DIVISION 1. - GENERALLY

Sec. 90-139. - Short title.

This article shall be known and cited as the Water and Wastewater Capital Recovery Fees Article.

(Code 1976, § 19-106)

Sec. 90-140. - Intent.

This article is intended to impose water and wastewater capital recovery 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.

(Code 1976, § 19-107)

Sec. 90-141. - Authority.

The city is authorized to enact this article by its charter and chapter 395, as amended, the Local Government Code, (Senate Bill 336 enacted by the 70th Texas Legislature) and its successors, which authorize home rule cities, among others, to enact or impose impact fees (Capital Recovery Fees) on land within their corporate boundaries or extraterritorial jurisdictions, and on persons with whom they have a water or wastewater 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. The provisions of this article shall not be construed to limit the power of the city to adopt this 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 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.

(Code 1976, § 19-108)

Sec. 90-142. - Definitions.

As applied in this article, the following words and terms shall have the same meaning and definition as contained in Section 395.001 of the Texas Local Government Code, as amended (the “ACT”).

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

Building permit is an official approval issued by the city for the construction, repair, alteration, demolition, or occupancy to a building or 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, project management 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 program who is not an employee of the city.

Capital improvement means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision: Water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, whether or not they are located within the service area;

Capital improvements advisory committee (advisory committee) means an advisory committee, consisting of the planning and zoning commission, including one regular or ad hoc member who is not an employee of the city and is a representative of the real estate, development, or building industries, and including one member representing the extraterritorial jurisdiction of the city if fees are to be assessed in the extraterritorial jurisdiction; which committee is appointed to regularly review and update the capital improvements program in accordance with the requirements and functions described in the act..

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

Capital recovery fee means an impact fee for water or wastewater facilities as defined herein.

City means City of Schertz.

City council (council) means governing body of the City of Schertz.

Commercial development means all development which is neither residential nor industrial.

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 which includes analysis, recommendations, and proposals for the city regarding such topics as population, economy, housing, transportation, community facilities and land use.

Duplex means a structure on a single lot designed to accommodate two dwelling units, as authorized under the city's zoning regulations.

Existing development means all property within the service area which has a water or wastewater connection.

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 Plat is a map or drawing of specific land showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys and easements drawn to scale. This process requires final approval by the City Planning and Zoning Commission or City Council and is recorded with the office of the County Clerk of the County (s) in which the parcel is located.

Fourplex means a structure on a single lot designed to accommodate four dwelling units, as authorized under the city's zoning regulations.

Industrial development means development which will be assigned to the industrial customer class of the water or wastewater utilities; generally, development in which goods are manufactured, or development which is ancillary to such manufacturing activity.

Impact fee means a charge or assessment imposed by a political subdivision 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. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;
(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;
(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or
(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

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

Living Unit Equivalent (LUE) means basis for establishing equivalency among and within various customer classes based upon the relationship of the continuous duty maximum 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 five-eighths-inch diameter simple water meter, using American Water Works Association C700-C703 standards. LUE'S for water meters are as follows:

METER SIZE AND TYPE	LUE'S
5/8 " Simple	1.0
¾" Simple	1.5
1" Simple	2.5
1½" Simple	5.0
2" Simple	8.0
2" Compound	8.0
2" Turbine	10.0
3" Compound	16.0
3" Turbine	24.0
4" Compound	25.0
4" Turbine	42.0
6" Compound	50.0
6" Turbine	92.0
8" Compound	80.0
8" Turbine	160.0

10" Compound	115.0
10" Turbine	250.0
12" Turbine	330.0

New development means subdivision of land; 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 or requires the purchase of a new water or wastewater service. New development includes the sale of water or wastewater taps resulting from the conversion of an individual well, or septic or other individual waste disposal system, to the city's water or wastewater utility.

Offset means the amount of the reduction of a capital recovery 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.

Residential development means a lot developed for use and occupancy as a single-family residence, two-family, or multi-family residential.

Service area means an area within the corporate boundaries and within the extraterritorial jurisdiction of the city as defined by the Municipal Annexation Act Chapter 43, as amended, Local Government Code, to be served by the water and wastewater 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 and based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years, expressed in living units equivalent (LUEs) *Single-family residential* means single-family dwelling unit(s), as authorized under the city's zoning regulations.

Site-related facility means the 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 program, and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.

Superintendent means the superintendent of the city water and wastewater utilities. For purposes of this chapter, in the absence of the Superintendent, the Director of Public Works' designee will have authority.

System-related facility means a capital improvement or facility expansion identified 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 means the filing with the city of a written application for a water or wastewater service connection water or wastewater existing lines or mains or the acceptance of applicable fees by the city for the connection or service. 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 of Texas, or other wholesale utility customer; nor shall it be applicable to a meter purchased for and exclusively dedicated to fire protection.

Wastewater facility means an improvement for providing wastewater service, including but not limited to, land 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 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 the 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 the portion(s) 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 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 definition of water facility excludes (1) 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; and (2) the dedication of right-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 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 fees pursuant to this article.

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

(Code 1976, § 19-109)

Sec. 90-143. - Applicability of capital recovery fees.

(a) This article shall be uniformly applicable to new development which occurs within the water and wastewater service areas, except for new development which occurs within the service areas of the city's wholesale customers.

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

(Code 1976, § 19-110)

Sec. 90-144. - Capital recovery fees as conditions of development approval.

No application for new development shall be approved within the city without assessment of capital recovery fees pursuant to this article, and no water and wastewater connection, or service, shall be issued unless the applicant has paid the capital recovery fees imposed by and calculated hereinunder.

(Code 1976, § 19-111)

Sec. 90-145. - Establishment of water and wastewater service areas.

(a) The water and wastewater service areas are established as shown on the service area map which has been adopted by city council and is on file in Public Works.

(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 Tex. Local Government Code, Ch. 395 and its successors.

(Code 1976, § 19-112)

(Code 1976, § 19-113)

Sec. 90-147. - Service units.

Service units means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering and planning standards, expressed in LUEs

(a) Upon application for a building permit (for properties inside the city corporate limits) or upon tap purchase (for properties outside the city corporate limits), service units for the property in question shall be calculated based on living units equivalent as determined by

(1) the size of the water meter(s) for the development, or alternatively:

(2) if in the judgment of the superintendent such compensation overstates or understates the impact of such new development, the superintendent may calculate the living units equivalent based on historical data and trends applicable to the political subdivision in which the individual unit of development is located during the previous 10 years; or alternatively:

3) if in the judgment of the superintendent such compensation overstates or understates the impact of such new development, the superintendent, at the cost and expense of the applicant, may obtain an engineer's report prepared by a qualified professional engineer licensed to perform such professional engineering services in the state, which demonstrates that the number of LUE's of service for the new development will be different.

(b) If a fire demand meter (tap) is purchased for a property, the meter size utilized to calculate the number of LUE'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 LUE's.

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

(2) To avoid the use of fire flow volumes for calculating 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 capital recovery fees to subsequent owners of the property at the full meter size. 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.

(c) Upon application for a building permit for lots for which no water meter has been purchased, service units for wastewater for said property shall be established by a professional engineer licensed in the state, retained by the applicant at no cost to the city, and shall be approved by the superintendent.

(d) The city council may revise the service unit’s designation according to the procedure set forth in the act.

(Code 1976, § 19-114)

Sec. 90-148. - Capital recovery fees per service unit.

(a) The maximum capital recovery fee per service unit for each service shall be computed by dividing: (i) the growth-related capital construction cost of service for new development, less the amount of any credits against such amount that are attributable to rate or future tax contributions to CIP funding by, (ii) the total number of new service units anticipated to be needed within the service area. The capital construction cost of service and the projected number of new service units shall be based on the land use assumptions for the service area as established as part of the CIP. The maximum capital recovery fees per service unit for each service shall be established by category of capital improvements and shall be set forth in ordinances and exhibits thereto as are adopted from time to time.

(b) Exhibits may be amended by the city council according to the procedure set forth in the act.

(c) Current capital recovery fees for water/wastewater shall be as established from time to time by ordinance and exhibits attached thereto.

(Code 1976, § 19-115)

Sec. 90-149. - Assessment of capital recovery fees.

(a) The assessment of the capital recovery fee applicable to such development shall be a prerequisite to the approval of any subdivision of land or of any new development.

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

 (1) For a 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 plat approval and shall be the amount of the capital recovery fee per service unit then in effect, as set forth in section 90-148(a). The city may provide the subdivider with a copy of fees and assessments prior to final plat approval, but such shall not constitute assessment within the meaning of this article.

 (2) For a development which has received final plat approval prior to the effective date of this article or for which no re-platting is necessary, assessment shall be upon issuance of building permit (for properties within the corporate boundaries) or upon tap purchase (for properties outside the corporate boundaries).

 (3) Water demand related solely to fire protection is not subject to assessment of a capital recovery 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, on the date of such determination, shall be assessed the current capital recovery fees for the fire protection capacity which has been converted to domestic capacity by its routine usage as domestic capacity.

(c) Following assessment of the capital recovery fee pursuant to subsection (b), no additional capital recovery fees or increases thereof shall be assessed against that development unless the number of service units increases, as set forth under section 90-147.

(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.

(Code 1976, § 19-116)

Sec. 90-150. - Calculation of capital recovery fees.

(a) Upon application for a building permit (for properties within the corporate boundaries of the city) or upon application for a water or wastewater tap (for properties outside the corporate boundaries of the city), the city shall compute the capital recovery fees due from the applicant in the following manner:

(1) The number of LUE's shall be determined by the size of the water meter purchased or by evaluation of the superintendent, or engineering firm, as determined according to section 90-147 of this article.

(2) LUE's shall be summed for all meters purchased for the development.

(3) The total service units shall be multiplied by the appropriate per-unit fee amount determined as set forth in section 90-148 of this article.

(4) Fee credits and offsets shall be subtracted as determined by the process prescribed in section 90-148 of this article.

(b) The amount of capital recovery fee due for a new development shall not exceed an amount computed by multiplying the fee assessed per service unit pursuant to section 90-148 of this article by the number of service units generated by the development.

(Code 1976, § 19-117)

Sec. 90-151. - Collection of capital recovery fees.

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

(b) Capital recovery fees shall be collected at the time of building permit issuance (for properties within the corporate boundaries of the city) or at the time of tap purchase (for properties outside the corporate boundaries)

(c) In the event that a water or wastewater tap is sold as the result of a conversion from an individual well, or septic or other individual waste disposal system, the appropriate capital recovery fee shall be collected at the time of tap purchase, except as provided below:

(1) At the request of the applicant, and with the approval of the superintendent, the capital recovery fees for such customers may be paid in increments over a period of not more than 12 months, with interest computed on the unpaid balance at the statutory rate as set forth in state law.

(2) If the applicant chooses this extended payment option, the applicant shall, as a condition of tap sale, sign and file with the city clerk, and consent to the recordation of, a "notice of capital recovery 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 capital recovery 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.

(d) Upon the request of an applicant, the city may, at its sole discretion, determine that lump sum payment by a fee payer would result in undue economic hardship and may enter into a payment agreement subject to the provisions below and according to guidelines established by the city, as amended from time to time.

(1) At the request of the applicant, and with the approval of the superintendent, the capital recovery fees for customers may be paid in increments over a period of not more than 12 months, with interest computed on the unpaid balance at the statutory rate as set forth in state law.

(2) If the applicant chooses this extended payment option, the applicant shall, as a condition of tap sale, sign and file with the city clerk, and consent to the recordation of, a "notice of capital recovery 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 capital recovery 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.

(4) Customer hardship cases, at the discretion of the superintendent, may be assisted with a financial assistance plan not to exceed 12 months with a ten percent administrative fee for handling the paperwork.

(e) 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 capital recovery fees are collected from the wholesale customer according to the number of LUE's attributable to each retail meter for new development within the wholesale customer's service area.

(Code 1976, § 19-118)

Sec. 90-152. - Offsets and credits against capital recovery fees.

(a) The city shall offset the present value of any system-related facilities, pursuant to rules established in this section, and which have been dedicated to 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 amount of the capital recovery fee due for that category of capital improvement due from the contribution.

(b) The city shall credit capital recovery and pro rata fees which have been paid pursuant to this chapter of the city Code prior to the effective date of this article, and during the period following adoption of this article, against the amount of a capital recovery fee due for that category of capital improvement, subject to guidelines established by the city.

(c) All offsets and credits against capital recovery 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 credit 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 program for the category of facility within the service area for which the capital recovery fee is imposed.

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

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

(d) An applicant for new development must apply for an offset or credit against capital recovery fees due for the development either at the time of application for final plat approval or at the time of building permit application (for properties within the corporate boundaries) or at the time of tap purchase (for properties outside the corporate boundaries), unless the city agrees to a different time. The applicant shall file a petition for offsets or credits with the city.

(e) The available offset credit associated with the plat shall be applied against a capital recovery fee at time of the first fee payment for properties within that plat in the following manner:

(1) Such offset or credit shall be prorated equally among all living units equivalent within the development, as calculated in section 90-147 of this article, and remain applicable to such LUE's, to be applied at the time of filing and acceptance of an application for a building permit (or at the

time of tap purchase for properties outside the corporate boundaries) against capital recovery fees due.

(2) If the total number of LUE's used by the city in the original offset or credit calculation described in subsection (1) is eventually exceeded by the number of total LUE's realized by the actual development, the city may, at its sole discretion, collect the full capital recovery fee exclusive of any associated offsets or credits for the excess LUE's.

(3) At its sole discretion, the city may authorize alternative credit or offset agreements upon petition by the owner.

(Code 1976, § 19-119)

Sec. 90-153. - Establishment of accounts.

(a) The city finance department 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 a capital recovery 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 90-154 of this article.

(c) The city's finance department shall establish adequate financial and accounting controls to ensure that capital recovery fees disbursed from the account are utilized solely for the purposes authorized in section 90-154 of this article. 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 capital recovery fee paid to the city shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee is deposited into the account.

(d) The city finance department shall maintain and keep adequate financial records for each 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 projects specified in the capital improvements program as system-related capital projects. The city finance department shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provision in section 90-156 of this article.

(Code 1976, § 19-120)

Sec. 90-154. - Use of proceeds of capital recovery fee accounts.

(a) The capital recovery fees collected pursuant to this article may be used to finance or to recoup capital construction costs of service. Capital recovery 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 facilities expansions.

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

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

(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 capital recovery 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.

(Code 1976, § 19-121)

Sec. 90-155. - Appeals.

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

(1) The applicability of a capital recovery fee to the development;

(2) The amount of the capital recovery fee due;

(3) The application of an offset or credit against a capital recovery fee due;

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

(b) The burden of proof shall be on the appellant to demonstrate that the amount of the capital recovery fee or the amount of the offset or credit was not calculated according to the applicable capital recovery fee schedule, or the guidelines established from determining offsets and credits.

(c) The appellant may appeal the decision of the superintendent, in writing, to the city manager. If the appeal is accompanied by a bond or other sufficient surety satisfactory to the city manager in an amount equal to the original determination of the capital recovery fee due, the development application or tap purchase may be processed while the appeal is pending.

(Code 1976, § 19-122)

Sec. 90-156. - Refunds.

(a) Any capital recovery fee or portion thereof collected pursuant to this article which has not been expended within ten years from the date of payment, shall be refunded, upon written application therefore by the record owner of the property at the time the refund is paid. If the capital recovery fee was paid by another governmental entity, such refund shall also include 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, (article 5069-1.03, Texas Revised Civil Statutes Annotated, as amended) (Vernon's Ann. Civ. St. art. 5069-1.03), or any successor on the amount of the capital recovery fee.

(b) If a refund is due pursuant to subsection (a) of this section, the refund of unexpended fee payments, including interest from the date of payment, shall be made to the current record owner or governmental entity.

(c) Upon completion of all the capital improvements or facilities expansions identified in the capital improvements program upon which the fee was based, the city shall recalculate the maximum fee per service unit using the actual costs for the improvements or expansions. If the maximum fee per service unit based on actual cost is less than the fee per service unit paid, the city shall refund the difference, if such difference exceeds the fee paid by more than ten percent. The refund to the record owner or governmental entity shall be calculated by multiplying such difference 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 a capital recovery fee has been paid, the city shall refund such fees if:

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

(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 capital recovery fee payments in the event that a previously purchased water meter is replaced with a smaller meter, based on the LUE differential of the two meter sizes and the per-LUE fee at the time of the original fee payment, and if capital recovery fees have not been expended in support of the previous meter, less an administrative charge of $50.00.

(f) Petition for refunds shall be submitted to the superintendent on a form provided by the city for such purpose. Within one month of the date of receipt of a petition for refund, the superintendent 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 superintendent 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 90-155 of this article.

(Code 1976, § 19-123)

Sec. 90-157. - Updates to plan and revision of fees.

The city shall review the land use assumptions and capital improvements program for water and wastewater facilities at least every three years, the first three-Year period which shall commence from the date of the adoption of the capital improvements program referenced herein. The city council shall accordingly then make a determination of whether changes to the land use assumptions, capital improvements program or capital recovery fees are needed and shall, in accordance with the procedures set forth in the act, either update the fees or make a determination that no update is necessary.

(Code 1976, § 19-124)

(Code 1976, § 19-125)

State Law reference Advisory committee, Tex. Local Government Code, § 395.058.

Sec. 90-159. - Agreement for capital improvements.

(a) 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 superintendent shall review the improvement plan, verify costs and time schedules, determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable capital recovery fee before submitting the proposed agreement to council for approval.

(b) The city and such owner either may agree that the costs incurred or funds advanced will be credited against the capital recovery fees otherwise due from the new development, or they may agree that the city shall reimburse the owner for such costs from capital recovery 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 plats.

(Code 1976, § 19-126)

Sec. 90-160. - Use of other financing mechanisms.

(a) The city may, at its sole discretion, finance water and wastewater capital improvements of facilities expansions designated in the capital improvements program through the issuance of bonds or other obligations, 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 capital recovery fees.

(b) Except as herein otherwise provided, the assessment and collection of a capital recovery 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 council may decide that the city shall pay all or part of capital recovery fee due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

(Code 1976, § 19-127)

Sec. 90-161. - Capital recovery fees as additional and supplemental regulation.

(a) Capital recovery 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 program, 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.

(Code 1976, § 19-128)

Sec. 90-162. - Relief procedures.

(a) Any person who has paid a capital recovery fee or an owner of land upon which a capital recovery fee has been paid may petition the city manager 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 manager determines that the duty is required pursuant to this article and is late in being performed, he shall cause the duty to commence within 60 days of the date of the request and to continue until completion.

(b)

(Code 1976, § 19-129)

Secs. 90-163—90-192. - Reserved.