

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING**

**TO CONSIDER THE FOLLOWING ADDITIONS/AMENDMENTS
TO THE LEESBURG TOWN CODE:**

**CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1
(GENERALLY), SECTION 34-18 (DEFINITIONS);**

**CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1
(GENERALLY), SECTION 34-40 (PORTABILITY OF WATER AVAILABILITY FEES);**

**CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL),
DIVISION 1 (GENERALLY), SECTION 34-117 (DEFINITIONS);**

**CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL),
DIVISION 1 (GENERALLY), SECTION 34-137 (PORTABILITY OF SEWER
AVAILABILITY FEES)**

Pursuant to Code of Virginia of 1950, as amended, § 15.2-1427, § 15.2-2119, the **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, JANUARY 14, 2014, at 7:30 p.m.**, in the Council Chambers at Town Hall, 25 West Market Street, Leesburg, Virginia, 20176, to consider the following additions/amendments to the Town Code:

Sec. 34-18 Definition

Portability means the transferability of paid water availability fees from one commercial street address to another within a one owner parcel.

Sec. 34-40. Portability of Water Availability Fees

(a) All paid water availability fees which have been paid for the issuance of the public facility permit (receipt) shall attach to and run with the parcel.

(b) Paid water availability fees are transferable within one commercial parcel with one owner. Minimum commercial water availability fee as established by Council shall remain with each commercial street address. Upon evaluation of available historical records, paid water availability fees in excess of the minimum required commercial fee per use may be eligible for portability. This subsection shall not apply to residential parcels.

(c) Parcel owner must consent to transfer paid water availability fee from one commercial street address to another within the same parcel.

(d) If any person enlarges a structure or extends the use of the town water system to any new or additional use on a premises, an availability fee shall be paid for the additional use, whether or not a new or enlarged connection is required. This subsection shall only apply if there is a transferable balance from previously paid water availability fees.

Sec.34-117. Definition

Portability means the transferability of paid sewer availability fees from one commercial street address to another within a one owner parcel.

Sec. 34-137. Portability of Sewer Availability Fees

(a) All paid sewer availability fees which have been paid for the issuance of the public facility permit (receipt) shall attach to and run with the parcel.

(b) Paid sewer availability fees are transferable within one commercial parcel with one owner. Minimum commercial sewer availability fee as established by Council shall remain with each commercial street address. Upon evaluation of available historical records, paid sewer availability fees in excess of the minimum required commercial fee per use may be eligible for portability. This subsection shall not apply to residential parcels.

(c) Parcel owner must consent to transfer paid sewer availability fee from one commercial street address to another within the same parcel.

(d) If any person enlarges a structure or extends the use of the town sewer system to any new or additional use on a premise, an availability fee shall be paid for the additional use, whether or not a new or enlarged connection is required. This subsection shall only apply if there is a transferable balance from previously paid sewer availability fees.

A copy of the proposed ordinance is available from the Town Clerk, located in Town Hall. Additional information regarding this proposed amendments is available in the Executive Department, located on the first floor of the Leesburg Town Hall, 25 West Market Street, Leesburg, Virginia, during normal business hours (Monday-Friday, 8:30 a.m. to 5:00 p.m.), or by calling Lee Ann Green, Clerk, at 703-731-2733.

At this hearing, all persons desiring to express their views concerning these matters will be heard. Persons requiring special accommodations should contact the Clerk of Council at 703-771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

1/2/14



Date of Council Meeting: January 14, 2014

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Portability of Water and Sewer Availability Fees

Staff Contact: Amy Wyks, Director of Utilities

Recommendation: Staff recommends a Town Code revision to allow reassignment with conditions of paid availability fees within the same parcel having one owner.

Issue: Should water and sewer availability fees paid for a parcel be portable and reassigned to another use within the same parcel?

Fiscal Impact: The estimated one time cost to develop and implement revisions to the availability fee program is \$50,000. Based on the expectations on how the data is made available to the public, the estimated cost for an online tool regarding paid availability fees is approximately \$30,000 and the remaining \$20,000 is staff resources to research and develop a database of paid availability fees. The Fiscal Year 2014 budget does not have funding for the revised program and an additional appropriation may be necessary.

Background: At the request of Councilwoman Burk, staff has reviewed and evaluated the issue of portable availability fees as outlined in the attached letter of recommendation from the Economic Development Commission (EDC).

At the November 26, 2013 Council meeting, Council approved Resolution 2013-136 initiating amendments to the Town Code Chapter 34 Sections 34-29 and 34-127 and authorizing a public hearing regarding portability of water and sewer availability fees.

Staff has preliminary information to support the recommended ordinance revision for an effective date of July 1, 2014 to allow time for development and implementation of a revised program. A presentation outlining the proposal and draft ordinance are attached.

Attachments: EDC Letter
Presentation
Draft Ordinance

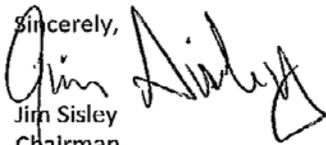
Date: 10/17/13
To: Town Council
From: Leesburg Economic Development Commission

Madame Mayor and Council Members,

The Leesburg Economic Development Commission has worked with John Wells and various staff members to explore the concept of making water availability fees portable within shopping centers owned by a single entity and situated on a single parcel or group of immediately adjacent parcels.

Water availability fees are often a significant hurdle to opening for a potential Leesburg retail business seeking to serve our citizens. Hair and nail salons, restaurants, food related services and other high water volume users generate some of the most profitable tax revenues collected by our municipality. Over time, a significant number of retail spaces that formerly housed these high water volume users have subsequently become occupied by businesses that do not use high water volumes. After the high volume user departs the shopping center, the fee becomes an asset of the property owner but may not be returning the highest possible volume of tax revenues to the Town. In these cases, the value of the previously paid Water Availability Fee sits unleveraged because the fee can only be used by the business in the retail space for which the fee was originally paid.

The Leesburg Economic Development Commission requests that the Town Council approve making water availability fees portable within shopping centers or similar properties so that the fee may be applied to different retail suites as they become available and newly occupied by high water volume users. The portability will lower the cost of starting businesses and will, in fact, help generate higher tax revenues from these new businesses. Your consideration and approval of making water availability fees portable is greatly appreciated as is the decision Council made to amortize the tap fees over time. Both of these policies are key to attracting and retaining businesses in Leesburg that are desirable and sustainable in terms of generating commercial tax revenues.

Sincerely,

Jim Sisley
Chairman
Leesburg Economic Development Commission

Portability of Water and Sewer

Availability Fees

Town Code Amendment

Council Meeting

January 14, 2014

Definition

- Availability fees are designed to promote cost sharing between existing customers and future customers in order to recover the costs incurred by a utility for construction of facilities.
- Otherwise known as:
 - Impact Fees
 - Tap Fees
 - Capacity Charge
- Philosophy is that growth pays for growth.

Availability Fee Structure

- Three standard methods of calculating availability fees (Meter Size, Equivalent Residential Units or Fixture Units)
- Town calculates fee based on type of establishment and estimated gallons per day. (Equivalent Residential Units)
- Comparable to other jurisdictions and water/sewer authorities; however most use meter size for calculation.
- Town's calculation method is fair, equitable, reasonable and practicable
 - Charged based on industry standard of uses
 - Example: 1" meter for a bank and restaurant
 - Staff surveys and compares usage from existing facilities to the established gpd benchmarks.
- Financing of fee is option when greater than \$10,000 for water and \$15,000 for sewer up to 5 years.
- Availability fees convey with the parcel. Only change to more intense use triggers potential for additional availability fees.
 - For leased properties, if a financial burden prevents the tenant from opening business, Town recommends tenant coordinate with landlord since fees will convey if business closes.

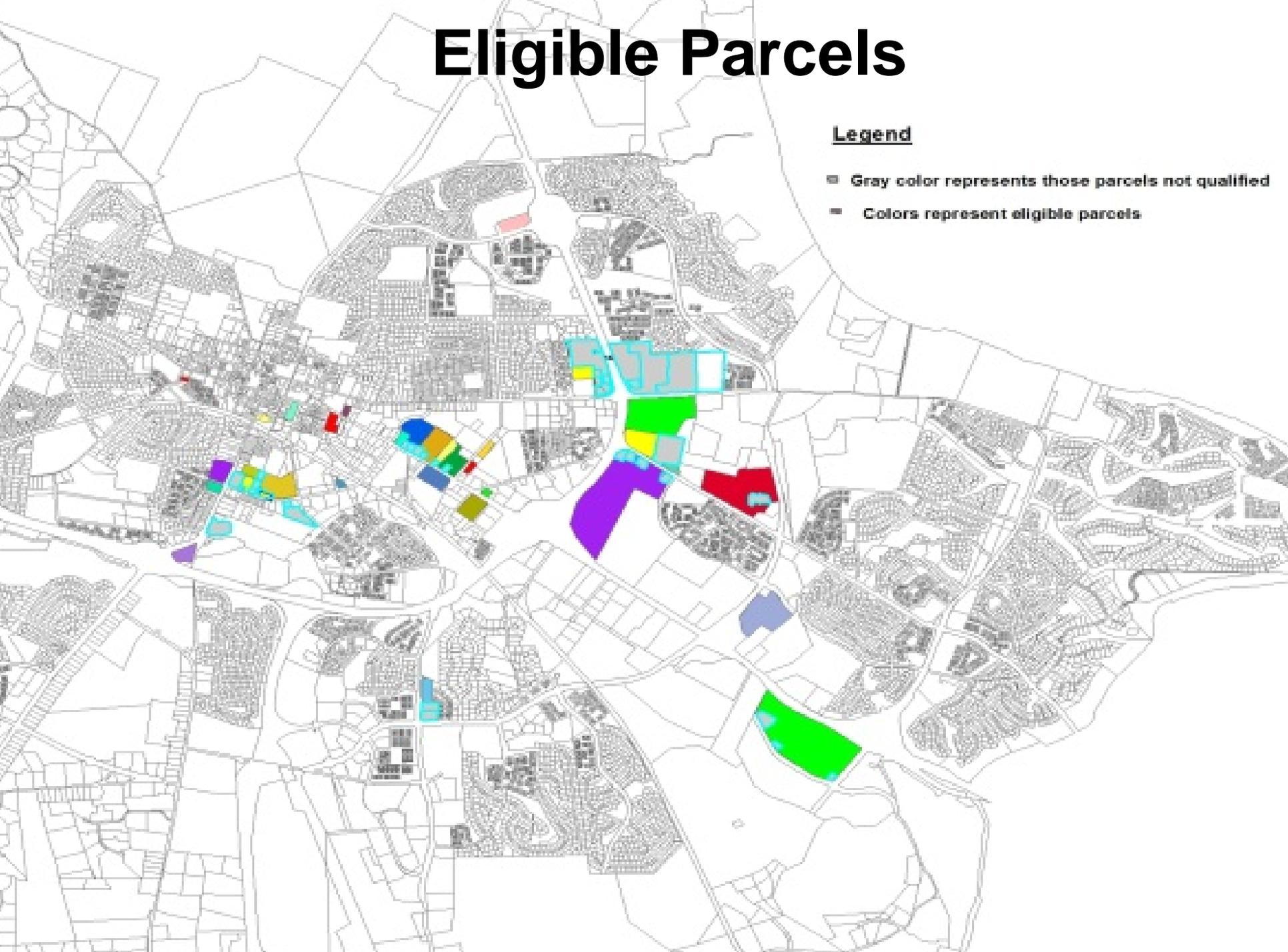
Portable Availability Fee Proposal

- Allow transfer of previously paid availability fees if property is one parcel and one owner.
- Minimum commercial fee (currently \$11,975) must remain with each tenant space.
- Property owner must request in writing confirmation of eligible fees available for transfer before Public Facilities and Zoning Permits are issued.
- Prior to issuance of permits, property owner must approve transfer of fees. Detailed fee information to be provided on the permit for tracking.

Eligible Parcels

Legend

- Gray color represents those parcels not qualified
- Colors represent eligible parcels



Implementation

- Ordinance Change by Council
 - Recommend effective date of July 1, 2014 to allow for research and development of database
- Review of permits for eligible parcels
- Data entry of paid fees
- Fees tracked and calculated by Utilities
- Development of standard operating procedure for calculation, tracking and processing of applicant request.
- Accessibility to Public? (Fiscal Impact)
 - Development of GIS layer with data
 - Web launch of online application

Town Code Amendments

- Define Portability in Sections 34-18 and 34-117.
- *Portability* means the transferability of paid water or sewer availability fees from one commercial street address to another within a one owner parcel.

Add Sections 34-40 & 34-137 Portability of Water or Sewer Availability Fees

- (a) All paid water or sewer availability fees which have been paid for the issuance of the public facility permit (receipt) shall attach to and run with the parcel.
- (b) Paid water or sewer availability fees are transferable within one commercial parcel with one owner. Minimum commercial water or sewer availability fee as established by Council shall remain with each commercial street address. Upon evaluation of available historical records, paid water or sewer availability fees in excess of the minimum required commercial fee per use may be eligible for portability. This subsection shall not apply to residential parcels.
- (c) Parcel owner must consent to transfer paid water or sewer availability fee from one commercial street address to another within the same parcel.
- (d) If any person enlarges a structure or extends the use of the town water or sewer system to any new or additional use on a premises, an availability fee shall be paid for the additional use, whether or not a new or enlarged connection is required. This subsection shall only apply if there is a transferable balance from previously paid water or sewer availability fees.

Challenges

- Communication
- Explanation of “transfer” when applicant has to pay for a space already built out
- Zoning application issued prior to approval by Utilities (Change in process/form)
- Accurate tracking and calculation
- Total paid based on actual permit value not current \$11,975 minimum value
 - Potential impact on parcel that paid years ago.
“Transferring” may require higher fees to be paid.
- Workload of staff for implementation and GIS/Web assistance for online application (including Fiscal Impact)

Example 1 – Transfer

- All examples, round minimum commercial fee to \$12,000 from \$11,975.

Unit A Restaurant	Unit B Retail	Unit C Retail	Unit D Retail
\$ 12,000 + \$ 38,000 <u> </u> \$ 50,000	\$12,000	\$12,000	\$12,000

TOTAL FEES PAID FOR PARCEL = \$86,000

Unit A Restaurant Closed (VACANT – Minimum Remains)	Unit B Retail	Unit C Retail	Unit D Restaurant
\$12,000	\$12,000	\$12,000	\$ 12,000 + \$ 28,000 <u> </u> \$ 40,000

TOTAL FEES PAID FOR PARCEL = \$86,000 with \$10,000 available for transfer

Example 2 – Create a New Tenant Space

Unit A Retail	Unit B Retail	Unit C Retail	Unit D Retail
\$12,000	\$12,000	\$12,000	\$22,000

TOTAL FEES PAID FOR PARCEL = \$58,000

Unit A Retail	Unit B Retail	Unit C Retail	Unit D Restaurant	Unit D-1 Retail
\$12,000	\$12,000	\$12,000	\$12,000	\$ 10,000 + \$ 2,000(Due) \$ 12,000

TOTAL FEES PAID FOR PARCEL = \$60,000

Example 3 – Merge tenant spaces

Unit A Restaurant	Unit B Retail	Unit C Retail	Unit D Retail
\$50,000	\$12,000	\$12,000	\$12,000

TOTAL FEES PAID FOR PARCEL = \$86,000

Unit A Restaurant closed (Minimum remains)	Unit B Retail	Unit C & D merged New Restaurant
\$50,000 - <u>\$38,000</u> \$12,000	\$12,000	\$12,000 (Unit C) + \$12,000 (Unit D) + \$38,000 (Unit A) + <u>\$13,000 (Due)</u> \$75,000

TOTAL FEES PAID FOR PARCEL = \$99,000

Example 4 – Decrease in Demand

Unit A Restaurant	Unit B Restaurant	Unit C Retail
\$50,000	\$42,000	\$12,000

TOTAL FEES PAID FOR PARCEL = \$104,000

Unit A Retail	Unit B Retail	Unit C Retail
\$12,000	\$12,000	\$12,000

TOTAL FEES PAID FOR PARCEL = \$104,000 with \$68,000 available for transfer

Discussion

Question & Answer

Current Availability Fees Charged by Neighboring Utilities

Water & Sewer Availability Fees by Meter Size

UTILITY	5/8"	3/4"	1"	1.5"	2"
Loudoun Water	\$14,410	\$21,615	\$43,230	\$93,665	\$179,920
Town of Purcellville	\$47,354	\$71,031	\$118,385	\$236,770	\$378,832
Prince William Service Authority	\$15,400	\$30,800	\$61,600	\$107,800	\$184,800
Fairfax Water	\$11,600	\$15,450	\$20,600	\$33,450	\$48,850
Town of Leesburg	\$11,975	\$11,975	\$11,975 \$29,506	\$11,975 \$31,833	\$51,502

- Town examples are based on specific permit calculated and paid by applicant.

Existing Availability Fees (Additional Information)

- Ordinance adopted by Town Council (95-O-14)
- Town Code Chapter 34 Sections 34-29 and 34-127
- Fees set by Town Council
 - Last fee increase was effective July 1, 2007 (FY08)
- Single Family/Duplex
 - Water \$4683 and Sewer \$7292 for total \$11,975.
- Multi-Family/Townhouse
 - Water \$3744 and Sewer \$5852 for total \$9596.
- Commercial
 - Water \$13.33/gpd and Sewer \$20.20/gpd for total of \$33.53/gpd.
 - Minimum Commercial Fee is Water \$4683 and Sewer \$7292 for total \$11,975.

Methods of Accessing Capital Recovery Charges (Additional Information)

Table 4.2 Methods of Assessing Capital Recovery Charges: Comparison of Advantages and Disadvantages

Assessment Method	Advantages	Disadvantages
Meter Size	<ul style="list-style-type: none"> • Easily understood by customers. • Generally easy to implement. • Encourages proper meter sizing by customers (larger meters would require higher capital recovery charges). • The customer's meter size identifies the potential demand placed on system by the customer. 	<ul style="list-style-type: none"> • Significant loading differences can exist among customers within a specific meter size class. • For wastewater, meter size may have little relevance to the customer's wastewater loading.
Equivalent Residential Units	<ul style="list-style-type: none"> • Attempts to recognize loading differences among different classes of customers—provides additional equity when compared with the meter size approach. • Can be used effectively for both water and wastewater capital recovery charges. 	<ul style="list-style-type: none"> • Bases the charge on usage class characteristics rather than the precise plumbing configuration of the customer. • Is more difficult to explain and administer than meter size approach.
Drainage Fixture or Supply Fixture Units	<ul style="list-style-type: none"> • Generally provides the most equitable capital recovery charge in that the unique plumbing configuration of the customer is used. • Can be effectively used for both water and 	<ul style="list-style-type: none"> • Can be the most costly and administratively difficult to implement in that each customer's building plan must be individually reviewed.

Source: The Arthur Young Guide to Water and Wastewater Finance and Pricing by George A. Raftellis

Why Establish?

- Fees collected are the source of financing for capital improvements.
- One time charge assessed for the cost to cover the additional system capacity required for the development.
- A nationwide industry practice as fees can provide equity to the financing and pricing system.
- Promotes cost sharing between existing customers and unconnected customers who derive benefits from the facilities.

Considerations for Availability Fee Structure

- Revenue Potential
- Potential for Litigation
- Implementation
- Simplicity
- Legality
- Impact of economic development

PRESENTED: JANUARY 14, 2014

ORDINANCE NO. 2014-O-

ADOPTED: JANUARY 14, 2014

AN ORDINANCE: AMENDING CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1 (GENERALLY), SECTION 34-18 (DEFINITION) AND CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL), DIVISION 1 (GENERALLY), SECTION 34-117 (DEFINITION); AND ADDING CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1 (GENERALLY), SECTION 34-40 (PORTABILITY OF WATER AVAILABILITY FEES) AND CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL), DIVISION 1 (GENERALLY), SECTION 34-137 (PORTABILITY OF SEWER AVAILABILITY FEES)

WHEREAS, the Economic Development Commission has recommended that the Town consider the portability of paid water and sewer availability fees; and

WHEREAS, staff has reviewed and evaluated the issue of portable availability fees and recommends an ordinance revision to be effective July 1, 2014 to allow time for development and implementation of a revised program; and

WHEREAS, the Town Council held a public hearing to consider these amendments to the Town Code; and

WHEREAS, the Code of Virginia, as amended, § Section 15.2-2119 allows the Town Council to set water and sewer availability fees; and

WHEREAS, the portability of water and sewer availability fees is advantageous to commercial property owners and perspective tenants.

THEREFORE, ORDAINED by the Council of the Town of Leesburg in Virginia as follows:

SECTION I. Sec. 34-18 Definition

Portability means the transferability of paid water availability fees from one commercial street address to another within a single owner parcel.

AN ORDINANCE: AMENDING CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1 (GENERALLY), SECTION 34-18 (DEFINITION) AND CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL), DIVISION 1 (GENERALLY), SECTION 34-117 (DEFINITION) AND ADDING CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1 (GENERALLY), SECTION 34-40 (PORTABILITY OF WATER AVAILABILITY FEES) AND CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL), DIVISION 1 (GENERALLY), SECTION 34-137 (PORTABILITY OF SEWER AVAILABILITY FEES)

Sec. 34-40. Portability of Water Availability Fees

(a) All paid water availability fees which have been paid for the issuance of the public facility permit (receipt) shall attach to and run with the parcel.

(b) Paid water availability fees are transferable within one commercial parcel with a single owner. Minimum commercial water availability fee, as established by Council, shall remain with each commercial street address. Upon evaluation of available historical records, paid water availability fees in excess of the minimum required commercial fee per use may be eligible for portability. This subsection shall not apply to residential parcels.

(c) Parcel owner must consent to transfer paid water availability fee from one commercial street address to another within the same parcel.

(d) If any person enlarges a structure or extends the use of the town water system to any new or additional use on a premise, an availability fee shall be paid for the additional use, whether or not a new or enlarged connection is required. This subsection shall only apply if there is a transferable balance from previously paid water availability fees.

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Sec. 34-137. Portability of Sewer Availability Fees

(a) All paid sewer availability fees which have been paid for the issuance of the public facility permit (receipt) shall attach to and run with the parcel.

(b) Paid sewer availability fees are transferable within one commercial parcel with a single owner. Minimum commercial sewer availability fee as established by Council shall remain with each commercial street address. Upon evaluation of available historical records, paid sewer availability fees in excess of the minimum required commercial fee per use may be eligible for portability. This subsection shall not apply to residential parcels.

(c) Parcel owner must consent to transfer paid sewer availability fee from one commercial street address to another within the same parcel.

(d) If any person enlarges a structure or extends the use of the town sewer system to any new or additional use on a premise, an availability fee shall be paid for the additional use, whether or not a new or enlarged connection is required. This subsection shall only apply if there is a transferable balance from previously paid sewer availability fees.

SECTION II. All prior ordinances in conflict herewith are hereby repealed.

SECTION III. This ordinance shall become effective upon July 1, 2014.

AN ORDINANCE: AMENDING CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1 (GENERALLY), SECTION 34-18 (DEFINITION) AND CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL), DIVISION 1 (GENERALLY), SECTION 34-117 (DEFINITION) AND ADDING CHAPTER 34 (UTILITIES), ARTICLE II (WATER SYSTEM), DIVISION 1 (GENERALLY), SECTION 34-40 (PORTABILITY OF WATER AVAILABILITY FEES) AND CHAPTER 34 (UTILITIES), ARTICLE III (SEWERS AND SEWAGE DISPOSAL), DIVISION 1 (GENERALLY), SECTION 34-137 (PORTABILITY OF SEWER AVAILABILITY FEES)

SECTION IV. If any provision of this ordinance is declared invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the ordinance.

PASSED this 14th day of January, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council