

**MINUTES**  
**CITY COUNCIL MEETING**  
**FEBRUARY 29, 2016**

**CALL TO ORDER – Roll Call and Determination of a Quorum**

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

Mayor Marshall called the meeting to order at 6:02 p.m. Council members Levine, Pettle, Standridge, Stone 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, Assistant Fire Chief Mark Barnaby, and Police Captain Kenneth Price

**EXECUTIVE SESSION 6:04 P.M. TO 7:00 P.M. – Pursuant to the provisions of Chapter 551, Texas Government Code the City Council may hold a closed meeting.**

1. RECESS TO CLOSED EXECUTIVE SESSION IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN:
  - a. Government Code Section 551.074 Personnel—To deliberate the appointment, employment, evaluation, compensation, and/or duties, of the supervisory officials of the Police Department

Mayor Marshall recessed the special meeting at 6:02 p.m.

2. RECONVENE REGULAR MEETING.

Mayor Marshall reconvened the special meeting at 7:00 p.m.

3. ANY APPROPRIATE DELIBERATION AND/OR ACTION ON ANY OF THE EXECUTIVE SESSION SUBJECTS LISTED ABOVE.

No action was taken.

**PLEDGE OF ALLEGIANCE**

AMERICAN PLEDGE: Cindy Meyer led the pledge.

TEXAS PLEDGE: Assistant Fire Mark Barnaby 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.

Praveen Madadi, 6002 Southridge Parkway, spoke in opposition to the February 16, 2016 approval of the Preliminary Plat for Reserve of Southridge. Mr. Madadi said he bought his home in August 2014 and he was aware Curtis Lane would join FM 2551. Now, he understood there would be a road running straight toward his back yard, which raised safety and privacy concerns. Mayor Marshall asked Mr. Madadi to meet with City Administrator Flanigan after the meeting.

**CONSENT AGENDA** Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.

1. APPROVAL OF MEETING MINUTES FOR FEBRUARY 2, 2016. [SCOTT GREY]
2. APPROVAL OF MEETING MINUTES FOR FEBRUARY 16, 2016. [SCOTT GREY]

**MOTION:** Councilmember Pettle moved to approve consent agenda. Councilmember Taylor seconded with Councilmembers Levine, Pettle, Standridge, Stone, and Taylor voting for. Motion carried 5-0.

**INDIVIDUAL CONSIDERATION ITEMS**

3. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON IMPACT FEES. [BIRKHOFF]

Mayor Marshall asked Municipal Engineer Birkhoff to come forward and present his report. Mr. Birkhoff stated his name and firm's address, 11910 Greenville Ave., Suite 600, Dallas, Texas, for the record. Mr. Birkhoff spoke extensively about Impact Fees. First, a little history, Impact fees were established by Senate Bill 336 in 1987. In the beginning their purpose was to replace a number of fees cities charged such as Capital Recovery Fees, Development Fees, and Front Footage Assessments with fees being in varying amounts. Initially, those fees were charged to developers and could get quite costly, so the development community went back to Austin, Texas, requesting something more uniform to do away with the city's arbitrary fees. The law set a procedure to calculate the fee in a more equitable way. After several revisions, the law was changed so the fees were charged to home builders at the time of building permits. Impact fees are charged to new development in the Capital Improvement Plan (CIP), as they have an impact on the various city systems, water, sewer, and/or roadway systems, buying into the entire system for service. The law had three (3) components: land use plan, which needed to be in place; impact fee for a capital improvements program, which needed to be place; and fee assessment. There were several steps, including newspaper ads, public hearings, and various responsibilities of planners, engineers, and city administrators. Impact fees were used for new capital improvements, thus not for repair or operation and maintenance of existing facilities. Although you can recapture certain monies. Surrounding cities had or do have impact fees, the City of Parker could gauge how the market was affected in those cities. Impact fees were a source of revenue to be reviewed at least every five (5) years, at which time they may be extended for an additional five (5) years, if there are no changes. Also, once a year a written certification of compliance

verifying compliance must be submitted to the State Attorney General prior to the last day of the fiscal year.

After some discussion, Mayor Marshall asked City Administrator Flanigan and City Engineer Birkhoff to get together and to prepare an Impact Fee proposal with cost information for the next City Council meeting. Mr. Birkhoff gave City Council a handout, *Impact Fees and Exactions*. (See Exhibit 1.). He said it was not entirely up-to-date, but he felt it would be beneficial.

#### 4. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON ENGINEERING CONTRACT RESOLUTION NO. 2016-504. [FLANIGAN]

Mayor Marshall reviewed the item stating, the City advertised for Request for Qualifications (RFQs) for professional engineering services; received eight (8) responses; and council approved a subcommittee, consisting of Mayor Z Marshall, Councilmember Stone, City Administrator Jeff Flanigan, and Parker Resident James Threadgill, with City Attorney Jim Shepherd attending as legal counsel; to analyze the proposals. He said he was unable to be directly involved, but the others made a unanimous recommendation to the subcommittee. He met with the subcommittee and City Attorney Shepherd and the recommendation was to continue to retain Birkhoff, Hendricks, and Carter, LLP Professional Engineers. Council had a contract Mr. Shepherd and Mr. Birkhoff worked on for approval. The Contract Committee met briefly prior to the meeting and there were some questions that came out of that meeting. He asked City Administrator Flanigan if he had anything to add. Mr. Flanigan said he thought the Mayor covered everything.

**MOTION:** Mayor Pro Tem Levine moved to accept the recommendation of the engineering firm, Birkhoff, Hendricks, and Carter, LLP. He noted there were issues with the contract, but they were not substantive, more stylistic, and those issues needed clarification. He asked that the City Attorney and City Engineer meet, work out the changes, and bring the contract back with the resolution for execution.

Mayor Marshall asked Mayor Pro Tem Levine to restate his motion. Mr. Levine stated his motion was to accept Birkhoff, Hendricks, and Carter, LLP, as the engineering firm, subject to appropriate contracting. Councilmember Stone seconded.

Councilmember Pettle asked how Council would address the issues. Mayor Pro Tem Levine asked if he should review the issues. Councilmember Pettle said he could or Council could accept the contract and allow the Contract Committee, Mr. Shepherd, and Mr. Birkhoff to meet and make corrections. Mr. Levine said he could quickly frame the issues. There needed to be clarification of the rates, so everyone understood they were hourly rates. There was a little confusion the way the contract was drafted. Section Part II: Exclusions needed clarification. The rest of the issues were grammatical.

Mayor Marshall noted Council had a motion and second to approved Birkhoff, Hendricks, and Carter, LLP, as the engineering firm, subject to a satisfactory contract negotiations. The contract for engineering services would be revised and returned to City Council for approval.

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

**5. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON PURCHASE OF SUV FOR FIRE DEPARTMENT. [SHEFF]**

Fire Chief Sheff reviewed the item stating, the fire department currently utilized two (2) Sport Utility Vehicles (SUVs) in its fleet, which included, 1) a 2015 Tahoe (Tac 811), equipped with command and control software on its laptop computer operated as a command vehicle at fires and other emergencies or as a general response vehicle as needed; and 2) a 2005 Explorer, with no laptop (Tac 812) operated as a general response vehicle. The Explorer was inoperative with electrical problems and was out-of-service, experiencing frequent repairs and recurring electrical, which rendered the vehicle's condition unreliable and potentially unsafe to drive.

The department wants to replace the 2005 inoperative Explorer with a new 2016 Ford 4X4 F-250 crew cab, gasoline pickup, estimated at \$33,000 with decaling. The vehicle would seat four occupants similar to the Explorer, but would provide greater utility with its ability to transport more fire personnel and both medical and firefighting equipment. The vehicle would be purchased through a purchase cooperative. The radio and emergency warning devices are in good condition and valued at over \$5,000. They would be removed from the Explorer and transferred to the pickup. The department has sufficient funds available from past fundraisers to purchase the vehicle and still has monies for future capital items and for training and equipping personnel. The Explorer would be auctioned off through Rene' Bates Auctioneers, Inc., McKinney, Texas.

A new replacement vehicle would benefit the city and its citizens by transporting paramedics and EMTs to medical emergencies, additional command staff and/or firefighters to major incidents, or would be utilized by department personnel conducting non-emergency department business.

Mayor Marshall asked if the 2005 Explorer had any residual value. Chief Sheff said yes, approximately \$2,500, which would be given back to the City after auction.

Councilmember Standridge asked if auctioning off the vehicle is the best way to dispose it and whether the monies would be used toward the new vehicle or would come back to the City. City Administrator Flanigan said he was not completely familiar with this particular vehicle and would need to do a little research. City Attorney Shepherd said auctioning of the vehicle would probably be the best way of disposal; it would solve the City's problem of properly advertising. This was how most cities would dispose of this type of equipment.

Mayor Pro Tem Levine asked why a 4X4 and why a gasoline, rather than a diesel engine. Fire Chief Sheff said the 4X4 was for occasional inclement weather, "ice", needs and the gasoline engine was less expensive for what the department needed.

**MOTION:** Councilmember Standridge moved to approve purchase of a new 2016 Ford 4X4 F-250 crew cab gasoline pickup not to exceed \$33,000 with Parker

Volunteer Fire Department Fundraising money, while the inoperative 2005 Explorer (TAC 812) would be auctioned. Councilmember Taylor seconded.

Mayor Pro Tem Levine asked Finance/H.R. Manager Boyd if she would prefer this transaction be completed through the Fire Department or the City's Budget then reversed. Ms. Boyd said she had access to both budgets; although, she felt it would be better for the Fire Department to handle it.

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

## 6. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON BOARDS AND COMMISSIONS MEMBERSHIP RESOLUTION NO. 2016-505. [FLANIGAN]

Mayor Marshall said he requested Councilmember Pettle and City Administrator Flanigan review the City's existing Resolution No. 2013-433 (*Boards and Commissions Membership Selection*) (*Repealing Res. 2011-348*) and recommend changes. The Mayor thanked them both for their diligent efforts.

Councilmember Pettle noted a couple of corrections, Resolution No. 2016-505, Section 3., Qualification Process., 2) should read, "Staff will present qualified candidates to each Board if requested, and to Council." and in Section 4. The dash should be removed and the "A" in after should be lower case, as follows:

### SECTION 3. Qualification Process.

- 1) City Staff will check candidates for basic qualifications such as; residency, other Board membership in Parker, etc.
- 2) Staff will present qualified candidates to each Board if requested, and to Council.
- 3) The Council will review the recommendations and may select Applicants for interviews. Interviews for the Zoning Board of Adjustments may be held either in open or executive session. All other interviews will be in open session.

### SECTION 4. Officer Appointment Process. Council will appoint Board Officers ~~After~~ after seeking input from existing Boards or Commission members, if possible.

Councilmember Pettle gave a brief synopsis of the recommended changes.

Mayor Marshall encouraged Parker residents to get involved, making a more transparent government.

**MOTION:** Councilmember Stone moved to approve Resolution No. 2016-505 (*Boards and Commissions Membership Selection*) (*Repealing Res. 2013-433*). Councilmember Taylor seconded with Councilmembers Levine, Pettle, Standridge, Stone and Taylor voting for. Motion carried 5-0.

7. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON ORDINANCE NO. 734, APPROVING THE 2016 CITY FEE SCHEDULE. [FLANIGAN]

City Administrator Flanigan said the City reviewed its "Fee Schedule" every year with City Staff comparing our fees to neighboring cities. Mr. Flanigan noted changes to page 4 of the City of Parker, Fee Schedule, as follows:

Public Works Inspection/Engineering Plans/Legal Review (50% Water/50% City)	5% of total construction costs
Zoning Variance Request	\$600.00

The only other fee changes were fees City Council already approved in contracts, as follows:

<i>Solid Waste Collection and Disposal</i>	
Monthly Base Fee	\$ 16.79 *
Administration Fee	\$ 1.59 *
Third Trash Cart	\$ 7.70 *

*\*These charges are subject to sales tax.*

Monthly Base Fee	
0-4,000 gallons	\$40.00
4,001-15,000 gallons	\$3.25 per thousand gallons
15,001-30,000 gallons	\$4.00 per thousand gallons
30,001-50,000 gallons	\$5.00 per thousand gallons
50,001-70,000 gallons	\$8.00 per thousand gallons
70,001- Up	\$11.00 per thousand gallons

Mayor Marshall asked if Animal Control fees were the same and inquired whether the City of Murphy relayed any increases to the City of Parker for their services. Mr. Flanigan said they have not. The Mayor noted some of those fees were directly passed along to the animal's owner. Mayor Marshall asked if the City of Murphy was able to ticket Parker residents for City of Parker Animal Control code violations. City Administrator Flanigan said yes, they have been.

Councilmember Taylor stated under the heading Water Service the Fee Schedule said "Past Due Penalty" and "10% of billed amount". He asked if that should read "10% of the amount past due". Finance/H.R. Manager Boyd said it was based on the past due amount. That was how it was calculated in the system. It was not just on a bill; it was actually the past due amount. Councilmember Taylor said he thought the verbiage should be changed to amount due, instead amount billed. Councilmember

Standridge asked if the penalty was based on 10% each month or one time. Ms. Boyd said the system looked each month to see what the past due amount was and that would go on the total.

Mayor Marshall recapped by stating the recommendation was to keep our Fee Schedule almost identical to what we were currently charging. We were changing some accounting on construction cost, applying a portion to the Water Department; we were going to revert back to a \$600 Zoning Variance Request fee, due to advertising costs; and a change to the verbiage on our Past Due Penalty under Water Service.

Councilmember Pettle said she had some items she felt should be referred to Planning and Zoning (P&Z) for clarification; for example, alarms. She understood someone received three (3) tickets in one evening, due to a malfunctioning alarm. She suggested that be one (1) incident as opposed to several. She asked whether Other Permits, Demolition and removal, meant she could get a permit to destroy someone's home; Other Permits, Fence, she said she felt we needed to review the fence requirements under the Comprehensive Zoning Ordinance; under Solicitor's Permit, Charitable Organizations, she asked if that included Parker Volunteer Fire Department, Boy Scouts, and/or Girl Scouts. She thought those items needed clarification. Mayor Marshall said he understood anything city related did not require the Solicitor's Permit and he felt those questions should be addressed at City Council's next planning session.

Mayor Pro Tem Levine asked whether Councilmember Pettle was concerned about the fees or who was charged those fees. If it was how the ordinance worked we probably needed to look at the ordinance. That would be the issue for now. Councilmember Pettle said she agreed.

**MOTION:** Councilmember Standridge moved to approve Ordinance No. 734, approving the 2016 City Fee Schedule, including the changes for Public Works Inspection and Zoning Variance Requests, and the verbiage change on our Past Due Penalty for our Water Service from amount billed to amount past due. Councilmember Taylor seconded with Councilmembers Levine, Pettle, Standridge, Stone and Taylor voting for. Motion carried 5-0.

## ROUTINE ITEMS

### 8. FUTURE AGENDA ITEMS

Mayor Marshall asked if there were any items to be added to the future agenda. He noted Impact Fees and a Proclamation, recognizing Parker resident, Olympic Gold Medalist and 2016 USA Gymnastics Hall of Fame recipient, Valeri Viktorovich Liukin. Councilmember Standridge asked about water meter usage. Mayor Marshall said we would hold off on that item at this time. He said the next regularly scheduled meeting would be Tuesday, March 15, 2016.

### 9. ADJOURN

Mayor Marshall adjourned the meeting at 8:04 p.m.



ATTESTED:

  
Patti Scott Grey

APPROVED:

  
Mayor Marshall

Approved on the 15th day  
of March, 2016.

# IMPACT FEES AND EXACTIONS

Jennifer S. Evans-Cowley, AICP

With the strong growth experienced by many communities throughout the 1990's and into the 2000's many cities experienced pressure to provide increasing numbers of roads and water and sewer lines to serve new development. As a result, many communities began using impact fees. Impact fees have been used for more than 30 years. This planning and budgeting devise has assisted cities suffering from growing pains and cash flow problems. In Texas, more than one-third of cities with a population of 10,000 or more assess development impact fees.<sup>(1)</sup> This chapter covers impact fees in three parts: 1) rationale behind impact fees; 2) impact fees and the adoption process in Texas; and, 3) controversy over impact fees.

## Principles and Purposes of Impact Fees

The basic principle behind the adoption of an impact fee is that growth, as evidenced by new land development, should help pay its own way. The purpose of an impact fee is to require a land developer to pay for a share of a city's cost of providing off-site infrastructure to serve the developing property. For example, an impact fee can be charged for the cost of extending a wastewater line to the development before a developer can hook up the internal lines of a subdivision to the municipal wastewater system. Developers pay for all of their internal wastewater lines just as they have in the past. The impact fee requires that developers pay up front for the cost of providing wastewater infrastructure.

Until the onset of impact fees, cities had traditionally paid for off-site infrastructure through the revenue or general obligation bonds or passed such costs on to the developers. Some cities were experiencing enormous growth and did not have the bond capacity or revenues to finance new infrastructure projects. Impact fees allow cities to recoup some of the cost of providing infrastructure at the time development begins, rather than waiting until taxes revenue or service changes are collected after development has occurred.

## Definition of Impact Fees

Impact fees may be defined as follows:

*"...single payments required to be made by builders or developers at the time of development approval and claim, intended to be the proportionate share of the capital cost of providing major facilities (arterial roads, interceptor sewers, sewage treatment plants, drainage facilities, etc.) to that development."*<sup>(2)</sup>

and,

*"Development impact fees are scheduled charges applied to new development to generate revenue for the construction or expansion of capital facilities located outside the boundaries of the new development (off-site) that benefit the contributing development."*<sup>(3)</sup>

As an example, a city has adopted a water and wastewater impact fee of \$2,000 per new single family residential unit built within its utility service area. Before obtaining building permits, the ~~home builder~~ developer of 100 lots must pay fees totaling \$200,000. Whether that fee goes toward new water and wastewater facilities or whether the developer is simply hooking up to an existing system built to service the area, the developer must pay the fee in either case. That payment is the essential difference between financing infrastructure with revenues out of the developer's pocket – the impact fee – and financing infrastructure through the traditional issuance of revenue or general obligation bonds. The concluding section of this chapter discusses in detail this shift to growth paying for the improvements necessary to support it.

## Political Rationale for Impact Fees

Five reasons for community use of development impact fees are identified as follows:

1. **To shift fiscal burdens from existing taxpayers to new development-** This reason for adopting impact fees emanates from two sources. The first is the basic feeling that growth has long been subsidized by the existing taxpayer, and the existing taxpayer is now saying that growth must pay for itself. The second reason has to do with the need for the community to find new sources of revenue. In addition to the basic problems of inflation, a series of occurrences has left many cities with a financial inability to maintain existing infrastructure and to expand systems in response to the demands of population growth. Among the primary causes of the cash flow shortages are tax and rate payer revolt, reductions in federal and state aid, and historic underpricing and underfinancing of existing infrastructure facilities and services.

2. **To synchronize the construction of new or expanded facility capacity with the arrival of new development** - Most infrastructure requires an uneven stream of capital investment in order to achieve economies of scale. For example, it is much less expensive in terms of construction costs to oversize a water transmission line now than to put in a small line now and then to install another small line at a later date. A second example is the case of the utility plant, which can only be efficiently built in terms of thousands of units of service at one time rather than in terms of single unit increments of service.

The problem arises because the economies of scale approach necessitates cash to pay for construction now for facilities which will not be fully utilized until some point in the future. A secondary problem with the economies of scale approach is that infrastructure may be extended beyond the urban fringe, thereby 'allowing leapfrog development and the resultant inefficiencies of urban sprawl. Impact fee systems provide revenues, either in current terms or as a sinking fund, which help to smooth out the uneven effect of the investment required to construct infrastructure systems.

3. **To subject new development decisions to pricing discipline** – Historic underpricing of utility service has led to inefficient use of the land. With costs of utility services low, developers have tended to produce low density, urban sprawl types of physical growth. Additionally, most communities have maintained equality of connection and service charges throughout, regardless of the actual cost of service, with the result that those in easy to serve areas subsidize those in difficult to serve parts of town. Impact fees require the developer to pay the full cost of receiving service for the property in question, and in doing so the fees force the developer to proceed only when the proposed project is feasible given the full service cost. Simply, "...when facility prices reflect true costs, only development which can afford to pay those costs will happen."<sup>(4)</sup>

4. **To enhance the community's quality of life by attempting to exclude certain types of development and socioeconomic groups** - Impact fees, though not empirically proven to do so, arguably raise the cost of housing, because in most cases, the developer passes the amount of the fee on to the homebuyer. The higher the cost of the house, the higher is the socioeconomic status required to purchase the house, with the result that some groups of persons and forms of development may effectively be excluded from the city. The concluding section of this chapter offers a discussion of the incidence of impact fees and the effect on housing affordability.

5. **To symbolically respond to locally vocal antigrowth sentiments** – The same taxpayer and ratepayer revolt which is partially responsible for the need for impact fees is related to antigrowth sentiment which seeks maintenance of the community status quo. Antigrowth sentiment reasons that the costs of expanded infrastructure and services are avoided if there is no demand for additional capacity. It is important to note, as well, that antigrowth sentiment may arise from social and environmental concerns quite unrelated to community finance. Regardless of the source of the antigrowth sentiment, the adoption of impact fees responds to the pressure.

## Impact Fees, Exactions, and Linkage Fees

The discussion thus far has used "impact fee" only in the generic sense. There are, however, three versions of the impact fees, and the distinctions among them must be made in order to avoid conclusion "Exactions" is also used in a generic sense to describe charges for growth.<sup>(5)</sup> All of the arguments and discussions on impact fees are applicable to the three basic forms of fees: impact fees, exactions, and linkage fees.

Impact fees and exactions are both fees designed to require the developer to pay for an appropriate share of the infrastructure which serves the development in question. A simple distinction between the two is offered by Snyder and Stegman.<sup>(6)</sup> In-kind contributions of facilities constructed by the developer and donated to the city are exactions. Monetary contributions, including fees paid in-lieu of exactions, are impact fees. Examples of exactions are park construction and parkland set aside and the construction of off site infrastructure such as lift stations. Impact fees would include those fees charged to a developer for the city to provide parkland.

Whereas impact fees and exactions are closely related to the infrastructure needs of the development in question, linkage fees are frequently associated with a community purpose more remotely related to development. Linkage fees pay for socially desirable programs, and the developer is asked to contribute to the expansion of such programs in parallel with the developer's expansion of the community. Examples are per square foot linkage fees, usually charged to commercial development, with the revenues dedicated to low income housing or community day care.

Exactions, especially in the form of land dedication, have long been part of the development approval process. Impact and linkage fees, as noted earlier, are of recent vintage and represent a marked departure from the traditional manner in which the city pays for infrastructure. Regardless of the technical nature of the mechanisms used, questions of application, accuracy, equity, and maintenance arise. The discussion now turns to the specifics of impact fees and their application in the state of Texas.

## Impact Fees in Texas

### History of Impact Fees in Texas and the United States - The practice of using impact fees

to offset the costs of growth and provision of public facilities has been used in many states across the nation. A 1995 survey of state enabling legislation found that 20 states have authorized local governments to adopt impact fees, including Texas.<sup>(7)</sup> More recently, South Carolina adopted legislation in 2000.

Other states, such as Florida do not have authorizing legislation but assess impact fees. Although impact fees are relatively new, their use evolved from developer contributions or "fees in lieu of requirements as part of the subdivision development process.

#### **States with Impact Fee Authorizing Legislation, 1995**

<b>Arizona</b>	<b>Idaho</b>	<b>New Hampshire</b>	<b>Texas</b>
<b>California</b>	<b>Illinois</b>	<b>New Jersey</b>	<b>Vermont</b>
<b>Colorado</b>	<b>Indiana</b>	<b>New Mexico</b>	<b>Virginia</b>
<b>Georgia</b>	<b>Maine</b>	<b>Oregon</b>	<b>Washington</b>
<b>Hawaii</b>	<b>Nevada</b>	<b>Pennsylvania</b>	<b>West Virginia</b>

Most states enacted legislation permitting land use regulations during the 1920's, but many of the precedents for impact fees were based on numerous court decisions in the 1960's, 1970's, and 1980's. These decisions resulted in either legislation allowing states to enact impact fees or defining parameters for their use. Most of the legislation and ordinances on impact fees used in current practice originated from various court decisions since 1980.

In 1984, the Texas Supreme Court upheld the City of College Station's park land dedication and "fee in lieu of ordinance."<sup>(8)</sup> In effect, the Court authorized "offsite" exactions as a valid exercise of the City's power of self government or "police power." Another aspect of the College Station court decision was the "rational nexus" test. Although broadly interpreted, the rational nexus test as applied to impact fees means the need for new public facilities must be attributable to the development being assessed the impact fees, must be proportionate to the need for facilities generated by the development, and the development must receive a reasonable, although not exclusive, benefit from the facilities financed by the impact fees.

In 1987, a Senate Bill, commonly referred to as SB336, was introduced into the 70th Legislature of Texas which authorized governmental entities (cities, counties, and certain special districts) to impose impact fees against new development. SB336 passed and became effective June 20, 1987, and is now incorporated within the Texas Local Government Code as Chapter 395. Minor amendments were made to the Statute by the 71st Legislature. In 2001, SB 243 added additional amendments to Chapter 395. Since 1987, several other states have passed impact fee legislation based on SB336 (Chapter 395).

**Overview and Purpose of Chapter 395** - The primary purpose of Chapter 395 (the impact fee legislation) is to authorize governmental entities, primarily municipalities, to collect impact fees to recoup some of the costs of providing public facilities which will serve new development. Both home rule and general law cities can impose impact fees under Chapter 395. While Chapter 395 serves as enabling authority, it also prescribes procedures which cities must follow to adopt impact fees and it establishes limitations on how impact fees can be applied.

In order to charge new development fees for offsite public improvements, such as water, sewer, and roadway facilities, a municipality must now comply with the provisions of Chapter 395. Chapter 395 defines an impact fee as "a charge or assessment imposed by a political subdivision (city) against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development." <sup>h9)</sup> Any capital recovery fees or charges defined as impact fees by the statute which were in effect prior to the statute were required to be replaced by fees in accordance with Chapter 395 by June 20, 1990. Generally, Chapter 395 requires municipalities to develop a plan for growth (land use assumptions) and to prepare a capital improvement plan (CI?) to accommodate anticipated growth. This requirement parallels basic planning principals — to develop policies upon which to formulate a comprehensive plan and develop a capital improvement plan to implement the plan.

One objective of impact fee programs in general is to raise money, but the most important objective is to ensure adequate capital resources to accommodate expected growth. Prior to Chapter 395, Texas cities often charged new development "front footage" fees for costs of building streets and pro rata charges for water and sewer lines. "Under Chapter 395, these assessments

can no longer be charged to new development if they are for facilities beyond the developer's property. An important concept of Chapter 395 is the premise that new development "buys into" the entire system of services rather than paying only for facilities that happen to be adjacent to the developer's property. In essence, the developer pays the city to make the water, sewer and roadway systems available to tie into. Without this system of public facilities, the developer could not develop the property.

#### Procedures for Implementing Impact Fees as Prescribed by Chapter 395

The statute mandates a detailed procedure for the adoption of impact fees. Generally, this procedure requires:

Appointment of an advisory committee; and,  
Public hearings on land use assumptions, a capital improvement plan, and the impact fee ordinance itself.

The main purpose of procedures set forth in Chapter 395 is to allow all interested parties a fair opportunity to participate in the adoption process. The appointment of an advisory committee and specific public hearing notification requirements ensure that anybody who wishes to participate will have the opportunity.

The following is an abbreviated outline of the process necessary to adopt an impact fee ordinance in accordance with Chapter 395:<sup>(10)</sup>

1. **Organization** - Qualified personnel, including city staff and/or consultants, should be organized to prepare the impact fee program. Even if consultants are retained to perform all or some of the required tasks, city staff should endeavor to participate in and/or coordinate the program. A written work program with dates for the following components should be prepared to help guide the process.

2. **Advisory Committee**<sup>(11)</sup> - As soon as possible, an advisory committee must be appointed. The Planning/Zoning Commission can be appointed as the advisory committee if at least one member is from the real estate, development or building industry.<sup>(12)</sup> The advisory committee and City Council are the two public bodies which participate in the adoption of impact fees and should both be briefed on their respective roles early in the process. The advisory committee's primary function is to advise and assist in the preparation of the land use assumptions and the capital improvement plan. The advisory committee also has ongoing responsibilities to produce semi-yearly reports and assist in updating the impact fee program. The City Council is the only body that can actually approve, adopt, and implement the program.

3. **Program Scope** - In addition to appointment of the advisory committee, it is important to determine target facilities early in the process. Eligible facilities include water treatment and distribution facilities, wastewater treatment and collection facilities, storm water drainage and flood control facilities, and roadway facilities. The city should determine which of these facilities it desires to include or target in its impact fee program. Sometimes this decision cannot be made without some preliminary analysis but it is important that professionals with expertise in designing plans for the specific targeted facilities are included in the process. Other city documents such as the comprehensive plan may provide direction and justification for the need and location of these types of capital facility improvements.

4. **Acceptable and unacceptable components of an impact fee program** - The Statute sets forth certain charges and facilities which can or cannot be included in the program.

Costs which may be included in calculating the impact fee are:<sup>(13)</sup>

- (1) Construction cost of the capital improvement;
- (2) Engineering and financial consultants' fees to prepare the impact fee program;
- (3) Land acquisition costs; and,
- (4) Interest and other financial costs of the capital improvement project

Items which cannot be paid for with funds collected under the impact program include:<sup>(4)</sup>

- (1) Projects not included in the Capital Improvements Plan (CIP);
- (2) Repair, operation and maintenance of existing or new facilities; Upgrading, updating, expanding, or replacing existing capital improvements to meet stricter safety, efficiency, environmental or regulatory standards, or to provide better service to existing development;
- (3) Administrative costs of operating the impact fee program; and
- (4) General debt or finance charges for projects not included in the CEP.

Impact fees can be charged for both residential and nonresidential properties.

5. **Preparation of the land use assumptions (LUA) and determination of service areas** - The OP must be based on a set of adopted land use assumptions which include a "description of the service area and projections of changes in land use, densities, intensities, and population in the service area over at least a ten-year period."<sup>(15)</sup> Although no particular format is specified in the statute, there are four basic requirements or components of the LUA:

- a. **Description and analysis of existing conditions (base data)** - This can include documentation of population, land use and other generally accepted background data for land use analysis;

b. **Service area determination** - Since base data and projections must be collected for each service area, the boundaries for each targeted facility must be determined and included in the LUA report. They should also be coordinated with the preparations of the CIP.

For water and wastewater facilities, a city has several options in determining its service areas. Multiple service areas can be created across the entire city, including its ETJ. If impact fees are to be assessed in the City's ETJ, then one member of the advisory committee must reside within the ETJ. Chapter 395 also allows a city to adopt system-wide (covering the entire city) land use assumptions and service areas. Most Texas cities adopting impact fees have chosen to designate city-wide service areas for water and wastewater facilities. Service areas for roadways and drainage facilities cannot be adopted on a system-wide basis. Roadway service areas are limited to the corporate limits of a city and the service areas for drainage are limited to specific drainage basins which will be served by the improvements. Additionally, the service area for roadway facilities must not exceed six miles in length at any point. Because of the service area size requirement on roadways, adoption of impact fees for roadway facilities is often more difficult than for other capital facilities. As a result, fewer cities have adopted impact fees for roadways than for other eligible facilities;

c. **Ten-year growth projections** - Similar to section "a" above, data for ten-year projections must include changes in density and intensity for residential, commercial and industrial land use. This is also interpreted to include population and, as appropriate, employment projections. All population and land use projections should be prepared by qualified planning professionals using generally accepted planning criteria. The LUA should also be developed in a format suitable for use in development of the CIP. Along with the formulation of service areas, the LUA should be coordinated with preparation of the CIP.

d. **Ultimate growth projections** - The same types of data required for the ten-year projections must also be prepared for each service area in an ultimate development, or "built out," scenario. This is usually based upon the holding capacity of the ultimate land area of the city using proposed future land uses to determine anticipated land use types and densities.

The best source of data for developing land use assumptions is a currently adopted or approved comprehensive plan which probably already contains some of the statutory requirements pertaining to land use and population projections.

Preparation of population projections without the benefit of a comprehensive plan requires development of a basis and methodology for land use and population projections within the LUA report itself. In developing the LUA, it is important to remember that they will serve as a basis for preparation of the CIP over a ten-year period, as well as a basis for generation of the number of "service units" required to be served. A city must be able to show that costs within the CIP which are eligible for impact fee funding are indeed attributable to new growth and derived from the LUA.

The LUA, including any maps showing service area boundaries, should be prepared in a report format suitable for public review and eventual adoption. It also should be noted that the contents of the LUA may need to be formatted differently depending on the methodology used to

formulate the CIP (different engineers prepare the CIP using different approaches; therefore, they have certain format requirements).

6. **Preparation of CIP for target facilities** — Once the LUA has been prepared the CIP should be prepared. The CIP must be prepared by a registered professional engineer and must include:<sup>(16)</sup>

- a. Description and assessment of existing capital facilities;
- b. Analysis of the total capacity and current levels of usage;
- c. Description of each type facility (water, sewer, roadway, etc.) and associated costs for improvements of each which will be necessitated by and attributable to new development within each service area based on the approved land use assumptions;
- d. Determination of a service unit and consumption, discharge or use of the facility by each service unit;
- e. Total number of projected service units based on the LUA;
- f. The projected demand for capital improvements over the next ten years;
- g. An equivalency table establishing the ratio of a service unit to various types of land uses;
- h. The credit for the portion of ad valorem tax and utility service revenues generated by new service units; (Note: This requirement was added as part of SB 243 and requires that a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the 10 year planning period and used to pay for projects included in the capital improvements plan be subtracted from the maximum impact fee. As an alternative, cities may choose to offer a credit of 50 percent of the cost of implementing the capital improvements plan); and,
- i. Calculation of the maximum fee that can be charged per target facility category for each service unit.

It is important to understand that the CIP prepared under Chapter 395 is different from a city's traditional capital improvement plan. A city's traditional CIP may identify many projects (including those to fix existing service deficiencies) to be undertaken during a shorter time period. As a result of the passage of Chapter 395, many cities could be maintaining two capital improvement programs, both with similar objectives but for different purposes.

The CIP required by Chapter 395, in essence, requires a city to define an appropriate level of service. This level will vary depending upon the nature of the targeted capital facility. For example, the level of service for the water system might be expressed as the peak usage period during a day in the summer. Selection of a service level represents an indirect commitment by the city to both correct

existing deficiencies and to deliver services in accordance with projected need. Although all facilities expected to serve growth in the next ten years are not required to be included in the CIP,

there should be an attempt to include all that are appropriate. That is, the OP should not attempt to under- or over-estimate the facilities which will be required to serve growth over the next ten years.<sup>7)</sup>

The CIP should be prepared in report form and sent to the advisory committee for review and comment. Similar to the LUA, the advisory committee must "review the capital improvements plan and file written comments to the City Council."<sup>(18)</sup> Once this is completed, then the CIP can be sent with the LUA to the City Council for approval and adoption.

**7. Public Hearin! on the LUA and CIP** - Once the land use assumptions and capital improvement plan have been drafted, they should be reviewed by the advisory committee. Any comments should be noted, and a copy of the comments and final LUA and CIP report must be sent to the City Council for approval. Although the advisory committee is not required to approve<sup>(19)</sup> the LUA and CIP, as a practical matter it is advisable to reach a consensus on the LUA and CIP report and provide a recommendation to the City Council.

The City Council must set a public hearing date for the LUA and CIP.<sup>(20)</sup> A written notice must appear in the newspaper prior to the 20<sup>th</sup> day before the public hearing. Written notices must also be sent to all who have requested to be notified. Section 395.044 prescribes specific size of headline lettering, location within the newspaper, and content of the public hearing notices. The City Council must hold the public hearing and must adopt or reject the LUA and CIP within 30 days<sup>(21)</sup>

**8. Ordinance preparation** - Once the LUA and CIP are adopted, a draft ordinance adopting impact fees should be prepared. This ordinance should explicitly state how impact fees will be administered and when the fees will be collected (i.e. at the time the building permits are issued or at the time the final plats are filed). It should also make provisions for credits and offsets in fees, establish how the funds will be accounted for, provide schedules for maximum fees which can be charged, and state actual fees (which can be equal to or less than the maximum fee as calculated in the CIP) which will be charged per service unit and the equivalency table equating specific land uses to service units. The draft ordinance should then be sent to the City Council for consideration.

**9. Public hearint on the impact fee ordinance** - Except for wording changes, the same public hearing procedures, content and format as for the LUA and CIP must be followed for the impact fees.<sup>(22)</sup> The impact fee ordinance must be adopted ,by the City Council within 30 days of the public hearing. Once the ordinance is adopted, impact fees may be imposed upon all new plats and replats approved after the ordinance adoption; however, impact fees cannot be charged for development on property platted prior to the adoption of the ordinance for a period of one year.

**10. On-going requirements** - In addition to normal administrative duties, a city must keep its impact fee program up-to-date. Every six months, the advisory committee must review the LUA and CIP and report its findings to the City Council. Every five years the entire program must be reviewed and updated if changes in the LUA and CIP have

occurred.<sup>(23)</sup> A written certification of compliance verifying compliance with Chapter 395 must be submitted to the State Attorney General prior to the last day of the fiscal year. The certification must be signed by the mayor. Failure to submit the certification of compliance can lead to a civil penalty of 10 percent of the amount of the impact fees erroneously charged.<sup>(24)</sup>

11. **Policy issues to consider when adopting impact fees** - As with many State Statutes, there are policy issues which must be resolved prior to implementation of an impact fee ordinance under Chapter 395. The two primary (and most controversial) issues include:

a. Determination of when the impact fees will be collected. The most recent amendments to Chapter 395 allow cities to collect impact fees at the time of ~~plotting~~, meter connection or building permit. However, if water and sewer capacity is available:  
(25)

- 1) Within the city limits the impact fee shall be collected at the time of the building permit is issued.
- 2) For land outside the city limits, the impact fee shall be collected at the time of the application for water or wastewater connection.

b. Determination of what rate to charge (if less than the maximum) to offset economic development or other objectives.

Other policy issues pertain to contents of the CIP and interim funding mechanisms. Funds generated by impact fees will occur slowly, and on an incremental basis, but the requirements for construction occur relatively quickly (within two to five years). Therefore, cities are faced with the burden of initially financing capital facilities until the impact fee program can generate enough money to pay off the debt for construction of capital facilities.

**Considerations in Using Chapter 395** - Each city must determine whether impact fees (under Chapter 395) are appropriate as a financing mechanism for capital improvements within their own jurisdiction. If a city is already completely built out or not expected to grow, then impact fees may not be appropriate. Conversely, if a city is expecting significant growth, anticipates construction of major capital facilities, or has already constructed significant oversized facilities, then impact fees may be appropriate.

There are advantages and disadvantages to impact fee programs. It has been argued that impact fees discourage growth and economic development, making cities that have adopted impact fees less competitive with cities that have not implemented impact fees. Also, the process of

adopting and maintaining the required land use assumptions, CIP, and ordinances is cumbersome and costly, especially for smaller cities. It is difficult to assess these alleged disadvantages, and thus far, comprehensive empirical studies on these effects have not been documented in literature available on the topic. But, in the current climate of fiscal constraints, growing cities must find new and innovative ways to finance facilities to accommodate expected growth. In Texas, Chapter 395 provides the only significant mechanism for cities to recoup expenditures for construction of off-site capital facilities.

### **Use of Impact Fees in Texas**

Many cities throughout the state have considered impact fees as a way to pay for new infrastructure development. In Texas, a recent study found that 36 percent of cities with a population of 10,000 or more assess development impact fees.<sup>(1)</sup> Most cities in this study assess impact fees for water and sewer, 53 percent. Thirteen percent of cities assess impact fees for water, sewer, and roads. The majority of cities that assess impact fees for drainage are located along the Gulf Coast where flooding is a larger concern.

### **Impact Fee Charges**

Fee Type	Lowest Fee	Highest Fee	Average
Water	\$110	\$2,943	\$803
Sewer	12	2,182	660
Road	14	1,600	625
Drainage	3	700	404

The amount of the impact fee assessed varied from just a few dollars to almost \$3,000. The total combined assessed fee ranged from a high of \$4,301 to a low of \$243. The average combined impact fee charged was \$1,300. The fees assessed for new infrastructure will vary from city to city depending on the actual costs of providing infrastructure. These fees charged may not represent the actual cost of infrastructure provision, as many communities choose to charge less than the maximum allowed fee.

**Impact Fees and Exactions Controversies** - This chapter has thus far introduced the concept, the political rationale, and the Texas practice of impact fee adoption and application. It is important to note that the jury is still out on whether or not impact fees accomplish their desired

purpose. There are also questions concerning the long and short run side effects of impact fees. The literature on impact fees is long on theory and description and woefully lacking in empirical evidence upon which to determine the success of the fees. Several articles have been written in response to the lack of evidence on the success of fees.<sup>(26)</sup> This chapter concludes with a discussion of some of the issues involved in hopes that the practitioner will find guidance in determining whether to adopt or continue impact fees.

**Must Growth Pay for Itself?** - City budgets have taken a beating in the face of rapid economic and population growth which spawns the need for equally rapid expansion of infrastructure. Even if the ponderously slow traditional bonding process were able to keep up with the rapidity of change, tax and rate payers are increasingly reluctant to help foot the bill. In theory, the rate of infrastructure development and its associated cost is matched by the rate of tax and rate base growth, such that the system grows without extra charges to the existing residents and businesses. But it is clear that the theory and practice are not in sync, because new infrastructure always costs the existing residents. Thus, the recent support has been found for the concept that growth must pay for itself—that the existing resident or business should not have to subsidize the newcomer.

Three basic problems arise with the logic that growth must pay for itself. The first is the realization that the very persons who now wish not to subsidize the newcomer were themselves subsidized when they were the newcomers. Vociiferous positing of the growth must pay for itself approach implies both a lack of appreciation for the history of community development and an antigrowth sentiment which may result in ultimate economic disadvantage for the city.

A second problem with growth must pay for itself is the multiple charging of the newcomer, first in terms of the impact fee, and then second in terms of paying for maintenance and rehabilitation of the previously existing system. Chapter 395 properly disallows use of the impact fee for maintenance and rehabilitation purposes, but it does not address subsequent levies for those purposes. For example, suppose that the newcomer pays the impact fee for a new residence, therefore having covered the cost of infrastructural services required to meet the one new unit of demand. Then, one year later, the city undertakes a massive renovation of an existing plant serving the older part of town, and the newcomer, having already paid once, is now asked to

pay again for infrastructure which serves elsewhere in the community. The concept of impact fees as "buying into the system" provides only small comfort to the newcomer who has been hit twice. The recent credit added to Chapter 395 helps to address this problem by subtracting the amount newcomers pay to support existing residents for these new facilities. However, the credit does not address newcomers contributions to existing facilities.

The third problem with growth must pay for itself relates to the current resident who buys a newly constructed home versus the newcomer who buys an existing home. The existing resident ends up paying the fee instead of the newcomer. An existing resident who buys several new homes in the community over a period of years pays several times a fee which in theory should never have been paid at all. Meanwhile, the newcomer who buys an existing home escapes the fee completely.

**Impact Fee Incidence and Housing Affordability** - Impact fees are charged to the developer as part of the process of creating legal lots. A common complaint about fees is that the fees are passed on to the homebuyer, therefore rendering housing increasingly less affordable. Impact fee proponents argue that fees are absorbed by the market and that the impact on housing affordability is minimal. The criticality of the issue merits detailed examination.

**1. Incidence** - Though the impact fee is a direct charge to the developer, there are theoretically three parties upon which the actual cost of the fee might fall. In the case of a tight housing market characterized by short supply and strong demand, the developer will simply pass the cost of the impact fee on to the builder who will pass the cost on to the homebuyer. In the case of the oversupplied market, the developer passes the impact fee backward to the raw land owner through paying a lower price for the land in the first place. Somewhere in between the two extremes, the developer will be forced to absorb the amount of the fee. Interestingly, in practice the homebuyer bears the brunt of the fee, regardless of the status of the market.

In the oversupply case, the developer cannot, for the development in question, pass the impact fee back to the landowner, because the developer has already paid for the land. The landowner is not likely to provide a refund, so the impact fee can be passed backward only in the long run, which does the current homebuyer no good. If market conditions are such that the developer must "eat" the impact fee, then the developer chooses to not develop. The result of not developing is decreased supply and ultimately higher housing cost. Once again the incidence falls upon the homebuyer.

Two studies have looked at the relationship between land prices and impact fees. Both studies found that cities with impact fees have higher lot prices than those cities that do not assess impact fees. One study found that lot prices were 1.2 time higher in impact fee

cities. <sup>(27)</sup> The second study found that there was a significant impact on lot prices in Florida, but not a significant difference in Colorado. <sup>(28)</sup>

**2. Housing Affordability** - An impact fee of several thousand dollars which might be passed on to the homebuyer is viewed by proponents as insignificant, even though most would recognize the incidence as regressive on lower priced homes. A closer examination of the developing/building/purchasing process, however, reveals a potentially explosive relationship between impact fees and housing affordability.

The developer buys raw land, develops it at a cost, adds a profit, and then in most cases sells legal lots to builders. Builders package a house on a lot based upon the price they paid for the lot. Package price to lot price ratios vary but are generally in the 4:1 or 5:1 range for single family houses. Thus a builder puts an \$80,000 to \$100,000 package on a \$20,000 lot. An impact fee of \$2,000, charged to the developer and passed on to the builder changes the \$20,000 lot to a \$22,000 lot, and the package price jumps into the \$88,000 to \$110,000 range. Beyond the base multiplied increment, the homebuyer must also incur additional downpayment, financing, and interest costs.

Impact fee proponents argue that fees don't really work that way. There have only been two studies conducted looking at the relationship between housing prices and impact fees. In Colorado, a study found that new home prices increased by \$3,800 after a \$1,182 impact fee was assessed. <sup>(29)</sup> A study in Florida found that new homes sold for \$1,643 more than new homes in surrounding cities after a \$1,150 impact fee was charged. <sup>(30)</sup>

There is limited formal evidence in either direction, but simple observation shows that those communities with the highest impact fees also tend overwhelmingly to have the highest priced housing.

Conversely, it can be argued that if impact fees are not charged for capital facilities, the homeowner will eventually pay for the cost of existing and new infrastructure through higher property and other taxes.

Accuracy of Fee Determination - Chapter 395 has gone a long way toward defining how fees must be calculated. Prior to Chapter 395, it was amazing to see how many cities charged exactly the same impact fees, the implication being that those cities had exactly the same costs of infrastructure provision. Even with the guidance of Chapter 395, there remains much to question about the accuracy of the fees. Do the fees charged in a city equal the city's incremental cost of infrastructure? At this time, few cities know the answer. Much heavy infrastructure — water, wastewater, streets, drainage — is systematic in nature. It is difficult, if not impossible, to distinguish the cost attributable to a single new unit of development. Formulas are available for determining impact fees, but they are

not theoretically based and empirically tested, and the result is operation of an impact fee system which may or may not recoup true infrastructure costs.

**Impact Fees and Exclusions** - One of Nicholas's previously mentioned political rationalizations for impact fees was exclusionary in intent. Communities interested in becoming pricey for exclusionary purposes would seem to have a weapon in impact fees of power similar to the large lot zoning excesses frequently at work. An entire series of articles concerning growth management devices, of which impact fees are a part, reveals their often exclusionary nature.<sup>(31)</sup> Whether the adoption of impact fees intentionally seeks to exclude or not doesn't matter. If the effect of impact fee adoption is one of comparative price increases for housing, the result will be one of increased exclusion.

It has also been alleged that impact fees discourage nonresidential development. For example, if impact fees are imposed on retail uses, could the effect be to discourage retail growth? Since nonresidential uses are generally less intensive users of public services, it is beneficial to cities to have these uses in order to offset the fiscal burden on residential users. Impact fees may discourage some nonresidential uses from locating in an area if the impact fees are not properly formulated in conjunction with adopted economic development policies.

**Effect on Traditional Budgetary Devices** - Impact fees have been adopted with such pervasive swiftness that they have been the focus of much budgetary attention. Their popularity, a fee charged to someone not yet here to vote, is undeniable. There is the danger, however, of forgetting that impact fees are only one weapon in the community budgetary arsenal. Impact fees are not a cure all, and it is important to continue to attend to the ongoing maintenance and use of traditional bonding, taxing, and ratepaying the heart of the revenue stream.

**Success with Impact Fees** - The questions raised above reveal that there are no readily available measures of the success of impact fees as a means of paying for infrastructural growth. Have those cities which adopted fees a decade ago found their infrastructure provision ills easing? Have those cities which adopted the fees under general budgetary stress found relief? There are no empirical answers at this time. The best source of information for those cities considering adoption

of impact fees is simply other cities with impact fee experience. Discussions with planning directors and finance officers should determine how well the impact fees have performed in individual cities. Those discussions will also reveal the complexity of the adoption process and the myriad of considerations which surround the use of impact fees.

#### Notes

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2. Nelson, Arthur C., Development Impact Fees, Planners Press, Chicago, Illinois, 1988, p. 3.
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6. Snyder, Thomas P. and Stegman, Michael A., Paving for Growth, Urban Land Institute, Washington, D.C., 1986, p. 20.
7. Freilich, Robert H. and David W. Bushek (eds.) Exactions, Impact Fees and Dedications: Shaping land-use development and funding infrastructure in the Dolan era, American Bar Association, Chicago, Illinois, 1995.
8. City of College Station v. Turtle Rock Corporation, 680 S.W. 2nd 802, 807 (Tex. 1984).
9. Texas Local Government Code, Section 395.001(4).
10. This outline is not intended to be exhibit r for the purpose of giving a broad feeling for the requirements and process for imposing impact fees. This outline should not be considered a substitute for detailed evaluation by legal counsel and other qualified professionals.
11. Texas Local Government Code, Chapter 395, Section 395.058.
12. A majority of Texas cities which have implemented impact fees have appointed the Planning/Zoning Commission as the advisory committee.
13. Texas Local Government Code, Section 395.012 (a) and (b).
14. Texas Local Government Code, Section 395.013.
15. Texas Local Government Code, Section 395.001(5).
16. Texas Local Government Code, Section 395.014.
17. The advisory committee is only required to "advise and assist" in preparing the LUA (Section 395.058 (1)).

18. Penalties are provided for over collection of funds when facilities in the CIP are not constructed or service is not provided, Section 395.019. Construction must begin on some portion of the CIP within two to five years of fee collection.
19. Texas Local Government Code, Section 395.058 (c) 2.
20. Texas Local Government Code, Section 395.042.
21. Texas Local Government Code, Section 395.045.
22. Texas Local Government Code, Section 395.049.
23. Texas Local Government Code, Section 395.052.
24. Texas Local Government Code, Section 395.082.
25. Texas Local Government Code, Section 395.016.
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