

CITY COUNCIL MEETING DATE: JUNE 2, 2020



CITY COUNCIL AGENDA ITEM #7

STAFF PREPARER: Sylvia Carrillo, City Administrator, scarrillo@sunsetvalley.org

SPONSOR: Mayor Cardona, rcardona@sunsetvalley.org /Administration
scarrillo@sunsetvalley.org

SUBJECT: PUBLIC WORKS – REFUND OF MITIGATION FEES PAID IN 2012 BY THE BRODIE EVENT CENTER

DESCRIPTION: Request by Brodie Homestead for a Re-evaluation of Mitigation Fee paid in 2008, with a potential refund to the Payee in the amount of \$61,470.11 with Council deliberation and possible action. (Mayor Cardona/Administration)

BACKGROUND: The Preliminary Site Plan was approved by the Council on May 1, 2012. Additionally, the Board of Adjustment approved the requested zoning variances on July 9, 2012. The Council approved the Watershed Development permit and final site plan on July 24, 2012.

As part of the mitigation to potential negative impacts from the development and surrounding development, the applicant paid fees in the amount of \$63,495.11. \$61,470.11 was for water quality mitigation and \$2,025 was for mitigation to tree planting opting to pay the mitigation fee instead of planting trees on the site. The fees for the tree planting have been used to plant trees along Ernest Robles way.

The council action, when approved, requested fees be used in the immediate vicinity of the applicant's business. To date, the mitigation fees for water quality have not been used, thus the applicant is requesting a refund of the \$61,470.11 fees paid as necessary to keep his business in operation given the negative impact COVID has had on his business.

STAFF RECOMMENDATION:

Described as a mitigation fee, the mitigation fee is to pay or prevent impacts to the water quality system, and is truly an impact fee. The City of Sunset Valley does not have an impact fee ordinance, nor has gone through the proper procedural requirements of implementing an impact fee.

Sec. 395.025. REFUNDS.

(a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section 395.019(1).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002, Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 37, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.82, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

Given the timeframe, staff recommends a refund to the Brodie Homestead and also direction to staff to review the criteria for mitigation/impact fees.

ATTACHMENTS:

- Council Agenda Item 7.24.2012
- Council Minutes 7.24.2012
- Local Government Code Chapter 395
- Texas A&M Real Estate Center Publication.

CITY OF SUNSET VALLEY

Agenda Date: July 24, 2012

SUBJECT: Consider approval of a Final Site Plan and Watershed Development Permit for the Brodie Events Center Project at 5207 Brodie Lane, Lots 1 and 2 of Block A, Sunset Valley Village Homestead. The approval includes consideration of Watershed Variances to Section 4.201(b), 4.201(d), 4.301(f) of the 1996 Land Development Code; a Parking Variance to Section 10.103 of the 1996 Land Development Code; and Landscape Variances to Section 13.200(j) and 13200(m) of the 1996 Land Development Code.

BACKGROUND: This project has been considered by the City Council (as well as the Zoning Commission and the Board of Adjustment) at several meetings during the past year. A summary of previous actions is attached.

The Preliminary Site Plan was approved by the Council on May 1, 2012. Since that time, the applicant has submitted the Final Site Plan and an application for a Watershed Development Permit. Additionally, the Board of Adjustment approved the requested zoning variances on July 9, 2012.

Following submittal of the Final Site Plan on June 13, 2012, staff and city consultants have reviewed the information and a detailed set of comments was provided to the applicant on July 13, 2012. The applicant provided revisions to plans and documents in a response dated July 17, 2012. This response follows the format of the city's request, so reviewing the Bury+Partners response comments (item 2 on the list of attachments) provides both the question/comment from the city and our consultants as well as the response from the applicant. This is typically an iterative process that continues until all comments are addressed. On July 18th, the applicant's responses were submitted to our consultants for review and comment; however, as of the preparation of the agenda, we have not received responses back that confirm that all the comments can be cleared. Any specific items not cleared by city staff or our consultants will be identified prior to the meeting. We will provide this information to the applicant as soon as possible to allow for any additional follow up if possible. The rapid response by the applicant to the comments provided on July 13th indicates a strong desire to move this project forward; however, at the time of preparation of this agenda packet, there are some items that have not been verified pending a response from our consultants.

There are a significant number of technical and code compliance issues that have been reviewed by city staff and our consultants. The specific variances that would need to be approved for the Final Site Plan as submitted are also included as possible action by the Council; however, in considering approval of the Final Site Plan, the Council may choose to consider the following questions, which would guide action on specific motions on the Site Plan, Watershed Development Permit and Variance requests:

Significant questions:

The site plan proposes to add 18,161 S.F of impervious cover on Lot 1 (which is similar to the amount approved in 2008) and 2,012 S.F. of impervious cover on Lot 2, which would bring the total amount of impervious cover on Block A to 642,571 S.F. The treatment capacity of the existing water quality system within the Block A development is 644,222. Originally, due to the amount of development within the Water Quality Transition Zone, the treatment capacity was oversized; however, almost all of the capacity is now proposed to be used.

Is the amount of additional impervious cover being proposed acceptable?

If so, are there any conditions to be added?

(such as a mitigation fee that was included with the 2008 variance that has expired or some on-site/adjacent mitigation)

A parking plan and parking agreement has been submitted by the applicant.

Does the parking plan and parking agreement address the items that were included as a part of the Council approval of the preliminary site plan on May 1, 2012?

The applicant has clarified that the proposed use for the House on Lot 2 will be for offices and the use of the Barn on Lot 1 will be for an Event Center.

The proposed crosswalk that was included on the approved preliminary site plan has been eliminated (and a connection to the sidewalk along Brodie has been added).

Staff has communicated with the applicant that the crosswalk is still needed; however the applicant is proposing the connection to the sidewalk along Brodie.

Does Council agree with the applicant that this crosswalk is not needed for public safety?

Without the crosswalk, can the parking provided on Lot 2 still be used in the overall parking calculations for the Event Center?

If Lot 2 is to be Office Use, is there a need for the Acoustical Wall on Lot 2?

There is no specific restriction that prevents construction of walls or fences; however, the proposed wall does require a Landscaping Variance due to its placement within the 25 foot landscape buffer.

Depending on the Council's decisions on the questions, the Site Plan could be approved as presented or with revisions. Additionally, in order to approve the Site Plan as submitted, there are six variances to the 1996 Land Development Code (which governs this development application) that will be required to be approved along with associated findings for granting of the variances.

Variances Requested:

Watershed

- 1) A Variance has been requested to 1996 LDC 4.201(b) regarding improvements within the Water Quality Transition Zone for the parking lot and related appurtenances on Lot 1 of Block A of the Sunset Valley Homestead Addition.
- 2) A Variance has been requested to 1996 LDC 4.201(d) regarding commercial improvements within the Water Quality Transition Zone on Lot 1 of Block A of the Sunset Valley Homestead Addition.
- 3) A Variance has been requested to 1996 LDC 4.301(f) regarding the Block A development improvements related to the proposed development of Lot 1 and Lot 2 of Block A of the Sunset Valley Village Homestead Subdivision. The request is for 18,861 S.F. of impervious cover for Lot 1, and 2,012 S.F. of impervious cover for Lot 2 to accommodate the development of the lots through the construction of surface parking and site improvement related impervious cover.

Parking

- 4) A Variance has been requested to 1996 LDC 10.103 regarding the minimum contiguous compact parking spaces for Lot 1 of Block A of the Sunset Valley Homestead Addition. The code requires a group of not less than five (5) contiguous spaces. The request is for a group of three (3) spaces and one single compact parking space.

Landscaping

- 5) A Variance has been requested to 1996 LDC 13.200(j) regarding the required 25 foot vegetative setback for Lot 2 of Block A of the Sunset Valley Homestead Addition. There is a proposed wall improvement which will be located within the setback.
- 6) A Variance has been requested to 1996 LDC 13.200(m) regarding parking island minimum width for Lot 1 and Lot 2 of Block A of the Sunset Valley Homestead Addition. Both Lots contain a number of large trees and in an effort to minimize the impact on the trees, the parking lot island dimensions are proposed to be reduced.

Attached are the following items:

- 1) Chronology of City Council/other Committee action
- 2) Bury+Partners response comments (dated 7/17/12)
- 3) Revised Impervious Cover Table (from Engineering report)

- 4) Notice of Board of Adjustments Action (from 7/9/12 meeting)
- 5) Parking Plan
- 6) Parking Agreement
- 7) Comment letters (most recent letter if more than one letter has been submitted)
- 8) Site Plan (11x17 plan set)

RECOMMENDATION: Staff and city consultants are still reviewing the latest submittals. Many areas have been addressed by the applicant and the major conceptual issues for Council approval have been identified; however, a staff recommendation will not be given to approve the Final Site Plan and issue a Watershed Development without ensuring that all comments have been addressed and verified. Every attempt will be made to ensure that all comments have been addressed in advance of the City Council meeting.

FOR MORE INFORMATION CONTACT: Clay Collins



**MINUTES OF A REGULAR MEETING OF THE
CITY COUNCIL
OF THE CITY OF SUNSET VALLEY, TEXAS
TUESDAY, JULY 24, 2012
6:00 P.M.**

COUNCIL MEMBERS PRESENT

Rose Cardona, Mayor
Rudi Rosengarten, Mayor Pro tem
Forrest Arnold, Council Member
Jeff Burdett, Council Member
Walter Jenkins, Council Member

COUNCIL MEMBERS ABSENT

Zubair Hamir, Council Member

STAFF PRESENT

Rae Gene Greenough, City Secretary/Accountant
Clay Collins, City Administrator
Sara Wilson, Assistant City Administrator
Lt. Sean Ford, Police Department
Carolyn Meredith, Environmental Manager
Joshua Ronson, Operations Manager
Doug Young, City Attorney

1. Call to order of the City Council.

Mayor Cardona called the meeting to order at 6:04 P.M.

2. Pledge of Allegiance.

The Pledge of Allegiance was recited.

3. Citizen/Public Communication.

- Mayor Cardona announced Trisha Houston's resignation effective immediately.
- Harvey Ring, 66 Pascal Lane, Austin, TX, 78747, discussed A&E petition by HURF.
- Dell Shaw, 5 Curley Mesquite, discussed the process of hiring a new police chief.

4. Staff and Committee reports on subject matters in written report issued on July 19, 2012.

1) City Administrator Report on subject matters in written report issued on July 19, 2012.

Clay Collins, City Administrator, reviewed some items from his report.

2) Police Department Report on subject matters in written report issued on July 19, 2012.

Lt. Ford reviewed some items from his report.

3) Public Works Department Report on subject matters in written report issued on July 19, 2012.

- Carolyn Meredith, Environmental Manager, reviewed some items from her report.
- Joshua Ronson, Operations Manager, discussed the Pillow Road Project.

5. Council consideration of agenda items for approval on consent.

A motion was made by Mayor Pro tem Rosengarten and seconded by Council Member Arnold to approve agenda items 6 and 7 on consent. All voted yes and the motion carried by a 4-0 vote.

ITEMS APPROVED ON CONSENT

6. Approval of the minutes from the July 10, 2012 meeting.

50 7. Consider approval of an access easement across City Property for Brant and Jean Boozer at 798
51 Oakdale Drive. (Mayor Cardona/Public Works)

52

53 **8. Presentation and consideration of approval of the 2010-11 Annual Financial Audit by**
54 **DARILEKBUTLER. (Council Member Hamir/Administration)**

55 - Robert Darilek, Sr. Partner of DARILEKBUTLER, presented the Annual Financial Audit for FY 2010-
56 2011.

57

58 A motion was made by Council Member Jenkins and seconded by Mayor Pro tem Rosengarten to
59 approve the Financial Audit for FY 2010-2011. All voted yes and the motion carried by a 4-0 vote.

60

61 **9. Consider approval of the First Amendment to the Agreement for Wholesale Water Service between**
62 **the City of Austin and the City of Sunset Valley to amend the language in Section 2.01 Maximum**
63 **Volume and Rate of Flow and Section 4.09 Sunset Valley Source for Raw Water.**
64 **(Mayor Cardona/Administration and Public Works Departments)**

65 - Clay Collins, City Administrator, reviewed the proposed changes.

66 - Bart Jennings, City of Austin Water Utility, was available for questions.

67

68 A motion was made by Council Member Burdett and seconded by Mayor Pro tem Rosengarten to
69 approve the First Amendment to the Agreement for Wholesale Water Service between the City of
70 Austin and the City of Sunset Valley to amend the language in Section 2.01 Maximum Volume and Rate
71 of Flow and Section 4.09 Sunset Valley Source for Raw Water. All voted yes and the motion carried by a
72 4-0 vote.

73

74 **10. Consider approval of a recommendation from the Director of Public Works to return to Stage 1 of the**
75 **City's Water Conservation and Drought Management Plan. (Mayor Cardona/Public Works)**

76 - Clay Collins, City Administrator, reviewed the recommendation from the Director of Public Works.

77

78 - A motion was made by Mayor Pro tem Rosengarten to reduce to Conservation Stage Level 1
79 with the additional continued Level 2 restrictions 2, 3, 4, 5, and 6 as listed in the backup
80 material, which are:

81 2. Eliminate washing driveways, sidewalks, or streets.

82 3. City shall check for and fix water leaks in public facilities promptly.

83 4. Require customers to check for and fix water leaks within their property.

84 5. Eliminate any new filling or refilling of swimming pools and/or spas. Topping off will be
85 allowed.

86 6. Irrigation by means of a hand-held hose with an automatic shutoff device or faucet-filled
87 bucket or watering can of five (5) gallons or less shall be permitted on any day before 10:00
88 A.M. and after 7:00 P.M.

89

90 The motion died for a lack of a second.

91

92 - A motion was made by Council Member Arnold and seconded by Council Member Jenkins to
93 reduce to Conservation Stage Level 1 with the additional continued Level 2 restrictions 2, 3, 4,
94 and 6 as listed in the backup material, which are:

95 2. Eliminate washing driveways, sidewalks, or streets.

96 3. City shall check for and fix water leaks in public facilities promptly.

97 4. Require customers to check for and fix water leaks within their property.

98 6. Irrigation by means of a hand-held hose with an automatic shutoff device or faucet-filled
99 bucket or watering can of five (5) gallons or less shall be permitted on any day before 10:00
100 A.M. and after 7:00 P.M.

101
102 Council Member Jenkins voted yes.
103 Council Member Arnold voted yes
104 Mayor Pro tem Rosengarten voted no.
105 Council Member Burdett voted no.
106 To break the tie vote, Mayor Cardona voted no.

107
108 The motion **failed** by a 3 to 2 vote.

109
110 - A motion was made by Council Member Burdett and seconded by Mayor Pro tem Rosengarten
111 to reduce to Conservation Stage Level 1 with no additional continued Level 2 restrictions. All
112 voted yes and the motion carried by a 4-0 vote.

113
114 **CITY COUNCIL TOOK A BREAK AT 6:49 P.M.**

115 **CITY COUNCIL RETURNED TO THE DIAS AT 7:00 P.M.**

116

117 **TIME CERTAIN 7:00 P.M.**

118

119 **11. Consider approval of a Final Site Plan and Watershed Development Permit for the Brodie Events**
120 **Center Project at 5207 Brodie Lane, Lots 1 and 2 of Block A, Sunset Valley Village Homestead. The**
121 **approval includes consideration of Watershed Variances to Section 4.201(b), 4.201(d), 4.301(f) of the**
122 **1996 Land Development Code; a Parking Variance to Section 10.103 of the 1996 Land Development**
123 **Code; and Landscape Variances to Section 13.200(j) and 13200(m) of the 1996 Land Development**
124 **Code. (Mayor Cardona/Administration)**

125 - Mayor Cardona made an opening statement and reviewed the plan of progress for this item.
126 - Ted Karam, Doc's Backyard, spoke in favor of approval of the Final Site Plan.
127 - The following people participated in the discussion:
128 • Scott Ratcliff, Project Manager, Bury + Partners
129 • Don Rauschuber, DSGR, Inc., City Engineer
130 • Dan Ross, Ross Law Group, project owner.
131 • Randy Rosengarten, 25 Yellow Tail Cove.

132

133 **CITY COUNCIL TOOK A BREAK AT 8:00 P.M.**

134 **CITY COUNCIL RETURNED TO THE DIAS AT 8:07 P.M.**

135

136 - Clay Collins, City Administrator, began the discussion on the watershed variances.
137 - Rick Albers, Attorney, representing owners of Lot 3, 4, and owner of shopping center, objects to the
138 final site plan.
139 - Mayor Cardona read into record a letter from Terry Cowan, 4500 Stearns Lane.
140 - Scott Ratcliff, Project Manager, Bury + Partners and Dan Ross, Ross Law Group, project owner were
141 included in the variances discussion.

142

143 ❖ A motion was made by Council Member Jenkins and seconded by Council Member Burdett to
144 approve the three watershed variances as listed below, with the contingency that the same
145 mitigation fee that was approved and applied in 2008 be applied in this situation and that the City
146 to whatever extent it can, use that fee on or near the property of the barn and house.

- 147 ❖ A Variance has been requested to 1996 LDC 4.201(b) regarding improvements within the Water
148 Quality Transition Zone for the parking lot and related appurtenances on Lot 1 of Block A of the
149 Sunset Valley Homestead Addition.
150
- 151 ❖ A Variance has been requested to 1996 LDC 4.201(d) regarding commercial improvements
152 within the Water Quality Transition Zone on Lot 1 of Block A of the Sunset Valley Homestead
153 Addition.
154
- 155 ❖ A Variance has been requested to 1996 LDC 4.301(f) regarding the Block A development
156 improvements related to the proposed development of Lot 1 and Lot 2 of Block A of the Sunset
157 Valley Village Homestead Subdivision. The request is for 18,861 S.F. of impervious cover for Lot
158 1, and 2,012 S.F. of impervious cover for Lot 2 to accommodate the development of the lots
159 through the construction of surface parking and site improvement related impervious cover
160

161 Council Member Burdett voted yes.
162 Council Member Jenkins voted yes.
163 Mayor Pro tem voted no.
164 Council Member Arnold voted no.
165 To break the tie Mayor Cardona voted yes.
166

167 The motion ***passed*** by a 3 to 2 vote.
168

- 169 ❖ Council Member Jenkins made an amendment to the motion to approve the three watershed
170 variances to add the findings as outlined in the Bury + Partners letter dated July 19, 2012. Council
171 Member Burdett seconded the amendment.
172

173 Council Member Burdett voted yes.
174 Council Member Jenkins voted yes.
175 Mayor Pro tem voted no.
176 Council Member Arnold voted no.
177 To break the tie Mayor Cardona voted yes.
178

179 The motion ***passed*** by a 3 to 2 vote.
180

- 181 ❖ After discussion, a motion was made by Mayor Pro tem Rosengarten and seconded by Council
182 Member Burdett to approve a variance to the 1996 LDC 10.103 requiring a group of not less than
183 five (5) contiguous spaces to allow a group of three (3) spaces and one single compact parking
184 space. All voted yes and the motion carried.
185

- 186 ❖ After discussion, the applicant withdrew the variance regarding the required 25-foot vegetative
187 setback for Lot 2 of Block A of the Sunset Valley Homestead Addition. There is a proposed wall
188 improvement that will be located within the setback.
189

- 190 ❖ A motion was made by Council Member Arnold and seconded by Mayor Pro tem Cardona to
191 approve a Variance to 1996 LDC 13.200(m) with the findings listed on page 9 of the July 19, 2012
192 Bury + Partners letter. All voted yes and the motion carried by a 4-0 vote.
193

194 **CITY COUNCIL TOOK A BREAK AT 9:15 P.M.**

195 **CITY COUNCIL RETURNED TO THE DIAS AT 9:26 P.M.**

196 A motion was made by Mayor Pro tem Rosengarten and seconded by Council Member Burdett to approve
197 the Final Site Plan and Watershed Development Permit for the Brodie Events Center Project at 5207 Brodie
198 Lane, Lots 1 and 2 of Block A, Sunset Valley Village Homestead with the following conditions:

- 199 1. the wall on Lot 2 be removed in its entirety
 - 200 2. the wall on Lot 1 stays as indicated on the plan
 - 201 3. applicant agrees to meet all of the things required by the fire department
 - 202 4. provide and all Utility information as required by staff
 - 203 5. reply to all request from staff regarding tree #s 19495, 19496, and 19497 regarding the drainage
204 lines
 - 205 6. agree to mitigation fees related to the trees
- 206
- 207 - Rick Albers, Attorney, representing owners of Lot 3, 4, and owner of shopping center, objects to the
208 final site plan.
 - 209 - Melissa Gonzales, 26 Reese, spoke about the project.
- 210

211 Mayor Cardona called for the vote. All voted yes and the motion carried by a 4-0 vote.

212

213 **12. Presentation on City Employee Staffing. (Mayor Cardona/Administration)**

214 A motion was made by Council Member Burdett and seconded by Council Member Arnold to postpone
215 agenda item # 11 until the next meeting. All voted yes and the motion carried by a 4-0 vote.

216

217 **A motion was made by Council Member Jenkins and seconded by Council Member Arnold to go into
218 Executive Session. All voted yes and the motion carried by a 4-0 vote.**

219

220 **EXECUTIVE SESSION**

221

222 Mayor Cardona announced that the City Council would go into Executive Session, pursuant to Chapter 551
223 of the Texas Government Code, to consult with the City Attorney (551.071).

224

225 EX-1: The Council will confer with its attorney pursuant to Tex. Gov't Code § 551.074 regarding the status
226 and potential settlement of claims asserted in *City of Sunset Valley, Texas v. River Oaks Sunset Valley, Inc.*

227

228 **CITY COUNCIL MOVED TO EXECUTIVE SESSION AT 10:28 P.M.**

229 **CITY COUNCIL RETURNED TO THE REGULAR MEETING AT 10:33 P.M.**

230

231 **13. Consideration and action to approve settlement of all claims in *City of Sunset Valley, Texas v. River
232 Oaks Sunset Valley, Inc.* and authorize the Mayor to execute a settlement agreement disposing all
233 claims. (Mayor Cardona/Administration)**

- 234 - No action on this agenda item.

235

236

237 **A motion was made by Council Member Jenkins and seconded by Council Member Burdett to adjourn the
238 meeting. All voted yes and the motion carried by a 4-0 vote.**

239

240 **Mayor Cardona adjourned the meeting at 10:34 P.M.**

241 **A video of this meeting is on file in the office of the City Secretary and is a part of the official minutes of**
242 **this meeting.**

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Attest:

Rose Cardona, Mayor

Rae Gene Greenough, City Secretary

OFFICIALLY APPROVED BY THE CITY COUNCIL ON _____

LOCAL GOVERNMENT CODE

TITLE 12. PLANNING AND DEVELOPMENT

SUBTITLE C. PLANNING AND DEVELOPMENT PROVISIONS APPLYING TO MORE THAN ONE
TYPE OF LOCAL GOVERNMENTCHAPTER 395. FINANCING CAPITAL IMPROVEMENTS REQUIRED BY NEW DEVELOPMENT IN
MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 395.001. DEFINITIONS. In this chapter:

(1) "Capital improvement" means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision:

(A) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and

(B) roadway facilities.

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

(3) "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.

(4) "Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater

collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(5) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.

(6) "New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

(7) "Political subdivision" means a municipality, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or, for the purposes set forth by Section 395.079, certain counties described by that section.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and

flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six miles. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 1989, 71st Leg., ch. 566, Sec. 1(e), eff. Aug. 28, 1989;
Acts 2001, 77th Leg., ch. 345, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

Sec. 395.011. AUTHORIZATION OF FEE. (a) Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee.

(b) Political subdivisions may enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this chapter, except that impact fees may not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities.

(c) A municipality may contract to provide capital improvements, except roadway facilities, to an area outside its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee under the contract, but if an impact fee is charged in that area, the municipality must comply with this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.012. ITEMS PAYABLE BY FEE. (a) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the:

- (1) construction contract price;
- (2) surveying and engineering fees;

(3) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees; and

(4) fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.

(b) Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan and are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan.

(c) Notwithstanding any other provision of this chapter, the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this chapter.

(d) A municipality may pledge an impact fee as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or public facility expansion if:

(1) the improvement or expansion is identified in a capital improvements plan; and

(2) at the time of the pledge, the governing body of the municipality certifies in a written order, ordinance, or resolution that none of the impact fee will be used or expended for an improvement or expansion not identified in the plan.

(e) A certification under Subsection (d)(2) is sufficient evidence that an impact fee pledged will not be used or expended for an improvement or expansion that is not identified in the capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 1995, 74th Leg., ch. 90, Sec. 1, eff. May 16, 1995.

Sec. 395.013. ITEMS NOT PAYABLE BY FEE. Impact fees may not be adopted or used to pay for:

(1) construction, acquisition, or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;

- (2) repair, operation, or maintenance of existing or new capital improvements or facility expansions;
- (3) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;
- (4) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;
- (5) administrative and operating costs of the political subdivision, except the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay its administrative and operating costs;
- (6) principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed by Section [395.012](#).

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.014. CAPITAL IMPROVEMENTS PLAN. (a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

- (1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;
- (4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to

various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

(b) The analysis required by Subsection (a)(3) may be prepared on a systemwide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

(c) The governing body of the political subdivision is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.015. MAXIMUM FEE PER SERVICE UNIT. (a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

(b) If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to projected new service units described by Section 395.014(a)(6) by the projected new service units described in that section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 3, eff. Sept. 1, 2001.

Sec. 395.016. TIME FOR ASSESSMENT AND COLLECTION OF FEE. (a) This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(c) This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.

(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall collect the fees at the time the political subdivision issues a building permit;

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision's water or wastewater system.

(e) For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(f) An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

(g) Notwithstanding Subsections (a)-(e) and Section [395.017](#), the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 1997, 75th Leg., ch. 980, Sec. 52, eff. Sept. 1, 1997;

Acts 2001, 77th Leg., ch. 345, Sec. 4, eff. Sept. 1, 2001.

Sec. 395.017. ADDITIONAL FEE PROHIBITED; EXCEPTION. After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract for any reason unless the number of service units to be developed on the tract

increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.018. AGREEMENT WITH OWNER REGARDING PAYMENT. A political subdivision is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.019. COLLECTION OF FEES IF SERVICES NOT AVAILABLE. Except for roadway facilities, impact fees may be assessed but may not be collected in areas where services are not currently available unless:

(1) the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the political subdivision commits to commence construction within two years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years;

(2) the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat; or

(3) an owner voluntarily requests the political subdivision to reserve capacity to serve future development, and the political subdivision and owner enter into a valid written agreement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.020. ENTITLEMENT TO SERVICES. Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive

immediate service from any existing facilities with actual capacity to serve the new service units, subject to compliance with other valid regulations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.021. AUTHORITY OF POLITICAL SUBDIVISIONS TO SPEND FUNDS TO REDUCE FEES. Political subdivisions may spend funds from any lawful source to pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES. (a) Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

(b) A school district is not required to pay impact fees imposed under this chapter unless the board of trustees of the district consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board of trustees considers advisable to provide for the payment of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 250 (S.B. 883), Sec. 1, eff. May 25, 2007.

Sec. 395.023. CREDITS AGAINST ROADWAY FACILITIES FEES. Any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.024. ACCOUNTING FOR FEES AND INTEREST. (a) The order, ordinance, or resolution levying an impact fee must provide that all funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital

improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under this chapter.

(c) Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this chapter.

(d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.025. REFUNDS. (a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section [395.019\(1\)](#).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section [302.002](#), Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 37, eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 62, Sec. 7.82, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE

Sec. 395.041. COMPLIANCE WITH PROCEDURES REQUIRED. Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN. The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section [395.014](#).

Added by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC. On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the capital improvement facilities that may be proposed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. (a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political

subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.

(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.0455. SYSTEMWIDE LAND USE ASSUMPTIONS. (a) In lieu of adopting land use assumptions for each service area, a political subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt systemwide land use assumptions, which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter.

(b) Prior to adopting systemwide land use assumptions, a political subdivision shall follow the public notice, hearing, and other requirements for adopting land use assumptions.

(c) After adoption of systemwide land use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment, and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the systemwide land use assumptions.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(b), eff. Aug. 28, 1989.

Sec. 395.047. HEARING ON IMPACT FEE. On adoption of the land use assumptions and capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution imposing an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.049. NOTICE OF HEARING ON IMPACT FEE. (a) Before the 30th day before the date of the hearing on the imposition of an impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) the amount of the proposed impact fee per service unit; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON IMPACT FEES. The advisory committee created under Section 395.058 shall file its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.051. APPROVAL OF IMPACT FEE REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an impact fee, shall approve or disapprove the imposition of an impact fee.

(b) An ordinance, order, or resolution approving the imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.052. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

(b) The political subdivision shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with Subchapter B.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 6, eff. Sept. 1, 2001.

Sec. 395.053. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. The governing body of the political subdivision shall, within 60 days after the date it receives the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and review the update and shall determine whether to amend the plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.054. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. A public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution amending land use assumptions, the capital improvements plan, or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. (a) The notice and hearing procedures prescribed by Sections [395.044](#)(a) and (b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee.

(b) The notice of a hearing under this section must contain the following:

- (1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 7, eff. Sept. 1, 2001.

Sec. 395.056. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS. The advisory committee created under Section 395.058 shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee before the fifth business day before the date of the public hearing on the amendments.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.057. APPROVAL OF AMENDMENTS REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the amendments, shall approve or disapprove the amendments of the land use assumptions and the capital improvements plan and modification of an impact fee.

(b) An ordinance, order, or resolution approving the amendments to the land use assumptions, the capital improvements plan, and imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0575. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES IS NEEDED. (a) If, at the time an update under Section 395.052 is required, the governing body determines that no change to the land use assumptions, capital improvements plan, or impact fee is needed, it may, as an alternative to the updating requirements of Sections 395.052-395.057, do the following:

(1) The governing body of the political subdivision shall, upon determining that an update is unnecessary and 60 days before publishing the final notice under this section, send notice of its determination not to update the land use assumptions, capital improvements plan, and impact fee

by certified mail to any person who has, within two years preceding the date that the final notice of this matter is to be published, give written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of hearings related to impact fees. The notice must contain the information in Subsections (b) (2)-(5).

(2) The political subdivision shall publish notice of its determination once a week for three consecutive weeks in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.

(b) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO UPDATE

LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS

PLAN, OR IMPACT FEES";

(2) a statement that the governing body of the political subdivision has determined that no change to the land use assumptions, capital improvements plan, or impact fee is necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least 60 days after publication of the first notice, a person makes a written request to the designated official of the political subdivision requesting that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body must comply with the request by following the requirements of Sections 395.052-395.057; and

(5) a statement identifying the name and mailing address of the official of the political subdivision to whom a request for an update should be sent.

(c) The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plans, and

impact fee before the fifth business day before the earliest notice of the government's decision that no update is necessary is mailed or published.

(d) If, by the date specified in Subsection (b)(4), a person requests in writing that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body shall cause an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 395.052-395.057.

(e) An ordinance, order, or resolution determining the need for updating land use assumptions, a capital improvements plan, or an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(d), eff. Aug. 28, 1989.

Sec. 395.058. ADVISORY COMMITTEE. (a) On or before the date on which the order, ordinance, or resolution is adopted under Section 395.042, the political subdivision shall appoint a capital improvements advisory committee.

(b) The advisory committee is composed of not less than five members who shall be appointed by a majority vote of the governing body of the political subdivision. Not less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the political subdivision has a planning and zoning commission, the commission may act as the advisory committee if the commission includes at least one representative of the real estate, development, or building industry who is not an employee or official of a political subdivision or governmental entity. If no such representative is a member of the planning and zoning commission, the commission may still act as the advisory committee if at least one such representative is appointed by the political subdivision as an ad hoc voting member of the planning and zoning commission when it acts as the advisory committee. If the impact fee is to be applied in the extraterritorial jurisdiction of the political subdivision, the membership must include a representative from that area.

(c) The advisory committee serves in an advisory capacity and is established to:

(1) advise and assist the political subdivision in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

(d) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

(e) The governing body of the political subdivision shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

SUBCHAPTER D. OTHER PROVISIONS

Sec. 395.071. DUTIES TO BE PERFORMED WITHIN TIME LIMITS. If the governing body of the political subdivision does not perform a duty imposed under this chapter within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the political subdivision stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the governing body of the political subdivision finds that the duty is required under this chapter and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.072. RECORDS OF HEARINGS. A record must be made of any public hearing provided for by this chapter. The record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the date of the hearing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.073. CUMULATIVE EFFECT OF STATE AND LOCAL RESTRICTIONS. Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed are cumulative with the restrictions in this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.074. PRIOR IMPACT FEES REPLACED BY FEES UNDER THIS CHAPTER. An impact fee that is in place on June 20, 1987, must be replaced by an impact fee made under this chapter on or before June 20, 1990. However, any political subdivision having an impact fee that has not been replaced under this chapter on or before June 20, 1988, is liable to any party who, after June 20, 1988, pays an impact fee that exceeds the maximum permitted under Subchapter B by more than 10 percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.075. NO EFFECT ON TAXES OR OTHER CHARGES. This chapter does not prohibit, affect, or regulate any tax, fee, charge, or assessment specifically authorized by state law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.076. MORATORIUM ON DEVELOPMENT PROHIBITED. A moratorium may not be placed on new development for the purpose of awaiting the completion of all or any part of the process necessary to develop, adopt, or update land use assumptions, a capital improvements plan, or an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 441, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.077. APPEALS. (a) A person who has exhausted all administrative remedies within the political subdivision and who is aggrieved by a final decision is entitled to trial de novo under this chapter.

(b) A suit to contest an impact fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee.

(c) Except for roadway facilities, a person who has paid an impact fee or an owner of property on which an impact fee has been paid is entitled to specific performance of the services by the political subdivision for which the fee was paid.

(d) This section does not require construction of a specific facility to provide the services.

(e) Any suit must be filed in the county in which the major part of the land area of the political subdivision is located. A successful litigant shall be entitled to recover reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.078. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS. An impact fee may not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.079. IMPACT FEE FOR STORM WATER, DRAINAGE, AND FLOOD CONTROL IN POPULOUS COUNTY. (a) Any county that has a population of 3.3 million or more or that borders a county with a population of 3.3 million or more, and any district or authority created under Article XVI, Section 59, of the Texas Constitution within any such county that is authorized to provide storm water, drainage, and flood control facilities, is authorized to impose impact fees to provide storm water, drainage, and flood control improvements necessary to accommodate new development.

(b) The imposition of impact fees authorized by Subsection (a) is exempt from the requirements of Sections 395.025, 395.052-395.057, and 395.074 unless the political subdivision proposes to increase the impact fee.

(c) Any political subdivision described by Subsection (a) is authorized to pledge or otherwise contractually obligate all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued or incurred by or on behalf of the political subdivision and to the payment of any other contractual obligations.

(d) An impact fee adopted by a political subdivision under Subsection (a) may not be reduced if:

(1) the political subdivision has pledged or otherwise contractually obligated all or part of the impact fees to the payment of

principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision; and

(2) the political subdivision agrees in the pledge or contract not to reduce the impact fees during the term of the bonds, notes, or other contractual obligations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 669, Sec. 107, eff. Sept. 1, 2001.

Sec. 395.080. CHAPTER NOT APPLICABLE TO CERTAIN WATER-RELATED SPECIAL DISTRICTS. (a) This chapter does not apply to impact fees, charges, fees, assessments, or contributions:

(1) paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under that constitutional provision if both districts are required by law to obtain approval of their bonds by the Texas Natural Resource Conservation Commission; or

(2) charged by an entity if the impact fees, charges, fees, assessments, or contributions are approved by the Texas Natural Resource Conservation Commission.

(b) Any district created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution may petition the Texas Natural Resource Conservation Commission for approval of any proposed impact fees, charges, fees, assessments, or contributions. The commission shall adopt rules for reviewing the petition and may charge the petitioner fees adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required by this chapter for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.257, eff. Sept. 1, 1995.

Sec. 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 115,000 or less that constitutes more than three-fourths of the population of the county in which the majority of the area of the municipality is located.

(b) A municipality that has not adopted an impact fee under this chapter that is constructing a capital improvement, including sewer or waterline or drainage or roadway facilities, from the municipality to a

development located within or outside the municipality's boundaries, in its discretion, may allow a landowner whose land adjoins the capital improvement or is within a specified distance from the capital improvement, as determined by the governing body of the municipality, to connect to the capital improvement if:

(1) the governing body of the municipality has adopted a finding under Subsection (c); and

(2) the landowner agrees to pay a proportional share of the cost of the capital improvement as determined by the governing body of the municipality and agreed to by the landowner.

(c) Before a municipality may allow a landowner to connect to a capital improvement under Subsection (b), the municipality shall adopt a finding that the municipality will benefit from allowing the landowner to connect to the capital improvement. The finding shall describe the benefit to be received by the municipality.

(d) A determination of the governing body of a municipality, or its officers or employees, under this section is a discretionary function of the municipality and the municipality and its officers or employees are not liable for a determination made under this section.

Added by Acts 1997, 75th Leg., ch. 1150, Sec. 1, eff. June 19, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1043 (H.B. 3111), Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 100, eff. September 1, 2011.

impact fees

PAYING FOR PROGRESS

By James P. Gaines and Judon Fambrough

Texas grew by more than 2.6 million residents between 2000 and 2006 and is expected to add another 2.4 million by 2010. Growth of this magnitude exerts a substantial strain on local political jurisdictions to provide basic public services.

Public infrastructure investment decisions made by local governments often control the timing, location, intensity and quality of community growth. If growth occurs at a relatively slow, even pace, most communities can absorb the new demand through increased property and sales tax revenues and service fees generated by new development.

But if growth surges, communities may be hard-pressed to provide services and pay for new or expanded high-cost capital improvements. In such cases, local governments require developers to pay for capital infrastructure supporting their new developments. One way this is done is through impact fees.

Debate over whether new development pays for itself has continued for decades. Expecting developers to pay for expansion of existing facilities or construction of new facilities, especially in areas of substantial and rapid growth, appears justifiable and equitable if properly implemented. Developers

in high-growth areas not only expect but may actually encourage and promote impact fees to finance capital improvements to ensure that their developments are built.

Texas law permits impact fees, and more and more communities are using them to finance local infrastructure enhancements. Impact fees may only be imposed for and spent on capital improvement costs “necessitated by and attributable to” projected new development within a defined area and specifically identified in the local capital improvements plan. Builders, developers and other real estate industry participants need to understand these procedures and play an active role in the implementation process.

State Enabling Legislation

Although charging development fees for public services dates back decades in fast-growing areas like California and Florida, Texas was the first state to enact legislation specifically authorizing local governments to levy impact fees on new development (1987). Impact fees are governed by Chapter 395 of the Texas Local Government Code, which authorizes impact fees to fund required capital costs for locally provided roadways and water and wastewater facilities as well as storm water, flood control and drainage facilities. All other fees, costs or exactions levied by a local jurisdiction on new developments technically are not impact fees.

The code contains definitions, requirements, processes, procedures and required computations an eligible local jurisdiction must adhere to when enacting or updating a local impact

fee ordinance. The ordinance establishes the administrative procedures and financial details by which the impact fee program will be implemented. It also mandates when fees are assessed, when they are paid, what they are imposed for, how they will be spent, the actual fee to be assessed for each land-use type, the process for appeals and other administrative details.

Enacting the Ordinance

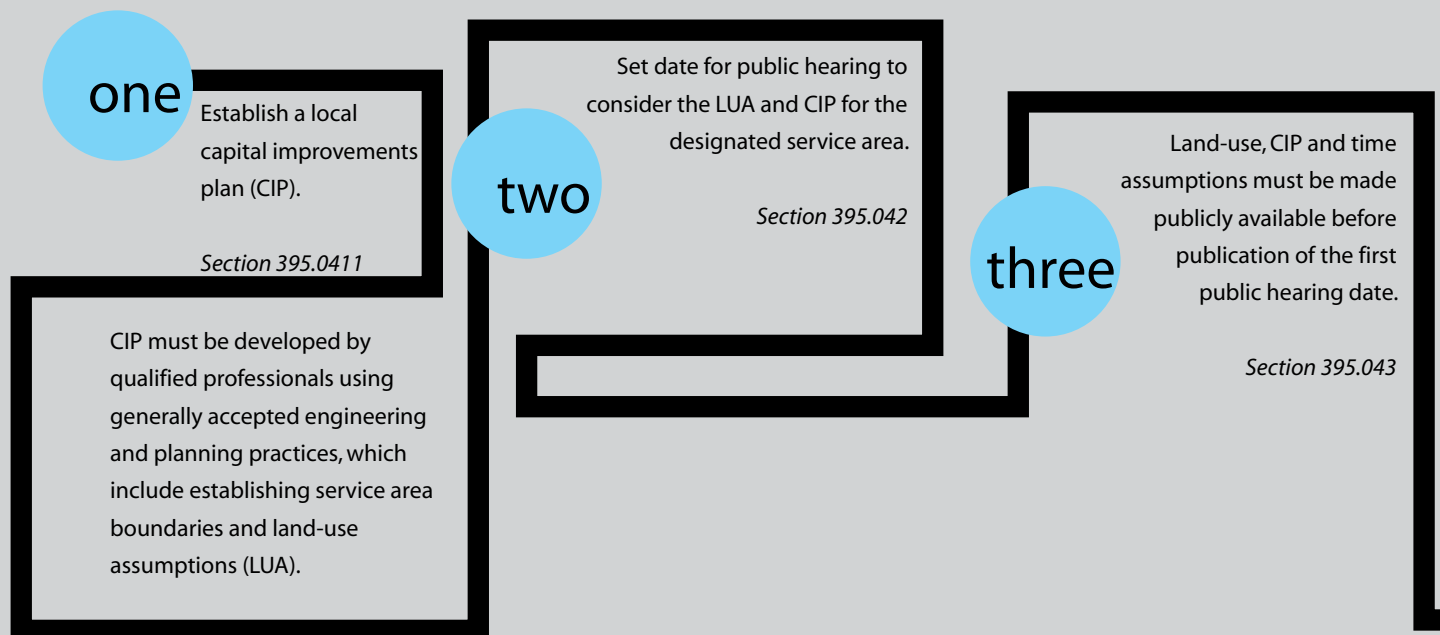
State-authorized political subdivisions must follow the procedures and requirements specified in *Subchapter C. Procedures for Adoption of Impact Fee*, Chapter 395 of the Texas Local Government Code, to enact impact fee ordinances (see figure). The first phase of this process requires public hearings to secure approval of the land-use assumptions (LUA) and comprehensive capital improvements plan (CIP).

The second phase requires approval of the specific impact fee ordinance. Most communities perform these functions as part of a comprehensive planning process to forecast future service and capital facility needs whether they enact an impact fee or not.

Advisory Committee Role

On or before the date of the first public hearing on the CIP for an impact fee ordinance, the political subdivision must appoint an advisory committee made up of at least five members. At least 40 percent of these must represent the real estate, development or building industries and must not be affiliated with the jurisdiction. If the service area includes all or part of the political subdivision’s extraterritorial jurisdiction, at least

Creating a Local Impact Fee Ordinance



one member of the committee must represent that area. If the local planning and zoning commission acts as the advisory committee, only one member is required to represent the real estate, development or building industries.

The committee's charge is to review the proposed CIP and "advise and assist the political subdivision" in adopting the LUA. Although the committee is required to submit a written report reviewing the LUA, CIP and the proposed impact fee ordinance, it has no authority to approve, disapprove or to take any other direct action with regard to the data, conclusions or recommendations. It has the ongoing responsibility to monitor and evaluate the implementation of the CIP. Despite its lack of direct authority, the advisory committee can be influential in implementing a local fee through its role as technical advisor to the decision-making body of the local jurisdiction.

Updating LUA and CIP

Any jurisdiction imposing an impact fee must update the LUA, capital improvements plan and impact fee ordinance every five years (Section 395.052). If no update is necessary, the jurisdiction must meet specific

notification requirements to inform the public of that fact (Section 395.0575).

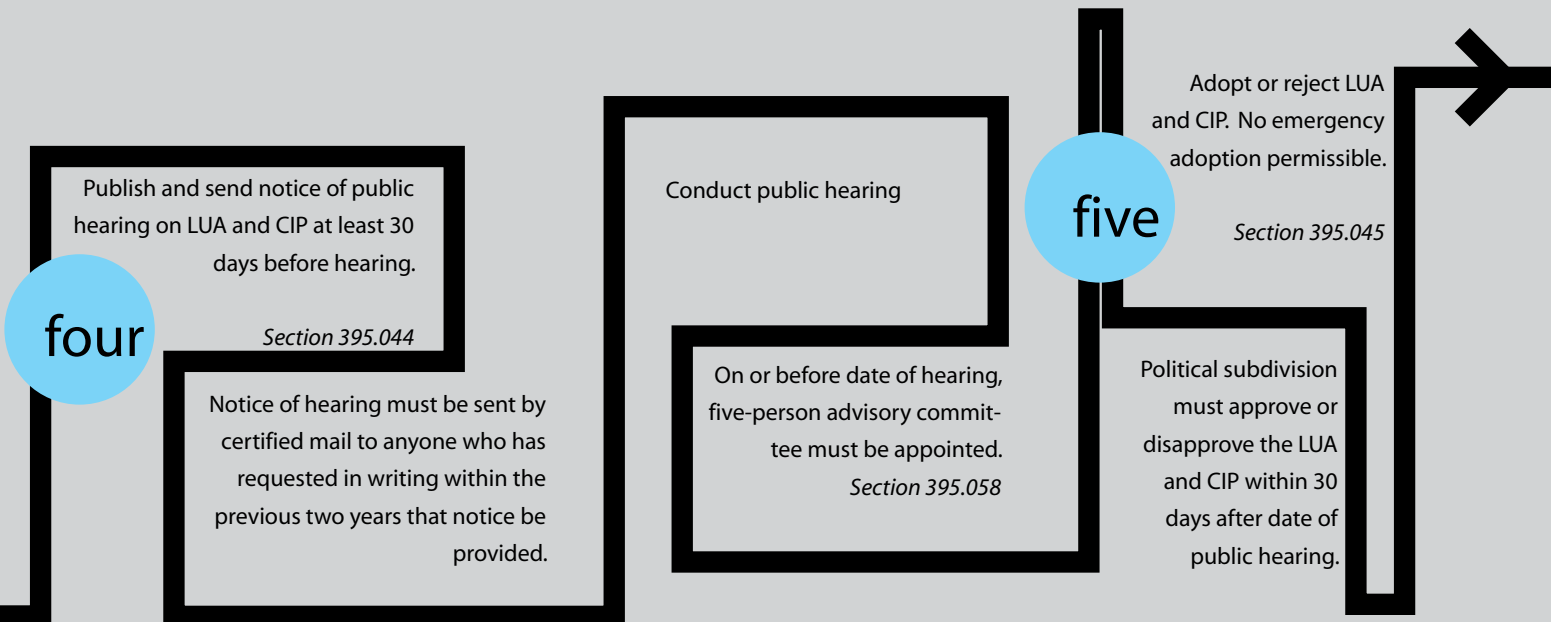
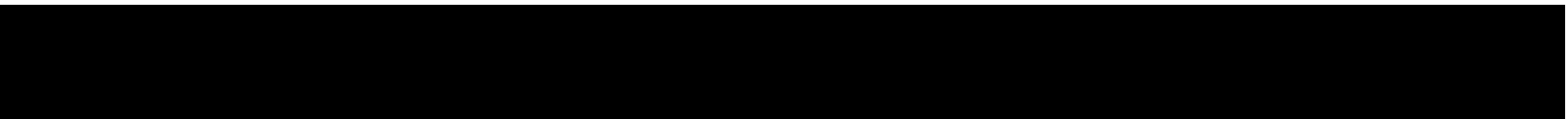
If any citizen files a written request to update the LUA, the CIP or the impact fee ordinance, the jurisdiction must follow the prescribed steps of notice, hearings and adoption detailed in Subchapter C of the Texas Local Government Code. The jurisdiction must follow essentially the same process to update or change the impact fees as was required to enact the impact fee ordinance originally (Section 395.0575[d]).

Assessing Fees

In general, impact fees may be assessed anytime during the land platting or building approval stages of a project. Once the fees are assessed, additional fees cannot be assessed and fees cannot be increased unless the number of units to be developed on the tract increases (Section 395.017).

The political subdivision may collect impact fees when the subdivision plat or connection to the jurisdiction's water or sewer system is recorded or when the jurisdiction issues the building permit or certificate of occupancy. If new developments are platted

Impact fees may be assessed anytime during the land platting or building approval stages of a project.



before the adoption of an impact fee, fees cannot be collected on any building for which a building permit is issued within one year after the impact fee is adopted (Section 395.016[c]).

The code mandates that impact fees may not be collected in areas where services are not available unless:

- the collection is made to pay for a capital improvement or facility expansion identified in the CIP, and the jurisdiction commits to begin construction within two years and have services available in no more than five years;
- the jurisdiction has an agreement with the owner of a new development that the owner may construct or finance capital improvements or facility expansions and that costs incurred will be credited against the impact fees due from the new development; or
- an owner asks the political subdivision to reserve capacity to serve future development, and the jurisdiction and the owner have a written agreement to that effect (Section 395.019).

Texas code prohibits political subdivisions from placing a moratorium on new development while waiting for LUA, a CIP, or an impact fee to be developed, adopted or updated (Section 395.076).

Refunds and Exemptions

Impact fees not spent are eligible to be refunded if service is denied or construction is not begun on a facility within two years, if service is not available within a reasonable time (not more than five years), or if impact fees are not spent for allowable purposes within ten years.

All refunds bear interest calculated from the date of collection to the date of refund at the statutory rate. Property owners must request refunds and prove that they are owed. Eligibility to request or sue for a refund belongs to the current owner of record, who most often is not the person who paid the fee (Section 395.025).

Rather than expecting future property owners to know that a fee was paid and then trying to initiate separate or even class-action suits for recovery, developers might attach deed restrictions transferring the right to seek impact fee

Should different fees be assessed in different areas based on existing capacity and projected growth in demand in these areas?

Creating a Local Impact Fee Ordinance

six

May adopt LUA for systemwide water supply, treatment and distribution facilities or wastewater collection and treatment facilities that cover the entire political subdivision.

Section 395.0455

May *not* adopt systemwide assumptions for storm water, drainage, flood control or roadway facilities.

seven

Set date for public hearing for adopting impact fee ordinance.

Section 395.047

eight

Publish and send notice of public hearing on impact fees at least 30 days before hearing.

Section 395.049

Notice of hearing must be sent by certified mail to anyone who has requested in writing within the previous two years that notice be provided.

refunds to the local homeowners association. The association could then initiate the refund process if the fees paid were not spent in an appropriate or timely fashion.

The Texas code allows impact fees to be reduced or waived on qualified affordable housing projects for low- and moderate-income households. No other specific land uses or purposes are eligible for exemption.

Issues to be Decided

Impact fee procedures and administration are complex because impact fees have requirements that traditional local tax revenue sources do not. While Texas legislation spells out procedural requirements to enact impact fees, significant policy and operational issues are being raised around the country and will no doubt come to the forefront in Texas. For example:

- Should different fees be assessed in different areas based on existing capacity and projected growth in demand in these areas?
- Should residential impact fees be indexed by home size, value or some other criteria? Impact fees on residential properties typically are based on the number of lots or multifamily units, projected at the same rate. Consequently, the effective rate is substantially lower for higher-priced properties than for lower-priced properties.
- Should some development projects be exempted from impact fees to boost economic development?

- Should fees be indexed or phased over time? Projected development over a ten-year period probably will not occur at an even pace over the period, so should the fees be phased based on actual development?
- Are fees justified if existing capacity exceeds the projected increase in demand or if the proposed capital improvements create even greater excess capacity over time? For example, if existing excess capacity on a roadway, is 50,000 vehicle-miles and projections indicate 40,000 vehicle-miles of new demand, is a fee justified?
- Should differential impact fees be used to promote some types of development and discourage others?

Information on computing impact fees will be included in the next issue of *Tierra Grande*. 📍

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THE TAKEAWAY

Many communities, especially those in high-growth areas, are assessing impact fees to finance infrastructure construction. Creating a local ordinance is the first step in the process, which is governed by Texas Local Government Code. Chapter 395 provides specific requirements for enacting a local impact fee.

nine

Advisory committee must file written comments on proposed impact fee at least five business days prior to public hearing.

Section 395.050

An impact fee cannot be held invalid because public notice requirements were not complied with if compliance was substantial and in good faith.

Section 395.078

Conduct public hearing

ten

Adopt or reject the impact fee ordinance. No emergency adoption permissible.

Section 395.051

Political subdivision must approve or disapprove the impact fee plan within 30 days after date of public hearing.

Appeal of impact fee ordinance must begin within 90 days.

Section 395.077



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