

CITY OF SEGUIN

ORDINANCE NO.:

STATE OF TEXAS

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEGUIN, TEXAS AMENDING THE SEGUIN CODE OF ORDINANCES, CHAPTER 102, UTILITIES, ARTICLE IX, CAPITAL RECOVERY FEES, TO UPDTATE THE LIVING UNIT EQUIVALENT FOR MULTI-FAMILY BUILDINGS AND TO MAKE PROVISIONS FOR BOTH A MAXIMUM AND EFFECTIVE CAPITAL RECOVERY FEE; PROVIDING FOR PUBLICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND AUTHORIZING CITY STAFF TO PREPARE THIS ORDINANCE FOR SUBMISSION AS A SUPPLEMENT TO THE CODE OF ORDINANCES

WHEREAS, state law requires that all cities charging impact fees review their fees and corresponding land use assumptions every five years; and

WHEREAS, during this review process the City's consultants recommended changes to the City's ordinance, including changing the living unit equivalent for multi-family buildings; and

WHEREAS, in order to maintain greater flexibility under the state law governing assessment of impact fees, staff recommends changing the City Code of Ordinances to allow assessment of the maximum fee allowed then allowing the City Council to set an effective fee that can be reviewed and changed as needed; and

WHEREAS, under state law impact fees (capital recovery fees) are assessed, and vested, at platting and paid at the time of application for building permits; and

WHEREAS, as a result of the way impact fees are assessed, and the need to maintain a list of fees assessed for various plats, staff recommends removing the abbreviated fee schedule from Appendix C.

NOW THEREFORE BE IT ORDAINED by the City Council of Seguin, Texas:

SECTION ONE. The Seguin Code of Ordinances, Chapter 102, Utilities, Article IX, Capital Recovery Fees, Division 1, General Provisions, Section 102-354, Definitions, subsection 24, only, shall be amended as follows underlining indicates added text, ~~strikethrough~~ indicates deleted text):

(24) Living unit equivalent (LUE). 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 five-eighths-inch diameter simple water meter, using American Water Works Association C700-C703 standards; ~~except that for multifamily, each living unit is equivalent to 0.5 LUE.~~ LUE's for water meters are shown below.

SECTION TWO. The Seguin Code of Ordinances, Chapter 102, Utilities, Article IX, Capital Recovery Fees, Division 1, General Provisions, Section 102-359 shall be amended as follows underlining indicates added text, ~~strikethrough~~ indicates deleted text):

Sec. 102-359. - Service units.

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

(b) Service units shall be calculated based on living units equivalent as determined by the size of the water meter(s) for the development; ~~except that for multifamily development,~~ the levy shall be based on the number of units; or alternatively, as approved the city engineer as a result of an engineering report prepared by a qualified professional engineer licensed to perform such professional engineering services in the State of Texas, which demonstrates that the number of LUEs of service for the new development will be different than those indicated by the size of the water meter.

(c) If the engineer 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 engineer may adjust the number of LUEs based on a smaller or larger sized meter which more accurately reflects the flow rate and the system pressure conditions.

(d) 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 of Texas, shall be reviewed by the city engineer and shall be presented to council, which shall designate the appropriate number of service units.

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

SECTION THREE. The Seguin Code of Ordinances, Chapter 102, Utilities, Article IX, Capital Recovery Fees, Division 1, General Provisions, Section 102-360 shall be amended as follows underlining indicates added text, ~~strike through~~ indicates deleted text):

Sec. 102-360. - Capital recovery fees per service unit.

(a) The maximum capital recovery fee per service unit for each conceptual service area shall be computed by dividing the growth-related capital construction cost of service in the conceptual 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 conceptual service area which are necessitated by and attributable to new development, based on the land use assumptions for that conceptual service area, and adjusted by subtracting credits in the form of future rate or tax contributions to water and/or wastewater CIP funding. Maximum capital recovery fees per service unit for each conceptual service area shall be established by category of capital improvements and shall be available from the City's Planning Department set forth in exhibit C to this article.

(b) The effective capital recovery fee per service unit which is to be paid by each new development shall be that established by the City council, as may be amended from time to time, and shall not be more than the maximum capital recovery fee per service unit established in subsection (a) above. Capital recovery fees which are to be paid by developers shall be posted on a list maintained by the City's Department of Planning.

~~(c)~~ (b) ~~Exhibit C~~ The maximum capital recovery fee 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.

(d) The effective capital recovery fees per service unit may be amended from time to time by the city council through ordinance amendment to any amount not greater than the maximum amount assessed after review under the procedures set forth in Chapter 395 of the Texas Local Government Code, less than that set forth in exhibit C to this article.

SECTION FOUR. The Seguin Code of Ordinances, Chapter 102, Utilities, Article IX, Capital Recovery Fees, Division 1, General Provisions, Section 102-361 shall be amended as follows underlining indicates added text, strikethrough indicates deleted text):

Sec. 102-361. - Assessment of capital recovery fees.

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

(b) Assessment of the capital recovery 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 maximum effective capital recovery fee per service unit then in effect, ~~as provided in exhibit C as set forth in subsection 102-360(c).~~ 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, as actual assessment shall occur on the date the corresponding plat is approved.

(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 maximum capital recovery fee per service unit in effect on the date of application for the aforementioned building permit ~~set forth in exhibit C.~~

(3) For new development which occurs or is proposed to occur without platting, assessment shall be upon the issuance of a building permit or water or sewer tap (whichever occurs first), and shall be the value of the effective maximum capital recovery fee in effect at the time of application for the building permit or tap for water or sewer. ~~per service unit set forth in exhibit C.~~

(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 LUEs, as determined under section 102-359. If the exchange of said taps will result in an increase in the number of LUEs the purchaser shall be assessed the effective maximum capital recovery fee in effect at the time of tap exchange, based on the additional LUEs 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 a capital recovery fee.

(6) Landscape meters for which water demand related solely to landscape irrigation demand shall be assessed a water capital recovery fee, but shall not be assessed a sewer capital recovery fee.

(c) Following assessment of the capital recovery fee pursuant to subsection (c), 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 102-359.

(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.

SECTION FIVE. The Seguin Code of Ordinances, Chapter 102, Utilities, Article IX, Capital Recovery Fees, Division 1, General Provisions, Section 102-363 shall be amended as follows underlining indicates added text, ~~strikethrough~~ indicates deleted text):

(a) No water or wastewater tap or building permit shall be issued 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 paid at the time of the issuance of a building permit, except as provided in subsection (c) or in subsection (d), in the amount shown as the effective capital recovery fees as established by the procedures set forth in this Article. ~~set forth in exhibit C to this article.~~

(c) 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 capital recovery fees in the form of a monthly assessment in the same manner as monthly assessments for related tap fees, if such an extended payment program for tap fees is currently in effect, as provided below:

(1) At the request of the applicant, and with the approval of the city manager, the capital recovery 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 allowed by Texas law. ~~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, sign and file with the city secretary, 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) The city may, at its sole discretion, enter into contracts to establish a different date of fee collection than those provided in this section.

(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 LUEs attributable to each retail meter for new development within the wholesale customer's service area.

SECTION SIX. The Seguin Code of Ordinances, Appendix C, Fee Schedule, Chapter 102, Utilities, Article IX, Water and Wastewater Impact Fees is repealed.

SECTION SEVEN. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

SECTION EIGHT. City staff is authorized to prepare this Ordinance for submission as a supplement to the Seguin Code of Ordinances.

SECTION NINE. In accordance with Section 3.10 of the Seguin City Charter, this Ordinance shall become effective upon ten (10) days following passage on second reading and shall be published in a newspaper of general circulation.

PASSED AND APPROVED on first reading this 5th day of January, 2016.

PASSED AND APPROVED on second reading this 19th day of January 2016.

DON KEIL, Mayor

ATTEST:

Thalia Stautzenberger, City Secretary