

# **A Primer on Impact Fees**

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# Impact Fees Are Governed by State Law

- Chapter 395, Texas Local Government Code establishes specific requirements for adoption and collection of impact fees
- An impact fee may not be imposed except as authorized by Chapter 395 (Sec. 395.011)

# What is an Impact Fee?

- Any charge or assessment charged to *new developments* in order to pay for the cost of capital improvements
- Water, sewer, drainage and roadways

# What is an Impact Fee?

- Exceptions:
  - Park dedication or park fees
  - Dedication of rights-of-way or easements or construction or dedication of on-site or off-site water, sewer, drainage or streets that is necessitated by and attributable to the new development
  - Oversizing or pro rata fees for water or sewer lines only

# Requirements for Adopting an Impact Fee

- Adopt land use assumptions
- Adopt capital improvements plan
- Establish “service units” and make a mathematical calculation

# Land Use Assumptions

- Land use assumptions is a document that projects changes in land uses, densities, intensities, and population over a 10 year period
- Land use assumptions are used to determine what capital improvements should be included in the capital improvements plan

# Capital Improvements Plan

- Lists those capital improvements that are needed to serve new development
- Must include the following:
  1. Existing capital improvements and cost to upgrade
  2. Total capacity and current level of usage of existing capital improvements
  3. Projected capital improvements “necessitated by and attributable to” new development

# Capital Improvements Plan

4. The quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements
5. The projected number of service units necessitated by and attributable to new development
6. The projected demand for capital improvements over a reasonable period of time not to exceed 10 years

# Capital Improvements Plan

7. A credit for ad valorem taxes and utility service revenues to be derived from new developments (or a 50% credit)
  - Sec. 395.014

# Calculation of Impact Fee

- An impact fee is derived by a mathematical calculation
- The impact fee per service unit may not exceed the cost of capital improvements, less the required tax/utility credit, divided by the number of service units
  - Section 395.015

# Service Areas

- Impact fees must be determined for specific “service areas”
  - A service area is the area determined to be served by the capital improvements specified in the capital improvements plan
  - Water and sewer service areas may include all land within the corporate boundaries or ETJ

# Service Areas

- Roadway service areas are limited to the corporate boundaries and shall not exceed six miles
- Drainage service areas shall not exceed the area actually served by the drainage facilities and shall not extend across watershed boundaries

# What is a Service Unit?

- Defined as a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development

# What is a Service Unit?

- The use of the property determines the service unit, e.g. a single family dwelling = one service unit
  - Typically based on water meter size for water and sewer impact fees
  - Based on trip generations for roadway impact fees
  - Based on impervious coverage for drainage fees
- Must be calculated using generally accepted engineering or planning standards

# Procedures for Adopting Impact Fees

- Notice and public hearings
  - City Council must adopt an order, ordinance or resolution establishing a public hearing date
  - The land use assumptions and capital improvements plan must be available prior to the public hearing

# Procedures for Adopting Fees

- Notice must be sent to persons who have requested notice and must be published more than 30 days before the hearing
- Land use assumptions and capital improvements plan must be approved within 30 days of the public hearing
- Similar hearings and notice required for adoption of impact fee

# Capital Improvements Advisory Committee

- Must be appointed
- Must have at least 5 members
- Must have 40% of members from real estate, development or building industries
  - Exception: May appoint P&Z as CIAC, only one member (or ad hoc voting member) must be representative of real estate, development or building industries
- Must review and file written comments at least 6 business days before the public hearing on impact fees

# Assessment and Collection of Impact Fees

- Impact fees are assessed at time of recordation of plat
- Collected at time of issuance of building permit or connection to water and sewer system
- Once an impact fee is assessed, it may never be increased
  - Section 395.017

# Assessment and Collection of Impact Fees

- May not collect impact fees where services are not currently available unless:
  - Commit to commence construction within 2 years and have service available within reasonable period of time – not to exceed 5 years; or
  - Owner requests that capacity be reserved for future development

# Specific Impact Fee Issues

- Any construction, contributions to, or dedication of off-site roadway facilities *agreed to or required* must be credited against roadway impact fees
  - Section 395.023
- Double dipping is not allowed
  - Section 395.001(4)

# Specific Impact Fee Issues

- Can charge impact fees for city's share of state highway improvements
  - 395.001(8)
- Can charge impact fees to other political subdivision
  - 395.022
- Must use “qualified professionals” to prepare CIP
  - 395.014
  - Can include costs of engineers and financial consultants who are not employees in impact fee
    - 395.012

# Other Compliance Issues

- Impact fees must be updated every 5 years
  - Section 395.052
- May determine that no update is necessary if no written request is received
  - Section 395.0575
- The mayor must file written certification with AG verifying compliance with impact fee statute – prior to beginning of fiscal year

# Other Compliance Issues

- May not place a moratorium on new development
- 90 days after adoption to contest impact fees
- CIAC must file semi-annual reports of any perceived inequities in implementing the CIP
  - 395.058(c)

# Refund of Impact Fees

- If requested by the owner when service is denied
- Where city fails to make service available within 5 years
  - 395.025(a)
- If impact fee is not spent within 10 years
  - 395.025(c)
- Refunds bear interest
- Impact fees must be deposited in separate interest-bearing
  - 395.024

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