ORDINANCE NO. 2025-09

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY REPEALING CHAPTER 46, ARTICLE IV – WATER, WASTEWATER, AND DRAINGE CAPITAL RECOVERY FEES, IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 46, ARTICLE IV – WATER, WASTEWATER, AND DRAINAGE IMPACT FEES; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED $2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * * * * * * *

WHEREAS, the City of Tomball has reviewed and evaluated its current impact fee ordinance for water, wastewater, and drainage; and

WHEREAS, the City Council of the City of Tomball, Texas, finds that it is in the best interest to adopt updated regulations as it pertains Chapter 46, Article IV to align with the regulations set forth in Chapter 395 of Texas Local Government Code; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by repealing Chapter 46, Article IV – Water, Wastewater, and Drainage Capital Recovery Fees, previously adopted on March 17, 2003 by Ordinance No. 2003-02, in its entirety. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adopting Chapter 46, Article IV – Water, Wastewater, and Drainage Impact Fees, attached hereto and incorporated herein by this reference for all purposes.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the solid waste contract executed between the City and contractor. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. Any person who shall intentionally, knowingly, recklessly or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed $2,000. Each day of violation shall constitute a separate offense.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE xxTH DAY OF MONTH 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

SECOND READING:

READ, PASSED, AND ORDAINED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE XXST DAY OF MONTH 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

_____
Lori Klein Quinn, Mayor
City of Tomball

ATTEST:

_____
Tracylynn Garcia, City Secretary
City of Tomball

Chapter 46 – UTILITIES

ARTICLE IV. WATER, WASTEWATER, AND DRAINAGE IMPACT FEES

DIVISION 1. GENERALLY

Sec. 46-144. Intent.

This article is intended to impose water, wastewater, and drainage facilities impact fees on new development, as established in this article, in order to finance public facilities, the demand for which is generated by new development in the designated service areas. The designated service areas are as identified in the Water and Wastewater Impact Fee Study and Drainage Impact Fee Study

(Code 1993, § 82-132; Ord. No. 2003-02, § 2(82-132), 3-17-2003)

Sec. 46-145. Authorization.

(a) The City is authorized to enact the ordinance from which this article is derived in accordance with V.T.C.A., Local Government Code Ch. 395, which authorizes home rule cities, among others, to enact or impose impact fees (capital recovery fees) on land within their corporate boundaries or extraterritorial jurisdictions, as charges or assessments imposed 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; and by the City Charter.

(b) The provisions of this article shall not be construed to limit the power of the city to adopt such article pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth in this ordinance, either in substitution of or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

(Code 1993, § 82-133; Ord. No. 2003-02, § 2(82-133), 3-17-2003)

Sec. 46-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Area-related facility means a capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. The term "area-related facility" may include a capital improvement which is located off site, within or on the perimeter of the development site.

Assessment means the determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

Building permit means written permission issued by the city for the construction, repair, alternation or addition to a structure.

Capital construction cost of service means costs of constructing capital improvements or facility expansions, including and limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees and expert witness fees), and the 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 city.

Capital improvements advisory committee or *advisory committee* means the advisory committee appointed by the City Council, consisting of at least five members who are not employees of the City, not less than 40 percent of which shall be representatives of the real estate, development or building industries, and including one member representing the extraterritorial jurisdiction of the City; or consisting of the planning and zoning commission, including one regular or ad hoc member who is not an employee of the City and which is representative of the real estate, development or building industry, and one representative of the extraterritorial jurisdiction area of the City; which committee is appointed to regularly review and update the capital improvements program in accordance with the requirements of V.T.C.A., Local Government Code § 395.001 et seq., or its successor statute.

Capital improvements program or *capital improvements plan (CIP)* means the plan which identifies water, wastewater, and drainage capital improvements or facility expansions pursuant to which capital recovery fees may be assessed.

Certificate of occupancy means a certificate issued by the building official which certifies that all code-required systems have been inspected and are in compliance with the city codes and that the building may be occupied.

Commercial development means all development that is not residential.

Comprehensive plan (master plan) means the comprehensive long-range plan, adopted by the city council, which is intended to guide the growth and development of the city and which includes analysis, recommendations and proposals for the city regarding such topics as population, economy, housing, transportation, community facilities and land use.

Credit means the amount of the reduction of an impact fee for fees, payments, or charges for the same type of capital improvements for which the fee has been assessed.

Director means the City's Director of Public Works.

Drainage facility means those improvements or facility expansions to provide drainage service, including land or easements, more particularly described in the CIP.

Drainage facility expansion means expansion of the capacity of any existing drainage improvement identified in the CIP, for the purpose of serving new development, not including the repair, maintenance, modernization, or expansion of such existing drainage facility to serve existing development.

Drainage improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the drainage facilities or drainage expansions and their associated costs, which are necessitated by and attributable to new development, and for a period not to exceed

ten years, and which are to be financed in whole or in part through the imposition of drainage facilities impact fees, pursuant to this article.

Facility expansion means the expansion of the capacity of an existing facility which serves the same function as an otherwise necessary new capital improvement in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

Final subdivision plat means the map, drawing or chart on which is provided a subdivider's plan of a subdivision, and which has received final approval by the planning and zoning commission or the city council, and which is recorded with the office of the county clerk.

Growth-related costs means capital construction costs of service related to providing additional service units to new development, either from excess capacity in existing facilities, from facility expansions or from new capital facilities. The term "growth-related costs" does not include:

(1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;

(2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;

(3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

(5) Administrative and operating costs of the city; and

(6) Principal payments and interest or other finance charges on bonds or other indebtedness, except for such payments for growth-related facilities contained in the capital improvements program.

Impact Fee means the fee to be imposed upon new development, calculated based upon the costs of facilities in proportion to development creating the need for such facilities. The term "impact fee" does not include dedication of rights-of-way or easements, construction or dedication of site-related water distribution, wastewater collection, or drainage facilities required by other ordinances or this Code; or pro rata fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines or drainage facilities.

Land use assumptions means projections of changes in land uses, densities, intensities and population therein over at least a ten-year period, adopted by the city, as may be amended from time to time, upon which the capital improvement plan is based.

Multifamily residence means a structure on a single lot designed to accommodate more than one dwelling unit.

New development means a subdivision of land; or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or

any use or extension of the use of land; or any of which increases the number of service units; or any new meter or request for size upgrade to existing meters.

Offset means the amount of the reduction of an impact fee designed to fairly reflect the value of area-related facilities, pursuant to rules herein established or administrative guidelines, provided and funded by a developer pursuant to the city's subdivision regulations or requirements.

Residential development means a lot developed for use and occupancy as a single-family or multifamily residence, as authorized by Chapter 48 of the Code of Ordinances.

Service area means an area within the corporate boundaries and within the extraterritorial jurisdiction as defined by V.T.C.A., Local Government Code § 43.001, to be served by the water, wastewater, and drainage capital improvements or facilities expansions specified in the capital improvements program applicable to the service area.

Service unit means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions, expressed in service units equivalent.

Service Unit Equivalent means the equivalent to a water or wastewater connection for a single-family residence established by the safe maximum operating capacity for a given meter size.

Single-family residence means a single-family dwelling unit.

Site-related facility means improvement or facility which is for the primary use or benefit of a new development and/or which is for the primary purpose of safe and adequate provision of water, wastewater, or drainage facilities to serve the new development, and which is not included in the capital improvements plan, and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.

Tap purchase means the filing with the City of a written application for a water or wastewater tap and the acceptance of applicable fees by the City. The term "tap purchase" shall not be applicable to a master water meter or master wastewater connection purchased from the City by a wholesale customer such as a water district, political subdivision of the state, or other wholesale utility customer; nor shall it be applicable to a meter purchased for and exclusively dedicated to fire protection.

Wastewater facility means improvement for providing wastewater service, including, but not limited to, land or easements, treatment facilities, lift stations or interceptor mains. The term "wastewater facility" excludes wastewater lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities, and which are maintained in dedicated trusts. The term "wastewater facilities" also excludes dedication of rights-of-way or easements or construction or dedication of on-site wastewater collection facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Wastewater facility expansion means expansion of the capacity of any existing wastewater improvement for the purpose of serving new development, not including the repair, maintenance, modernization, or expansion of an existing wastewater facility to serve existing development.

Wastewater improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the wastewater facilities or wastewater expansions and their associated costs which are necessitated by and which are attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of wastewater facilities impact fees, pursuant to this article.

Water facility means an improvement for providing water service, including, but not limited to, land or easements, water supply facilities, treatment facilities, pumping facilities, storage facilities or transmission mains. The term "water facility" excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from pro rata charges paid by subsequent users of the facilities, and which are maintained in dedicated trusts. The term "water facilities" also excludes dedication of rights-of-way or easements or construction or dedication of on-site water distribution facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Water facility expansion means expansion of the capacity of any existing water improvement for the purpose of serving new development, not including the repair, maintenance, modernization, or expansion of an existing water facility to serve existing development.

Water improvements plan means that portion of the CIP, as may be amended from time to time, which identifies the water facilities or water expansions and their associated costs which are necessitated by and which are attributable to new development, and for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of water facilities impact fees, pursuant to this article.

Wholesale customers means water or wastewater customers of the city's utilities which purchase utility service at wholesale rates for resale to their retail customers.

(Code 1993, § 82-134; Ord. No. 2003-02, § 2(82-134), 3-17-2003)

Sec. 46-147. Applicability of Impact Fees.

(a) This article shall be uniformly applicable to new development which occurs within the water, wastewater, and drainage service areas, except for new development which occurs within the service areas of the City's wholesale customers. It shall be the policy of the City to revise contracts with wholesale customers, when the terms of current contracts are completed, to effectively charge wholesale customers impact fees for the new development within the wholesale customers' service area, such fees being equivalent to impact fees charged to retail customers of the City's utilities.

(b) No new development shall be exempt from the assessment of impact fees. However, the City Council may determine that, for reasons of applicant hardship or for reasons of general community welfare, the applicable fees may be waived.

(Code 1993, § 82-135; Ord. No. 2003-02, § 2(82-135), 3-17-2003)

Sec. 46-148. Assessment and Collection of Impact Fees.

Impact fees imposed by this article shall be assessed and collected in accordance with the provisions of V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-136; Ord. No. 2003-02(82-136), § 2, 3-17-2003)

Sec. 46-149. Establishment of Water, Wastewater, and Drainage Service Areas.

(a) Water, wastewater, and drainage service areas are hereby established as identified and described in the CIP.

(b) The service areas shall be established consistent with any facility service area established in the CIP for each utility. Additions to the service area may be designated by the City Council consistent with the procedure set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-137; Ord. No. 2003-02, § 2(82-137), 3-17-2003)

Sec. 46-150. Land Use Assumptions.

Land use assumptions used in the development of the impact fees are hereby adopted and are more particularly described in the Water and Wastewater Impact Fee Study from which this section is derived and made a part of this article. These assumptions may be revised by the City Council according to the procedure set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-138; Ord. No. 2003-02, § 2(82-138), 3-17-2003; Ord. No. 2014-12 , § 2, 6-2-2014)

Sec. 46-151. Service Units.

(a) Service units are established in accordance with generally accepted engineering and planning standards.

(b) Service units for water and wastewater impact fees shall be calculated as follows:

a. For platted lots and for lots on which new development will occur without platting, and for which no water or wastewater meter has been purchased, service units are established as follows:

i. The developments impact on the water system will be determined by utilizing the safe maximum operating capacity of each meter, as defined by the manufacturer, to calculate the service unit equivalent (SUE) for all meters larger than ¾-inch. The SUE is the ratio of the safe maximum operating capacity for the larger meters to the safe maximum operating capacity of a ¾-inch meter.

b. Before issuance of a certificate of occupancy, service units shall be calculated based on service units equivalent as determined by the size of the water meters for the development, or, alternatively, based on the recommendation of the director as a result of an engineering report prepared by a qualified professional engineer licensed

to perform such professional engineering services in the state, which demonstrates the water meter size required for the new development.

c. If the director determines that the water pressure in the city's transmission main is significantly higher or lower than standard pressure such that the size of the water meter is not indicative of actual service demand, the director may adjust the meter size to more accurately reflect the flow rate and the system pressure conditions.

d. If a fire demand meter (tap) is purchased for a property, the meter size utilized to calculate the number of LUEs shall be the dimension of the portion of the fire demand meter that reflects the meter size which would provide only domestic service to the property. Such reduced meter size shall then be utilized to calculate the number of LUEs.

    i. The meter types used to calculate the number of LUEs shall be either simple or compound meters.

    ii. To avoid the use of fire flow volumes for domestic usage, the owner of any property for which a fire demand meter is purchased shall be required to execute a restrictive covenant on a form approved by the city attorney, which covenant shall acknowledge the right of the city to assess such fees to subsequent owners of the property. Such covenant shall be executed prior to the purchase of the fire demand meter and shall be filed in the deed records of the county.

e. Upon issuance of certificate of occupancy for construction on lots for which no water meter has been purchased, service units shall be established by a professional engineer licensed in the state and shall be approved by the Director of Public Works.

(c) A service unit for calculation of drainage impact fees shall be per developed acre.

(d) The City Council may revise the service units designation according to the procedure set forth in V.T.C.A., Local Government Code Ch. 395, or its successor statute.

(Code 1993, § 82-139; Ord. No. 2003-02, § 2(82-139), 3-17-2003)

Sec. 46-152. Impact Fees per Service Unit.

The maximum allowable impact fee per service unit for each service area shall be computed by dividing the cost of required capital improvements identified in the capital improvements plan by the total number of service units attributed to new development during the impact fee eligibility period.

(Code 1993, § 82-140; Ord. No. 2003-02, § 2(82-140), 3-17-2003)

Sec. 46-153. Assessment of Impact Fees.

(a) Impact fees are hereby assessed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. Assessment of impact fees for new development shall be made as follows:

1. This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.
2. This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.
3. This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Texas Local Government Code Chapter 212, Subchapter A, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.
4. This subsection applies only to land platted in accordance with Texas Local Government Code Chapter 212, Subchapter A, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Texas Local Government Code Chapter 212, Subchapter A, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019 (Texas Local Government Code), if the political subdivision has water and wastewater capacity available:
    i. the political subdivision shall collect the fees at the time the political subdivision issues a building permit;
    ii. for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed; or
    iii. a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an

application is filed for an individual meter connection to the political subdivision's water or wastewater system.

5. For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.
6. An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.
7. Notwithstanding Subsections (a)-(e) and Section 395.017 of the Texas Local Government Code, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

(Code 1993, § 82-141; Ord. No. 2003-02, § 2(82-141), 3-17-2003)

Sec. 46-154. Calculation of Impact Fees.

(a) Following the request for new development as provided in section 46-153, or upon application for a building permit, the Ccity shall compute impact fees due for the new development in the following manner:

(1) Determine the meter size required to adequately service the development and reference the approved impact fee as adopted in the Water and Wastewater Impact Fee Study; and

(2) For drainage impact fees, determine the amount of acreage of each land use from the subdivision plat or appropriate document.

(3) The amount of each impact fee due for a new development, whether calculated at the time of final plat approval or at the time of building permit issuance, shall not exceed an amount as identified by V.T.C.A., Local Government Code Ch. 395, or its successor statute.

(4) Fee credits shall be subtracted as determined by the process prescribed in section 46-159.

(Code 1993, § 82-142; Ord. No. 2003-02, § 2(82-142), 3-17-2003)

Sec. 46-155. Collection of Impact Fees.

(a) For all development platted after the effective date of the ordinance from which this article is derived, the impact fees due shall be collected at the time of application for a building permit, or at the time of application for a utility connection, whichever occurs first. If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees due shall be computed using the impact fee then in effect, and previous payments of impact fees shall be credited against the new fees due.

(b) For water and wastewater fees, if the city has water and wastewater capacity available, the impact fee shall be collected at the time the city issues a building permit or approves an application for a utility connection, whichever occurs first.

(c) In areas where services are not currently available, fees may be assessed but may not be collected, except as provided by state law. Where state law requires a commitment by the city to commence construction of a capital improvement or facility expansion, and to have the service available within a specified time frame in order to collect the fees, the city manager is empowered to make this commitment on behalf of the city after consultation with the city's engineer.

(d) A school district is not required to pay impact fees imposed under this article unless the board of trustees of the district consents to the payment of the fees by entering into a contract with the city.

(e) Notwithstanding the above, the City may enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

(f) No certificate of occupancy shall be issued until all impact fees have been paid to the city.

(Code 1993, § 82-143; Ord. No. 2003-02, § 2(82-143), 3-17-2003)

Sec. 46-156. Establishment of Accounts.

(a) Impact fee funds shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in section 46-157.

(c) The city shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in section 46-157. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee was collected.

(d) The city shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended within the service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

(Code 1993, § 82-146; Ord. No. 2003-02, § 2(82-146), 3-17-2003)

Sec. 46-157. Use of Proceeds of Impact Fee Accounts.

a. The impact fees collected may be spent only for the purposes for which they were imposed and within the service area for which they were adopted, as shown in the CIP and as authorized by this article. The impact fees collected for each service area pursuant to this article may be used to finance or to recoup of any capital improvements or facility expansion identified in the applicable capital improvement plan for the service area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition cost (including land purchases, court wards and costs, attorney's fees, and expert witness fees). Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvements or facility expansions. Impact fees may also be used to pay fees actually contracted to be paid to an independent qualified engineer or financial consultant for preparation of or updating the impact fee study or capital improvement plan.

b. Impact fees collected pursuant to this article shall not be used to pay for any of the following expenses:

    a. Construction, acquisition or expansion of capital improvements or assets other than those identified in the applicable capital improvements plan;

    b. Repair, operation or maintenance of existing or new capital improvements or facility expansion;

    c. Upgrade, expansion or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

    d. Upgrade, expansion or replacement of existing capital improvements to serve existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or

    e. Administrative and operating costs of the city.

(Code 1993, § 82-147; Ord. No. 2003-02(82-147), § 2, 3-17-2003)

Sec. 46-158. Appeals.

Upon written application of the owner of the property upon which impact fees were assessed, the City Council shall consider appeals to the interpretations of or errors in the application of the impact fee regulations or schedules used to calculate the fees or credits. The burden of proof shall be on the property owner to demonstrate that the amount of the impact fee,

or the amount of the offset or credit, was not calculated according to the applicable impact fee as referenced in the master fee schedule, or the guidelines established for determining offsets and credits.

(Code 1993, § 82-148; Ord. No. 2003-02, § 2(82-148), 3-17-2003)

Sec. 46-159. Refunds, Credits and Offsets.

The process for refunds for impact fees will be as follows:

On the request of an owner of property on which an impact fee has been paid, impact fees shall be refunded if existing facilities are available and service is denied, or, if the city failed to commence construction of facilities required for service within two years of payment of the fee, or if construction is not complete within a reasonable time considering the type of capital improvements or facility expansion to be constructed, but not in any event more than five years from date of payment of the fee.

(a) Any impact fee funds not expended within ten years after payment shall be refunded.

(b) Refunds shall bear interest calculated from the date of collection to the date of refund at the statutory rate set forth in V.T.C.A. Finance Code § 302.002 or its successor statutes.

(c) All refunds will be made to the owner of record at the time the refund is paid. If, however, the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

The process for credits and offsets will be as follows:

(a) Any construction of, contributions to, or dedications of any facility appearing on the capital improvements plan which is required by the city to be constructed by the owner as a condition of development shall be credited against the impact fees otherwise due from the development. Credit for impact fees due to an owner in one category of impact fees may not be used to offset impact fees in another category.

As an alternative to the foregoing, the city and owner may enter into an agreement providing that, in addition to the credit, owner will be reimbursed for all or a portion of the costs of such facilities from impact.

(b) Fees received from other new developments that will use such capital improvements of facility expansions.

(c) The owner shall be entitled to a credit against any category of impact fee provided in any written agreement between the city and the owner.

(d) No credit for construction of any facility shall exceed the total amount of impact fees due from the development for the same category of improvements.

Petition for refunds for refunds shall be submitted to the Public Works Director. Within one month of the date of receipt of a petition for refund, the director must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision. If a refund

is due to the petitioner, the director shall notify the city treasurer and request that a refund payment be made to the petitioner. The petitioner may appeal the determination to the City Council, as set forth in section 46-158.

(Code 1993, § 82-149; Ord. No. 2003-02, § 2(82-149), 3-17-2003)

Sec. 46-160. Updates to Plan and Revision of Impact Fees.

The City shall review the land use assumptions and capital improvements plan for water, wastewater, and drainage facilities in accordance with V.T.C.A., Local Government Code, Ch. 395. The City Council shall accordingly decide of whether changes to the land use assumptions, capital improvements plan or impact fees are needed and shall, in accordance with the procedures set forth in V.T.C.A., Local Government Code Ch. 395, either update the fees or make a determination that no update is necessary.

(Code 1993, § 82-150; Ord. No. 2003-02, § 2(82-150), 3-17-2003)

Sec. 46-161. Functions of Advisory Committee.

(a) The Capital Improvements Advisory Committee (advisory committee) shall consist of the Planning and Zoning Commission. If the commission does not include at least one representative of the real estate, development or building industry who is not an employee or official of a political subdivision or governmental entity, the City Council shall appoint at least one such representative as an ad hoc member of the advisory committee.

(b) The advisory committee serves in an advisory capacity and is established to:

1. Advise and assist the city in adopting land use assumptions;
2. Review the capital improvements plan and file written comments;
3. Monitor and evaluate implementation of the capital improvements plan;
4. Advise the city staff and council of the need to update or revise the land use assumptions, capital improvements program and impact fees; and
5. File a semi-annual report evaluating the progress of the capital improvements plans and report to the City Council any perceived inequities in implementing the plan or imposing the impact fees.

(c) All professional reports concerning the development and implementation of the capital improvements plan shall be made available to the advisory committee.

(d) The Planning and Zoning Chair shall serve as the chairperson to preside at its meetings.

(e) The land use assumptions and capital improvements plan shall be updated at least every five years. Alternatively, the city council may, pursuant to the provisions of the V.T.C.A. Local Government Code § 395.0575, make a determination that no such update is necessary.

(Code 1993, § 82-151; Ord. No. 2003-02, § 2(82-151), 3-17-2003)

Sec. 46-162. Agreement for Capital Improvements.

(a) The City Council may enter into an agreement with the owner of a new development to construct or finance some of the public improvements identified in the CIP. In the case of such approval, the property owner must enter into an agreement with the City prior to fee collection. The agreement shall be on a form approved by the City, and shall establish the estimated cost of improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement shall be completed to city standards, and any other terms and conditions the City deems necessary. The Public Works Director shall review the improvement plan, verify costs, and time schedules, determine if the improvement is contained in the CIP, and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable impact fee before submitting the proposed agreement to the city council for approval.

(b) The City and such owner either may agree that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development, or they may agree that the City shall reimburse the owner for such costs from impact fees paid from other new developments which will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat.

(Code 1993, § 82-152; Ord. No. 2003-02, § 2(82-152), 3-17-2003)

Sec. 46-163. Use of Other Financing Mechanisms.

(a) The City may finance water, wastewater, and drainage capital improvements or facility expansions designated in the capital improvements plan through the issuance of bonds, through the formation of public improvement districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of impact fees.

(b) Except as otherwise provided in this article, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

(c) The City Council may decide that the City shall pay all or part of impact fees due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

(Code 1993, § 82-153; Ord. No. 2003-02, § 2(82-153), 3-17-2003)

Sec. 46-164. Impact Fees as Additional and Supplemental Regulation.

(a) Impact fees established by this article are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land, the issuance of building permits, the sale of water or wastewater taps, or the issuance of certificates of occupancy. Such fees are intended to be consistent with and to further the policies of the city's comprehensive plan, capital improvements plan, subdivision regulations and other city policies, ordinances, and resolutions by which the City seeks to

ensure the provision of adequate public facilities in conjunction with the development of land.

(b) This article shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Code 1993, § 82-154; Ord. No. 2003-02, § 2(82-154), 3-17-2003)

Sec. 46-165. Relief Procedures.

(a) Any person who has paid an impact fee, or an owner of land upon which an impact fee has been paid, may petition the City Council to determine whether any duty required by this article has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within 60 days of the request. If the city council determines that the duty is required pursuant to this article and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion.

(b) The City Council may grant a variance or waiver from any requirement of this article, upon written request by a developer or owner of property subject to this article, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property.

(c) The City Council may grant a waiver from any requirement of this article on other grounds, as may be set forth in administrative guidelines.

(d) If the City Council grants a variance or waiver to the amount of the impact fees due for a new development under this section, it shall cause to be appropriated from other city funds the amount of the reduction in theimpact fees to the account in which the fees would have been deposited.

(Code 1993, § 82-155; Ord. No. 2003-02, § 2(82-155), 3-17-2003)

Sec. 46-166. Schedule of Maximum Allowable Impact Fees.

(a) The maximum allowable impact fee is determined during the impact fee study process and may be adopted by ordinance at the maximum allowable amount or amount determined by City Council and shall be established in the master fee schedule, or as hereafter adopted by resolution of the CityCcouncil from time to time.

(b) This section may be amended by the City Council according to the procedure set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-156; Ord. No. 2003-02, § 2(82-156), 3-17-2003; Ord. No. 2009-12, § 2(82-156), 6-1-2009; Ord. No. 2014-22 , § 13, 8-4-2014)

Secs. 46-167—46-185. Reserved.

DIVISION 2. WATER IMPACT FEES

Sec. 46-186. Water service area.

(a) There is hereby established a water service area, which is specifically described and defined in the CIP .

(b) The boundaries of the water service area may be amended from time to time, and new water service areas may be delineated, pursuant to the procedures in section 46-149.

(Code 1993, § 82-166; Ord. No. 2003-02, § 2(82-166), 3-17-2003)

Sec. 46-187. Water Capital Improvement Plan.

(a) The water capital improvement plan for the city, as set forth in the Water and Wastewater Master Plan, is hereby adopted. A copy of such plan shall be maintained on file in the office of the City Secretary.

(b) The water capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-167; Ord. No. 2003-02, § 2(82-167), 3-17-2003)

Sec. 46-188. Water facilities fees.

(a) The maximum allowable impact fees per service unit for water facilities are hereby adopted and incorporated in section 46-166.

(b) The impact fees per service unit for water facilities may be amended from time to time, pursuant to the procedures in section 46-152.

(Code 1993, § 82-168; Ord. No. 2003-02, § 2(82-168), 3-17-2003)

Secs. 46-189—46-214. Reserved.

DIVISION 3. WASTEWATER IMPACT FEES

Sec. 46-215. Wastewater service area.

(a) There is hereby established a wastewater service area, which is specifically described and defined in the CIP.

(b) The boundaries of the wastewater service area may be amended from time to time, and new wastewater service areas may be delineated, pursuant to the procedures in section 46-149.

(Code 1993, § 82-181; Ord. No. 2003-02, § 2(82-181), 3-17-2003)

Sec. 46-216. Wastewater Capital Improvement Plan.

(a) The wastewater capital improvement plan for the city, as set forth in the Water and Wastewater Master Plan, is hereby adopted. A copy of such plan shall be maintained on file in the office of the City Secretary.

(b) The wastewater capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-182; Ord. No. 2003-02, § 2(82-182), 3-17-2003)

Sec. 46-217. Wastewater facilities fees.

(a) The maximum allowable impact fees per service unit for wastewater facilities are hereby adopted and incorporated in section 46-166.

(b) The impact fees per service unit for wastewater facilities may be amended from time to time, pursuant to the procedures in section 46-152.

(Code 1993, § 82-183; Ord. No. 2003-02, § 2(82-183), 3-17-2003)

Secs. 46-218—46-242. Reserved.

DIVISION 4. DRAINAGE IMPACT FEES

Sec. 46-243. Drainage service area.

(a) There are hereby established four drainage service areas, which are specifically described and defined in the Drainage Master Plan..

(b) The boundaries of each drainage service area may be amended from time to time, and new drainage service areas may be delineated, pursuant to the procedures in section 46-149.

(Code 1993, § 82-190; Ord. No. 2003-02, § 2(82-190), 3-17-2003)

Sec. 46-244. Drainage capital improvement plan.

(a) The drainage capital improvement plan for each service area, as set forth in the Drainage Master Plan, is hereby adopted. A copy of such plan shall be maintained on file in the office of the City Secretary.

(b) The drainage capital improvement plan may be amended from time to time, pursuant to the procedures set forth in V.T.C.A., Local Government Code Ch. 395.

(Code 1993, § 82-191; Ord. No. 2003-02, § 2(82-191), 3-17-2003)

Sec. 46-245. Drainage Impact Fees.

(a) The maximum impact fee within each service area is per service unit for drainage facilities and are hereby adopted and incorporated in section 46-166.

(b) The impact fees per service unit for drainage facilities may be amended from time to time, pursuant to the procedures in section 46-152.

(Code 1993, § 82-192; Ord. No. 2003-02, § 2(82-192), 3-17-2003)

Secs. 46-246—46-268. Reserved.