

MINUTES
CITY COUNCIL MEETING

November 17, 2015

CALL TO ORDER – Roll Call and Determination of a Quorum

The Parker City Council met in a regular meeting on the above date at Parker City Hall, 5700 E. Parker Road, Parker, Texas 75002.

Mayor Marshall called the meeting to order at 6:00 p.m. Council members Stone, Standridge, Levine, Pettie and Taylor were present.

Staff Present: City Administrator Jeff Flanigan, Finance/H.R. Manager Johnna Boyd, City Secretary Patti Scott Grey, City Attorney Jim Shepherd, Fire Chief Mike Sheff, Police Chief Bill Rushing, and Police Captain Kenneth Price

Mayor Marshall recognized Carol Levine, Mayor Pro Tem Levine's mother, visiting from Phoenix, Arizona.

PLEDGE OF ALLEGIANCE

AMERICAN PLEDGE: Visitor Carol Levine led the pledge.

TEXAS PLEDGE: Captain Kenneth Price led the pledge.

PUBLIC COMMENTS The City Council invites any person with business before the Council to speak. No formal action may be taken on these items at this meeting. Please keep comments to 3 minutes.

No comments

INDIVIDUAL CONSIDERATION ITEMS

1. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION 2015-496 MAKING APPOINTMENTS TO THE PLANNING AND ZONING COMMISSION. [FLANIGAN]

City Administrator Flanigan spoke briefly about the item, stating long time Planning and Zoning (P&Z) Commission Member Mr. Leonard Stanislav resigned, leaving a vacancy. The City received one (1) P&Z Commission application from JR Douglas, which was provided in the City Council packet. There was some discussion in regard to P&Z Commission Chairperson, Vice Chairperson, and Secretary with Russell Wright and Joe Lozano, continuing as Chairperson and Vice Chairperson respectively and Cleburne Raney being recommended for Secretary.

Mayor Pro Tem Levine moved to approve the recommended P&Z Commission appointments, specifically as following:

Place 3	Wei Wei Jeang	November 30, 2017
and		
Alternate 3	JR Douglas	November 30, 2017
with		

Chairperson	Russell Wright
Vice Chairperson	Joe Lozano
Secretary	Cleburne Raney

Councilmember Stone seconded the motion. Councilmember Pettie voiced her concerns that Resolution No. 2013-433 (Boards and Commissions Membership Selection) (Repealing Res. No. 2011-348) was not being followed. She asked City Administrator Flanigan if City Staff checked the candidates' basic qualifications and whether interviews were performed. City Administrator Flanigan said there was one applicant. Mayor Marshall said he and the City Administrator spoke with the only candidate and recommended his appointment. Councilmember Standridge asked if the current P&Z Commission members were consistent in their attendance. Mayor Marshall responded the current members were consistent and active.

MOTION: Mayor Marshall restated the motion. Mayor Pro Tem Levine made a motion to make the following Planning and Zoning Commission (P&Z) appointments:

Place 1	Russell Wright	November 30, 2017
Place 3	Wei Wei Jeang	November 30, 2017
Place 5	Jasmat Sutaria	November 30, 2017

The next two (2) were previously appointed (Res. No. 2014-465):

Place 2	Joe Lozano	November 30, 2016
Place 4	Cleburne Raney	November 30, 2016

The Mayor then read the remaining Planning and Zoning Commission (P&Z) appointments:

Alternate 1	Tony Cassavechia	November 30, 2017
Alternate 2	David Leamy	November 30, 2017
Alternate 3	JR Douglas	November 30, 2017

with Russell Wright being named Chairperson; Joe Lozano being named Vice Chairperson; and Cleburne Raney being named Secretary. Councilmembers Levine, Pettie, Standridge, Stone and Taylor voting for. Motion carried 5-0.

2. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON RESOLUTION 2015-497 MAKING APPOINTMENTS TO THE ZONING BOARD OF ADJUSTMENTS. [FLANIGAN]

City Administrator Flanigan spoke briefly about the Zoning Board of Adjustment (ZBA) item, stating ZBA Commission Member Mr. Keith Pettie resigned, leaving two (2) vacancies. The City received two (2) ZBA Commission applications, one from James Clay and one from Phil Steiman, which were also provided in the City Council packet. Mr. Flanigan recommended former ZBA Alternate One Brian Deaver be moved to the ZBA Place 5 Voting Member and the two (2) applicants be appointed Alternate One and Two respectively. There was some discussion in regard to the ZBA Commission Chairperson and Vice Chairperson with Jack Albritton, continuing as Chairperson and Don Dickson being recommended for Vice Chairperson. Councilmember Pettie again voiced her concerns that the Boards and Commissions Membership Selection Resolution was not being followed. She asked City Administrator Flanigan if interviews were performed. Mr. Flanigan said no. City Administrator said he had a brief conversation with the applicants and recommended their appointment.

MOTION: Councilmember Standridge moved to approve the ZBA appointments of Brian Deaver, James Clay, and Phil Steiman with Jack Albritton as Chairperson and Don Dickson as Vice Chairperson. Councilmember Stone seconded

Mayor Pro Tem Levine read a portion of Resolution No. 2013-433 (Boards and Commissions Membership Selection), ***“Section 3. Interview Process. Each Board may interview, select, and present final recommendations to Council, when Board positions are vacant.”*** He stressed the words ***“may interview, select, and present”***. Mayor Pro Tem asked City Attorney Shepherd if we were in compliance. Mr. Shepherd said we were in compliance. After a brief discussion, the City Attorney commented the resolutions should be followed and if the Council was doing something different, the resolution should be changed to reflect that procedure. Mayor Marshall asked if there was any more discussion.

Councilmembers Levine, Pettie, Standridge, Stone and Taylor voting for. Motion carried 5-0.

3. CONSIDERATION AND/OR ANY APPROPRIATE ACTION REGARDING RESPONSES TO REQUEST FOR PROPOSALS FOR MUNICIPAL SOLID WASTE SERVICES. [FLANIGAN]

City Administrator Flanigan said the City received qualified responses to the Requests for Proposals (RFPs). The Contract Committee voted unanimously to move forward with Republic Services, Inc. Mayor Marshall reiterated the committee reviewed bid comparisons of three (3) RFPs submitted, recommended Republic Services, Inc. The City Administrator recommended to increase the administration fee from \$1.00 to \$1.59 for a total of \$19.71.

MOTION: Mayor Pro Tem Levine moved to have the City Attorney negotiate a contract with Republic Services, Inc. for the Municipal Solid Waste Services. Councilmember Standridge seconded. Mayor Marshall asked City Attorney Shepherd and Republic Services Manager Bernas to meet, negotiate the contract, and move forward. Councilmembers Levine, Pettie, Standridge, Stone and Taylor voting for. Motion carried 5-0.

4. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON WATER AND ROADS IMPACT FEES [SHEPHERD]

City Attorney Shepherd reviewed a document he emailed to City Council after the packets went out called "The Nuts and Bolts of IMPACT FEES" (Exhibit 1), specifically the bolded areas of the documents.

After questions and discussion, Mayor Marshall asked the City Attorney if he had a sample ordinance.

After additional discussion, Mayor Marshall stated the discussion of impact fees was a direct result of the November 10, 2015 2015-2016 Annual Planning Session. With this information, there will probably be a series of questions and discussions, but hopefully the City Council should be able to start the process. He asked for any additional comments or questions.

Warner Land Advisor, L.P. Land Developer Steve Sallman suggested looking at various cities in Northwest Texas have done, comparable size cities, and as well as various regions in Texas.

Councilmember Stone suggested creating an advisory committee to start making recommendations. Mayor Marshall asked for counsel advice. City Attorney Shepherd said he would go back to Page 3, D. Implementation Process and follow that procedure. He suggested holding off on the consultant for a little while. Mr. Shepherd recommended that City Council get far enough into the impact fee discussion to determine whether there would be enough of a fee generated or whether cost was prohibitive, to see if this was a good idea to pursue.

Mayor Marshall, in response to Councilmember Stone suggestion, stated council will ask staff to gather additional information, review the city attorney's ordinance, and have our city engineer come to a future City Council meeting to address concerns.

No action was taken.

5. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON A RESOLUTION AS RELATES TO ROAD ALIGNMENT ADJACENT TO THE DONIHOO FARM DEVELOPMENT AND THE PLANO INDEPENDENT SCHOOL DISTRICT PROPERTY. [FLANIGAN]

MOTION: Mayor Pro Tem Levine moved to have the item tabled to the next meeting. Councilmember Taylor seconded with Councilmembers Levine, Pettie, Standridge, Stone and Taylor voting for. Motion carried 5-0.

6. FIRE DEPARTMENT UPDATE —CHIEF SHEFF

Fire Chief Sheff said as he understood this item was to further discuss the proposal received and the ISO rating. He said he had not received the ISO information from

Mike McCormick, but he would email that information once it was received. The Chief said he would address questions.

Councilmember Standridge voiced his concern that City of Parker conveys all the good things happening in the Parker Fire Department. Fire Chief Sheff explained the City Fire Department had a cascading system in place that was automatic to ensure our citizens receive prompt emergency service, in the form of automatic aid agreements as well as agreements with the dispatch center as to the time frame or response time. Councilmember Standridge said there was concern there had been calls, but no response. Fire Chief insisted all calls have been answered to his knowledge there had never been an instance where someone did not show or a call went unanswered. It may have been through our mutual aid agreements with Lucas and Murphy.

No action was taken.

ROUTINE ITEMS

7. FUTURE AGENDA ITEMS

Mayor Marshall asked if there were any items to be added to the future agenda. There being no response.

8. ADJOURN

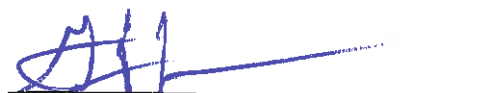
Mayor Marshall adjourned the meeting at 7:12 p.m.



ATTESTED:


Patti Scott Grey, City Secretary

APPROVED:


Mayor Z Marshall

Approved on the 8th day
of December, 2015.

The Nuts and Bolts of

IMPACT FEES

A. Origin of Impact Fees

The authority of local governments to adopt impact fees originated in 1987. During the 70th Legislature, Regular Session, the Legislature adopted S.B. 336, which was included in Vernon's Texas Civil Statutes as Article 1269j-4.11. These provisions were later codified as Chapter 395, Texas Local Government Code, and have been amended numerous times since then. Prior to the adoption of these statutory provisions, similar exactions whereby municipalities attempted to "make growth pay for itself" were imposed under the names of "capital recovery fees," "community impact fees," or "escrow fees." However, with the adoption of S.B. 336, governmental entities may only enact and impose impact fees in accordance with these statutory provisions. Also, § 395.074 provides that any impact fee in place on June 20, 1987, must be replaced by an impact fee adopted under Chapter 395, and such replacement had to be accomplished on or before June 20, 1990.

B. Geographic Application of Fees

Covered political subdivisions may impose impact fees on land within their corporate boundaries or extraterritorial jurisdiction ("ETJ") by complying with the chapter, but fees may not be imposed in the ETJ for roadway facilities. (Tex. Local Gov't Code § 395.011(b) (West 2005). However, a city may contract to provide capital improvements, except roadway facilities, to an area outside its city limits and ETJ, and may charge an impact fee under the contract, but if an impact fee is charged in that area the city must comply with Chapter 395. (Tex. Local Gov't Code § 395.011(c) (West 2005).

1. Use of Impact Fees

The guiding principle of impact fees is that growth should pay for itself. Rather than burdening existing citizens and taxpayers with the cost of infrastructure needed to serve new development, the developers will pay for a share of that cost.

Impact fees can only be used for purposes specified in Chapter 395. These purposes are capital improvement costs "necessitated by and attributable to" 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. Tex. Local Gov't Code §395.001(4) (West 2005). The defined terms in Chapter 395 are very important, and must be closely examined in order to determine the validity of the proposed use of the impact fee funds.

Impact fees by any other names may still be impact fees, and are still covered by Chapter 395. *Black v. City of Killeen*, 78 S.W.3d 686, 697-698 (Tex. App.—Austin, 2002, review denied). However, a fee assessed by local ordinance is not an impact fee merely because it is greater than the actual cost associated with the service for which it is assessed. And, unless the revenues generated from the city's water and sewer tap fees are actually used for capital improvements, they also are not impact fees. *Id.*

"Amortized charges", "lump-sum charges", "capital recovery fees", "contributions in aid of construction", and any other fee that functions like an impact fee is considered to be an impact fee. Tex. Local Gov't Code § 395.001(4) (West 2005).

However, “impact fee” does not include:

- (i) dedication of land for public parks or payment in lieu of the dedication to serve park needs,
- (ii) dedication of right-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;
- (iii) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or
- (iv) other pro rata fees for reimbursement of water or sewer main or lines extended by the political subdivision.

Specific items are payable by revenues obtained from the impact fee. The costs of constructing capital improvements or facility expansions are, of course, eligible to be paid from the impact fee. These costs include, and are limited to, the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorneys’ fees, and expert witness fees), and 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. Tex. Local Gov’t Code § 395.012(a) (West 2005). This means the city engineer, who is not an employee, will have fees which may be included in the impact fee costs.

Projected interest charges and other finance costs may also be included in determining the amount of impact fees only if the impact fees are actually used to pay the principal and interest on bonds, notes, or other obligations of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan. Tex. Local Gov’t Code § 395.012(b) (West 2005). A specific exemption to the requirement that the engineer must not be employed by the political subdivision is provided for the Edwards Underground Water District or a river authority that is authorized by state law to charge fees that function as impact fees. Tex. Local Gov’t Code § 395.012(c) (West 2005).

C. Prohibited Uses of Impact Fees

As a general rule, the key words to keep in mind when determining whether a proposed use of impact fees is allowed are: “capital improvements,” “new,” and “capital improvements plan.” Chapter 395 specifically identifies prohibited uses of impact fee revenues:

- (i) construction, acquisition, or expansion of public facilities or assets other than capital improvements or facility expansion identified in the capital improvements plan;
- (ii) repair, operation, or maintenance of existing or new capital improvements or facility expansions;
- (iii) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;
- (iv) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing development;

- (v) administrative and operating costs of the political subdivision (except for the Edwards Underground Water District or a river authority that is authorized to charge fees that function as impact fees); and
- (vi) principal payments, interest, or other finance charges on bonds or other indebtedness (except as provided in § 395.012).

D. Implementation Process

The procedural requirements for adopting an impact fee are detailed, and need to be followed to the letter.

1. Approval by Municipality

The process to be used by a municipality is set out in Subchapter C of Chapter 395. In most cases, a city will hire a consultant to help in the process because of the very technical aspects of the information required to be obtained and developed.

The two most important documents upon which the impact fee must be based are the land use assumptions and the capital improvements plan. These form the basis for the impact fee ordinance. A political subdivision may not place a moratorium on new development for the purpose of awaiting the completion of all or any part of the process of developing, adopting, or updating the land use assumptions, the capital improvements plan, or the impact fee. Tex. Local Gov't Code § 395.076 (West 2005). However, moratoria for non-impact fee matters are permissible, such as a moratorium on a zoning ordinance that is being amended.

a. *Capital Improvements Advisory Committee*

The city must first appoint a capital improvements advisory committee that must have at least five members. Tex. Local Gov't Code § 395.058 (West 2005). Many cities use their Planning and Zoning Commission as the committee, but if the service area includes all or part of the city's ETJ, at least one member of the advisory committee must represent that area. **One member of the committee must be a representative of the real estate, development, or building industry.** *Id.*

The role of the advisory committee is to advise and assist in the preparation of the land use assumptions that will, in turn, be used in the preparation of the capital improvements plan. The production of semi-annual reports and updates to the impact fee program are the responsibility of the advisory committee. (See Ex. A, attached)

b. *Land Use Assumptions*

The advisory committee will help determine the scope of the impact fee ordinance, and must be guided by the statutory provisions identifying acceptable and prohibited expenditures of impact fee revenues.¹⁰ The committee then prepares the land use assumptions and the capital improvements plan.

The land use assumptions are a “description of the service area and projections of changes in land uses, densities, and population in the service area over at least a 10-year period.” Tex. Local Gov't Code § 395.001(5) (West 2005).

The types of analyses undertaken may include the following:

- (i) analysis of existing conditions – population, density, zoning classifications, and other land use analyses;
- (ii) determination of service area – for water and wastewater facilities, this is usually the entire city and its ETJ; for roadway facilities, the service area is limited to city limits, not exceeding six miles; for stormwater, drainage, and flood control facilities, the area is limited to all or part of the land within the city limits or its ETJ actually served by these facilities;
- (iii) projection of 10-year growth patterns – involves a review of land use data, zoning classifications, density calculations, projected growth, population trends, employment projects, and the like;
- (iv) “build-out” growth projections – based on the holding capacity of the land area of the city, anticipated land use types, densities, and ultimate populations.

Once the land use assumptions are developed, the city must hold a public hearing, taking care to follow the statutory notice and publication requirements. (The city may consolidate this public hearing with the hearing required prior to adoption of the capital improvements plan.) Tex. Local Gov’t Code §§ 395.042, 395.043, 395.044 (West 2005).

c. *Capital Improvements Plan*

The capital improvements plan (“CIP”) must be prepared as directed by the statute, as follows:

- (i) it must be prepared by a qualified professional engineer;
- (ii) it must describe 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;
- (iii) it must analyze the total capacity and current levels of usage and commitments for usage of capacity of the existing capital improvements;
- (iv) it must describe the capital improvements or facility expansions and their costs necessitated by and attributable to the new development based on approved land use assumptions;
- (v) it must contain a table establishing the specific level or quantity of use by service unit for each category of improvements, and must show the ratio of a service unit to various types of land uses, including residential, commercial, and industrial;
- (vi) it must show the total number of projected service units necessitated by and attributable to the new development;
- (vii) it must identify the projected demand for capital improvements required by the new service units projected over not longer than 10 years, and
- (viii) it must include a plan for awarding credits for ad valorem taxes and utility service revenues generated by the new service units that is used for the payment of improvements included in the CIP, or a credit equal to 50% of the total projected cost of implementing the CIP.

A public hearing must be held prior to adopting the CIP; again, specific notice and hearing requirements must be adhered to. Tex. Local Gov’t Code § 395.049 (West 2005).

d. *Impact Fee Ordinance*

The city must adopt an impact fee ordinance within 30 days of the hearing on the CIP, and the ordinance cannot be adopted as an emergency measure. Tex. Local Gov't Code § 395.051 (West 2005).

The ordinance should include provisions for the administration of the impact fees, the time of assessment of the fees, the time of collection of the fees, for offsets and credits of impact fees, a schedule of maximum fees and actual fees to be collected, an accounting system for funds collected, and refund provisions.

Impact fees are calculated by dividing the total cost of facilities required to serve new development by the total number of new service units expected.

The maximum amount of the fee per service unit may not exceed the amount determined by:

- (i) subtracting the amount determined in the plan for awarding credits for ad valorem taxes and utility service revenues generated by the new service units that is used for the payment of improvements included in the CIP, or**
- (ii) a credit equal to 50% of the total projected cost of implementing the CIP, from**
- (iii) the capital improvements or facility expansions and their costs necessitated by and attributable to the new development based on approved land use assumptions, and**
- (iv) (iii) dividing that amount by the total number of projected service units. Tex. Local Gov't Code § 395.015 (West 2005)**

e. Fee Assessment and Collection

“Fee assessment” means a determination of the amount of the impact fee in effect on the relevant date, and is the maximum amount that can be charged per service unit of the development. The city does not need to take any action to “assess” the fee. Tex. Local Gov't Code § 395.016(f) (West 2005). The time at which the fees may be assessed depends on when the fees were adopted and the land is platted. For fees adopted after June 20, 1987, and for land platted after that date, the fee may be assessed before or at the time of recordation of the subdivision plat or other plat under Local Government Code Chapter 212. Tex. Local Gov't Code § 395.016(d) (West 2005). If new development is to occur without platting, the city may assess the fee at any time during the development and building process. Tex. Local Gov't Code § 395.016(e) (West 2005).

After the fee is assessed, it cannot be increased against a tract for any reason, unless the number of service units increases. Tex. Local Gov't Code § 395.017 (West 2005).

Political subdivisions and other governmental entities may pay impact fees. Tex. Local Gov't Code § 395.022(a) (West Supp. 2013). A school district is not required to pay an impact fee under Chapter 395 unless its board of trustees enters into an agreement to pay the fees, under terms the board of trustees considers advisable. Tex. Local Gov't Code § 395.022(b) (West Supp. 2013).

The impact fee may be collected at different times. If the city has water and wastewater capacity available, the fees are to be collected at the time of issuance of a building permit. Also, if such capacity is available and the platted land is outside the city limits, the city may shall collect the fee at the time application is made for an individual meter connection to the city's system. For political subdivisions that do not issue building permits in the area where the fee applies, the fee shall be collected at the time an application is filed for an individual meter connection. Tex. Local Gov't Code § 395.016(d) (West 2005). If development is to occur without platting, the fee may be collected at either the time of connection to the system or at the time the political subdivision issues a building permit or certificate of occupancy. Tex. Local Gov't Code § 395.016(e) (West 2005).

A political subdivision and the owner of land that has a recorded plat may enter into an agreement providing for the time and method of payment of the impact fees. Tex. Local Gov't Code § 395.018 (West 2005).

f. Post-Adoption Requirements

The advisory committee is required to file semi-annual reports with respect to the progress of the CIP and any perceived inequities in implementing the plan or imposing the fee. Tex. Local Gov't Code § 395.058(c)(4) (West 2005). In addition, the advisory committee is to advise the political subdivision of the need to update or revise the land use assumptions, CIP, and impact fee. Tex. Local Gov't Code § 395.058(c)(5) (West 2005).

The governing body is under a continuing duty to update the land use assumptions and CIP at least every five years, beginning on the date that the CIP is adopted. Tex. Local Gov't Code § 395.052 (West 2005). Public hearings on the updated assumption and CIP are required. Tex. Local Gov't Code § 395.054 (West 2005). If the governing body determines after the public hearing that no changes are needed, it must give notice of that determination. If any person files a written request that the land use assumptions, CIP, or impact fee be updated, the governing body must perform the update.

g. Refunds and Exemptions

Refunds of paid impact fees are required in certain instances. If existing facilities are available and service is denied, or if the political subdivision has failed to commence construction within two years, or if service is not available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed (not to exceed five years), the property owner may request a the political subdivision is required to provide the refund. Tex. Local Gov't Code § 395.025(a) (West 2005).

Funds collected but not spent within 10 years after payment must be refunded. Tex. Local Gov't Code § 395.025(c) (West 2005). All refunds must bear interest from date of collection to date of refund at the statutory rate, and shall be made to the record owner of the property at the time the refund is paid. Tex. Local Gov't Code § 395.025(d) and (e) (West 2005).

Fees may be waived or reduced 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. However, if the affordable housing is not constructed, the political subdivision may reverse its decision to waive or reduce the fee, and may assess the fee at any time during the development approval or building process, or even after the process. Tex. Local Gov't Code §395.016(g) (West 2005).

