ARTICLE 10.01 GENERAL PROVISIONS

(Reserved)

ARTICLE 10.02 IMPACT FEES

Division 1. Generally

Sec. 10.02.001 Short title

This ordinance shall be known and cited as the water and wastewater impact fees ordinance.

Sec. 10.02.002 Intent

This article is intended to impose water and wastewater impact fees, as established in this article, in order to finance public facilities, the demand for which is generated by new development in the designated service area.

Sec. 10.02.003 Authority

The city is authorized to enact this article by chapter 395 of the Texas Local Government Code, which authorizes home-rule cities, among others, to enact or impose impact fees on land with in their corporate boundaries and in their extraterritorial jurisdictions, and on persons with whom they have a water or sewer service contract, 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, The provisions of this article shall not be construed to limit the power of the city to adopt such ordinance pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

(Ordinance 2011-21, sec. 1, adopted 8/9/11)

Sec. 10.02.004 Definitions

As applied in this article, the following words and terms shall be used:

Advisory committee.

(1) The advisory committee shall consist of at least five (5) members, appointed by the mayor and confirmed by the council, to serve terms of three (3) years. None of the committee members may be employees of the city, and at least forty percent (40%) of the members shall be representatives of the real estate, development, or building industries, and, if impact fees are to be applied within the extraterritorial jurisdiction of the city, the membership shall include one (1) member who resides within and represents the interests of those living within the city's extraterritorial jurisdiction. Alternatively, the committee may consist of the members of the city's planning and zoning commission, but in this case, the membership shall also include one regular or ad hoc member who is not an employee of the city and who is representative of the

real estate, development, or building industry, and, if impact fees are to be applied within the extraterritorial jurisdiction of the city, the membership shall include one (1) member who resides within and represents the interests of those living within the extraterritorial jurisdiction area. The committee is appointed to regularly review and update the capital improvements program in accordance with the requirements of chapter 395 of the Texas Local Government Code, and its successors.

(2) Each seat on the committee will be assigned a "place." Committee members' terms of service shall be "staggered," so that the entire membership of the committee will not be subject to replacement at any single point in time. To the extent possible, staggering shall be done so that the committee membership is divided into thirds. Initial staggering of the membership will be accomplished by having all appointees/members who are serving as of the first annual meeting following approval and passage of this section (held in July), "draw lots" to determine which "place" will have what number of service in the transition period (e.g., 1/3 of the places will draw for one-year terms, 1/3 of the places will draw for two-year terms, and the remaining 1/3 of the places will draw for three-year terms.) After the first July meeting, staggering of membership, by place, will begin.

(3) In the event of a vacancy on the committee, an individual appointed to fill the vacancy will serve only the remaining term of the individual who is being replaced by the appointee, so that the staggering of terms shall remain intact.

(4) Attendance requirements for the commission are set forth in this code, section 1.02.002(b), et seq.

(Ordinance 2012-13, pt. 4(H), adopted 6/26/12)

Assessment. The determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this article.

Building permit. Written permission issued by the city for the construction, repair, alteration or addition to a structure.

Capital construction cost of service. 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 program (CIP). Plan which identifies water and wastewater capital improvements or facility expansions pursuant to which impact fees may be assessed.

City. The city of Bastrop, Texas.

City council (council). Governing body of the city.

City manager (manager). Chief executive officer of the city, appointed by the council. City manager includes any city employee designated to act in the city manager's behalf.

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

Effective impact fee. Amount of impact fee collected per service unit, which may be equal to or less than the maximum impact fees as set forth in exhibit C to Ordinance 2011-21.

Existing development. All development within the service area which has a water or wastewater tap on the city's water or sewer system, as of the date of the adoption of this article.

Facility expansion. 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 (final plat). 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 city council and which is recorded with the office of the county clerk.

Growth-related costs. 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. Growth-related costs do 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; or

(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. Charge or assessment to be imposed by the city upon new development to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to new development. The term includes amortized charges, lump-sum charges, impact fees, contributions in aid of construction, and any other fee that functions as described by this definition. Impact fees do not include dedication of rights-of-way or easements, or construction or dedication of site-related water distribution or wastewater collection facilities, or streets, sidewalks, or curbs if the dedication or construction is required by other valid ordinances of the city code and is necessitated by and attributable to the new development; lot or acreage fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or other pro rata fees for reimbursement of water or sewer mains or lines extended by the city.

Inflation escalator. An inflation escalator is applied to the maximum allowable impact fee each fiscal year for October. That escalator is calculated by dividing the National Engineering News-Record Index Value for October by the National Engineering News-Record Index Value during the month of the adoption of this article.

Land use assumptions. Description of the service area and projections of changes in land uses, densities, intensities, and population therein over at least a 10-year period, adopted by the city, as may be amended from time to time, upon which the capital improvement plan is based.

Multifamily development. A single structure containing three or more dwelling units.

New development. 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; any of which increases the number of service units. New development includes the sale of water taps resulting from the conversion of an individual well to the city's water utility and the sale of wastewater taps resulting from the conversion of an individual septic or other individual waste disposal system to the city's wastewater utility.

Offset. The amount of the reduction of an impact fee designed to fairly reflect the value of system-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.

Service area. Area within the corporate boundaries and within the extraterritorial jurisdiction as defined by the Municipal Annexation Act (chapter 41, section 4202, Local Government Code), to be served by the water or wastewater capital improvements or facilities expansions specified in the capital improvements program applicable to the service area. The service area represents the general geographic basis for planning the utility capital improvement programs, used to formulate the fees. The service area is conceptual in nature and does not necessarily represent a definitive commitment for service by the city; the service area boundary also does not necessarily represent limits to service potential or fee assessment.

Service unit. 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 (SUE). Basis for establishing equivalency among and within various customer classes, based upon the relationship of the continuous duty flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 5/8" diameter simple water meter, using American Water Works Association C700–C703 standards. For purposes of this article, 5/8" water meters are considered to equal one (1) SUE; except that for multifamily development, each living unit is equivalent to 0.5 SUE.

SUE Equivalencies for Various Types and Sizes of Water Meters

Meter Type	Meter Size	Duty Maximum Continuous Rate (GPM)	Ratio To 5/8" Meter
Simple	5/8" X 3/4"	10	1.000
Simple	3/4"	15	1.500
Simple	1"	25	2.500
Simple	1-1/2"	50	5.000
Simple	2"	80	8.000
Compound	2"	80	8.000
Turbine	2"	100	10.000
Compound	3"	160	16.000
Turbine	3"	240	24.000
Compound	4"	250	25.000
Turbine	4"	420	42.000
Compound	6"	500	50.000
Turbine	6"	920	92.000
Compound	8"	800	80.000
Turbine	8"	1600	160.000
Compound	10"	1150	115.000
Turbine	10"	2500	250.000
Turbine	12"	3300	330.000

Source: AWWA Standards C700, C701, C702, C703.

Site-related facility. 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 or wastewater 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.

System-related facility. A capital improvement or facility expansion which is designated in the capital improvements plan and which is not a site-related facility. A system-related facility may include a capital improvement which is located offsite, within, or on the perimeter of the development site.

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

Wastewater facility expansion. 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 (wastewater CIP). Portion of the CIP, as may be amended from time to time, which identifies the wastewater facilities or wastewater facility expansions and their associated growth-related costs which are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, which are to be financed in whole or in part through the imposition of wastewater impact fees pursuant to this article.

Water facility. 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. Water facility excludes water lines or mains which are constructed by developers, the costs of which are reimbursed from charges paid by subsequent users of the facilities and which are maintained in dedicated trusts. Water facilities also exclude dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution facilities required by valid ordinances of the city and necessitated by and attributable to the new development.

Water facility expansion. 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 (water CIP). Portion of the CIP, as may be amended from time to time, which identifies the water facilities or water facility expansions and their associated growth-related costs which are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, which are to be financed in whole or in part through the imposition of water impact fees pursuant to this article.

Wholesale customer. Water or wastewater customer of the city's utilities which purchases utility service at wholesale rates for resale to their retail customers.

Sec. 10.02.005 Applicability

(a) This article shall be uniformly applicable to new development which occurs within the water and wastewater service areas.

(b) No new development shall be exempt from the assessment of impact fees as defined in this article.

Sec. 10.02.006 Impact fees as conditions of development approval

No application for new development shall be approved within the city without assessment of impact fees pursuant to this article, and no water and wastewater tap shall be issued and no building permit shall be issued unless the applicant has paid the impact fees imposed by and calculated hereunder.

Sec. 10.02.007 Establishment of water and wastewater service areas

(a) The water and wastewater service areas are established as shown on the service area map which is exhibit A to Ordinance 2011-21.

(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 chapter 395 of the Texas Local Government Code and its successors.

Sec. 10.02.008 Land use assumptions

Land use assumptions used in the development of the impact fees are contained in exhibit B to Ordinance 2011-21. These assumptions may be revised by the city council according to the procedure set forth in chapter 395 of the Texas Local Government Code and its successors.

Sec. 10.02.009 Service units

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

(b) Service units shall be calculated based on service units equivalent as determined by the size of the water meter(s) for the development; or alternatively, as approved the city 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 that the number of SUE's of service for the new development will be different than those indicated by the size of the water meter.

(c) If the city 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 city may adjust the number of SUE's based on a smaller or larger sized meter which more accurately reflects 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 SUE's shall be the dimension of the portion of the fire demand meter which reflects the meter size which would provide only domestic service to the property. Said reduced meter size shall then be utilized to calculate the number of SUE's.

(1) The meter types used to calculate the number of SUE's shall be either simple or compound meters.

(2) If the fire protection capacity of the fire demand meter is routinely utilized for domestic purposes as evidenced by the registration of consumption recorded on the city's meter-reading and billing systems, the then-owner of the property shall be assessed the then-current fee for the fire protection capacity which has been converted to domestic capacity by its routine usage as domestic capacity.

(3) 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, which covenant shall acknowledge the right of the city to assess such fees to subsequent owners of the property. Said covenant shall be executed prior to the purchase of the fire demand meter and shall be filed in the deed records of the county.

(4) No fees shall be collected for the purchase of taps which shall be utilized to provide only fire protection capacity.

(e) Upon wastewater tap purchase for lots for which no water meter has been purchased, service units shall be established by a professional engineer licensed in the state, shall be reviewed by the city and shall be presented to the city council, which shall designate the appropriate number of service units.

(f) The city council may revise the service unit designation according to the procedure set forth in chapter 395 of the Texas Local Government Code and its successors.

Sec. 10.02.010 Impact fees per service unit

(a) The maximum impact fee per service unit for each service area shall be computed by dividing the growth-related capital construction cost of service in the service area identified in the capital improvements plan for that category of capital improvements, by the total number of projected service units anticipated within the service area which are necessitated by and attributable to new development, based on the land use assumptions for that service area, and adjusted by subtracting credits in the form of future rate or tax contributions to water and/or wastewater CIP funding and adding any additional amount as may be yielded in the inflation-escalator portion of the fee assessment formula set forth in section 10.02.011. Maximum impact fees per service unit for each service area shall be established by category of capital improvements and shall be set forth in exhibit C to Ordinance 2011-21.

(b) Exhibit C to Ordinance 2011-21 may be amended by the city council according to the procedure set forth in chapter 395 of the Texas Local Government Code and its successors.

(c) The effective impact fees per service unit may be amended from time to time by the city council through ordinance amendment to any amount less than that set forth in exhibit C to Ordinance 2011-21.

Sec. 10.02.011 Assessment

(a) The approval of any subdivision of land or of any new development shall include as a condition the assessment of the impact fee applicable to such development.

(b) Assessment of the impact fee for any new development shall be made as follows:

(1) For new development which is submitted for approval pursuant to the city's subdivision regulations following the effective date of this article, assessment shall be at the time of final subdivision plat approval, and shall be the value of the effective impact fee per service unit then in effect, as provided in exhibit C as set forth in section 10.02.010(c), multiplied times the inflation escalator then in effect. The city may provide the subdivider with a copy of exhibit C prior to final subdivision plat approval, but such shall not constitute assessment within the meaning of this article.

(2) For new development which has received final plat approval prior to the effective date of this article and for which no replatting is necessary prior to the issuance of a building permit, assessment shall be upon the issuance of a building permit, and shall be the value of the effective impact fee per service unit set forth in exhibit C to Ordinance 2011-21.

(3) For new development which occurs or is proposed to occur without platting, assessment shall be upon the issuance of a building permit, and shall be the value of the effective impact fee per service unit set forth in exhibit C to Ordinance 2011-21.

(4) Fees shall not be assessed to property which has previously purchased taps for the property and which desires to exchange those purchased taps for taps which will reflect an equivalent number of SUE's, as determined under section 10.02.009. If the exchange of said taps will result in an increase in the number of SUE's, the purchaser shall be assessed the effective impact fee in effect at the time of tap exchange, based on the additional SUE's required.

(5) Because fire protection is of critical concern to the community as a whole, water demand related solely to fire protection is not subject to collection of an impact fee. However, if the fire protection capacity of the fire demand meter is routinely utilized for domestic purposes as evidenced by the registration of consumption recorded on the city's meter-reading and billing systems, the current owner of the property shall be assessed the impact fees currently in effect at the time such conversion is established by the city for the fire protection capacity which has been converted to domestic capacity by its routine usage as domestic capacity.

(c) Following assessment of the impact fee pursuant to subsection (b), no additional impact fees or increases thereof shall be assessed against that development unless the number of service units increases, as set forth under section 10.02.009.

(d) Following the lapse or expiration of approval for a plat, a new assessment must be performed at the time a new application for such development is filed.

Sec. 10.02.012 Calculation of impact fees

(a) Following the request for new development as provided in section 10.02.011 of this article, the city shall compute impact fees due for the new development in the following manner:

(1) The total service units for the new development shall be multiplied by the appropriate per-unit effective fee value determined as set forth in section 10.02.010; and

(2) Fee offsets shall be subtracted as determined by the process proscribed in section 10.02.014 of this article.

(b) The value of each impact fee due for a new development shall not exceed a value computed by multiplying the effective fee assessed per service unit pursuant to section 10.02.010 by the number of service units generated by the development.

Sec. 10.02.013 Collection of impact fees

(a) No water or wastewater tap or building permit shall be issued until all impact fees have been paid to the city, or until a "notice of impact fee due" is recorded as provided in this section, except as provided otherwise by contract.

(b) Impact fees shall be paid at the time of the issuance of a building permit, except as provided in subsections (c) through (f).

(c) For land platted outside the corporate boundaries of the city, fees shall be collected at the time an application for connection to the city's water or wastewater system is filed.

(d) If the city lacks authority to issue building permits in the area where the impact fee applies, impact fees shall be collected at the time an application is filed for connection to the city's water or wastewater system.

(e) For new development converting to the city water utility from an individual water well, or to the city wastewater utility from a septic tank or individual waste disposal system, the city may allow the fee payer to pay impact fees in the form of a monthly assessment, as provided below:

(1) At the request of the applicant, and with the approval of the city manager, the impact fees for such customers may be paid in increments over a period of not more than two years, with interest computed on the unpaid balance at the statutory rate as set forth in article 1.03, title 79, Revised Statutes (article 5069-1.03, Vernon's Texas Civil Statutes), or any successor statute.

(2) If the applicant chooses this extended payment option, the applicant shall, as a condition of tap sale and/or building permit issuance, sign and file with the city clerk, and consent to the recordation of, a "notice of impact fee due," which shall be recorded as a lien against the subject property. The city shall release the lien held only upon payment in full of the impact fees and any late penalties and applicable interest.

(3) Late payments shall subject the applicant to a penalty of ten percent of the amount due and additional interest in addition to all other remedies available to the city as lien holder.

(f) The city may, at its sole discretion, enter into contracts to establish a different date of fee collection than those provided in this section.

(g) It shall be the policy of the city to attempt to revise any contracts which might exist with wholesale customers, or which in the future may be entered into for wholesale service, in such a manner that impact fees are collected from the wholesale customer according to the number of SUE's attributable to each retail meter for new development within the wholesale customer's service area.

Sec. 10.02.014 Offsets against impact fees

(a) The city shall offset the present value of any system-related facilities, pursuant to rules established in this section, which have been dedicated to the city by the fee payer, and have been received by the city, including the value of rights-of-way or capital improvements constructed pursuant to an agreement with the city, against the value of the impact fee due for that category of capital improvement.

(b) All offsets against impact fees shall be subject to the following limitations and shall be granted based on this article and additional standards promulgated by the city, which may be adopted as administrative guidelines.

(1) No offset shall be given for the dedication or construction of site-related facilities.

(2) The unit costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the capital improvements plan for the category of facility within the service area for which the impact fee is imposed.

(3) If an offset applicable to a plat has not been exhausted within ten (10) years from the date of the issuance of the first building permit after the effective date of this article or within such period as may be otherwise designated by contract, such offset shall lapse.

(4) In no event will the city reimburse the property owner or developer for an offset when no impact fees for the new development can be collected pursuant to this article or for any value exceeding the total impact fees due for the development for that category of capital improvement, unless otherwise agreed to by the city.

(c) An applicant for new development must apply for an offset against impact fees due for the development either at or before the time of plat recordation. The applicant shall file a petition for offsets with the city on a form provided for such purpose. The contents of the petition shall be established by administrative guidelines. The city must provide the applicant, in writing, with a decision on the offset request, including the reasons for the decision. The decision shall specify the maximum value of the offset which may be applied against an impact fee, which value and the date of the determination shall be associated with the plat for the new development.

(d) The available offset associated with the plat shall be applied against an impact fee in the following manner:

(1) Such offset shall be prorated equally among all service units, as calculated in section 10.02.009, and remain applicable to such service units, to be applied at time of filing and acceptance of an application for a building permit, against impact fees due.

(2) If the total number of service units used by the city in the original offset calculation described in subsection (1) is eventually exceeded by the number of total service units realized by the actual development, the city may, at its sole discretion, collect the full impact fee exclusive of any associated offset for the excess service units.

(3) At its sole discretion, the city may authorize alternative offset agreements upon petition by the owner in accordance with guidelines promulgated by the city.

Sec. 10.02.015 Establishment of accounts and records

(a) The city shall establish separate interest-bearing accounts, in a bank authorized to receive deposits of city funds, for each major category of capital facility for which an impact fee is imposed pursuant to this article.

(b) Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds authorized in section 10.02.016.

(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 10.02.016. 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 (10) years from the date the fee is deposited into the account.

(d) The city shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of uses specified in the capital improvements program as system-related facilities. The city shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provision in section 10.02.018 of this article, and such other information as may be necessary for the proper implementation of this article.

Sec. 10.02.016 Use of proceeds of impact fee accounts

(a) The impact fees collected pursuant to this article may be used to finance or to recoup capital construction costs of service. Impact fees may also be used to retire bonds or 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 construction costs of service.

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

(1) Construction, acquisition or expansion of capital improvements or assets other than those identified in the associated capital improvements plans;

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

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

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

(5) Administrative and operating costs of the city.

Sec. 10.02.017 Appeals

(a) The property owner or applicant for new development may appeal the following decisions to the city manager:

(1) The applicability of an impact fee to the development;

(2) The basis for fee calculation;

(3) The amount of fee due;

(4) The availability or the value of an offset;

(5) The application of an offset against an impact fee due;

(6) The amount of the refund due, if any.

(b) The burden of proof shall be on the appellant to demonstrate that the value of the fee or the value of the offset was not calculated according to the applicable impact fee schedule or the guidelines established for determining offsets.

(c) If the appeal application is accompanied by a bond or other sufficient surety satisfactory to the city manager in an amount equal to the original determination of the impact fee due, the development application or tap purchase or building permit application may be processed while the appeal is pending.

(d) The appellant may appeal the decision of the city manager to the council. A notice of appeal to the council must be filed by the applicant with the city secretary within thirty (30) days following the city manager's decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the city attorney in an amount equal to the original determination of the capital recovery fee due, the development application or tap purchase or building permit issuance may be processed while the appeal is pending.

Sec. 10.02.018 Refunds

(a) Any impact fee or portion thereof collected pursuant to this article which has not been expended within ten (10) years from the date of payment, shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in article 1.03, title 79, Revised Statutes (article 5069-1.03, Vernon's Texas Civil Statutes), or any successor statute.

(b) An impact fee collected pursuant to this article shall be considered expended if the total expenditures for capital improvements or facilities expansions authorized in section 10.02.016 within ten (10) years following the date of payment exceeds the total fees collected for such improvements or expansions during such period.

(c) If a refund is due pursuant to subsections (a) and (b), the city shall prorate the same by dividing the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record owner or governmental entity shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

(d) Upon the request of an owner of the property on which an impact fee has been paid, the city shall refund such fees if:

(1) Existing service is available and service is denied;

(2) Service was not available when the fee was collected and the city has failed to commence construction of facilities to provide service within two years of fee payment; or

(3) Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event later than five years from the date of fee payment.

(e) The city shall refund an appropriate proportion of impact fee payments in the event that a previously purchased unused water meter is replaced with a smaller meter, based on the SUE differential of the two meter sizes and the per-SUE fee at the time of the original fee payment, less an administrative charge of $50.00.

(f) Petition for refunds shall be submitted to the city on a form provided by the city for such purpose. Within one month of the date of receipt of a petition for refund, the city 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 city manager shall cause a refund payment be made to the petitioner.

Sec. 10.02.019 Updates to plan and revision of fees

The city shall review the land use assumptions and capital improvements plan for water and wastewater facilities at least every five years, the first five-year period commencing from the date of adoption of the capital improvements plan referenced herein. The city council shall accordingly then make a determination 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 chapter 395 of the Texas Local Government Code, or any successor statute, either update the fees or make a determination that no update is necessary.

Sec. 10.02.020 Functions of advisory committee

(a) The functions of the advisory committee are those set forth in chapter 395 of the Texas Local Government Code, or any successor statute, and shall include the following:

(1) Advise and assist the city in adopting land use assumptions;

(2) Review the capital improvements plan regarding water and wastewater capital improvements and file written comments thereon;

(3) Monitor and evaluate implementation of the capital improvements program;

(4) Advise the city of the need to update or revise the land use assumptions, capital improvements program and impact fees;

(5) File semiannual reports evaluating the progress of the city in achieving the capital improvements plans and identifying any problems in implementing the plans or administering the impact fees, and any perceived inequities in administration of the fee; and

(6) In October of each year, the committee shall review the impact fees being assessed to determine whether said fees should be adjusted to reflect:

(A) Any changed circumstances encountered by the city; and

(B) Any increases in the consumer price index.

(b) The city shall make available to the advisory committee any professional reports prepared in the development or implementation of the capital improvements plan.

(c) The council shall adopt procedural rules for the committee to follow in carrying out its duties.

Sec. 10.02.021 Agreement for capital improvements

The city council may approve 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 city manager or his/her designee 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 offset for such improvement to be applied to the otherwise applicable impact fee before submitting the proposed agreement to the council for approval.

Sec. 10.02.022 Use of other financing mechanisms

(a) The city may finance water and wastewater capital improvements or facilities expansions designated in the capital improvements plan through the use of operating cash transfers, 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 herein otherwise provided, 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.

Sec. 10.02.023 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 or the issuance of building permits or 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 city's comprehensive plan, capital improvements plan, zoning ordinance, 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.

Sec. 10.02.024 Relief procedures

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 sixty (60) days of the request. If the council determines that the duty is required pursuant to the article and is rate in being performed, it shall cause the duty to commence within sixty (60) days of the date of the request and to continue until completion.

Sec. 10.02.025 Exemptions

No exemptions will be granted from payment of applicable water and wastewater impact fees, except as provided for in section 10.02.014.

Sec. 10.02.026 Certification of compliance required

(a) The city manager or designee shall submit a written certification verifying compliance with this chapter to the attorney general each year not later than the last day of the city's fiscal year.

(b) The certification must be signed by the presiding officer of the city council and include a statement that reads substantially similar to the following: "This statement certifies compliance with chapter 395, Local Government Code."

(Ordinance 2011-21, sec. 1, adopted 8/9/11)

Secs. 10.02.027–10.02.060 Reserved

Division 2. Water Facilities

Sec. 10.02.061 Service area

(a) There is hereby established a water service area as depicted on exhibit A to Ordinance 2011-21 and incorporated herein by reference.

(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 10.02.007.

Sec. 10.02.062 Improvements plan

(a) The water improvements plan for the city is hereby adopted as exhibit D to Ordinance 2011-21 and incorporated by reference herein.

(b) The water improvements plan may be amended from time to time, pursuant to the procedures set forth in chapter 395 of the Texas Local Government Code and its successors.

Sec. 10.02.063 Impact fees

(a) The maximum impact fee values per service unit for water facilities are hereby adopted and incorporated in exhibit C to Ordinance 2011-21 and made a part hereof by reference.

(b) The impact fee values per service unit for water facilities may be amended from time to time, pursuant to the procedures in section 10.02.010.

(Ordinance 2011-21, sec. 2, adopted 8/9/11)

Secs. 10.02.064–10.02.090 Reserved

Division 3. Wastewater Facilities

Sec. 10.02.091 Service area

(a) There is hereby established a wastewater service area as depicted on exhibit A to Ordinance 2011-21 and incorporated herein by reference.

(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 10.02.007.

Sec. 10.02.092 Improvements plan

(a) The wastewater improvements plan for the city is hereby adopted as exhibit E to Ordinance 2011-21 and incorporated by reference herein.

(b) The wastewater improvements plan may be amended from time to time, pursuant to the procedures set forth in chapter 395 of the Texas Local Government Code and its successors.

Sec. 10.02.093 Impact fees

(a) The maximum impact fee values per service unit for wastewater facilities are hereby adopted and incorporated in exhibit C to Ordinance 2011-21 and made a part hereof by reference.

(b) The impact fee values per service unit for wastewater facilities may be amended from time to time, pursuant to the procedures in section 10.02.010.

(Ordinance 2011-21, sec. 3, adopted 8/9/11)