
- g. After completion and acceptance of the developer's improvement, the improvements shall become a part of the City system, under its exclusive control and operation.
- h. The developer shall, within thirty (30) days after completion of the construction, furnish to the City a certified, itemized statement of the cost of the improvements, including the actual cost of construction, engineering, inspections, easements, rights-of-way and recording fees.
- i. The developer shall provide a map and boundary description of all property in the improvement area (area of impact) covered by the agreement.
- j. The developer shall provide a one-year warranty on all improvements.

**B. Qualified Improvements:**

1. **Improvement to System:** The project must be an improvement to the City public infrastructure system and provide excess capacity for use beyond the amount required for the development site that is undertaking the qualified improvement.
2. **Public Benefit:** The improvement must provide a public benefit and provide a benefit or service to other property.
3. **Project Requirements:** The project must be consistent with: a) the City of Enid master plans; or b) encourage infill development.
4. **Standards, Size, Depth Requirements:** The project shall conform to the standards, size and depth requirements of the City of Enid master plans on file in the engineering department of the City and the City of Enid current engineering standards.

**C. Allowable Recovery Cost:** This section sets out how the developer's costs for excess capacity of an improvement is calculated. These calculations establish an amount of money from which recovery from post-improvement developers can be acquired, as well as determine the district boundary for recovery.

1. **Allowable Cost:** The aggregate cost of the qualified portion of the improvement cost, including the developer's actual cost of construction, inspection fees, easements and rights-of-way acquisition cost (at or below appraised values), advertising and recording cost and engineering fees capped at seven percent (7%) of the bid construction amount for a qualified project. The allowable cost shall not exceed the actual funds expended by the developer for the allowed project.
2. **Allowable Recovery Cost:** The allowable recovery cost (ARC) shall be the allowable cost less the original developer's proportional cost. Proportional cost

shall be based on the original development's share of the total cost and the required capacity of the original development.

3. District Boundary (Area Of Impact): A district boundary shall be determined for each qualified project based on the properties that benefit or could reasonably benefit from the improvement.
4. Determinations Final and Binding: The determination of the district boundary (area of impact), the allowable recovery cost, and the development site's cost obligations, as approved by the City, shall be final and binding upon all parties.

D. Notice of Capital Improvement:

1. Notice of the estimated allowable recovery costs for the project shall be mailed to the current property owners within the boundary district by the developer and proof of mailing provided to the City prior to the authorization of the improvement project. The notice shall include a description of the project, the boundary of the area of impact, the estimated allowable recovery cost, and how excess capacity fees will be assisted on properties.
2. Notice of the determined allowable recovery costs after completion of the work shall be mailed to current property owners within the boundary district by the developer after completion of the work and proof of mailing provided to the City 30 days before final acceptance of the capital recovery allowable cost by the City. The notice shall include the information set out in Paragraph D1 above updated with constructed amounts.
3. Notice of final determined allowable recovery cost shall be filed with county records referencing the properties in the district boundary that are subject to excess capacity fees after acceptance of final allowable recovery costs.

E. Excess Capacity Capital Improvement; Payback Contract with Developer:

1. Upon approval of an excess capacity capital improvement, the City may enter into a contract with the developer concerning the construction, operation, or maintenance of the capital improvement and a payment of excess capacity fees in an amount not to exceed the allowable recovery cost to the developer of the excess capacity capital improvement and any interest set out in the Capital Recovery section.
2. After the completion and acceptance by the City of the developer's capital improvement constructed pursuant to this chapter, and upon connection of the improvement to the City's infrastructure, said improvement shall thereupon be and become a part of the City of Enid's capital improvement system, under the City's exclusive ownership, control and operation, including the right to make all such connections and cross connections, and use of the improvement as it may deem necessary for the proper management and utilization of the improvement as an integrated part of the City's infrastructure.
3. Unless sooner terminated by the provisions of the payback contract, the term of any excess capacity contract shall run for a period of twelve (12) years, commencing with the date of acceptance by the City of the improvement.

4. The sole and only obligation of the City of Enid to the developer hereunder, after the capital improvement has been constructed, accepted and becomes a part of the City's infrastructure, shall be to require the appropriate distribution of the capital recovery sums actually paid by others. In the event the fees are not collected, the city shall not be liable for payment.
  5. The City shall, during the term of any excess capacity contract, require any post-improvement developer, within the area of impact, which desires to connect to or extend any excess capacity improvement or otherwise use or make use of the system, to pay to the City, for the benefit of the developer of the excess capacity improvement, that portion of the allowable costs, as calculated herein, for payment to developers which hold excess capacity capital improvement contracts on that portion of the City's infrastructure which serves the property to be connected to or use the system.
  6. Neither the contract nor any right contained therein may be sold, assigned, transferred or encumbered by the developer without the advance written consent of the City of Enid.
  7. Nothing contained in the language of the contract shall prohibit the City from making any connections or cross connections or use of the capital improvement constructed by the developer at any location, and no payment or fee shall be required.
- F. Excess Capacity Fee Calculation: The post-improvement development site's share of an excess capacity capital improvement cost shall be calculated as follows:
1. Basis for Calculation: The allowable recovery cost shall be the cost of the project minus the developer's cost share where:
    - a. Developer's share of the project shall be based on the developer's share of the excess capacity compared to the total excess capacity established in the agreement.
    - b. Developer's cost share shall be the developer's share of project multiplied by the allowable cost of the project.
  2. Post-improvement Development Sites: The post-improvement development site excess capacity fee of qualifying capital improvement shall be calculated as follows:
    - a. Post-improvement development share shall be based on the post-improvement development's share of the excess capacity compared to the total excess capacity established in the agreement.
    - b. Post-improvement development cost share shall be the post-improvement development share multiplied by the allowable cost, inflated by three percent (3%) for each whole year from the date of acceptance of the capital improvement as a capital recovery project.
- G. Post-improvement Development Sites:

1. **Excess Capacity Fees:** When post-improvement development occurs within the area of impact and makes use of, or receives a benefit from, a portion of the excess capacity capital improvement covered under this chapter, the developer of the post-improvement development shall pay an excess capacity fee as set out in this chapter. Fees shall be due and payable to the City before issuance of the plat, or in cases where there are no plats issued, before issuance of any permit for the post-improvement development site or certificate of occupancy. When a post-improvement development occurs outside of the area of impact, but makes use of and receives fifty percent (50%) or more of the development's benefit from an excess capacity improvement covered under this chapter, the Post-development shall pay the excess capacity fees as if in the area of impact.
  2. **Site Requirements:** Post-development sites that fall within an excess capacity capital improvement district or districts, or where 50% or more of the site will use an improvement, or improvements, covered by an excess capacity agreement, shall provide the following:
    - a. Their share of the excess capacity being accessed or used.
    - b. Payment of excess capacity fee or fees with plat submission, or with other permits when a plat is not involved.
- H. **Capital Recovery Payments:**
1. **Excess Capacity Fees:** The City shall account for the excess capacity fees for each capital recovery improvement separately. Five percent (5%) of all fees collected shall be retained by the City for administration. The City shall provide notice to developers on record of active improvement districts of fees collected for amounts of one thousand dollars (\$1,000.00) or more. Developers on record may then file a claim for payment of fees, less the City's five percent (5%) administrative fee.
  2. **Unclaimed Fees:** Fees not claimed by the developer within one year of the second notice of fees on file shall become the property of the City, but failure to collect fees in one year does not terminate the developer's right to collect in subsequent years.
  3. **Non-liability or Obligation of the City:** The City shall not be liable for payment of any excess capacity fees not collected. The sole obligation of the City to any developer shall be to require the payment of excess capacity fees as required by this chapter.
- I. **Term of Capital Recovery District:** Recovery of capital recovery fees is available for a term as set out in section 10-4-4(E)(3). and shall start on the date of acceptance of the improvements by the City's Board of Commissioners. That recovery will be terminated prior to these terms whenever the entire allowable recovery cost with interest has been collected.
- J. **City Use:** The City shall have the right to make such connections, use, changes, improvements or abandonment of any public improvement, as it may deem necessary, without payment of fees.
- K. **Variances:** Prior to payment of capital recovery fees, any person that can show that they have an interest in property in an area of impact of a capital improvement project, and that such property is substantially unique, and that the capital improvement fee is a substantial hardship due to the unique qualities, may file a request for variance with the



board of adjustment. The board, upon hearing a request, must determine that there is a substantially unique condition that makes the proposed capital improvement fee a substantial hardship on the property before taking any action. The actions that may be taken include reduction of the capital improvement fee, waiving of the fee, deferring the fee or taking no action. The decision of the board shall be final.

- L. Restrictions and Reservations: The following restrictions and reservations apply to projects proposed under this chapter:
1. Limitation on Effect of Provisions: Nothing herein shall be construed to obligate the City to give or continue to give service to any person, firm or corporation, or to any particular tract of land, other than pursuant to its other ordinances and regulations.

Section VII: That Title 10, Chapter 4, Section 10-4-5 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-5: CAPITAL RECOVERY SPECIAL CONDITIONS FOR SANITARY SEWER IMPROVEMENTS:**

- A. Approval of Excess Capacity Capital Improvements:
1. Application for Excess Capacity Public Improvement for a Sanitary Sewer: A developer desiring to make an excess capacity public improvement of a sanitary sewer shall include the following information in the application:
    - a. A detailed drawing of the proposal, indicating the drainage area to be served, proposed location of the new improvement, location of existing services in close proximity, and the proposed point of connection.
    - b. Certified list of properties and owners within drainage area.
    - c. Proposed routing of sewer with coordination of drainage and other public services.
  2. Sewer easement location and size will be coordinated with drainage and other City services.
- B. Excess Capacity Fee Calculation for Sanitary Sewers: The post-improvement development site's share of an excess capacity sanitary sewer improvement cost shall be calculated as follows:
1. Basis for Calculation: The allowable recovery cost shall be proportioned out based on the post-development site's projected peak hourly wastewater flow compared to the established design peak hourly wastewater flow, less the peak hourly wastewater flow established for the original development site. This calculation shall be made for each improvement district the post-development site is within.
  2. Hourly Wastewater Flow Designations: The post-development projected peak hourly wastewater flow shall be:



- a. Nine hundred fifty (950) gpd for each single residence;
  - b. Four hundred (400) gpd for each motel unit, hotel unit, or other transient living unit;
  - c. Six hundred fifty (650) gpd for each trailer space, mobile home, or apartment living unit;
  - d. One hundred (100) gpd for each student of any non-boarding type school;
  - e. Twenty-eight (28) gpd for each person that may be accommodated in a main assembly hall, with restroom facilities only;
  - f. Six hundred sixty (660) gpd for each bed of a hospital.
3. Other Developments: The post-development projected peak hourly wastewater flow for any development not covered above shall be equal to four (4) times the development site's projected average water use contributing to the sanitary sewer system, but in no case shall the flow be less than four hundred (400) gpd.
- C. Post-improvement Development Sites for Sanitary Sewers:
1. Site Requirements: Post-improvement development sites that fall within an excess capacity improvement district or districts or will use an improvement covered by an excess capacity agreement shall provide the following information used to determine post-improvement fee:
    - a. Sanitary Sewer Improvement District: Number and type of living units, lots, sleeping units, or participants projected for the site. The projected peak hour wastewater flow for the site when required, and the method that the flow was calculated on.
- D. Exemptions: The following exemptions apply to projects proposed under this chapter for sanitary sewers:
1. Subsection 8-5A-5C of this code will not apply to properties within a capital recovery for sanitary sewer boundary district until the recovery of capital recovery fees is terminated.

Section VIII: That Title 10, Chapter 4, Section 10-4-6 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-6: CAPITAL RECOVERY SPECIAL CONDITIONS FOR STORMWATER IMPROVEMENTS:**

- A. Approval of Excess Capacity Capital Improvements for Stormwater:
1. A developer desiring to make an increased capacity public improvement for stormwater shall include the following additional information in their application:

- a. A detailed drawing of the proposal indicating the drainage area to be serviced and proposed location of improvement, drainage report identifying the existing capacity of the facility and the proposed improved capacity of the facility;
- b. List of properties and owners within the drainage district (area of impact);

**B. Increased Capacity Fee Calculation for stormwater:**

**1. For subdivisions, plats, and site plans:**

- a. The post-improvement development site's increased peak stormwater discharge shall be determined by the stormwater drainage report prepared by the developer. The allowable recovery cost adjusted by the time factor shall be proportioned based upon the post-development site's increase in the peak stormwater discharge flow compared to the projected total increase in the peak stormwater discharge for the fully developed drainage boundary (area of impact) using these equations:

$Post\ Q - Pre\ Q = Post\text{-}Developer\ Increase\ (PDI)$
$PDI\ divided\ by\ projected\ increase\ in\ Q\ by\ improvement = Developer's\ Share\ (DS)$
$DS \times ARC = Increase\ Capacity\ Fee\ (ICF)$

- b. These calculations shall be made for each drainage area the post-development site is within.

**2. For individual lots or tracts of land not covered by subsection B1 of this section, the increased capacity fees will be calculated based upon the type of development using this equation:**

$ICF = ARC\ divided\ by\ BUA \times Lot\ Size \times I.$	
Agricultural and R-1 Estate	$I=0.57$
Single-Family Residential	$I=0.86$
Multi-Family Residential	$I=1.00$
Commercial/Other	$I=1.07$

Section IX: That Title 10, Chapter 4, Section 10-4-7 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-7: CAPITAL RECOVERY SPECIAL CONDITIONS FOR TRANSPORTATION:**

**A. Approval of Excess Capacity Capital Improvements:**

- 1. Application for Excess Capacity Public Improvement for Transportation: A developer desiring to make an excess capacity public improvement for a transportation project shall include the following information in their application:

- a. A traffic study shall be accomplished by a professional licensed engineer establishing ADT, peak hour traffic for both AM and PM, and an equivalent single axel load (ESAL) for highest use lane and level of service for existing conditions, the increased condition with full development of the proposed site and for increased condition considering growth to a point 20 years after completion of improvement.
  - b. When a traffic control signal is included in the improvement, the study shall include the above information for the signalized intersection and each lane of the intersection. Growth shall include the projected growth of development within ½ mile of the intersection in all directions or half way to the next traffic control light.
- B. **Excess Capacity Fee Calculation for Transportation Project:** The post-improvement development site's share of an excess capacity transportation improvement cost shall be calculated as follows:
1. **Roads:** Post-improvement developments within a transportation capital recovery district for a road or multiple roads shall provide as part of their siteplan or plat a traffic study describing the estimated single axel equipment loads (ESAL) generated by the development for the life of the improvement and including how the loads are distributed to the road system. The post-improvement development's excess capacity fee shall be calculated by multiplying their ESAL share of the total ESAL for the road times the allowable recovery cost inflated as set out in section 10-4-4 of this chapter.
  2. **Traffic Control Signal:** Post-improvement developments within a transportation capital recovery district for a traffic control signal shall provide as part of their siteplan or plat a traffic study showing the distribution of development generated traffic through the intersection for the life of the improvement. The post-improvement development excess capacity fee shall be calculated by multiplying the post-improvement development's share of traffic impact on the signal system of the total traffic impact on the signal system times the allowable recovery cost inflated as set out in section 10-4-4.
  3. **Post-improvement development where traffic study is not provided:** Post-development developments that are not required and do not provide an adequate traffic study shall calculate their proportional cost share based on their area of development compared to the area of impact.

**Section X:** That Title 10, Chapter 4, Section 10-4-8 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-8: CAPITAL RECOVERY SPECIAL CONDITIONS FOR WATER IMPROVEMENTS:**

- A. **District Boundary (Area of Impact):** The district boundary shall be determined as follows for water improvement district:
  1. Where the water line improvement follows road right-of-way, the district boundary shall generally include the area to a line one-half (1/2) of the distance to

the next existing or planned water line, of equal size or larger, on both sides of the improvement, but not more than one-half (1/2) mile from the improvement. The district shall begin and end at the ends of the improvement. The area covered by the district boundary shall be the area of impact.

B. Excess Capacity Fee Calculation for Water Improvements: The post-improvement development site's share of an excess capacity water improvement cost shall be calculated as follows:

1. Basis for Calculation: The allowable recovery cost shall be proportioned out based on the post-development site's area and water tap size. Post-developments shall pay their proportional share of one half (1/2) of the allowable recovery cost based on the post-development site's developed area to the basin area, and shall pay their proportional share of one half (1/2) of the allowable recovery cost based on their tap size, in area, to the projected total metered area established for the basin. In the case where a post-development site outside of the basin boundary ties to or make use of an capital recovery water improvement, the required increased capacity fee shall be capped at not more than one half (1/2) of allow recovery cost after inflated as set out in section 10-4-4.
2. Post-development requirement: Post-developments shall provide their area of development and water tap size, or sizes, at time of site-plan, plating, permitting, or application to connect and in advance of connecting to water system covered by a capital recovery improvement.
  - a. Area of development shall be determined to be the area of the lot or tract of land associated with any building and associated with all imperious area being used by the site.
  - b. Water tap size shall be the larger of the tap size placed on a water main or meter size. For the purpose of calculation, proportion share water taps or meter areas shall be used as follows:

Normal Size	Area (in <sup>2</sup> )
3/4" and smaller	0.56
1"	1
1.5"	2.25
2"	4
3"	9
4"	16
6"	36

Section XI: That Title 10, Chapter 4, Section 10-4-9 of the Enid Municipal Code, 2014, is hereby created to read as follows:

**10-4-9: CITY/AUTHORITY AS DEVELOPER:**

- A. The City of Enid or any of its authorities may act as the developer, or as a partner with the developer, for the purpose of capital recovery. When the City of Enid or one of its authorities acts as the developer, the following provisions apply:
  - 1. Predevelopment Site: No predevelopment site is required.
  - 2. Allowable Recovery Cost: The allowable cost may be used as the allowable recovery cost.
  - 3. Notice of Benefit/Impact Area: The City of Enid may file a notice in place of a "payback contract" and in place of an application to establish the area of benefit (area of impact), estimated allowable recovery cost and any other items necessary and usually covered by the contract.

Section XII: Repealer. All ordinances or parts thereof, which are inconsistent with this ordinance, are hereby repealed.

Section XIII: Savings Clause. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceedings now pending in any court, or any rights acquired or liability incurred, nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section XIV: Severability. If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter or section shall, for any reason, be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Enid that this section of the Enid Municipal Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part not been included.

Section XV: Codification. This ordinance shall be codified as Title 10, Chapter 4, Sections 10-4-1 through 10-4-9 of the Enid Municipal Code, 2014.

PASSED AND APPROVED by the Mayor and Board of Commissioners of the City of Enid, Oklahoma, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF ENID, OKLAHOMA

\_\_\_\_\_  
William E. Shewey, Mayor

(SEAL)

ATTEST:

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Linda S. Parks, City Clerk

Approved as to Form and Legality:

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Andrea L. Chism, City Attorney

DRAFT

**City Commission Study Session**

**6.**

**Meeting Date:** 03/21/2017

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**SUBJECT:**

**DISCUSS ACTING MUNICIPAL JUDGE ORDINANCE.**

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**Attachments**

Ordinance

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ORDINANCE NO. 2017-\_\_

AN ORDINANCE AMENDING THE ENID MUNICIPAL CODE, 2014, TITLE 1, ENTITLED "ADMINISTRATION," CHAPTER 11, ENTITLED "MUNICIPAL COURT," SECTION 1-11-4, ENTITLED "MUNICIPAL JUDGES," TO ALLOW FOR THE MAYOR TO APPOINT AN ACTING MUNICIPAL JUDGE IN THE EVENT BOTH MUNICIPAL JUDGES RECUSE OR ARE DISQUALIFIED. TO ALLOW FOR COMPENSATION OF AN ACTING MUNICIPAL JUDGE AT A REASONABLE HOURLY RATE; PROVIDING FOR REPEALER, SAVINGS CLAUSE, SEVERABILITY AND CODIFICATION.

ORDINANCE

BE IT ORDAINED BY THE MAYOR AND BOARD OF COMMISSIONERS OF THE CITY OF ENID, OKLAHOMA:

Section I: That Title 1, Chapter 11, Section 1-11-4 of the Enid Municipal Code, 2014, is hereby amended to read as follows:

**1-11-4: MUNICIPAL JUDGES:**

- A. Number and Terms<sup>7</sup>: There shall be one presiding municipal judge and one assistant municipal judge of the municipal court. Their terms shall be two (2) years, expiring in January in each even numbered year, and thereafter until they are replaced.
- B. Duties and Powers:
  1. In addition to his regular duties as a municipal judge, the presiding judge shall:
    - a. Assign cases among the judges as he deems best.
    - b. Assign duties to the assistant municipal judge in case of his absence or inability to preside.
    - c. Promulgate uniform rules of court procedure<sup>8</sup>.
    - d. Perform such other acts as required to execute the ordinances and resolutions of the city, charter and statutes of the state of Oklahoma.
  2. The municipal judges shall have power to issue warrants of arrest upon the filing of written verified complaints. The municipal judges shall have power to issue alias warrants at their discretion, shall issue subpoenas for all whose testimony may be deemed material as witnesses upon the trial, and shall enforce the attendance of witnesses, if necessary. The municipal judges shall also have power to administer oaths; and to enforce due obedience to all orders, rules and judgments made by him. (Ord. 2011-10, 7-19-2011)



C. If both the presiding judge of the municipal court and the assistant municipal judge are unable to preside over a case, the Mayor may appoint an acting judge as provided for under 11 O.S. §27-106. The City Commission, through this ordinance, shall provide for the compensation of an acting judge of the municipal court at a reasonable hourly rate for someone with similar knowledge, skills, and experience.

Section II: Repealer. All ordinances or parts thereof, which are inconsistent with this ordinance, are hereby repealed.

Section III: Savings Clause. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceedings now pending in any court, or any rights acquired or liability incurred, nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section IV: Severability. If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter or section shall, for any reason, be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Commission of the City of Enid that this section of the Enid Municipal Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part not been included.

Section V: Codification. This ordinance shall be codified as Title 1, Chapter 11, Section 1-11-4, of the Enid Municipal Code, 2014.

PASSED AND APPROVED by the Mayor and Board of Commissioners of the City of Enid, Oklahoma, on this \_\_\_\_ day of March, 2017.

CITY OF ENID, OKLAHOMA

\_\_\_\_\_  
William E. Shewey, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Linda S. Parks, City Clerk

Approved as to Form and Legality:

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Andrea L. Chism, City Attorney

DRAFT