

MINUTES

CITY COUNCIL MEETING

MARCH 15, 2016

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 5:30 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, and Police Officer Greg Wells

EXECUTIVE SESSION 5:30 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 and 551.071 confidential legal advice—To deliberate the appointment, employment, evaluation, compensation, and/or duties, of the Police Chief and supervisory officials of the Police Department.**

Mayor Marshall recessed the regular meeting at 5:32 p.m.

2. RECONVENE REGULAR MEETING.

Mayor Marshall reconvened the regular meeting at 7:04 p.m.

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

Mayor Marshall stated City Council received an email from Police Chief Bill Rushing, announcing his retirement April 8, 2016. The City Staff and Council searched for an outside consultant to assist with that vacancy.

MOTION: Mayor Pro Tem Levine moved to retain the services of Todd Renshaw with Southwest Leadership Resources, LLC to assist with the search for a new Police

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

PLEDGE OF ALLEGIANCE

AMERICAN PLEDGE: Louis Zettler led the pledge.

TEXAS PLEDGE: Annette Stone led the pledge.

PROCLAMATION

Mayor Marshall presented a proclamation, recognizing Valeri Viktorovich Liukin, a Parker, Texas, resident, Olympic Gold Medalist and 2016 USA Gymnastics Hall of Fame recipient. Mr. Liukin accepted the proclamation and thanked everyone.

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.

Louis Zettler, 4202 Donna Lane, spoke in regard to his concerns with speeding drivers along Donna Lane. Mr. Zettler said he was a long time resident of Parker and with the Donihoo Farms Phase One Development came a great deal of traffic from various construction equipment, delivery trucks, and tradesmen, travelling back and forth down Donna Lane. He had concerns for his safety, as well as his neighbors, and the deterioration of the Donna Lane. Mr. Zettler suggested a three-way stop sign at Donna and Windmill Creek. Mayor Marshall asked City Administrator Flanigan to follow up with Mr. Zettler about the matter. (See Exhibit1.)

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.

Councilmember Stone requested a color change to the Building Permit and Police Department Monthly Report graphs, noting the color blue used for years 2012-2013 and 2015-2016 were very similar. He suggested possibly using the color purple. Councilmember Pettle asked that the number of cases pending and number of outstanding warrants be added to the Court Monthly Report.

Mayor Marshall suggested removing item #5, Department Reports, from the consent agenda for further discussion. The item could be reviewed under individual consideration items.

4. APPROVAL OF MEETING MINUTES FOR FEBRUARY 29, 2016. [SCOTT GREY]

MOTION: Councilmember Standridge moved to approve the February 29, 2016, special meeting minutes as presented. Councilmember Pettle seconded. Mayor Marshall complimented City Secretary Scott Grey on the preparation of meeting minutes. Mayor Pro Tem Levine agreed. Councilmembers Levine, Pettle, Standridge, Stone and Taylor voting for. Motion carried 5-0.

INDIVIDUAL CONSIDERATION ITEMS

5. DEPARTMENT REPORTS-ANIMAL CONTROL, BUILDING, COURT, POLICE AND WEBSITE

Mayor Marshall asked Councilmember Stone to briefly restate his department report concerns. Councilmember Stone said the color used for the Building Permit and Police Department bar graphs was a similar blue, which made it difficult to read. He recommended using purple. City Administrator Flanigan said he would follow up with City Staff and coordinate the color better and/or make sure it was not a copier issue. Councilmember Stone also inquired about an area on the Police Department Monthly Report for each vehicle listed as "oil change", which seemed to remain zero (0) all the time. Finance/H.R. Manager Boyd said she could respond to that question and stated only repairs and maintenance exceeding \$500 would be added. She assured City Council oil changes were being done routinely and said that could be removed. Councilmember Pettle restated her comment as well. She said if the Municipal Court Monthly Report could include the number of cases pending and number of warrants outstanding that would be helpful.

MOTION: Councilmember Stone moved to accept the monthly reports as presented with modifications for future reports. Councilmember Taylor seconded with Councilmembers Levine, Pettle, Standridge, Stone and Taylor voting for. Motion carried 5-0.

6. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON IMPACT FEE PROPOSAL AND COST INFORMATION. [FLANIGAN]

City Administrator Flanigan stated City Attorney gave a report on Impact Fees in November and Municipal Engineer Birkhoff came to our last City Council meeting to discuss the engineering prospective and common sense approach to Impact Fees. At that meeting, City Council asked that he and Municipal Engineer Birkhoff get together and prepare an Impact Fee proposal with cost information for this City Council meeting. Mr. Birkhoff had two proposals, 2016 Water Impact Fee Analysis and 2016 Roadway Impact Fee Analysis, in the City Council packet for consideration at a cost of \$20,000 each. Mr. Flanigan stated this was a 6-8 week process, which the City Attorney would elaborate on further. The information was made available for City Council to review and decide whether to move forward, or not. The agreement may need to be tweaked or modified, if City Council decided to move forward.

City Attorney Shepherd said the contracts in City Council packets were replaced with new contracts, received from Mr. Birkhoff this afternoon. The major question was which Impact Fee the City Council would like to move forward with, if any. Mayor Marshall said he asked Mr. Flanigan and Mr. Shepherd to prepare a timeline for City Council. City Attorney Shepherd provided City Council a handout, *Timeline and Tasks for Impact Fees Adoption* and then reviewed it. (See Exhibit 2.)

Mayor Marshall said this was a topic City Council discussed three (3) or four (4) times. He asked if City Council was interested in pursuing, one impact fee analysis, both, or none at all.

Councilmember Pettle asked where the money would come from, if City Council decided to move forward. Mayor Marshall said it would come from the Council Contingency Fund.

Councilmember Stone spoke about current concerns, capital improvement projects, maintenance, and stormwater/drainage issues. He said he was not excited about impact fees. Councilmember Standridge said he was not overly excited about extra taxes or fees, but we needed something to counteract or impact our water needs and costs, as Water Rate Review Committee (WRRC) recommended. It may be a starting place. Councilmember Standridge continued by saying he did not want to put the burden on developers, because we want to continue our growth. Councilmember Taylor stated impact fees could only be used for new development; it would not help with existing issues. City Attorney Shepherd counseled them on the fact that impact fees had strict guidelines on use. Pro Tem Levine said if he had to pick one impact fee he would choose the Water Impact Fee Analysis and then later City Council would need to discuss whether the Drainage and/or Roadway Impact Fee Analysis were more important. Mr. Levine also stated an Impact Fee would be less expensive than a bond. Water Infrastructure needs for the future were significant, so Mr. Levine said he thought City Council should move forward posthaste with the 2016 Water Impact Fees Analysis.

City Attorney Shepherd agreed, stating with the Water Rate Study results, the City should have more information, to move forward quickly on the Water Impact Fee.

MOTION: Councilmember Taylor moved to retain Birkhoff, Hendricks, and Carter, LLP to complete a 2016 Water Impact Fee Analysis for the City of Parker, for an amount not to exceed \$20,000. Councilmember Standridge seconded with Councilmembers Levine, Pettle, Standridge, Stone and Taylor voting for. Motion carried 5-0.

7. CONSIDERATION AND/OR ANY APPROPRIATE ACTION ON ENGINEERING CONTRACT RESOLUTION NO. 2016-504. [SHEPHERD]

MOTION: Councilmember Pettle moved to table the engineering contract and resolution, pending further legal review and possible revisions. Councilmember Taylor seconded with Councilmembers Levine, Pettle, Standridge, Stone and Taylor voting for. Motion carried 5-0.

ROUTINE ITEMS

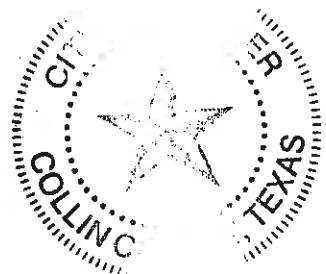
8. FUTURE AGENDA ITEMS

Mayor Marshall asked if there were any items to be added to the future agenda. He noted Impact Fee Committee and Allen Heights bids. He said the next regularly scheduled meeting would be Tuesday, April 5, 2016.

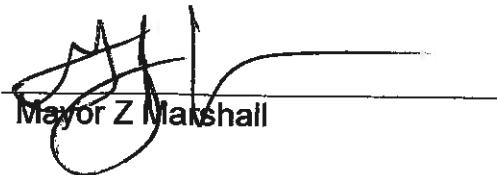
9. ADJOURN

Mayor Marshall adjourned the meeting at 7:46 p.m.

ATTESTED:


Patti Scott Grey
Patti Scott Grey, City Secretary

APPROVED:


Mayor Z. Marshall

Approved on the 19th day
of April, 2016.

From: Lou Zettler
Sent: Wednesday, March 16, 2016 10:10 AM
To:
Cc:
Subject: Donihoo Farms - Construction & Speeding Drivers on Donna Lane

Hello Mayor & council members,

I am asking for guidance & assistance with a problem, that places Parker residents at risk!

Donna Lane is a very very popular residential road, neighbors walk thier dogs, joggers run in the AM & PM, children riding bicycles, truly a reflection of Parker Texas Values.

However Speeding drivers race up & down Donna Lane, ruining the tranquility of our community and threatening the safety of anyone on foot. Until now, the problem has been limited to some extent, however as of yesterday

The construction of Donihoo Farms (Phase One) has begun, first the giant earth moving equitment was trucked in, next the operators, next the gravel trucks, next the concrete trucks, next the material supply trucks, next the carpenters, plumbers etc, etc.

Donihoo Farms Phase One is 74 houses, let's multiplie 74 times each & every delivery, tradesman, real estate agent, prospective buyer... Your Parker residents that live on Donna Lane will witness thousands of drivers exceeding the 30 MPH speed limit.

Many drivers lack awareness of the deadly impact that driving five or ten mph over the limit can have on the people outside their vehicles. Neighborhood speeders do more than ruin the peace; they threaten our safety.

Remember, a little more speed, makes a big difference in pedestrian crashes. Hit at 30 mph, a person has around an 80% chance of living. Hit at 40 mph, a pedestrian has an 85% chance of dying

Why is Donna Lane the Exclusive construction road, to be used & abused by the Developer of Donihoo Farms? This is a residential road, not a 2 or 4 lane concete feeder road that was built to withstand the 100,000 pound loads of a earth mover on a trailer. - Who's gonna pay to repair Donna Lane?

Why is Donna Lane is the Exclusive road, *can we not require the Developer to build relief roads?*

What can we do?

Installing a 3 Way Stop sign on Donna Lane & Windmill Creek will have the greatest impact.

**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).

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).

TIMELINE AND TASKS FOR IMPACT FEE ADOPTION

THE TASKS BELOW ARE TAKEN FROM THE “NUTS AND BOLTS” PAPER PREPARED IN NOVEMBER OF 2015. THE ESTIMATED TIMES FOR EACH TASK ARE HEAVILY DEPENDENT ON MEETING SCHEDULES, AND THE EXTENT OF EXISTING REQUIRED INFORMATION FOR THE LAND USE ASSUMPTIONS. AS THERE IS NOT AS YET A STARTING DATE, THE TIME PERIODS BELOW ARE ESTIMATES OF WEEKS OR MEETINGS NECESSARY TO ACHIEVE EACH STEP. THE ATTACHED COPY OF THE NUTS AND BOLTS PAPER HAS THE TIMELINES BELOW PASTED INTO IT, STARTING ON THE TASKS ON PAGE 3. THE IMPLEMENTATION PROCESS.

ASSUMPTIONS MADE ARE:

1. P&Z WOULD BE APPOINTED AS THE CAPITAL IMPROVEMENTS ADVISORY COMMITTEE (THE “COMMITTEE”), THAT IT WOULD MEET NO LESS THAN TWICE A MONTH.
2. STAFF AND THE CITY ENGINEER CAN PROVIDE EXISTING REQUIRED INFORMATION TO THE COMMITTEE QUICKLY, AND REQUIRED INFORMATION NOT CURRENTLY AVAILABLE CAN BE DEVELOPED IN A REASONABLE PERIOD OF TIME TO ALLOW THE LAND USE ASSUMPTIONS TO BE COMPLETED. FOR EXAMPLE, DO WE KNOW HOW MANY ACRES IN THE ETJ ARE UNDEVELOPED, AND WHAT THE LIKELY DEVELOPMENT IS?
3. THE PROCESS WILL BE SIGNIFICANTLY CHANGED IN TIME ALLOCATIONS IF THE GOAL IS ONLY ONE TYPE OF IMPACT FEE (SUCH AS ROADS), AS OPPOSED TO THE GREATER DEMANDS OF A COMPREHENSIVE IMPACT FEE FOR ROADS, WATER, STORM WATER, ETC.

THE TIMELINE ESTIMATES ARE SHOWN BELOW AS WEEKS ESTIMATED FOR A SINGLE PURPOSE IMPACT FEE, SUCH AS ROADS. AND THE AGGREGATE TOTAL OF EACH STEP, ALL IN **BLUE INK**. THESE ARE VERY PRELIMINARY ESTIMATES, TO BE REVISED WHEN COUNCIL DECIDES ON WHAT TYPE OF FEES ARE TO BE DEFINED, AND THE CITY ENGINEER GIVES US AN ESTIMATE FOR THEIR WORK ON THE CAPITAL IMPROVEMENTS PLAN.

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 moratorium on zoning ordinance is being amended.

a. *Capital Improvements Advisory Committee*

CITY COUNCIL- APPOINT COMMITTEE-INCLUDING ETJ REP—TWO WEEKS—TWO WEEKS

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.

b. *Land Use Assumptions*

ONE MEETING EVERY TWO WEEKS OF THE COMMITTEE ON EACH OF THE FOUR STEPS OF (i) thru (iv). MORE TIME WILL BE REQUIRED IF THERE IS A COMPREHENSIVE IMPACT FEE DESIRED. IF NOT, THEN A MINIMUM OF 10 WEEKS, (AGGREGATE OF 12 WEEKS)

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

THIS PORTION OF THE PLAN IS DEPENDENT ON THE CITY ENGINEER'S SCHEDULE, AS THIS IS THE PORTION THE LAW REQUIRES THE ENGINEER TO CREATE. WHAT KIND OF IMPACT FEE IS DESIRED, AND HOW WELL THE LAND USE ASSUMPTIONS ARE LAID OUT BY THE COMMITTEE WOULD ALSO AFFECT THE TIMELINE. I WILL BE TALKING TO JOHN MONDAY THE 13TH, AND WILL SEE WHAT HE THINKS ON TIME FOR THIS PART OF THE PROJECT. IT WOULD HELP HIM TO KNOW IF THIS WILL JUST BE ROADS, OR WATER, OR DRAINAGE, OR EVERYTHING. THREE MONTHS, PLUS ANOTHER MONTH FOR COUNCIL REVIEW, TWO MORE WEEKS FOR THE REQUIRED PUBLIC HEARING.. (EARLY ESTIMATE-18 WEEKS, AGGREGATE 30 WEEKS).

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

DEVELOPING THE ORDINANCE CAN OCCUR DURING EACH STAGE OF THE PROCESS. ALLOW 30 DAYS AFTER THE PUBLIC HEARING ON THE LAND USE ASSUMPTIONS AND THE CAPITAL IMPROVEMENTS PLAN. (FOUR WEEKS, AGGREGATE 34 WEEKS)

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 a credit equal to 50% of the total projected cost of implementing the CIP, from (ii) the capital improvements or facility expansions and their costs necessitated by and attributable to the new development based on approved land use assumptions, and (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).

TIMELINE AND TASKS FOR IMPACT FEE ADOPTION

THE TASKS BELOW ARE TAKEN FROM THE “NUTS AND BOLTS” PAPER PREPARED IN NOVEMBER OF 2015. THE ESTIMATED TIMES FOR EACH TASK ARE HEAVILY DEPENDENT ON MEETING SCHEDULES, AND THE EXTENT OF EXISTING REQUIRED INFORMATION FOR THE LAND USE ASSUMPTIONS. AS THERE IS NOT AS YET A STARTING DATE, THE TIME PERIODS BELOW ARE ESTIMATES OF WEEKS OR MEETINGS NECESSARY TO ACHIEVE EACH STEP. THE ATTACHED COPY OF THE NUTS AND BOLTS PAPER HAS THE TIMELINES BELOW PASTED INTO IT, STARTING ON THE TASKS ON PAGE 3. THE IMPLEMENTATION PROCESS.

ASSUMPTIONS MADE ARE:

1. P&Z WOULD BE APPOINTED AS THE CAPITAL IMPROVEMENTS ADVISORY COMMITTEE (THE “COMMITTEE”), THAT IT WOULD MEET NO LESS THAN TWICE A MONTH.
2. STAFF AND THE CITY ENGINEER CAN PROVIDE EXISTING REQUIRED INFORMATION TO THE COMMITTEE QUICKLY, AND REQUIRED INFORMATION NOT CURRENTLY AVAILABLE CAN BE DEVELOPED IN A REASONABLE PERIOD OF TIME TO ALLOW THE LAND USE ASSUMPTIONS TO BE COMPLETED. FOR EXAMPLE, DO WE KNOW HOW MANY ACRES IN THE ETJ ARE UNDEVELOPED, AND WHAT THE LIKELY DEVELOPMENT IS?
3. THE PROCESS WILL BE SIGNIFICANTLY CHANGED IN TIME ALLOCATIONS IF THE GOAL IS ONLY ONE TYPE OF IMPACT FEE (SUCH AS ROADS), AS OPPOSED TO THE GREATER DEMANDS OF A COMPREHENSIVE IMPACT FEE FOR ROADS, WATER, STORM WATER, ETC.

THE TIMELINE ESTIMATES ARE SHOWN BELOW AS WEEKS ESTIMATED FOR A SINGLE PURPOSE IMPACT FEE, SUCH AS ROADS. AND THE AGGREGATE TOTAL OF EACH STEP, ALL IN **BLUE INK**. THESE ARE VERY PRELIMINARY ESTIMATES, TO BE REVISED WHEN COUNCIL DECIDES ON WHAT TYPE OF FEES ARE TO BE DEFINED, AND THE CITY ENGINEER GIVES US AN ESTIMATE FOR THEIR WORK ON THE CAPITAL IMPROVEMENTS PLAN.

IMPLEMENTATION TASKS AND TIMELINE DRAFT

- a. *Capital Improvements Advisory Committee*
CITY COUNCIL- APPOINT COMMITTEE-INCLUDING ETJ REP—TWO WEEKS—TWO WEEKS
- b. *Land Use Assumptions*
ONE MEETING EVERY TWO WEEKS OF THE COMMITTEE ON EACH OF THE FOUR

STEPS OF (i) thru (iv). MORE TIME WILL BE REQUIRED IF THERE IS A COMPREHENSIVE IMPACT FEE DESIRED. IF NOT, THEN A MINIMUM OF 10 WEEKS, (AGGREGATE OF 12 WEEKS)

c. Capital Improvements Plan

THIS PORTION OF THE PLAN IS DEPENDENT ON THE CITY ENGINEER'S SCHEDULE, AS THIS IS THE PORTION THE LAW REQUIRES THE ENGINEER TO CREATE. WHAT KIND OF IMPACT FEE IS DESIRED, AND HOW WELL THE LAND USE ASSUMPTIONS ARE LAID OUT BY THE COMMITTEE WOULD ALSO AFFECT THE TIMELINE. I WILL BE TALKING TO JOHN MONDAY THE 13TH, AND WILL SEE WHAT HE THINKS ON TIME FOR THIS PART OF THE PROJECT. IT WOULD HELP HIM TO KNOW IF THIS WILL JUST BE ROADS, OR WATER, OR DRAINAGE, OR EVERYTHING. THREE MONTHS, PLUS ANOTHER MONTH FOR COUNCIL REVIEW, TWO MORE WEEKS FOR THE REQUIRED PUBLIC HEARING..

(EARLY ESTIMATE-18 WEEKS, AGGREGATE 30 WEEKS).

d. Impact Fee Ordinance

DEVELOPING THE ORDINANCE CAN OCCUR DURING EACH STAGE OF THE PROCESS. ALLOW 30 DAYS AFTER THE PUBLIC HEARING ON THE LAND USE ASSUMPTIONS AND THE CAPITAL IMPROVEMENTS PLAN. (FOUR WEEKS, AGGREGATE 34 WEEKS)

A good update to this timeline can be made with the following information:

- a. Council decision on a single impact fee (such as roads or water), or a comprehensive fee for roads, water, drainage, etc.
- b. Availability of existing information needed for the land use assumptions and capital improvements plan.
- c. Input from the city engineer regarding the time needed for him to complete his portion of this work, with the largest part being the capital improvements plan, and exhibits for the ordinance.