CITY OF LEON VALLEY
PLANNING & ZONING COMMISSION
Leon Valley City Council Chambers
6400 El Verde Road, Leon Valley, TX 78238
Tuesday, September 26, 2023 at 6:30 PM

AGENDA

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF ZONING COMMISSION MINUTES

1. Planning & Zoning Commission - Regular Meeting - August 22, 2023

3. NEW BUSINESS

1. Workshop to Discuss Eliminating the Gateway Overlay Standards and Districts - M.Teague, Planning and Zoning Director

2. Discussion and Presentation on the Duties of the Planning and Zoning Commission as They Relate to the Capital Improvement Advisory Committee (CIAC) for the Purpose of Updating Water and Sewer Impact Fees - M. Teague, Planning and Zoning Director

4. ANNOUNCEMENTS BY COMMISSIONERS AND CITY STAFF

In accordance with Section 551.0415 of the Government Code, topics discussed under this item are limited to expressions of thanks, congratulations or condolence; information regarding holiday schedules; recognition of a public official, public employee or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial or community event; and announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

5. ADJOURNMENT

Executive Session. The City Council of the City of Leon Valley reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on the posted agenda, above, as authorized by the Texas Government Code, Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), and 551.087 (economic development).

Sec. 551.0411. MEETING NOTICE REQUIREMENTS IN CERTAIN CIRCUMSTANCES: (a) Section does not require a governmental body that recesses an open meeting to the following regular business day to post notice of the continued meeting if the action is taken in good faith and not to circumvent this chapter. If an open meeting is continued to the following regular business day and, on that following day, the governmental body continues the meeting to another day, the governmental body must give written notice as required by this subchapter of the meeting continued to that other day.

Attendance by Other Elected or Appointed Officials: It is anticipated that members of other City boards, commissions and/or committees may attend the open meeting in numbers that may constitute a quorum. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of any other boards, commissions and/or committees of the City, whose members may be in attendance in numbers constituting a quorum. These members of other City boards, commissions, and/or committees may not deliberate or act on items listed on the agenda. [Attorney General Opinion – No. GA-0957 (2012)].

I hereby certify that the above **NOTICE OF PUBLIC MEETING(S) AND AGENDA OF THE LEON VALLEY CITY COUNCIL** was posted at the Leon Valley City Hall, 6400 El Verde Road, Leon Valley, Texas, and remained posted until after the meeting(s) hereby posted concluded. This notice is posted on the City website at **https://www.leonvalleytexas.gov**. This building is wheelchair accessible. Any

request for sign interpretive or other services must be made 48 hours in advance of the meeting. To make arrangements, call (210) 684-1391, Extension 216.

SAUNDRA PASSAILAIGUE, TRMC
City Secretary
SEPTEMBER 20, 2023 03:00 PM

City of Leon Valley
PLANNING AND ZONING COMMISSION
MEETING MINUTES
6:30 PM – AUGUST 22, 2023
Leon Valley City Council Chambers
6400 El Verde Road, Leon Valley, TX 78238

1. CALL TO ORDER AND ROLL CALL

Chair Catherine Rowse called the Planning and Zoning Commission meeting to order at 6:39 PM.

PRESENT			
Commissioner	Andrea Roofe	Place 2	
Commissioner	Pat Martinez	Place 4	
Chair	Cassie Rowse	Place 5	
2nd Vice Chair	Erick Matta	Place 6	Tardy 7:06PM
Commissioner	Richard Blackmore	Place 7	
2nd Alternate	Thomas Dillig		Seated to Vote
3rd Alternate	Mary Ruth Fernandez		Seated to Vote
Council Liaison	Benny Martinez		

ABSENT			
1st Vice Chair	Edward Alonzo	Place 1	Excused
Commissioner	Hilda Gomez	Place 3	Excused
1st Alternate	David Perry		Unexcused

Also in attendance were Public Works Director Melinda Moritz and Permit Technician Elizabeth Aguilar.

2. APPROVAL OF ZONING COMMISSION MINUTES

1. Planning & Zoning Commission - Regular Meeting - July 25, 2023

   Commissioner Roofe made a motion to approve the minutes, which was seconded by Commissioner Blackmore. The motion carried unanimously.

3. NEW BUSINESS

1. Presentation, Public Hearing, and Discussion to Consider a Recommendation on an Ordinance Revising Chapter 15 Zoning, Division 6, Section 15.02.306 (R-1 Single-Family Dwelling District) to Allow Accessory Buildings in the Side Yard - M. Teague, Planning and Zoning Director

   Ms. Moritz presented the case information, and a brief discussion was held between Ms. Moritz and Commissioner Martinez on why a pool is considered an accessory building.

   Chair Rowse opened the public hearing at 6:42PM, seeing that nobody wished to speak, closed the public hearing at 6:43PM.

   Commissioner Roofe made a motion to approve the case as presented, which was seconded by 2nd Alternate Dillig. The motion carried unanimously.

   Voting Yea: Chair Rowse and Commissioners Roofe, Martinez, Blackmore, Dillig and Fernandez.

   Voting Nay: None

2. Workshop to Discuss Revisions to the Leon Valley Code of Ordinances, Chapter 15 Zoning to Eliminate the General, Sustainability, and Commercial/Industrial Standards and Districts - M. Teague, Planning and Zoning Director

   Ms. Moritz presented the information, and a brief discussion was held between the Commissioners and Ms. Moritz about removing sections of the supplementary architectural regulations. The Commissioners recommended the removal of the supplementary architectural regulations.

4. ANNOUNCEMENTS BY COMMISSIONERS AND CITY STAFF

Ms. Moritz explained to the Commissioners that the Sustainability Overlay regulations were only mentioned in the Master Plan on two pages and that the language in the Plan can be easily revised to remove the references.

Permit Technician Aguilar explained the PowerPoint printouts for each Commissioner from the Planning and Zoning Workshop.

Chair Rowse welcomed the new members 3rd Alternate Fernandez and 2nd Alternate Dillig. She also reminded everyone that school would be starting the next week and to be mindful of the school zones and children.

Ms. Moritz mentioned that there will be some street work underway soon at Seneca, Poss and Timco West which might present some difficulties for travelers in those area for a short while.

Chair Rowse reminded everyone that the next meeting will be on September 26, 2023.

5. ADJOURNMENT

Chair Rowse announced the meeting adjourned at 7:28 pm.

These minutes were approved by the Leon Valley Planning & Zoning Commission on the 26th of September 2023.

APPROVED

_____
CATHERINE ROWSE
CHAIR

ATTEST: _____

ELIZABETH AGUILAR
PERMIT TECHNICIAN

ZONING COMMISSION STAFF REPORT

DATE: 9-26-23

TO: Planning and Zoning Commission

FROM: Mindy Teague, Planning and Zoning Director

THROUGH: Crystal Caldera, City Manager

SUBJECT: To consider making a recommendation for moving some regulations from Appendix C Sustainability, Gateway, and Commercial/Industrial Overlay Standards

SPONSOR(S): N/A

PURPOSE

The purpose of this workshop is to discuss revisions to the Leon Valley Code of Ordinances, Chapter 15 zoning and to eventually eliminate the General, Sustainability, and Commercial/Industrial Overlay and Gateway Standards

SEE LEON VALLEY

Social Equity – Updating regulatory codes protects the health, safety, and welfare of all citizens

Economic Development – Assuring quality development maintains housing and business property values

Environmental Stewardship – Updating the Code to the present environmental standards assures clean air and water

FISCAL IMPACT

N/A

STRATEGIC GOALS

Goal # 1 - Economic Development · Objective F – Promote Leon Valley

RECOMMENDATION

At the Commission's discretion

APPROVED: _____ DISAPPROVED: _____

APPROVED WITH THE FOLLOWING AMENDMENTS:

_____

_____

_____

_____

ATTEST:

_____
SAUNDRA PASSAILAIGUE, TRMC
City Secretary

Workshop
Amending Chapter 15 Zoning

Planning and Zoning Commission Meeting

Planning & Zoning Director Mindy Teague

9-26-23

Purpose

- The purpose of this workshop is to discuss revisions to the Leon Valley Code of Ordinances, Chapter 15 Zoning:
  - To consider a recommendation for moving some regulations from Appendix C Sustainability, Gateway, and Commercial/Industrial Overlay Standards
  - To eventually eliminate the General, Sustainability, and Commercial/Industrial, Gateway Overlay Standards and zoning districts
- This workshop will address only the Gateway Overlay Standards
- Future workshops will address Commercial/Industrial Overlay Standards and districts

Background

- Chapter 15 Zoning is to be reviewed and amended periodically, as directed by city council
- Codes should be reviewed and updated/adopted every 4 years in order to incorporate new trends and current building regulations
- Adopting codes assures a *minimum* standard
- City Council has expressed their desire to revise Appendix C Sustainability, Gateway, and Commercial/Industrial Overlay Standards
- Staff would also like to make these revisions in order to make the Zoning Code easier to understand for both internal and external users

Supplementary architectural regulations

The intent of this subsection is to create buildings which reflect the desired Leon Valley character of being a sustainable and attractive city as stated above. It is also intended that nonresidential buildings are constructed in a manner that allows flexibility to accommodate a range of uses over time in order to avoid the need to demolish and rebuild for successive uses. The size, disposition and design of buildings play an important role in achieving that goal.

State Law

- H.B. 2439 added Government Code Section 3000.002 to prohibit an applicable governmental entity from adopting or enforcing a regulation that either:
  - Directly or indirectly prohibits or limits the use or installation of a building product or material in the construction or alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or
  - Establishes a standard for a building product, material, or aesthetic method in the construction or alteration of such a building that is more stringent than a standard for the product, material, or aesthetic method under such a code that applies to the construction or alteration of the building

State Law

- There are limited exceptions outlined in the code and most recently **SB 2453** added exceptions as follows:
  - **Exceptions to Building Material Preemption**: allows a governmental entity, including a city, to adopt a regulation regarding the building the use or installation of a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if that product, material or method relates to:
  - (1) certain energy codes adopted by the State Energy Conservation Office;
  - (2) certain energy and water conservation design standards established by the State Energy Conservation Office; or
  - (3) certain high-performance building standards approved by the board of regents of an institute of higher education. (Effective September 1, 2023.)
-

Fiscal Impact

- These revisions may impact developers as vacant land becomes developed and as existing developments are remodeled or redeveloped

S.E.E. Statement

- *Social* – Updating regulatory codes protects the health, safety, and welfare of all citizens
- *Economic* – Assuring quality development maintains housing and business property values
- *Environmental* – Updating the Code to the present environmental standards assures clean air and water

III. STANDARDS FOR GATEWAY OVERLAY

A. Intent.

The intent of these standards is to

1. Create an identity for Leon Valley to distinguish it from surrounding communities
2. Stabilize and strengthen property values over the long term
3. Attract new residents and businesses that will invest and reinvest in properties
4. Increase the quality of development
5. Strengthen and clarify existing zoning ordinance provisions for nonresidential design standards.
6. Make the community more sustainable for future generations through
    a. Providing for integrated mixed use,
    b. Embodying LEED-ND (Leadership in Energy and Environmental Design - Neighborhood Development) principles, and
    c. Assuring pedestrian and bicycle friendliness.

B. Land use.

1. *Intent.* It is intended that allowed uses will encourage pedestrian-oriented mixed use projects that are well integrated with retail and residential activities.
2. Residential uses in the form of townhouses are allowed on up to 50 percent of the site area and shall abide by the townhouse district standards and the standards in this ordinance. However, at least 50 percent of the retail must be constructed prior to obtaining a certificate of occupancy for the residential component.
3. Residential uses above nonresidential uses at-grade shall be permitted by right and defined as a mixed use building. Lobbies to upper stories may be located at grade level.
4. *General standards.* Approval of a specific use permit, landscaping requirements, sign standards, performance standards, and requirements for nonconforming structures shall follow the procedures established by the zoning ordinance as well as procedures and standards outlined in section I, Overlay Standards - General of these overlay district standards.

C. Building height and site area regulations.

1. *Intent.* The intent of the height and area regulations is to convey a stronger sense of community by bringing buildings closer to the street.
2. *Building height.*
    a. Buildings shall not exceed 50 feet or three stories, whichever is less, unless it qualifies as a landmark building, in which case the landmark feature may be up to 25 percent greater than the remainder of the building height as approved by the director.
    b. However, buildings on properties abutting Bandera may be constructed up to four stories or 60 feet.

c. Portions of any buildings within 100 feet of a single-family zoned residential lot may not exceed 45 feet in height or 2.5 stories.

3. *Minimum lot size.* One acre unless otherwise approved through the site plan.

4. *Front yard.* Minimum front yard shall be six feet and a maximum setback of 100 feet (which would allow for one full bay of parking).

5. *Rear yard.* Minimum seven feet, or 30 feet when abutting residentially zoned land.

D. Building orientation.

1. *Intent.* It is intended that buildings have direct orientation to the street.

2. Facades shall generally be built parallel to the street or major access drive frontage, except at street intersections, where a facade containing a primary building entrance may be curved or angled toward an intersection.

E. Cross-access drives.

1. *Intent.* It is the intent that access ways will facilitate the movement of pedestrians and autos in an attractive environment, and that blocks ensure cross-access to adjacent non-single-family zoned sites.

2. *Cross-access.* All nonresidential lots must provide cross-access to adjoining nonresidential lots.

F. Automobile parking.

1. *Intent.* The following is the intent of the city's parking policies and these design standards for the Gateway Overlay District:

a. Minimize paved surfaces which increase runoff, ambient temperature and construction costs.

b. Support the creation of shared parking in order to enable visitors to park once at a convenient location and to access a variety of nonresidential enterprises in a pedestrian and bicycle-friendly environment.

c. Manage parking so that it is convenient and efficient, and supports an active and vibrant retail environment.

d. Ensure ease of access to parking.

e. Provide flexibility for changes in land uses which have different parking requirements within the district.

f. Provide flexibility for the redevelopment of small sites.

g. Avoid diffused, inefficient single-purpose reserved parking.

h. Avoid adverse parking impacts on residential neighborhoods.

2. *Parking requirements.*

a. Off-street parking facilities shall be provided in accordance with this subsection.

b. Off-street parking spaces for the applicable use classification shall meet the city's current standards.

c. Where parking exceeds the minimum spaces required by more than ten percent, or more than one full bay of parking is located between a building and a public street, landscaping of parking areas shall be increased to the following standards between the building and the public street:

i. A minimum of 12 percent of the gross vehicular use area shall be devoted to living landscaping which includes grasses, ground cover, plants, shrubs and trees.

ii. There shall be a minimum of one shade tree planted for each 300 square feet or fraction thereof of required interior landscape area.

iii. Planting islands shall not be spaced greater then every ten spaces unless approved in the landscape plan in order to preserve existing trees and natural features or due to unique site conditions.

d. *Parking reduction.* Provided there is a shared access and joint use agreement with an adjacent property, parking may be reduced by up to 15% of the total requirement.

G. Bicycle parking.

1. *Goals.* Bicycle parking is required in order to encourage the use of bicycles by providing safe and convenient places to park bicycles.

2. *Bicycle parking.* Bicycle parking shall be provided based on at least one bike rack for each development or one bike rack for each 25 car parking spaces required, whichever is greater, unless otherwise approved by the director. Bicycle racks shall accommodate a minimum of two bicycles per rack. No more than ten bicycle racks shall be required per development.

3. *Bicycle parking standards.*

a. *Location.*

i. Required bicycle parking should be located within 50 feet of an entrance to the building.

ii. Bicycle parking may be provided within a building, but the location must be easily accessible to bicycles.

H. Supplementary architectural regulations.

1. *Intent.* The intent of this subsection is to create buildings which reflect the desired Leon Valley character of being a sustainable and attractive city as stated above. It is also intended that nonresidential buildings are constructed in a manner that allows flexibility to accommodate a range of uses over time in order to avoid the need to demolish and rebuild for successive uses. The size, disposition and design of buildings play an important role in achieving that goal. This includes encouraging the following:

a. Landmark elements such as enhanced open spaces and building features.

b. Buildings which directly contribute to the attractiveness, safety and function of the street and public areas.

c. Buildings which are constructed in a manner, and with materials, that are highly durable and will continue to endure and be attractive over a long time, especially adjacent to public and pedestrian areas.

It is intended by this section, to encourage a variety of building and design solutions in response to the standards and regulations outlined herein.

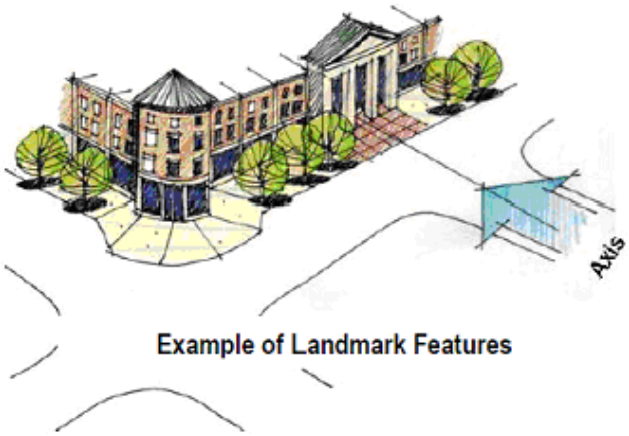
2. *Building standards - Nonresidential and mixed use.*

a. *Building form.*

i. All buildings shall be designed and constructed in tri-partite architecture so that they have a distinct base, middle and top.

Examples of Single Story Tri-Partite

ii. Buildings which are located on axis with a terminating street or access drive or at the intersection of streets and/or major access drives shall be considered a landmark building. Such buildings shall be designed with landmark features which take advantage of that location, such as an accentuated entry and a unique building articulation which is offset from the front wall planes and goes above the main building eave or parapet line.



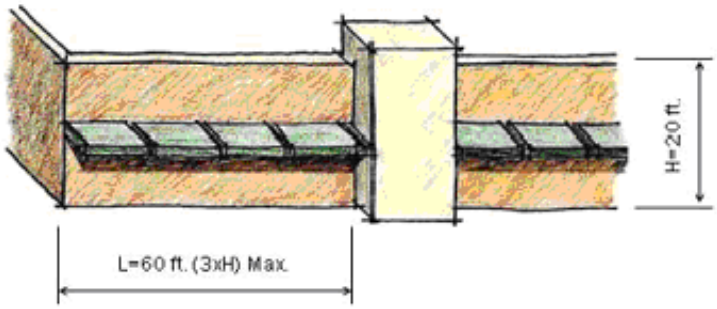
Example of Landmark Features

iii. *Building articulation.* One- and two-story facades visible from a public street, drive or open space shall meet the following minimum standards for articulation. Articulation for buildings three or more stories in height shall be required for the primary entries and the building's main corners.

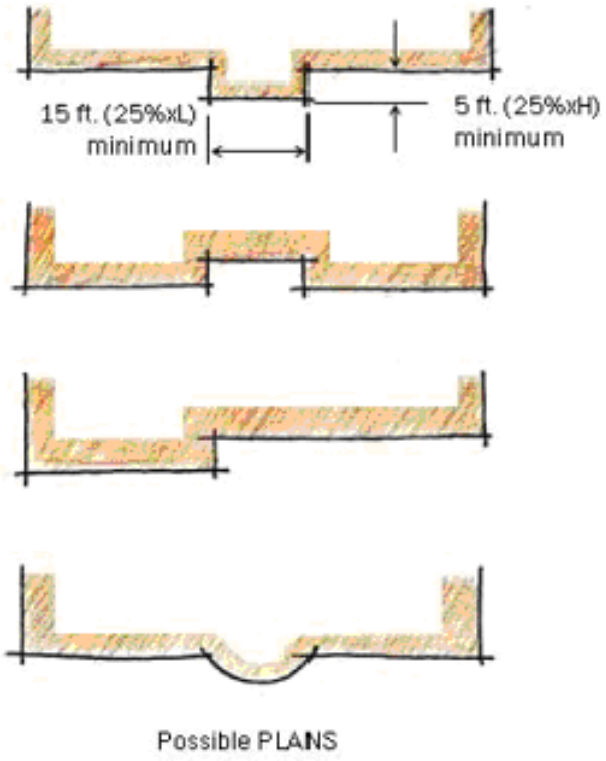
Horizontal articulation. No building wall shall extend for a distance equal to three times the wall's height without having an offset equal to 25 percent of the wall's height, and that new plane shall extend for a distance equal to at least 25 percent of the maximum length of the first plane.

Vertical articulation. No horizontal wall shall extend for a distance greater than three times the height of the wall without changing height by a minimum of 25 percent of the wall's height. Pitched roofs shall count toward achieving vertical articulation, provided they are 65 degrees or less from horizontal.

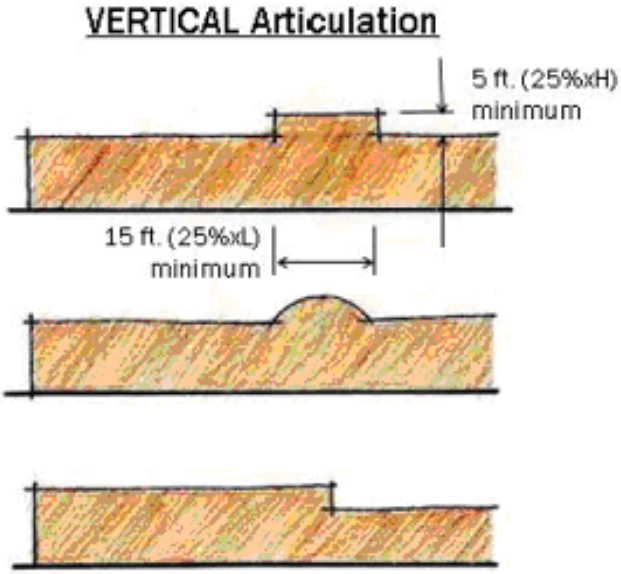
Building Articulation Examples



HORIZONTAL Articulation



Possible PLANS



Possible ELEVATIONS

3. *Architectural features.*

   a. Where clearly visible from a public street, open space or major access drive:

      i. *Roofs.* For buildings with hip, gable or mansard roofs, allowed materials include metal standing seam, slate, clay or concrete tile (barrel or Roman shape).

      ii. *Windows*, except for retail at-grade, shall be vertical in proportion and have at least a three-inch reveal. Vertically proportioned windows which are joined together by a mullion shall be considered as meeting this standard.

   b. *Architectural point system.* All structures shall be designed to incorporate no less than four of the architectural elements from the list below. Buildings over 50,000 square feet must include a minimum of five of the referenced architectural elements.

      i. Canopies, awnings, porticos with colonnade, or arcades for at least 70 percent of the front facade;

      ii. Raised pilasters or quoined corners;

      iii. Vertical elements (landmark feature as defined in this Code);

      iv. Windows and doors framed with stone, cast stone, limestone, or other decorative masonry headers and sills;

      v. Outdoor patios and/or courtyards (landscaped and furnished);

      vi. Decorative ornamentation integrated into the building facade, such as corbels, medallions (non-signage), functioning clocks, niches, wrought iron, balconettes or horizontal and rhythm patterned brickwork; or other architectural features approved by the director.

      vii. Rainwater harvesting system for on-site use.

c. *Exterior facade materials.*

i. *Allowed exterior materials.* Allowed exterior surface materials are categorized into three groups:

Group A. Brick, stone and exterior grade stucco applied in a three-step process. At least 10% of any primary facade shall contain brick or stone.

Group B. Stucco, architectural concrete block with integrated color, factory primed cementitious fiberboard (in the form of lap siding or board and batten), colored or stamped tilt-wall, EIFS (above 14 feet from grade only). Cementitious fiberboard is limited to 20 percent of any facade.

Group C - Accent. Metal, EIFS, wood.

ii. *Prohibited exterior materials.* Prohibited exterior surface materials include metal building panels, cinderblock and aggregate finished surfaces.

iii. *Primary facades.* The following shall apply to all exterior walls of buildings which are clearly visible from a public street, open space, or active storefront:

a) Primary facades, excluding windows, doors, and other openings, shall be constructed of at least 80 percent Group A materials and up to 20 percent Group B materials. However, accent materials from Group C may be allowed in limited application for architectural features.

iv. *Secondary facades.* The following shall apply to all exterior walls of buildings which are not clearly visible from a public street, open space or active storefront, or are constructed on a property line as one of a series of in-line buildings where the wall will become part of a common wall:

a) Walls, excluding windows, doors, and other openings, shall be constructed of a minimum of 20 percent Group A materials and up to 80 percent Group B materials. However, the color of the walls shall match the primary facades.

b) *Wrapping the primary facade treatment.* Secondary facades which are adjacent to the primary facade shall contain the primary facade treatment for at least 10 percent of its area. This may occur as a simple continuation of the primary facade treatment, or elements such as cornices, bases and vertical elements. In all cases, however, wall surface materials shall wrap the corner, except when located on a common property line.

v. At least two materials shall be used on all exterior facades.

vi. Windows and glazing shall be limited to a minimum of 30 percent and maximum of 70 percent of each building elevation facing a street, major Access Drive or side yard greater than ten feet. This does not apply to big boxes or industrial buildings. See subsection 6.b below for special requirements for retail at-grade.

vii. *Color.*

a) The dominant color of all buildings shall be muted shades of color. Black shall not be used except as an accent color.

There are no restrictions on accent colors which comprise less than 1.0 percent of the building face, except that bright and florescent colors are prohibited.

b) Roof colors shall be a muted shade of cool gray, warm gray, brown or red.

c) The planning director may refer the interpretation of appropriate colors to city council.

4. *Townhouse district standards.*

a. All townhouse developments within the overlay are subject to site plan review and approval by director. The site plan shall show the typical layout of the townhouse lot and an overall layout of the development.

b. All townhouse developments shall provide rear entry off-street parking with a minimum two-car garage. Alleys servicing these developments shall be a minimum 20 feet in width.

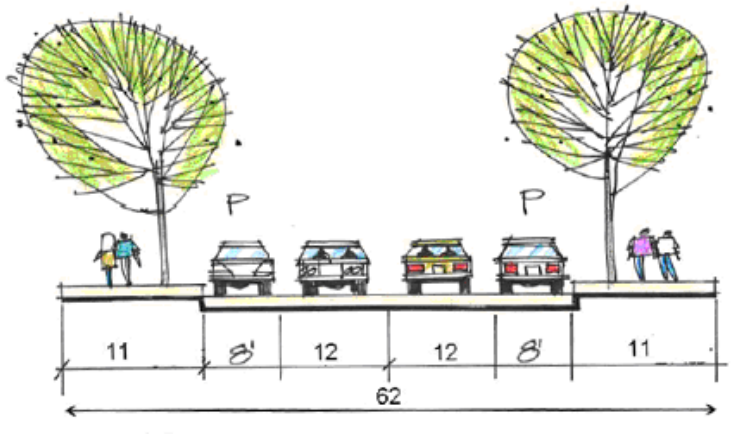
c. *Open space.*

i. Ten percent of the total townhouse development shall be dedicated as usable open space. This area shall be platted as common area; open space must be usable and serve as an amenity for residents.

ii. Open space shall contain at least one large canopy tree and one small ornamental tree for each 5,000 square feet of required open space. The location of open space should endeavor to preserve existing trees.

d. The maximum height of townhouses shall be at least two stories but may not exceed three stories or 50 feet whichever is less.

e. Streets adjacent to townhouses shall have a minimum 62-foot right-of-way or public access driveway. All townhouses shall be platted on individual lots and require public street frontage, but cannot have double street frontage.



f. Parallel parking shall be provided along the curb in the right-of-way.

g. The front building setback shall be a minimum of six feet and a maximum of 15 feet.

h. Three zones between back of curb and the building line:

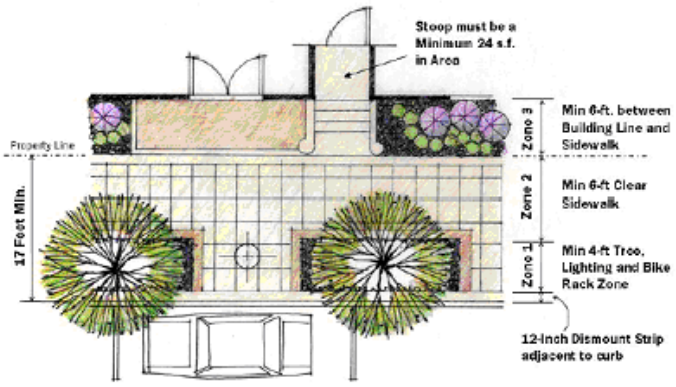
i. Streetscape zone - a minimum four-foot wide area adjacent to the back-of-curb for urban trees, street furniture plus a one-foot dismount strip. An urban tree in a tree well shall be provided for each 25 linear feet in the streetscape zone. For each two urban trees, a bike rack, trash receptacle, bench, pedestrian streetlights, or other approved street furniture is required.

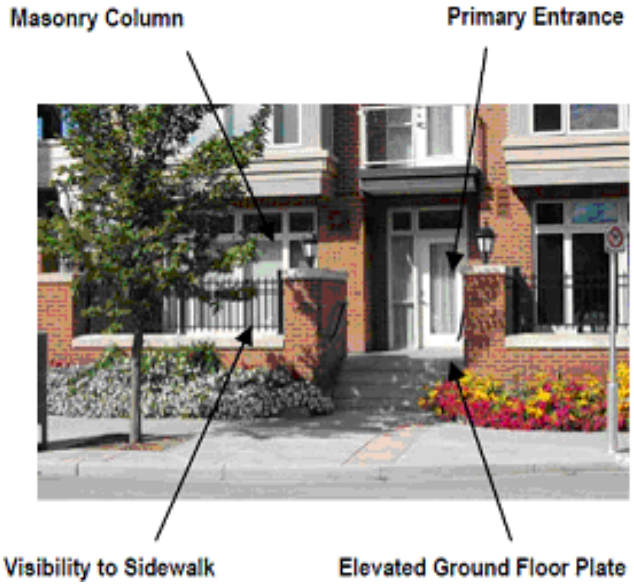
ii. Sidewalk zone (2) - a minimum six-foot wide clear sidewalk;

iii. Landscape zone (3) - a minimum six-foot landscape/patio area adjacent to the building. In order to differentiate the different zones (public v. private) of the sidewalk and the townhouse, a three-foot high wrought iron, masonry, or cast stone fence may be constructed. Balcony and patio railings and fences shall be largely transparent and constructed of tempered glass, wrought iron or metal. Masonry columns may be used on patios provided that they are used as accents. Wood fences and railings and chain-link fencing are prohibited for balconies and patios.

i. All buildings which have residential unit floor plates within six feet of grade shall include a primary front door entrance into the unit which may be accessed from the sidewalk.

j. The front door entry shall be located a minimum of two feet above the sidewalk elevation and include a minimum 24 sf stoop. If pre-empted by topographic conditions, the entry may be lowered in elevation, subject to approval of the director. However, up to 50 percent of units [may be] built at grade for ADA accessibility from the sidewalk provided there is a metal fence (in the form of metal tubing or wrought iron) separating the private area from the public sidewalk area.





k. A 20-foot rear building setback shall be applied from the alley right-of-way which includes a five-foot fence setback with an urban tree for each property.

l. The minimum side yard is five feet between groups of three to six townhouses; side yard at corner shall be the same as for a front yard, and requires all three zones.

m. The minimum lot width is 25 feet. Lot depth is a minimum of 100 feet.

n. The maximum block length should not exceed 400 feet.

o. A ten-foot wide rear landscape buffer shall be provided and shall contain one tree for each 30 linear feet.

p. Units must also include windows which provide residents a view of the street or public access easement and sidewalk area.

5. *Residential at-grade.* In developments that contain residential at-grade, the front door entry shall be located a minimum of two feet above the sidewalk elevation and include a minimum 24 sf stoop. If pre-empted by topographic conditions, the entry may be lowered in elevation, subject to approval of the director. However, up to 50 percent of units [may be] built at grade for ADA accessibility from the sidewalk provided there is a metal fence (in the form of metal tubing or wrought iron) separating the private area from the public sidewalk area. (See diagram in townhouse standards above.)

6. *Retail and mixed use building standards.*

a. The ground floor entry must be located at the approximate elevation of the adjacent sidewalk and should be inset by at least four feet.

b. Retail uses adjacent to the sidewalk at-grade shall:

i. Be constructed to meet fire code separation from any other uses constructed above;

ii. Have a minimum clear height of 14 feet between finished floor and the bottom of the structure above. Mezzanines within the retail space shall be allowed per building code;

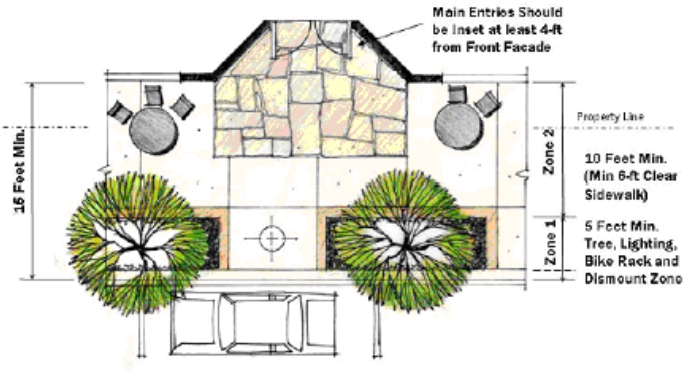
iii. Have an awning or canopy which extends at least six feet over the sidewalk for at least 75 percent of the frontage on any portion of a building. Such awning or canopy shall maintain a minimum 7.5-foot clearance over the sidewalk; and

iv. Have highly transparent glass windows for at least 60 percent, but no greater than 80 percent, of the ground floor facade. The ground floor shall be excluded from the minimum and maximum window requirement above.

c. Two zones between back of curb and the building line:

i. Streetscape zone - a minimum four-foot wide area adjacent to the back-of-curb for urban trees, street furniture plus a one-foot dismount strip. An urban tree in a tree well shall be provided for each 25 linear feet in the streetscape zone. For each three urban trees along a sidewalk, a bike rack, trash receptacle, bench, lighted bollard, or other approved street furniture should be provided.

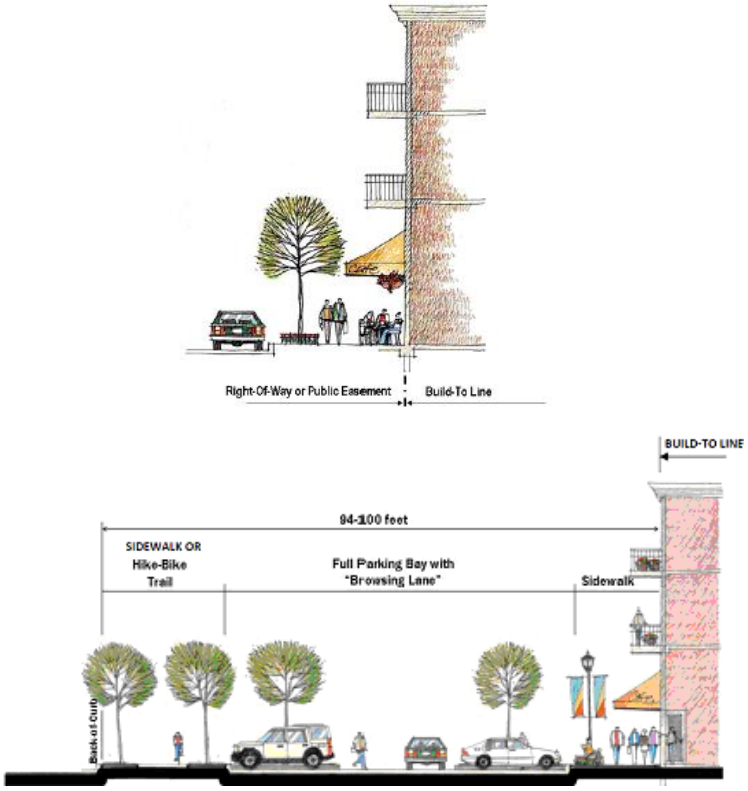
ii. Sidewalk zone (2) - a minimum ten-foot wide sidewalk. The sidewalk zone may be encroached by a three-foot high fenced patio area for dining, as long as a minimum six-foot width is maintained for a pedestrian way.



d. *Build-to line.* At least 70 percent of the front building face shall be constructed within a minimum of 15 feet from the back of curb and a maximum of 20 feet when adjacent to a major access drive. The remainder of the building frontage may be set back further to allow such things as outdoor dining,

plazas, entry courts and pass-throughs to parking. For developments where there is parking between the building and property line, the build-to line shall be 100 feet from the back-of-curb.

Build-To Diagrams



(Ordinance 10-049 adopted 11-16-10; 2008 Code, ch. 14, app. C, sec. III)

LOCAL GOVERNMENT CODE
TITLE 12. PLANNING AND DEVELOPMENT
SUBTITLE C. PLANNING AND DEVELOPMENT PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT
CHAPTER 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

City of Leon Valley

Planning & Zoning Commission
Capital Improvements Advisory Committee (CIAC)

Overview – Impact Fees

- Cities are allowed to charge developers a fee for the "impact" their new developments will have on the City's water and sewer systems
- The fees are calculated based on land use assumptions (growth patterns) or with the adoption of system-wide land use assumptions
- State law requires assumptions to be reviewed by a professional engineer & updated at least every 5 years

Overview - Impact Fees

- State and local law allows the Planning & Zoning Commission to be appointed as the Capital Improvements Advisory Committee (CIAC) to perform the reviews and updates
- Impact fees collected may only be spent on new improvements to water and sewer facilities and equipment attributed to growth
- Future water and sewer infrastructure needs are identified and categorized into a Capital Improvements Plan (CIP)
- The basis for the forecast of future growth patterns is the City's Master Plan

CIAC Duties

- To advise and assist the City Council in adopting land use assumptions
- To review the Capital Improvements Plan (CIP) and file written comments
- To monitor and evaluate the implementation of the CIP

CIAC Duties

- To file semi-annual reports regarding the progress of the CIP and report to the City Council any perceived inequities in implementing the Plan or imposing the impact fee
- To advise the City Council of the need to update or revise the land use assumptions, CIP, and impact fees

The Process

- Law requires updates every five years
- During the five years, the CIAC is required by City Code to monitor the CIP & file written reports to the City Council every 6 months, detailing the progress or deviation of/from the plan
- At the 5-year mark, the CIAC should prepare a report for City Council, advising them if an update is needed
- Within 60 days of receiving the report, the Council is to set a date for a public hearing to determine the need for an update

The Process

- If an updated plan is needed, the Council will cause an update to be prepared by a Professional Engineer
- Engineer submits his report to the CAIC for review
- CAIC makes recommendation based on future land planning and assumptions or on system-wide assumptions
- A date is set for the public hearing on the new fees, with fees and supporting documents made available to the public at City Hall
- Notice of hearings are sent to interested parties and is published in the official newspaper

Current Conditions

- Staff recommends revising the Leon Valley Code of Ordinances to remove the mandate for bi-annual review of the fees
- The City Engineer determined that the current impact fees were adequate to support new development during the past five years
- City Engineer recommends increasing the fees for the purchase of 300 more acre-feet of water rights to support future growth
- No other improvements are needed at this time

Conclusion

- Recommend convening the CIAC and conducting a meeting to start the process of updating the fees
- Recommend in-depth study of growth patterns during the next Master Plan review to determine future water and sewer supply needs