



*Implementation Specialists for Governmental
Planning & Engineering, and
Legal Services*

TEXAS SENATE BILL 336

REGULATING THE FINANCING OF CAPITAL IMPROVEMENTS THROUGH THE USE OF "IMPACT FEES"

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SB 336 AS FINALLY PASSED AND SIGNED BY THE GOVERNOR

AN ACT

relating to financing of capital improvements by political subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

- (1) "Capital improvements plan" means a plan required by this Act which identifies capital improvements or facility expansions pursuant to which impact fees may be assessed.
- (2) "Capital improvement" means water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; storm water, drainage, and flood control facilities; whether or not located within the service area, or roadway facilities, with a life expectancy of three or more years, owned and operated by or on behalf of a political subdivision.
- (3) "Facility expansion" means the expansion of the capacity of an existing facility which serves the same functions as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. "Facility expansion" does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.
- (4) (A) "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 such new development. As used in this Act, the term "impact fee" includes amortized charges as well as lump-sum charges and includes capital recovery fees, contributions in aid of construction, and any other fee which functions as described in this definition.
(B) Impact fees do not include
 - (i) dedication of land for public parks or payment in lieu thereof to serve park needs;
 - (ii) dedication of rights-of-way or easements, or construction or drainage facilities, or streets, sidewalks, or curbs when such dedications and construction are required by valid ordinances and are necessitated by and attributable to the new development; or
 - (iii) 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; provided, however, no item which is included in the capital improvements plan shall be required to be constructed, except pursuant to Subdivision (2) of Subsection (H) of Section 2 of this Act, and no owner shall be required to construct or dedicate facilities and pay impact fees for the same facilities.
- (5) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities, and population therein over at least a 10-year period.
- (6) "New development" means the subdivision of land; or 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 city or town, whether operating under general law or under special or home-rule charter, 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 in Section 10 of this Act, certain counties described in Section 10.
- (8) "Roadway facilities" means arterial or collector streets or roads which have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances, but does not include any roadways or associated improvements designated on the federal or Texas highway system.
- (9) "Service area" means the area within the corporate boundaries, or extraterritorial jurisdiction as defined by the Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes) of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities. The service area, for the purposes of this Act, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed a distance equal to the average trip length from the new development, but in no event more than three miles, which service area shall be served by the roadway facilities designed in the capital improvement plan.
- (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 for a particular category of capital improvements or facility expansions.

SECTION 2. AUTHORIZATION OF IMPACT FEE.

- (A) Unless otherwise specifically authorized by state law or this Act, no governmental entity or political subdivision shall enact or impose an impact fee. Political subdivisions are authorized to enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this Act, except impact fees shall not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities. A municipality may contract to provide capital improvements, except for roadway facilities, to an area outside of its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee pursuant to the contract, but if an impact fee is charged therein, the municipality must comply with this Act.
- (B) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the construction contract price, surveying and engineering fees, land acquisitions costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees), and the 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. Notwithstanding any other provision of this Act, the Edwards Underground Water District or a river authority, which is authorized elsewhere by state law to charge fees which function as impact fees as defined in this Act, may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this Act. 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) Impact fees shall not be adopted or used to pay for any of the following:
 - (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, which is authorized elsewhere by state law to charge fees which function as impact fees as defined in this Act, may expend 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 Subsection (B) of this section.
- (D) (1) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan shall contain specific enumeration of the following items
 - (a) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve,

- expand, or replace such 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 such professional engineering services in the State of Texas.
- (b) 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 such professional engineering services in the State of Texas;
- (c) a description of all or the portions 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 such professional engineering services in the State of Texas;
- (d) 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 but not limited to residential, commercial, and industrial;
- (e) the total number of projected service units necessitated by and attributable to new development within the service area based on approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;
- (f) 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.
- (2) *The impact fee per service unit shall not exceed the amount determined by dividing the costs of the capital improvements described in Paragraph (c) above of this subsection by the total number of projected service units described in Paragraph (e) of this subsection.* 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 portion of the capital improvements necessitated by and attributable to projected new service units described in Paragraph (f) of this subsection by the projected new service units described in that paragraph. The analysis required by Paragraph (c) of this subsection may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.
- (E) (1) *This subdivision applies only to impact fees adopted and land platted prior to the effective date of this Act.* For land which has been platted in accordance with Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), or the subdivision or platting procedures of a political subdivision prior to the effective date of this Act, 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 and except as provided in Subsection (H) of this section, 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.
- (2) *This subdivision applies to impact fees adopted prior to the effective date of this Act and land platted subsequent to the effective date of this Act.* For new development which is platted in accordance with Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), or the subdivision or platting procedures of a political subdivision after the effective date of this Act, the political subdivision may assess the impact fees before or at the time of recordation and, except as provided in Subsection (H) of this section, 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.
- (3) *This subdivision applies only to impact fees adopted subsequent to the effective date of this Act.* For new development which is platted in accordance with Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), or the subdivision or platting procedures of a political subdivision prior to the adoption of an impact fee, no impact fee shall be collected on any service unit for which a valid building permit is issued within one year subsequent to the date of adoption of the impact fee.
- (4) *This subdivision applies to land which is platted in accordance with Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), or the subdivision or platting procedures of a political subdivision subsequent to adoption of an impact fee which is adopted after the effective date of this Act.* The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat pursuant to Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), 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 and, except as provided in Subsection (H) of this section, 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.
- (5) *For land on which new development occurs or is proposed to occur without platting,* the political subdivision may assess the impact fee 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.
- (6) *Assessment means a determination of the amount of the impact fee in effect on the date of occurrence provided in this subdivision and is the maximum amount which can be charged per service unit of such development.* No specific act by the political subdivision is required.
- (F) After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, no additional impact fees or increases thereof shall be assessed against such tract for any reason, unless the number of service units to be developed on such tract increases. In the event of the increase in the number of service units, the impact fees to be imposed shall be limited to the amount attributable to the additional service units.
- (G) 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.
- (H) Except for roadway facilities, impact fees may be assessed, but shall not be collected, in areas where services are not currently available unless:
- (1) collection is made to pay for a capital improvement or facility expansion which has been identified in the capital improvements plan and the political subdivision commits to, within two years, commence construction, pursuant to duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and 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 which 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.
- (I) Any new development for which an impact fee has been paid shall be entitled to the permanent use and benefit of the services for which the fee was exacted and shall be 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.
- (J) Political subdivisions are authorized to expend funds from any other lawful source to pay for all or a portion of the capital improvements or facility expansions to reduce the amount of impact fees.
- (K) Political subdivisions and other governmental entities are authorized to pay impact fees imposed pursuant to this Act.
- (L) 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 such

development.

SECTION 3. PROCEDURES FOR ADOPTION OF IMPACT FEE.

- (A) Except as otherwise provided in this Act, an impact fee as authorized by Section 2 of this Act shall be levied by a political subdivision only upon complying with the provisions set forth in this section.
- (B) A political subdivision intending to impose an impact fee shall adopt an order, ordinance, or resolution establishing a public hearing date to consider land use assumptions within the designated service area that will be used to develop the capital improvements plan.
- (C) Not later than the day of adoption of such order, the governing body of the political subdivision shall appoint an advisory committee in accordance with Section 7 of this Act.
- (D) On or before the date of the first publication of the notice, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the general nature of the capital improvements facilities which may be proposed.
- (E) The political subdivision shall provide public notice of the hearing.
- (1) At least 30 days before the hearing, 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 city secretary or other designated official of the political subdivision requesting notice of such hearing within two years preceding the date of adoption of the resolution or order setting the public hearing.
- (2) The political subdivision shall publish notice of the hearing once a week for three consecutive weeks, the first notice to appear at least 30, but not more than 60 days before the date set for the hearing, in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority which is authorized elsewhere by state law to charge fees which function as impact fees as defined in this Act may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing shall not be in the part of the paper in which legal notices and classified ads appear and shall 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.
- (3) The notice shall contain the following:
- (a) a headline to read as follows:
"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"
 - (b) the time, date, and location of the hearing;
 - (c) a statement that the purpose of the hearing is to consider the land use assumptions that will be used to develop a capital improvements plan pursuant to which an impact fee may be imposed;
 - (d) an easily understandable map of the service area to which the land use assumptions apply; and
 - (e) 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.
- (F) After the public hearing, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions.
- (G) The political subdivision shall have 30 days from the date of the public hearing within which to approve or disapprove such land use assumptions.
- (H) An ordinance, order, or resolution approving land use assumptions shall not be adopted as an emergency measure.
- (I) If the governing body adopts an ordinance, order, or resolution approving the land use assumptions, 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 Subsection (D) of Section 2 of this Act.
- (J) Upon completion of the capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the adoption of the plan and imposition of the impact fee.
- (K) A public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution adopting a capital improvements plan and imposing an impact fee. On or before the date of the first publication of the notice, the capital improvements plan shall be available to the public.
- (L) The political subdivision shall provide public notice of the hearing.
- (1) At least 30 days before the hearing, 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 city secretary or other designated official of the political subdivision requesting notice of such hearing within two years preceding the date of adoption of the resolution or order setting the public hearing.
- (2) The political subdivision shall publish notice of the hearing once a week for three consecutive weeks, the first notice to appear at least 30, but not more than 60 days before the date set for the hearing, in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority which is authorized elsewhere by state law to charge fees which function as impact fees as defined in this Act may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing shall not be in the part of the paper in which legal notices and classified ads appear and shall 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.
- (3) The notice shall contain the following:
- (a) a headline to read as follows:
"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"
 - (b) the time, date, and location of the hearing;
 - (c) a statement that the purpose of the hearing is to consider the adoption of an impact fee;
 - (d) an easily understandable map of the service area on which the proposed fee will be levied;
 - (e) the amount of the proposed impact fee per service unit; and
 - (f) 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.
- (M) The advisory committee shall file its written comments on the proposed capital improvements plan and impact fees not less than five business days prior to the public hearing.
- (N) The political subdivision shall approve or disapprove the adoption of the capital improvements plan and imposition of an impact fee within 30 days after the public hearing.
- (O) An ordinance, order, or resolution approving the capital improvements plan and imposition of an impact fee shall not be adopted as an emergency measure.

SECTION 4. USE OF PROCEEDS.

- (A) The order, ordinance, or resolution levying an impact fee shall 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. Interest earned on impact fees shall be considered funds of the account on which it is earned and shall be subject to all restrictions placed on use of impact fees under the provisions of this Act. Expenditures of impact fee funds shall be made only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this Act. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.
- (B) The governing body shall be responsible for supervising implementation of the capital improvements plan in a timely manner.

SECTION 5. REFUNDS.

- (A) Upon the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fees 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 of time 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 pursuant to the provisions of Subdivision (1) of Subsection (H) of Section 2 of this Act.
- (B) Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the political subdivision shall recalculate the impact fee using the actual costs of the capital improvements or facility expansion. If the impact fee calculated based on actual cost is less than the impact fee paid, the political subdivision shall refund the difference if the difference exceeds the impact fee paid by more than 10 percent.
- (C) The political subdivision shall refund any impact fee or portion thereof which is not expended as authorized by this Act within 10 years from 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 Article 1.03, Title 79, Revised Statutes (Article 5069-1.03, Vernon's Texas Civil Statutes), or its successor statute.
- (E) All refunds shall be made to the record owner of the property at the time the refund is paid; provided, however, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to such 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 which paid the impact fee shall have standing to sue for a refund under the provisions of this section.

SECTION 6. PLAN UPDATE.

- (A) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every three years, which three-year period shall commence from the date of the adoption of the capital improvements plan.
- (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 Section 2 of this Act.
- (C) The governing body of the political subdivision shall, within 60 days of receiving the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and to review the update and shall determine whether to amend the plan.
- (D) 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, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be available to the public.
- (E) The political subdivision shall provide public notice of the hearing.
- (1) At least 30 days before the hearing, 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 city secretary or other designated official of the political subdivision requesting notice of such hearing within two years preceding the date of adoption of the resolution or order setting the public hearing.
- (2) The political subdivision shall publish notice of the hearing once a week for three consecutive weeks, the first notice to appear at least 30, but not more than 60 days before the date set for the hearing, in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority which is authorized elsewhere by state law to charge fees which function as impact fees as defined in this Act may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing shall not be in the part of the paper in which legal notices and classified ads appear and shall 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.
- (3) The notice shall contain the following:
- a headline to read as follows:
"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"
 - the time, date, and location of the hearing;
 - 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;
 - an easily understandable description and map of the service area on which the update is being prepared; and
 - a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.
- (F) The advisory committee shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee not less than five business days prior to the public hearing.
- (G) The political subdivision shall approve or disapprove the amendment of the land use assumptions and the capital improvements plan and modification of an impact fee within 30 days after the public hearing.
- (H) An ordinance, order, or resolution approving the amendment to the land use assumptions, the capital improvements plan, and imposition of an impact fee shall not be adopted as an emergency measure.

SECTION 7. ADVISORY COMMITTEE.

- (A) A capital improvements advisory committee, composed of not less than five members, 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 shall 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, provided that 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 within the extraterritorial jurisdiction of the political subdivision, said membership shall include a representative from such area.
- (B) The advisory committee shall serve in an advisory capacity and is established to perform the following functions:
- to advise and assist the political subdivision in adopting land use assumptions;
 - to review the capital improvements plan and file written comments;
 - to monitor and evaluate implementation of the capital improvements plan;
 - to file semi-annual reports with respect to the progress of the capital improvements plan and to report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and
 - to advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.
- (C) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.
- (D) The governing body of the political subdivision shall adopt procedural rules for the committee to follow in carrying out its duties.

SECTION 8. GENERAL PROVISIONS.

- (A) If the governing body of the political subdivision does not perform a duty imposed under this Act within the prescribed time period, a person who has paid an impact fee or an owner of land upon which an impact fee has been paid shall have 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 of the request. If the governing body of the political subdivision finds that the duty is required under this Act and is late in being performed, it shall cause the duty to commence within 60 days of the request and continue until completion.
- (B) A record must be made of any public hearing provided for in this Act. Such record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the hearing.
- (C) Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed will be cumulative with the restrictions in this Act.
- (D) An impact fee which is in place on the effective date of this Act must, within three years of said effective date, be replaced by an impact fee made pursuant to this Act; provided, however, any political subdivision having an impact fee which has not been replaced pursuant to this Act within one year of the effective date of this Act shall be liable to any party who, after the one-year period, pays an impact fee which exceeds the maximum permitted under Subsection (D) of Section 2 of this Act 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.
- (E) This Act shall not be construed to prohibit, affect, or regulate any tax, fee, charge, or assessment which is specifically authorized by state law.
- (F) No moratorium shall 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 the impact fee.

SECTION 9. APPEALS.

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 Act. A suit to contest an impact fee must be filed within 90 days from the date of adoption of the ordinance, order, or resolution establishing the impact fee. 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 shall be entitled to specific performance of the services by the political subdivision for which the fee was paid. Nothing in this section shall require construction of a specific facility to provide such services. Any suit must be filed in the county in which the major portion 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. An impact fee shall not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

SECTION 10. STORM WATER, DRAINAGE, AND FLOOD CONTROL.

- (A) Any county with a population of at least 2.2 million, according to the most recent federal census, or which borders a county with a population of at least 2.2 million, 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) of this section is exempt from the requirements of Section 5, Section 6, and Subsection (D) of Section 8 of this Act, unless the political subdivision proposes to increase the impact fee.
- (C) Any political subdivision described in Subsection (A) of this section 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 such political subdivision and to the payment of any other contractual obligations.
- (D) An impact fee adopted by a political subdivision pursuant to Subsection (A) of this section shall 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 such political subdivision and
 - (2) the political subdivision agrees in such pledge or contract not to reduce such impact fees during the term of such bonds, notes, or other contractual obligations.

SECTION 11. EXEMPT TRANSACTIONS.

- (A) This Act does not apply to impact fees, charges, fees, assessments, or contributions paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under Article XVI, Section 59, of the Texas Constitution if both districts are required by law to obtain approval of their bonds by the Texas Water Commission.
- (B) This Act does not apply to impact fees, charges, fees, assessments, or contributions charged which are approved by the Texas Water Commission. Any district created pursuant to Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, may petition the Texas Water Commission for approval of any such proposed fees. The commission shall adopt rules for reviewing any such petition and may charge the petitioner fees which are adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required herein for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

SECTION 12.

The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.



Engineering, Planning, and Governmental Services
Engineering and legal services

220 Nolana McAllen, Texas 78504

AGENDA - REGULAR MEETING OF THE CAPITAL IMPROVEMENTS ADVISORY COMMITTEE/PLANNING AND ZONING COMMISSION OF THE CITY OF PEARLAND, TEXAS TO BE HELD ON MAY 3, 1988 AT 7:30 P. M. IN THE COUNCIL CHAMBERS, CITY HALL, 3519 LIBERTY DRIVE, PEARLAND, TEXAS

I. CALL TO ORDER

II. APPROVAL OF MINUTES: Special Planning & Zoning Commission
Meeting of April 19, 1988

III. NEW BUSINESS

1. DISCUSSION WITH ART STOREY OF BERNARD JOHNSON, INC. REGARDING SB 336 REGULATING THE FINANCING OF CAPITAL IMPROVEMENTS THROUGH THE USE OF "IMPACT FEES" AND DISCUSSION CONCERNING THE NEWLY APPOINTED CAPITAL IMPROVEMENTS ADVISORY COMMITTEE.
2. DISCUSSION REGARDING RULES OF PROCEDURE DURING MEETINGS OF CAPITAL IMPROVEMENTS ADVISORY COMMITTEE/PLANNING AND ZONING COMMISSION.

IV. ADJOURN

POSTED: 29 DAY OF April, A. D., 1988, 3:00 P.M.
REMOVED: 6 DAY OF May, A. D., 1988

MINUTES OF A REGULAR MEETING OF THE PLANNING AND ZONING COMMISSION/CAPITAL IMPROVEMENTS ADVISORY COMMITTEE HELD ON MAY 3, 1988 AT 7:30 P. M. IN THE COUNCIL CHAMBERS, 3519 LIBERTY DRIVE, PEARLAND, TEXAS

The meeting was called to order with the following present:

Chairman	Leroy Savoie
Vice Chairman	Al Lentz
Member	Mary Starr
Member	Helen Beckman
Member	Benny Frank
Member	James Garner
Code Enforcement Officer	Ernesto Buenrostro
Assistant City Secretary	Pat Vaught

Commission Member Clyde Starns was not present, having an excused absence.

APPROVAL OF MINUTES

It was moved by Mary Starr, seconded by Helen Beckman, that the Minutes of the Special Meeting of April 19, 1988, be approved as submitted.

Motion passed 5 to 0, with Al Lentz abstaining.

NEW BUSINESS

DISCUSSION WITH ART STOREY OF BERNARD JOHNSON, INC. REGARDING SB 336 REGULATING THE FINANCING OF CAPITAL IMPROVEMENTS THROUGH THE USE OF "IMPACT FEES" AND DISCUSSION CONCERNING THE NEWLY APPOINTED CAPITAL IMPROVEMENTS ADVISORY COMMITTEE.

Art Storey of Bernard Johnson made some introductory remarks regarding Senate Bill 336 and introduced Charles Kalkomey, head of the Civil Engineering Department of Bernard Johnson.

Mr. Storey stated that his firm had been appointed by the City Council to study SB 336 to find out its impact on the City and establish procedures for compliance. Mr. Storey stated that SB 336 states that cities cannot charge capital recovery fees any longer unless they go through an extensive planning and administrative routine to prove that the dollar value that the city is trying to recover money for divided by the number of people you are going to serve is the rate in which you are charging these fees.

Bernard Johnson has begun the steps outlined in the Act that must be complied with which are: a public hearing date established to consider land use assumptions; appoint an advisory committee which it has done, being the Planning and Zoning Commission, make available to the public its land use assumptions, and give notice in three official City publications. Mr. Storey stated that we were following t

procedures as outlined in the bill and as a result hoped to qualify the impact fees the City now charges.

Mr. Storey explained that his firm needed to familiarize itself with the City via land use inventory and guidance given tonight as to where the Advisory Committee felt the projected growth would be in the City. An additional future assignment of Bernard Johnson would be facilities planning such as the need for new sewer mains, wells, treatment plants, etc.

Concerns surfaced regarding the Brazos Bend Water Authority and municipal utility districts and their impact on the study and planning being done as they relate to SB 336.

Maps were presented denoting existing land use both in the City and the ETJ and Mr. Kalkomey also pointed out city water wells and sanitary sewer systems and their capacities and capabilities.

Maps presented divided the City into nine areas and the ETJ into five areas. The Advisory Committee and Mr. Kalkomey discussed each area individually and gave their comments as to the projected growth indicated on the map of single family, multi-family, commercial and industrial units which resulted in some changes in the number of connections previously anticipated.

Based on the comments from the Advisory Committee, Mr. Storey and Mr. Kalkomey indicated they would amend the map accordingly for the public hearing to be held on May 16, 1988, and would keep the Committee advised of the progress.

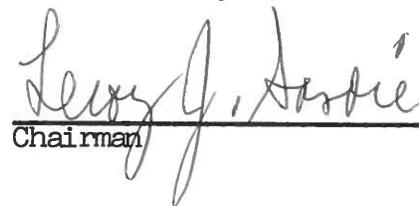
DISCUSSION REGARDING RULES OF PROCEDURE DURING MEETINGS OF CAPITAL IMPROVEMENTS ADVISORY COMMITTEE/PLANNING AND ZONING COMMISSION.

Code Enforcement Officer Ernesto Buenrostro discussed briefly with the members rules of procedure which were based on a meeting he had with the then City Attorney Luke Daniel.

ADJOURN

The meeting adjourned at 9:14 P. M.

Minutes approved as submitted and/or corrected this 7th day of June, A. D., 1988.


Chairman

ATTEST:


Assistant City Secretary



City of Pearland

P. O. Box 2068 • Pearland, Texas 77588-2068 • 485-2411

file
Tom Reid, Mayor
James E. Bost, Councilmember
Dennis Frauenberger, Councilmember
Richard Tetens, Councilmember
Charles Mack, Councilmember
Stella Roberts, Councilmember
Ronald J. Wicker, City Manager

April 29, 1988

Mr. Mark Klein
3504 Landsdowne Court
Pearland, Texas 77584

Dear Mr. Klein:

As we discussed previously, the City Council at their regularly scheduled meeting of April 25, 1988, appointed you as Ad Hoc member to the Capital Improvements Advisory Committee. I would like to take this opportunity to express my appreciation, and that of the Council, for your willingness to serve in this capacity.

A copy of the agenda for the May 3, 1988 meeting is enclosed.

Thank you again for your participation.

Sincerely yours,

A handwritten signature in cursive script that reads 'Don Birkner'.

Don Birkner
Assistant City Manager

DB:pv

Encl.

Birdsong Printing, Inc.



485-0650

① ~~_____ Mark Klein~~
② ~~_____ 3-28-81~~
~~N.B - 2?~~

- ③ jackets
- ④ gaiting
- ⑤ calendar

STANDARD TRADING, INC.

Mr. Charles R. Kalkomey
Bernard Johnson Inc
5050 Westheimer
Houston 77056

~~But E Bailey 76824~~
~~2334 N. Loop E~~
~~76825~~

AN ORDINANCE AMENDING SECTIONS 7-54, 7-55, 7-56, 7-57 AND 7-58 OF THE CODE OF ORDINANCES OF THE CITY OF PEARLAND, TEXAS; PROVIDING FOR CAPITAL RECOVERY FEES FOR CITY WATER AND SANITARY SEWER SERVICE; DEFINING TERMS; SETTING FORTH AMOUNT AND USE OF FEES; REQUIRING PAYMENT PRIOR TO SERVICE; HAVING A SAVINGS CLAUSE; HAVING A REPEALER CLAUSE; PROVIDING FOR CODIFICATION, PUBLICATION AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1.

Sections 7-54, 7-55, 7-56, 7-57 and 7-58 of the Code of Ordinances of the City of Pearland, Texas, shall be and are hereby amended and shall read as follows:

"Section 7-54. Creation.

"There is hereby created a water capital recovery fee and a sanitary sewer capital recovery fee for the City of Pearland, Texas, for the purpose of developing a capital reserve fund to be used to defray the future capital costs for the construction and maintenance of water production and distribution facilities and sanitary sewer collection and treatment facilities.

"Section 7-55. Definitions.

"For the purposes of this article the following terms, phrases, words and their derivatives shall have the meaning ascribed to them in this section. In the event such terms are not defined in this section, they shall be construed in their common and usual significance.

"(a) Capital Recovery Fee shall mean a one time fee which is paid prior to the first time the applicable utility service is received at any residential unit or commercial unit.

"(b) Residential Unit shall mean a facility intended for occupancy as living quarters which provides all normal domestic needs; kitchen, laundry and bathroom facilities. The following shall be considered to be included in this category: house, townhouse, patio home, garden home, manufactured home, apartment, condominium, mobile home, duplex home.

"(c) Partial Residential Unit shall mean a facility intended for occupancy as living quarters which does not provide all normal domestic needs; generally providing only individual bathroom facilities. The following shall be considered to be included in this category: hotel room or suite, motel room or suite, hospital room, nursing home room.

"(d) Commercial Unit shall mean each separate industrial, commercial, institutional or recreational facility, of whatsoever nature, which shall apply or contract for service from the City's water and/or sanitary sewer systems, and for water service for which a meter has been or will be installed. Commercial activities which have high water and sanitary sewer usage may be assessed more than one "unit" fee, based upon projected usage as determined by the City Building Official.

"Section 7-56. Use and Disposition of Fees.

"All fees generated by this article shall be deposited in a separate capital recovery fund and such fees shall be used for capital expansion and maintenance of water production and distribution facilities and sanitary sewer collection and treatment facilities and improvements related thereto.

"Section 7-57. Amount of Fee.

"The amount of capital recovery fee to be assessed and collected for each residential and commercial unit, inside and outside the corporate limits of the City, shall be as determined by the City Council from time to time and on file in the offices of the City Secretary and City Building Official. The capital recovery fee shall be assessed on a unit basis or multiple thereof. The fee for partial residential units shall be assessed on a unit basis considering a unit to consist of three partial units, or major fraction thereof, with a prorated meter or interceptor cost plus the addition of prorated common area square footage.

"Section 7-58. Payment of Fees.

"The capital recovery fees imposed by this Article shall become due and payable:

"(a) When application is made for initial water and/or sanitary sewer service at the unit; or,

"(b) When hookup to City water and/or sanitary sewer service is mandated by City Council or by the City Manager, Director of Public Works, or the authorized agent of any of these; or,

"(c) When hookup to City water and/or sanitary sewer service is required by operation of law.

"In all cases, however, the fees imposed by this Article shall be paid in full prior to the initial receipt of water service and/or sanitary sewer service at the unit."

Section 2.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 3.

All Ordinances and parts of Ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict.

Section 4.

It is the intent of the City Council of the City of Pearland, Texas that this Ordinance shall be codified in the City's official Code of Ordinances as provided hereinabove.

Section 5.

The City Secretary shall cause this Ordinance, or the caption hereof, to be published in the official newspaper of the City of Pearland, Texas at least once within ten (10) days after the passage of such Ordinance. This Ordinance shall then become effective ten (10) days from and after its publication, or the publication of its caption, in the official City newspaper.

PASSED AND APPROVED ON FIRST READING this the 28 day of May, A.D., 1985.

Don Reed
Mayor, City of Pearland, Texas

ATTEST:

Kay Krouse
City Secretary

PASSED AND APPROVED ON SECOND AND FINAL READING this the 10 day of June, A.D., 1985.

James E. Bost
Mayor Pro Tem
City of Pearland, Texas

ATTEST:

Kay Krouse
City Secretary

PUBLICATION DATE: JUNE 14, 1985
EFFECTIVE DATE: JUNE 24, 1985

APPROVED AS TO FORM:

PUBLISHED AS REQUIRED BY SECTION 3.10 OF THE CHARTER OF THE CITY OF PEARLAND, TEXAS

Luke L. Daniel
City Attorney
Luke L. Daniel

VOTING RECORD (FIRST READING) MAY 28, 1985

Voting "Aye" - Councilman Gray, Councilman Frauenberger, Councilman Bost, Councilman Tetens, and Councilman Lentz.

Voting "No" - None

VOTING RECORD (SECOND READING) JUNE 10, 1985

Voting "Aye" - Councilman Tetens, Councilman Bost, Councilman Frauenberger, and Councilman Gray.

Voting "No" - None

AN ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF PEARLAND, TEXAS, BY ADDING THERETO A NEW ARTICLE IV TO BE ENTITLED "CAPITAL MAINTENANCE AND RECOVERY FEES;" PROVIDING FOR AN EFFECTIVE DATE; A SAVINGS CLAUSE; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

SECTION I

That Chapter 7 of the Code of Ordinances of The City of Pearland, Texas, be and the same is hereby amended by adding thereto a new Article IV to be entitled "Capital Maintenance and Recovery Fees," which Article shall hereafter read as follows:

"Article IV. CAPITAL MAINTENANCE AND RECOVERY FEES.

"Section 7-54. Creation.

"There is hereby created a capital maintenance and recovery fee for The City of Pearland, Texas, for the purpose of developing a capital reserve fund to be used to defray the future capital costs for the construction and maintenance of distribution, transmission and treatment facilities for water and sanitary sewers.

"Section 7-55. Definitions.

"For the purposes of this article the following terms, phrases, words and their derivatives shall have the meaning ascribed to them in this section, in the event such terms are not defined in this section, they shall be construed in their common and usual significance.

"(a) Residential Unit shall now mean a house, town-house, patio home, garden home, apartment, condominiums, modular home, mobile home, duplex homes, a group of rooms or a single room, or any other separate or individual space intended for occupancy as living quarters.

"(b) Commercial Unit shall mean each separate industrial, commercial, institutional or recreational facility, of whatsoever nature, which shall apply or contract for

service from the City's water and/or sanitary sewer system and for which a meter has been or will be installed.

"Section 7-56. Use and Disposition of Fees.

"All fees generated by this article shall be deposited in a separate capital maintenance and recovery fund and such fees shall not be used for any purpose except that of capital expansion and maintenance of the distribution, transmission and treatment facilities for water and sanitary sewer.

"Section 7-57. Amount of Fee.

"The amount of capital maintenance and recovery fee to be assessed and collected for each residential and commercial unit, inside and outside the corporate limits of the City, shall be as determined by the City Council from time to time and on file in the offices of the City Secretary and city building inspector.

"Section 7-58. Payment of fee.

"The capital maintenance and recovery fee imposed by this article shall be paid in full at the time of the issuance of a building permit."

SECTION II

If any section, paragraph, clause, or sentence shall be declared void or unenforceable or unconstitutional, it is hereby declared the intention of the City Council of The City of Pearland, Texas, that the remainder of such ordinance shall remain in full force and effect.

SECTION III

It is the intention of the City Council, and it is hereby ordained, that the provisions of this Ordinance shall be made part of the Code of Ordinances, City of Pearland, Texas, and the sections of this Ordinance may be renumbered to accomplish such intention.

SECTION IV

All provisions of the Code of Ordinances of The City of Pearland, Texas, in conflict with amendments herein made are hereby expressly repealed to the extent of such conflict.

SECTION V

This Ordinance shall be effective and in full force on the tenth day after its publication in the official newspaper of The City of Pearland, Texas.

PASSED AND APPROVED ON FIRST READING this 26 day of March, A.D. 1984.

THE CITY OF PEARLAND, TEXAS

By: Thomas J. Reid
THOMAS J. REID, Mayor

ATTEST:

Dorothy L. Cook
DOROTHY COOK, City Secretary

PASSED AND APPROVED ON SECOND AND FINAL READING this 9 day of April, A.D. 1984.

THE CITY OF PEARLAND, TEXAS

By: Thomas J. Reid
THOMAS J. REID, Mayor

ATTEST:

Dorothy L. Cook
DOROTHY COOK, City Secretary

VOTING RECORD (FIRST READING) MARCH 26, 1984

"Aye" - Councilman Lentz, Councilman Bost, Councilman Mack, Councilman Gray and Councilman Frauenberger

"No" - None

APPROVED AS TO FORM:

Bobby Williams
BOBBY WILLIAMS, City Attorney

VOTING RECORD (SECOND READING) APRIL 9, 1984

"Aye" - Councilman Frauenberger, Councilman Gray, Councilman Bost, Councilman Mack and Councilman Lentz

"No" - None

EFFECTIVE DATE: April 23, 1984

CAPITAL MAINTENANCE AND RECOVERY FEE SCHEDULE
 PURSUANT TO CHAPTER 7, ARTICLE IV, CODE OF
 ORDINANCES OF THE CITY OF PEARLAND, TEXAS

The fees to be assessed and collected for Capital Maintenance and Recovery for water and sewer shall be as follows:

I.

WATER CAPITAL MAINTENANCE FEE

1. Residential or commercial service per unit:

(a) Inside Corporate Limits:

\$550.00 + meter cost + 10¢ per square foot of building floor space or living area.

(b) Meter Cost per pipe size:

5/8" -----	\$	50.00
1" -----		115.00
1-1/2" -----		345.00
2" -----		450.00
3" -----		1,560.00
4" -----		2,000.00
5" and over -----		To be determined by building inspector

(c) Outside Corporate Limits:

\$800.00 + meter costs + 15¢ per square foot of building floor space or living area.

(d) Meter Cost

5/8" -----	\$	60.00
1" -----		130.00
1-1/2" -----		355.00
2" -----		500.00
3" -----		1,700.00
4" -----		2,500.00
5" and over -----		To be determined by building inspector

II.

SEWAGE CAPITAL MAINTENANCE FEE

1. Residential or commercial service per unit:

(a) Inside Corporate Limits:

\$400.00 + \$130.00 interceptor costs + 10¢ per square foot of building floor space or living area.

(b) Outside Corporate Limits:

\$450.00 + \$200.00 interceptor costs + 15¢ per square foot of building floor space or living area.