

# **WATER AND WASTEWATER IMPACT FEE UPDATE 2020**



**It's real.**

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# **WATER AND WASTEWATER IMPACT FEE UPDATE 2020**

City of Seguin, Texas

## **1.0**      **INTRODUCTION**

The 70<sup>th</sup> Texas legislature passed Senate Bill 336 (subsequently Chapter 395 of the Local Government Code) regulating various types of utility fees, defined in the legislation as “impact fees”. Such fees included not only traditional impact fees, but also lot, acreage, frontage and other typical utility fees, as well as facility dedication requirements. The legislation laid out very specific requirements for the technical development of impact fees as well as the procedures necessary for enactment of impact fee programs. Seguin completed its original water and wastewater impact fees under the requirements of the Chapter in 2000 the initial fee program extended from 2000-2005. Fees were updated in 2005 to create a second impact fee program running from 2005-2015. Fees were then updated again in 2010 to create a third impact fee program running from 2010-2020. Fees were updated again in 2015 to create a fourth impact fee program running from 2015-2025.

In 2007, the Schertz-Seguin Local Government Corporation (SSLGC), which provides many of the water facilities used to serve Seguin, enacted its own water impact fee which is charged to new development within Seguin. In order to avoid double-charges to new development, Seguin updated its water impact fee in two stages to remove all SSLGC facility costs from the City fee. (A) Immediately after the SSLGC enacted its fees, Seguin removed all SSLGC projects from its impact fee program and immediately lowered its fee accordingly. (B) Shortly thereafter in 2007, Seguin performed a full update of the water fee, including various changes in the capital improvement program (in addition to the SSLGC changes), resulting in the later fees that are charged currently.

Since Chapter 395 requires an update of fee programs at least every five years, the City needs to update its water and sewer fee currently, since it has not been updated since 2015. Upon City Staff recommendation, the update will create a new impact fee program running from 2020-2030, which will result in the current program being truncated to the 2015-2020 period (rather than the original 2015-2025 planning horizon). This report represents the update of fee programs for the 2020-2030 period. Thus, the City will have five (5) programs in effect:

- **1987 – 2005:** For properties that were platted between June 20, 1987 (date of passage of State enabling legislation) and August 2, 2005 (date of program update).
- **2005 – 2010:** For properties platted between August 3, 2005 and the date of passage of the program developed on January 14, 2011.
- **2010 – 2015:** For properties platted between January 15, 2011 and the date of passage of the program being developed in this update.
- **2015 – 2020:** For properties platted after the date of the ordinance updated through this study; for properties where new development will occur without platting (such as redevelopment needing a larger



meter size, or conversion of septic tanks to the City system); and properties platted prior to June 20, 1987.

- **2020 – 2030:** For properties platted after the date of the ordinance updated through this study; for properties where new development will occur without platting (such as redevelopment needing a larger meter size, or conversion of septic tanks to the City system); and properties platted prior to June 20, 1987.

The purpose of the early sections of this report (which is the revised version of earlier impact fee reports) is to orient City officials and staff, the Advisory Committee and the public to the general environment in which impact fees are developed. Later sections of the report document the formulation of such fees.

**Section 2.0** of this report presents the legal context for fee development. **Section 3.0** highlights a few technical and policy issues pertinent to the study, most of which have been resolved in earlier fee studies. **Section 4.0** presents a particular fee development model – the Equity Residual Model – which responds to the requirements of Chapter 395 and constitutional issues.

**Section 5.0** contains the technical data which is the basis for the 2020-2030 fee calculation: land use and planning data, unit usage statistics and capital improvements plan.

Actual fee calculation is shown in **Section 6.0**. **Section 7.0** contains recommendations from the consultants and the Advisory Committee. **Section 8.0** contains a copy of Chapter 395 of the Texas Local Government Code and **Section 9.0** contains various administrative documents such as resolutions, public notices, public information packets, etc.



## 2.0 LEGAL CONTEXT OF IMPACT FEES

Chapter 395 of the Texas Local Government Code (the Texas Impact Fee Act) contains many pages of detailed instructions regarding the calculation of impact fees. However, Chapter 395 was not developed in a legal vacuum; rather, it is the embodiment of several decades of constitutional law precedent. For that reason, it is important to look beyond the specific requirements of Chapter 395 to understand the historical evolution of impact fees. This investigation will ensure that the City develops fees which not only meet State requirements, but which can also withstand potential constitutional challenges. As with all matters of a complex legal nature, the City should consult closely with its Attorney regarding specific local circumstances and legal interpretation, as this document does not present legal advice but rather a general historical background for City personnel.

### 2.1 LEGAL CONTEXT IN A NATIONAL PERSPECTIVE

Impact fees are the result of a long history of local subdivision regulation. It is important to understand this evolutionary development in order to appreciate the authority for this type of exaction as well as its limitations. Texas is one of an increasing number of states which has specific enabling legislation for impact fees; while Chapter 395 offers considerable definition to the specific requirements for fee development, it is also necessary to be aware of ongoing constitutional challenges to such fees (primarily in other states) to appreciate precedents established by the courts.

#### 2.1.1 Impact Fees as a Form of Subdivision Exaction

Historically, cities have had the authority to establish impact fees arising from their home rule authority and from the general state-delegated authority to regulate subdivisions. The authority to regulate the subdivision of land is an exercise of the state police power authority which is delegated to municipalities. The regulation of land subdivisions has been generally recognized as a valid exercise of the police power subject to the same basic standard of reasonableness enunciated by the U.S. Supreme Court in *Village of Euclid v. Ambler Realty Co.*, (272 U.S. 365 (1926)), which stated that municipal zoning ordinances would be upheld unless found to be "clearly arbitrary and unreasonable, having no substantial relationship to the public health, safety, morals, or general welfare". The ultimate validity and enforceability of any impact fee ordinance rests, in an historical sense, upon its identity as an integral element of a city's broad, well-recognized authority to control land use through police power zoning and subdivision regulation for the protection of the public health, safety, and general welfare. (Of course, in the State of Texas, cities have also been granted express powers to enact impact fees for water, sewer, local roadways, and drainage.)

The precise form of subdivision regulations and exactions has evolved over time from limited, on-site contributions of capital infrastructure, to include its current form of cash payments for major off-site facilities which benefit an entire community. In the beginning, subdivision regulations required that certain lands within the proposed development be dedicated for streets, roads, alleys, or other essential capital improvements specific to the development itself. This form of requirement later expanded in two ways: first, to address street and road requirements outside the development, and second, to address land dedications for supplemental purposes, including parks, open space, and educational uses. Payments "in lieu" of facility dedications were later exacted as a further refinement, especially for the support of educational, recreational, public safety and other services not entirely appropriate for land dedications. In many jurisdictions, in lieu payments have been replaced by impact fees which are generally considered to be more flexible mechanisms for distributing the costs of growth, especially for sewer and water and other off-site capital facilities.

Despite its origins in subdivision regulation, in practice the calculation of impact fees takes a form more akin to environmental impact analysis and mitigation than typical subdivision regulation of area, height, etc.



## 2.1.2 Tests of Validity

As the form of subdivision exactions evolved, legal theories were developed through case law to test the validity of these exactions, including impact fees. It is important to understand this evolution since Chapter 395 embodies the theoretical principles of these tests.

### 2.1.2.1 Privilege Theory

Early challenges to subdivision regulation were disposed of in some jurisdictions on the grounds that the subdivision of one's property was a privilege conferred by the governing authority and was not an inherent right. Since the subdivider can always choose not to subdivide, the theory goes, he or she cannot claim to be harmed by restrictions imposed on the manner of subdivision. The privilege theory has been generally abandoned.

### 2.1.2.2 Specifically and Uniquely Attributable Test

Later, more restrictive standards were applied to subdivision exactions; there have been a range of standards applied to exactions, extending from the "specifically and uniquely attributable" test of reasonableness (the most restrictive test) to the "reasonably related" test, the most liberal standard.

The "specifically and uniquely attributable" test was enunciated by the Illinois Supreme Court in *Pioneer Trust & Savings Bank v. Village of Mount Prospect* and focused on the authority's obligation to demonstrate a clear linkage between the need for capital expenditures and the growth directly attributable to subdivisions subject to the exaction (*Pioneer Trust & Savings Bank v. Village of Mount Prospect*, 176 NE 2d 799, (Ill. 1961)). At about the same time, the "direct benefit" standard enunciated by the New York Supreme Court invalidated subdivision exactions unless it could be shown that funds collected from required payments for capital expenditures were specifically tied to a benefit directly conferred on homeowners in the subdivision which paid the fees (*Gulest Associates, Inc. v. Town of Newburgh*, 209 NY 52d 729 (Sup. Ct. 1960)). For example, a builder could only be charged a fee for the specific water lines, pump stations, treatment plant, etc., which provided service to his development. This highly restrictive test is no longer applied.

### 2.1.2.3 Rational Nexus Test

Overly restrictive effects of "specifically and uniquely attributable" and "direct-benefit" standards led to the articulation of a more discretionary standard by the Wisconsin Supreme Court in *Jordan v. Village of Menominee Falls* (137 NW 2d 442, 1965, appeal dismissed 385 U.S. 4, 1966), which upheld a local ordinance requiring dedication or payment in lieu for education and recreational facilities. The court softened considerably the municipality's burden of proof in demonstrating the specific relationship between the new development and the fee. However, it maintains the proportional linkage among service demand costs and service provision and the amount of fee charged. This test, the Dual Rational Nexus test or "reasonable connection" test, is in the current mainstream of court decisions and is reflected in the requirements of Chapter 395. (See [Section 2.1.3.2](#) for detailed discussion.)

### 2.1.2.4 Reasonable Relationship Test

Some courts have moved toward an even more lenient standard which maintains that fees must "bear a reasonable relationship to the use of facilities by the future inhabitants of the subdivision" (*Associated Home Builders of the Greater East Bay, Inc. v. City of Walnut Creek*, 484 p. 2d 606 (Calif. 1971)). This test does not require, as the rational nexus test does, that fee payments be proportionate to the costs actually



caused by the new customer, but simply that the feepayer receive some benefits from funded facilities (although non-feepayers may also substantially benefit). Similarly, a California case (*Home Builders and Contractors Association of Palm Beach County, Inc. v. The Board of County Commissioners of Palm Beach County*, 446 So 2d 140 (Fla. 1983) held that "benefit accruing to the community generally does not adversely affect the validity of a development regulation ordinance as long as the fee does not exceed the cost of the improvements required by the new development and the improvements adequately benefit the development which is the source of the fee".

### 2.1.2.5 Essential Nexus Test

The "essential nexus" test was enunciated in *Nollan et ux v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141 (1987). In this case, landowners wishing to rebuild a beachfront structure were required to dedicate a lateral beachfront easement in exchange for a building permit. The U.S. Supreme Court ruled that this exaction violated the Takings Clause of the Fifth Amendment because there was not a demonstrated "essential nexus" between the impact of the proposed development and the exaction. This newly coined essential nexus test was not well-developed in the ruling, leading to considerable confusion about whether this were a new standard or a re-naming of the rational nexus or reasonable relationship test. The Court, in its opinion, stated, "we can accept, for purposes of discussion, the Commission's proposed test [the 'reasonably related test'] as to how close a 'fit' between the condition and the burden is required, because we find that this case does not meet even the most untailored standards". Thus, the Supreme Court enunciated, but did not define, the essential nexus test.

### 2.1.2.6 Rough Proportionality Test

Another landmark case, *Dolan v. City of Tigard*, 854 P. 2d 437, 317 Ore. 110, 114 S. Ct. 2309 (1994), provides further definition, rejecting the extremes of both the specific and uniquely attributable test, at one end of the spectrum, and generalized statements regarding connectivity at the other. Rather, the Court adopted a middle course, saying:

We think the 'reasonable relationship' test adopted by a majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term 'reasonable relationship' seems confusingly similar to the term 'rational basis' which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.

Practitioners most commonly utilize the Dual Rational Nexus Test as conforming to the *Nollan* and *Dolan* decisions.

## 2.1.3 Key Legal Issues

Given the fact that cities have the general authority to enact impact fees through subdivision powers and that there is some established case law history for determining the validity of specific fees according to various "tests of validity", there are several key issues of which the city should be aware in developing specific fees. Texas is one of a number of states which has specific enabling legislation related to impact fees; moreover Chapter 395, for the most part, is consistent with mainstream court decisions related to such fees. Thus, it would be prudent for any city contemplating the levying of impact fees to become familiar with standard constitutional challenges to such fees.



### 2.1.3.1 Fee vs. Tax Issue (Ultra Vires Challenge)

As stated above, the power of a city to exact impact fees from private parties derives from its police power authority to regulate subdivisions. The historical evolution of such exactions began with mandatory requirements for dedicated streets, gutters, water and sewer lines, alleys, etc. within new subdivisions. Later, developers were allowed to make "in lieu" payments for such facilities rather than constructing them. Finally, these in lieu payments were broadened to incorporate off-site facilities which were required to serve the subdivision (as well as the greater community). These off-site in lieu payments are impact fees and are governed in Texas by Chapter 395.

From a theoretical perspective, impact fees could be assessed either in the form of a tax or a fee. The distinction between taxes and fees relies on legislative intent; if the primary motivation behind a levy is purely the generation of revenue, it is a tax. Moreover, tax revenues may be spent to broadly benefit the community while fees are intended to cover the costs of providing benefits more specifically to the feepayer. Also, taxation authority generally must be expressly granted by state enabling legislation or the state constitution.

This potential problem of an ultra vires challenge has been largely addressed by Chapter 395 in that it confers specific authority on cities to levy impact fees, and then it further defines specific methodological approaches to fee calculation which tend to ensure impact fees are indeed "fees" related to specific costs imposed by the feepayer -- rather than a general revenue-generating tax. One deficiency of Chapter 395 had been that it did not address the interaction of utility rates or property taxes with impact fees. In most cases, the assessment of an impact fee equal to the full capital cost of service, as technically had been permitted by the legislation, would result in excessive fee payments which might be contested as an unconstitutional tax on new development. This potential deficiency was remedied by the Texas Legislature in 2001 with SB243, which requires cities to provide credits for rate and tax payments, or alternatively, to reduce impact fees by 50% as a proxy for a rate/tax credit.

### 2.1.3.2 Rational Nexus

Although court decisions have been both more and less permissive, the most standard basis for determining a reasonable relationship between fees and benefits and costs is the "rational nexus" criteria (Snyder and Stegman, 1986). The rational nexus concept has two parts: the "demand" nexus and the "benefit" nexus.

The "demand nexus" addresses the relationship between the fee payer and the facilities funded by fee payments. The demand nexus is sufficiently established, the Jordan decision said, if the local authority can show that a series of subdivisions have generated the demand for facilities for the benefit of a stream of new residents. Thus, the City must be able to demonstrate that the demand for facilities for which it is assessing the fee is being substantially caused by those against whom the fee is levied. The technical requirements of Chapter 395 ensure that this test will be addressed.

The "benefit nexus" part of the standard addresses the effects of the exaction -- that is, the reasonable connection between the expenditure of impact fee funds and benefits accruing to the locality from which those funds were derived. In the Jordan case, the Wisconsin court held that this standard was met where the fees were to be used exclusively for site acquisition and the amounts collected from developments generating the demand were less than the amount spent by the authority in constructing additional facilities. (In other words, the City cannot collect more than the total cost of the facilities being funded.) Contrary to the more restrictive "direct benefit" test, the fact that the general public might also partake of the benefits flowing from the exaction does not affect the reasonableness of the relationship. This same reasoning was adopted in an important Florida case, Contractors & Builders Assn. v. City of Dunedin (329 So 2d 314 (Fla.



1976) cert. denied 444 US 867 (1979)), as well as in *Hollywood, Inc. v. Broward County* (431 So 2d 606 (Fla 1983)).

Thus, the implication for the City, in a very broad sense, is that an impact fee may collect some portion of the cost of facilities required to service new customers but not more than 100%. Those paying the fee must certainly receive service; however, it is unclear with what precision the fees collected from one subdivision must be directly assigned to some facility directly serving that subdivision. It is possible that a reasonable case could be made for a given subdivision contributing fees which are used for the expansion of the system as a complete, integrated whole, provided the subdivision receives complete utility service. Chapter 395 requires that fee payers receive service within a defined time frame or be refunded their fees. This requirement addresses the benefit nexus.

**Figure 2-1** illustrates the "rational nexus" legal test for fee formulation, showing the required linkages between the fee payer, the funded facility expansion and the fee amount. Both the demand nexus and the benefit nexus are shown.

The arrows at the top of the figure illustrate the "Demand Nexus". The first arrow (1) shows that the fee payer must create a demand for facility expansion in order to be assessed a fee. That expanded capacity has a cost which must be calculated (2) and used as the basis for the fee to be paid.

At the bottom of the figure is shown the "Benefit Nexus" which demonstrates the relationship between the paid fee and benefits which are provided to the fee payer. Arrow (3) illustrates that collected fees must be dedicated to funding the facility expansion for which the fees were collected. Finally, the expanded capacity must be provided back to the fee payer (4) in return for the fee payment.

The courts are increasingly becoming involved in the methodologies by which impact fees and other assessments are determined, with especial focus on the benefit nexus (*St. Johns County v. Northeast Florida Builders Association*, 583 So. 2d 635 (Fla., 1991); *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla., 2000)). In regard to water and sewer utilities, it is essential that an exceptions provision be included in impact fee ordinances to address extraordinary circumstances wherein a fee payer may not receive the full portion of benefits associated with the fee collected.

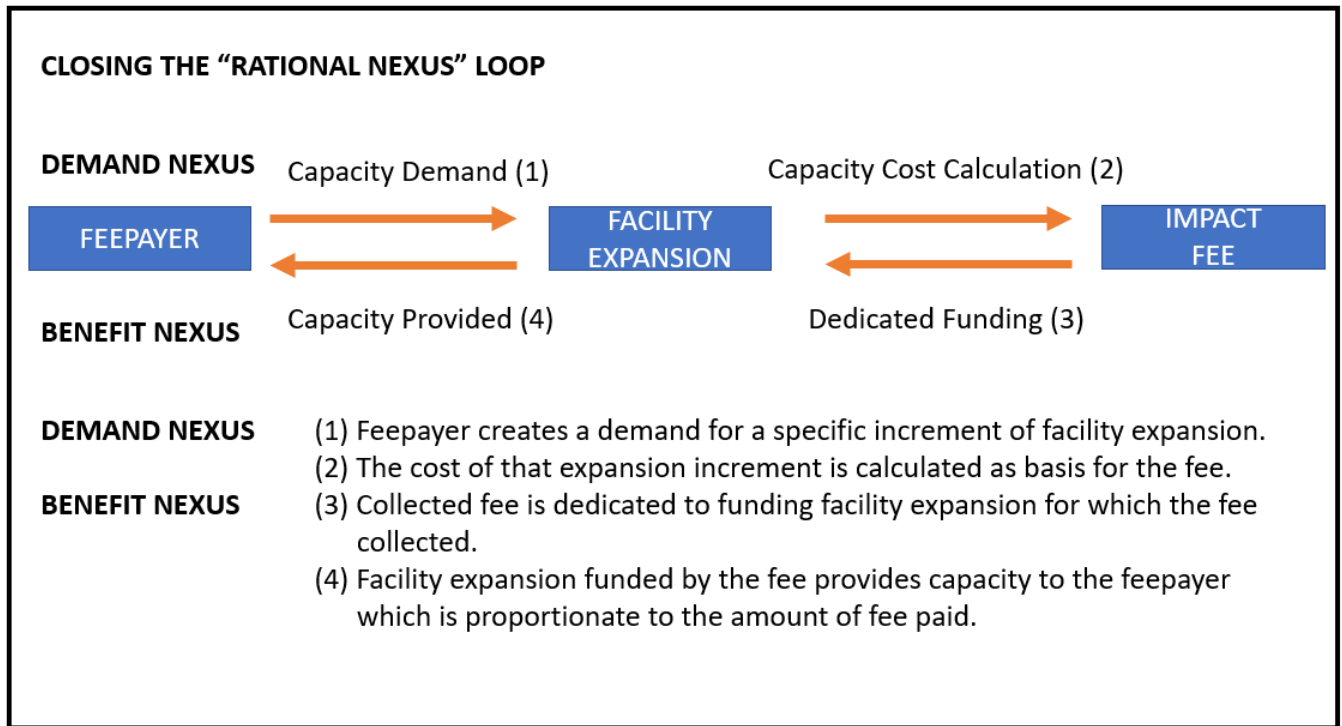
These are the legally-defined relationships to which the fee program must be addressed: ensuring that the basis for the fee does not exceed cost-of-service, is proportionate to capacity demand of fee payers and is nonpunitive (i.e., ensuring that the fee is equitable).

**Figure 2-2** illustrates further equity considerations which must be considered. The top register in **Figure 2-2** shows utility cost recovery by customers prior to the enactment of an impact fee program. Through their rate payments, these customers pay for debt service for existing facilities which provide them with service and for renovation of those facilities. They also pay for operational expenses. Assuming that impact fees will insulate pre-fee customers from additional debt service for system expansion, rate payments by existing customers constitute their fair-share payments for services provided.

The bottom register illustrates the inequitable position of new customers if they pay for their total cost share of the utility system in a cash fee. These new customers would also make rate payments (like all other utility customers) which would be used for existing system debt retirement and renovation as well as system operation. While the operations portion of the rate payments is appropriate, payments for debt retirement and renovation of the existing system are an inequitable subsidy of existing customers. In order to ensure that equity is achieved (i.e., rational nexus), new customers must either have a reduced impact fee or reduced rate payments.



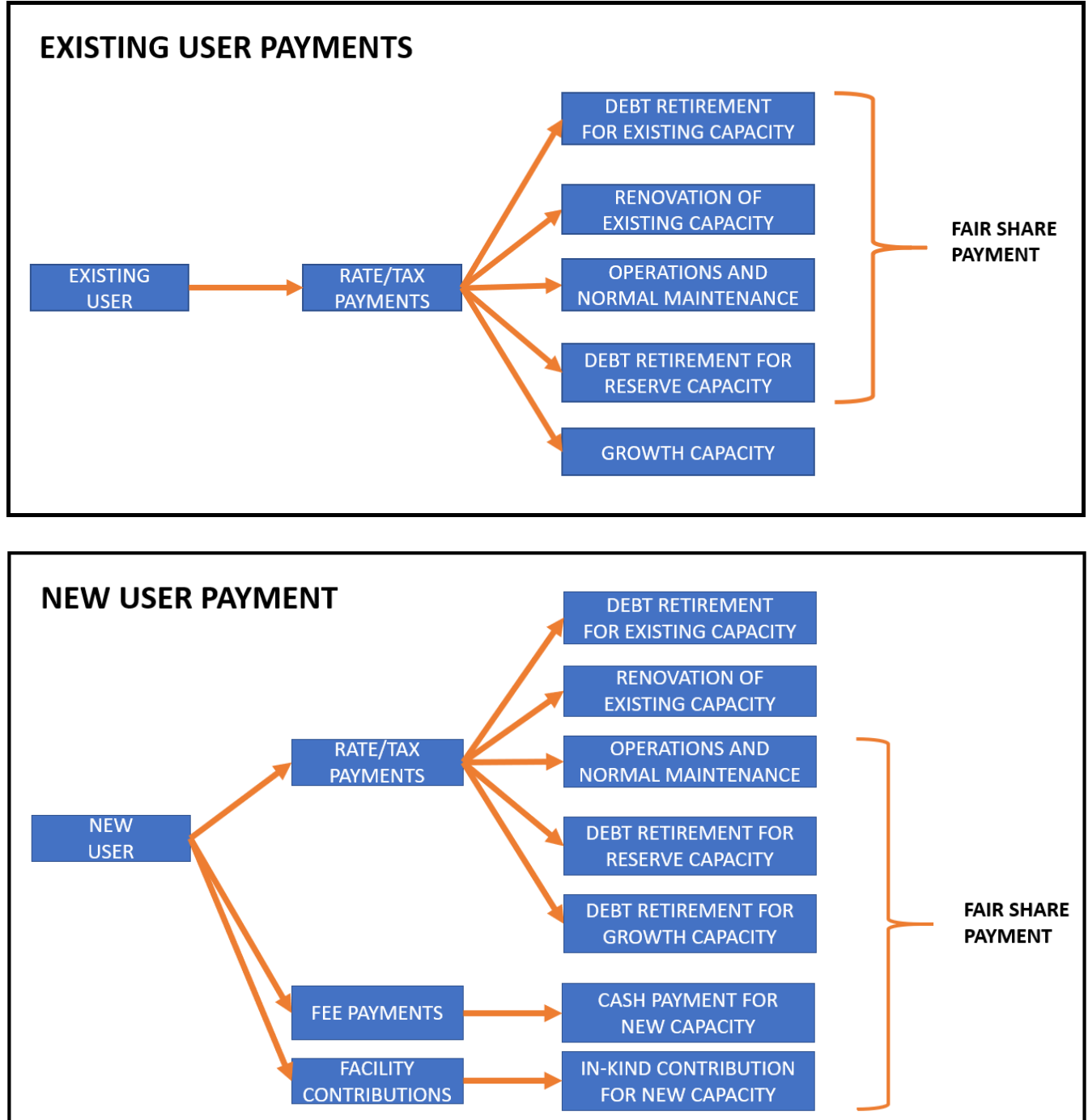
FIGURE 2-1  
RATIONAL NEXUS



An additional equity complication involves facility contributions to the system by developers (the costs of which are then passed along to the ultimate feepayers). Unless an adjustment to the fee is made to compensate for these in-kind contributions, the feepayer will make an inequitably high system contribution. Such problems are generally handled with fee "offsets" or with reimbursements to developers to maintain the rational nexus while achieving full cost recovery for the City. Chapter 395 prohibits feepayers from being charged a fee for the same facilities they contributed to the City, thus providing for overall cost equity.



FIGURE 2-2  
NEXUS COMPLICATIONS AND  
FAIR SHARE PAYMENTS





### 2.1.3.3 Takings Issues

Two cases in recent times have brought especial scrutiny to takings issues in regard to land use regulation in terms of assessments to offset impacts on the community (Nollan et ux. v. California Coastal Commission, 483 US 825, 107 S. Ct. 3141 (1987) and Dolan v. City of Tigard , 854 P. 2d 437, 317 Ore. 110, 854 P. 2d 437, 114 S. Ct. 2309 (1994)), and others have followed which have tried to interpret the rulings in these cases (Ehrlich v. Culver City, 12 Cal 4th 854; 911 P. 2d 4290; 50 Cal., (California, 1996)). There has been lively discussion about the import of these cases in regard to impact fees, as compared to required property dedications as mitigation to community impacts suffered in the process of development. However, following the requirements of Chapter 395 should help the City avoid any takings issues, which are centered around (a) whether the regulation "substantially advances legitimate state interests"; (b) whether there is an "essential nexus" between alleviating impacts on the community and the assessment; and (c) whether the assessment is proportional to the impacts.

**Land Dedications vs. Monetary Exactions.** Although there is considerable debate on each side of the issue, recent cases suggest that takings challenges based on Nollan and Dolan may have greater probability of success when land dedications are required rather than monetary dedications. As stated in Rogers Machinery v. Washington County and City of Tigard, 181 Or. App. 369, 45 P. 3d 966 (2002):

The Fifth Amendment is particularly protective of property against that form of encroachment, and physical invasion or diminutions of rights of exclusive possession have been deemed to be *per se* takings that entitle a property owner to compensation . . . Such an invasion is unconstitutional 'without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner' . . . The same is not true, however, of the second traditionally recognized type of government encroachment on property interests, namely, regulatory restrictions on property uses . . . A court must engage in an essentially ad hoc, factual inquiry that considers whether the land use regulation 'substantially advance[s] legitimate state interests' and 'does not den[y] an owner economically viable use of his land' . . . Thus, when the government regulates property without physically occupying, the Takings Clause is much less protective of the interests of the property owner and much more deferential to the public interests served.

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See also: McCarthy v. Leawood, 257 Kan. 566, 894 P. 2d 836 (1995); Home Builders Association of Central Arizona v. Scottsdale, 930 P. 2d 993, cert. den. 521 U.S. 1120 (1997); Garneau v. City of Seattle, 147 F. 3d 802 (9th Cir. 1998); San Remo Hotel v. City and County of San Francisco 41 P. 3d (2002); Home Builders Association of Metropolitan Portland v. Tualatin Hills Park and Recreation District, 62 P. 3d 404 (2002); Dudek v. Umatilla, 69 P. 3d 751 (Or. 2003).

**Legislative Acts vs. Adjudicative Decisions.** Additionally, some courts (those listed above plus others) have focused on whether exactions arise from a legislative act (such as a broadly applied ordinance without discretion in application) rather than an adjudicative decision (ad hoc negotiations with individual



feepayers). (See *Parking Association of Georgia v. City of Atlanta*, 515 U.S. 1116 (1995)). For example, in the *Scottsdale* case, the Supreme Court of Arizona found:

The adoption of Ordinance No. 1940 was a legislative act that came to the court cloaked with a presumption of validity . . . Land use regulations of general application will be overturned by the courts only if a challenger shows the restrictions to be a legitimate state interest . . . Development or impact fees are presumed valid as exercises by legislative bodies of the power to regulate land use . . . In *Dolan*, the Chief Justice was careful to point out that the case involved a city's *adjudicative* decision to impose a condition tailored to the particular circumstances of an individual case. Because the *Scottsdale* case involves a generally applicable legislative decision by the city, the court of appeal thought *Dolan* did not apply. We agree . . .

The reasoning behind the distinction between a legislatively applied exaction and an exaction imposed by adjudicative action was explained in *Erlich v. City of Culver City*, 12 Cal 4th 854, 50 Cal Rptr 2d 242, 911 P. 2d 429, cert. den. 519 U.S. 929 (1996):

[The risk of extortionate behavior on the part of government] diminishes when the fee is formulated according to preexisting statutes or ordinances, which purport to rationally allocate the costs of development among a general class of developers or property owners - indeed, as discussed above, the separation of powers doctrine clothes such a fee in a presumption of constitutionality. But when the fee is ad hoc, enacted at the time the development application was approved, there is a greater likelihood that it is motivated by the desire to extract the maximum revenue from the property owner seeking the development permit, rather than on a legislative policy of mitigating the public impacts of development or of otherwise reasonably distributing the burden of achieving legitimate government objectives.

The *Rogers Machinery* case combined these takings issues, finding:

Some courts have declared, seemingly categorically, that *Dolan* is limited to dedications of property and does not extend to nonpossessory exactions, such as the payment of fees. Other courts have rejected that view, holding that *Dolan* potentially can extend to monetary exactions, at least in some circumstances . . . With near uniformity, lower courts applying *Dolan* to monetary exactions have done *so only* when the exaction has been imposed through an adjudicatory process; they have expressly declined to use *Dolan's* heightened scrutiny in testing development or impact fees imposed on broad classes of property pursuant to legislatively adopted fee schemes.

Thus, the *Dolan*-level scrutiny is applied to impact fees almost exclusively when those fees are calculated on an ad hoc, rather than a routine, ordinance-driven basis. This serves as a caution to communities in the application of waivers and exceptions (See [Section 3.5](#)).

#### 2.1.3.4 Due Process

Increasingly, attention is being given in the courts to due process around the issue of waivers and exemptions (*St. Johns Co. v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635 (Fla., 1991); *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126 (Fla., 2000); *Cherokee County v. Greater Atlanta Home Builders Association*, 566 SE 2d 470 (Ga 2002). According to Tyson Smith (Smith, 2004) of White & Smith, LLC, national impact fee experts, exemptions should only be given if it can be shown that an impact fee does not apply because the applicant has no impact on the community. This should rarely happen in the case of water and sewer utilities and can be addressed through use of an exceptions provision in the ordinance.



On the other hand, Mr. Tyson encourages communities to completely avoid waivers of fees, for reasons of essential fairness, fiscal integrity, effectiveness of the impact fee program and exposure to legal challenge. If waivers are desired, non-impact fee funds should be used to pay fees for the waived party.

### 2.1.3.5 Apportionment of Costs

The "reasonableness" element of the rational nexus standard is in essence the touchstone for challenges to the impact fee based on real or perceived inequities in the apportionment of charges and benefits among various classes of users. Several questions arise out of the equitable apportionment issue; only a portion of these issues are addressed by Chapter 395. A Utah case (*Banberry Development Corporation v. South Jordan City*, 631 P. 2d 899 Utah (1981), reiterated by *Timothy Ross Lafferty v. Payson City*, 642 P. 2d 376 Utah (1982)) provides a list of factors to be analyzed in apportioning costs between "old" and "new" customers. These include:

- Cost of existing capital facilities
- Means of financing existing facilities (i.e., user charges, special assessments, bonded indebtedness, taxes, grants)
- Past and future contributions of the feepayers toward financing existing facilities
- Private contributions by feepayers of facilities normally financed publicly
- Extraordinary costs of serving feepayers
- Time-price differential in amounts paid at different times

As determined in the *Banberry* case, the interaction of fee payments with rates and other contributions must be acknowledged to avoid "double payments" by the feepayers.

In Texas, the Legislature passed SB243, an amendment to Chapter 395 which requires rate/tax credits or alternatively, at least 50 percent fee reduction in lieu of rate/tax credit calculation. (See [Section 2.2.3.5](#) for additional discussion.)

### 2.1.3.6 Geographic Aspects of Fee Application

The perceived importance of geographic distribution of capital facilities varies among jurisdictions. In some cases, ordinances have been invalidated because proposed facilities were in a different part of town. In Texas, Chapter 395 provides that fee analyses may be "prepared on a systemwide basis within the service area" and makes no requirement for geographic-specific costs for water and wastewater. On the other hand, nothing in Chapter 395 prohibits geographic considerations for water and sewer, if that distinction is desired by the City.

### 2.1.3.7 Protection of Public Health, Safety, and Welfare

Despite the revenue potential of the impact fee, this mechanism must retain its identity as an exercise of the city's police power regulatory authority, directed toward the protection of public health, safety and welfare and not simply the naked generation of revenue. In other words, the City should be prepared to argue that, despite the revenue potential of the impact fee, it is an integral part -- in intent and practical



effect -- of the City's regulatory regime for controlling land use for the general welfare of the community. This is supported by the Chapter 395 requirement that the fee have its ultimate origin in a system-wide land use plan and capital improvements plan (CIP).

## 2.1.4 Summary of General Legal Context

The sections above provide a general legal context for the development of an impact fee and suggest some legal constraints which the City should consider in developing an impact fee. In summary, these parameters are as follows:

- An impact fee must relate to the protection of community health, safety, and general welfare;
- An impact fee should be based on full or partial cost of service; There must be equity to all users;
- Deviations from equity must be based on a carefully defined public policy basis;
- Those who pay an impact fee must have created a demand for the facilities which are being funded by the fee;
- The fees collected must be used for the benefit of those who paid them; Fees assessed must be proportional to the cost of serving and benefits provided to the feepayer;
- Past and future rate/tax/facility contributions by feepayers must be acknowledged as a credit in fee calculations; and
- The City cannot impose punitive fees on any customer or class of customers.

These guidelines should serve as a point of departure in setting community goals and objectives related to impact fees.

## 2.2 **SPECIFIC REQUIREMENTS OF CHAPTER 395**

The provisions of Chapter 395 are summarized below and put in the context of the legal framework discussed above.

### 2.2.1 Definition of "Impact Fee"

The legislation specifically addresses impact fee regulations for water; wastewater; storm, flood and drainage; and local roadway facilities with a life expectancy of three or more years. The law states that "Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee".

The only other type of capital facility addressed by the law is parks. The Chapter specifies that parkland dedication and in lieu fees are not considered to be "impact fees" under the legislation; thus, they are neither prohibited nor regulated. Also, the following are not considered impact fees:

- Right-of-way or easement required by ordinance for a development;
- On-site or off-site distribution, collection, drainage, streets, sidewalks and curbs required by ordinance for a new development;



- "Oversizing" or "subsequent user" fees placed in trust funds to reimburse developers for water or wastewater line oversizing; and
- Other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

## **2.2.2**      Application of the Fee

Among other governmental entities, impact fees may be assessed by cities operating under general law, or special or home rule charter, and by special districts (municipal utility districts, road districts, etc.) for water, sewer, drainage and local roadways. Water and sewer may be assessed in the utility service area inside the city and in the extraterritorial jurisdiction (ETJ); fees may also be assessed to areas outside the ETJ which are served by contract by the City.

Fees may be assessed and collected for "new development", which includes new land subdivision; redevelopment; or any use or expansion of use which increases the service demand of a property (including "cut-overs" from individual wells or septic systems).

## **2.2.3**      Cost-of-Service Basis

Chapter 395 is extensively devoted to specific requirements for performing technical studies by qualified professionals according to accepted engineering and planning standards. The specifics of these studies are highlighted below.

### **2.2.3.1**      Service Area

There must be a clearly defined service area which will be subject to the fee. The fee may be applied within the City and within the extraterritorial jurisdiction for water and sewer. In the past, the service area for Seguin's water utility has been the corporate city limits, while the sewer service area was slightly larger, including areas currently in the City's extraterritorial jurisdiction (ETJ) that are likely to be provided sewer service, but will not receive City water. (Other water providers in the City or the ETJ are Springs Hill Water Supply Corporation, Crystal Clear Water Supply Corporation, Green Valley Special Utility District, and the Guadalupe-Blanco River Authority (GBRA)).

### **2.2.3.2**      Projections of Future Land Use and Population Growth

Land use in the service area, in terms of land use character, density, intensity and population, must be projected for (1) full buildout, and (2) growth within at least the next ten years. The water and wastewater utilities are permitted to use growth projections for their entire jurisdiction (as is usually presented in a city master plan), without performing projections for the precise service areas which may be different than the jurisdictional boundaries. This planning information is to be used in developing the CIP to serve service area growth. It should be noted that service areas are likely to be different for each type of facility (water, sewer), as has been the case in Seguin. Although city-wide growth is acknowledged in the City's planning, the impact fees are based upon the portion of the population that is actually served by each utility, since some areas of the City and ETJ are not served by Seguin utilities.

### **2.2.3.3**      Disaggregation of Costs for Existing and Future Customers

The current utility system must be fully described, separating that part of the system's facilities needed for existing customers from the excess capacity remaining for new customers. Also, the CIP must differentiate between future projects (or portions of projects) needed to meet existing needs and to upgrade service to



existing customers, from future projects needed to serve new customers. In this manner, costs for existing customers are separated from costs for future customers. The legal requirement for disaggregation of costs falls squarely within the requirements of the mainstream "rational nexus" test.

#### **2.2.3.4 Unit Cost Calculation**

The study must select a measurement unit (e.g., gallons, housing units, living unit equivalents or LUE's) and determine how many units are required to serve various types of land use. Usage figures must be calculated separately for at least residential, commercial and industrial uses.

#### **2.2.3.5 Fee Calculation**

The maximum fee which can be charged is the total cost of facilities specifically required for future customers divided by the unit usage for each future customer, less rate/tax credits.

Chapter 395 also states that "Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan. . . ." There is a diversity of legal opinion on this phrase. From a technical viewpoint, such charges must be carefully construed to retain the cost of service basis. If Seguin were to attempt to include projected interest and financing charges in the fee, the approach should be addressed by the City's legal counsel. Prior Seguin studies do not include projected financing and interest costs.

#### **2.2.3.6 System-Wide vs. Geographic-Specific Fees**

The law provides that the service analysis may be prepared on a system-wide basis; however, this provision seems to apply only to water and sewer service and not to roadways or drainage. This allowance of system-wide fee development seems to address the rational nexus standard rather than the more restrictive "specifically and uniquely attributable" test which requires geographic disaggregation. Seguin has historically calculated fees on a system-wide basis.

#### **2.2.3.7 Facilities Which Can Be Included in the Fee Base**

The law provides that only facilities in the associated CIP can be funded by the fee. The requirement that fee-funded facilities must be in the CIP also cements the fee assessment to a comprehensive planning document, and thus implies a strong orientation to the city's overall approach to controlling land use for the purpose of public health, safety and welfare -- i.e., the ultimate basis for the authority for such fee programs.

#### **2.2.4 Proportionality**

The technical approach outlined in the Chapter ensures that fees paid must be proportional to demand caused by the fee payer. The law also addresses "offsets" -- a situation whereby a developer finances and constructs a facility which is normally funded in full or in part by the fee process, and either has his fee assessment reduced accordingly or receives reimbursement of costs. The law stipulates that "an owner may not be required to construct or dedicate facilities and pay impact fees for those facilities". Again, this provides for meeting the rational nexus test.



## 2.2.5 Rational Nexus

### 2.2.5.1 Rational Nexus: Demand Nexus

The technical study provisions of Chapter 395 ensure that feepayers will pay only for the demands they place on the system (averaged over a whole class of customers).

### 2.2.5.2 Rational Nexus: Benefit Nexus

Chapter 395 contains numerous provisions to ensure that a feepayer receives the benefit of service for which the fee has been paid. Except for roadways, impact fees cannot be collected where service is not currently available except under specific conditions:

- The capital improvement for which the fee was collected is in the CIP, will begin construction within two years and will be completed in no more than five years; or
- The developer agrees to build/finance the facility for offset credit or reimbursement; or
- The landowner voluntarily asks to reserve future service.

The law moreover stipulates that the feepayer must receive permanent use of services for which the fee was paid and that he must receive immediate service from any existing facilities with capacity to serve him.

## 2.2.6 Timing of Fee Assessment and Collection; Grandfathering Provisions

### 2.2.6.1 Fee Assessment

The Chapter distinguishes between the timing of fee assessment (when a determination is made about the fee amount per service unit which will be charged to a property) and the timing of actual fee collection.

- For land already subdivided and platted prior to the adoption of the fee, and for which a building permit is issued within one year after adoption of the city's impact fee: No fee can be collected.
- For land subdivided and platted subsequent to the adoption of the fee: Fees must be assessed before or at the time the subdivision plat is recorded.
- For property on which development will occur without platting: Fees can be assessed at any time during the development and approval process.

These provisions pertain to fee assessment; for the most part, the maximum fee per unit will be determined at the time of plat recordation. After that assessment is made, "no additional impact fees or increases thereof shall be assessed against such tract for any reason, unless the number of service units to be developed on such tract increases". Initially, the overall effect of this provision seems to be onerous for the City if a subdivided parcel were not developed in a timely manner, or if, many years hence, a development expands its capacity demand. Regardless of the passage of time and increases in cost over time, the City



may be effectively prohibited from charging the developer the cost of service at the time he/she receives service; rather the City is limited to charging the cost of service at the time the subdivision was platted, whether or not service was used at that time. Over time this is also likely to affect the real estate market since undeveloped properties with low fee assessments will become more valuable commodities. To avoid both the revenue loss and land speculation activities, the City may wish to carefully craft fees to account for the disparity between the cost of capital improvements at the time of assessment and that at the time of collection.

#### 2.2.6.2 Fee Collection

Actual collection of fees generally occurs at the time that a building permit is issued. However, when a municipality provides service in areas where it does not issue building permits, it may collect fees at the time of connection to the water or sewer system.

#### 2.2.7 Use of Funds

Impact fees must be deposited in individual dedicated accounts (i.e., one each for water and sewer, for each ten-year fee program) with earned interest becoming a part of the dedicated funds. Expenditures may be made only for the uses for which the fees were collected. Expenditure of fee funds is specifically prohibited for:

- Either capital or interest payment for any facility not identified in the CIP (including, presumably, non-CIP approach mains or other major facilities not identified in the CIP);
- Repair, operation or maintenance expenses; or
- Upgrading, updating, expanding or replacing existing facilities to meet stricter standards or provide better service to existing customers.

These provisions are generally required as a part of meeting the rational nexus test to ensure that feepayers receive specific benefits from fee payment and that fee revenues are not diverted to pay for facilities or other purposes which do not benefit new customers. They also further tie fee funds to the adopted planning documents of the City (i.e., the CIP) by prohibiting expenditures on facilities not in the CIP.

#### 2.2.8 Refunds

Chapter 395 also addresses refunds of unused or overcharged fees. All funds must be expended within 10 years of collection or the remaining fees, plus interest, must be refunded to the current property owner or to the political subdivision which paid the fee. This implies considerable recordkeeping efforts on the part of cities. However, in practical terms, cities typically spend all fee revenues in a timely manner. Also, many Texas cities choose to set fees at a level which is competitive with surrounding jurisdictions, thus tending to keep fees lower than the maximum allowable amount.

Another circumstance requiring a refund is if a feepayer is denied immediate service (when existing service is available) or if the City does not begin and complete construction within the time period stipulated above. In those instances, the feepayers may request and must receive a refund, plus interest. However, as noted



above, Seguin collects fees at the time of building permit or connection, thus there is no practical situation in which Seguin would need to refund fees.

Again, these provisions provide checks to ensure that fee payers actually receive benefits from their payments. Moreover, they discourage fee collection when there is no significant need for growth-related CIP expenditures over the longer-term, which supports the "demand nexus" test.

### 2.2.9 Public Process/Fee Updates

The law contains extensive provisions related to the public process required to enact, revise and update an impact fee. Generally, these provisions include:

- Technical planning and engineering studies concerning land use and population projections, facility needs and cost allocation.
- Public availability and review of all assumptions and data.
- Public hearings to review all aspects of fee formulation when a new fee is developed.
- Published notice of hearings.
- Appointment of an advisory committee (which may be the Planning Commission), including real estate representatives and a representative from the ETJ.
- Any lawsuit opposing the fee ordinance must be filed within 90 days of ordinance adoption.

Cities are required to review their impact fee programs every five years and determine whether there is a need to update the fee or any of its underlying assumptions. If the City Council determines that no update is necessary, it must publish a public notice so stating. However, if any party requests that a full update be performed, the City must comply, following the same procedure as that for initiating a new fee, except with a single-hearing format. Likewise, if the Council itself decides that updates of any provisions of the fee are needed, the City must follow the same process as it used for the land use/CIP hearing process.

### 2.2.10 Summary of Chapter 395 Analysis

In summary,

- The City is regulated in its authority to charge impact fees for water, sewer, drainage and local roadways.
- A detailed technical study is required to initiate a new fee and any time the fee is updated (including service area definition, growth projections, CIP development, cost allocation, unit usage determination, etc.).
- Fees per unit "run with the plat" since they are set at time of platting; since fees are not collected at platting, this could result in losses for the City since actual cost of service may be much higher when service is ultimately provided than it was when the land was platted. Careful fee construction may avoid this under-collection.
- The maximum allowable fee under Chapter 395 is the full capital cost per unit, less rate/tax credits



- The City must create an advisory committee which contains both real estate representatives and a representative of the ETJ (when fees will be charged in the ETJ).
- Fees which are not expended on appropriate CIP projects within 10 years must be refunded, plus interest.
- Feepayers must receive immediate service, if capacity is available; otherwise they must receive service in five years or less.
- Developers must be reimbursed or receive fee offsets for contributed facilities.



### 3.0 POLICY DECISIONS OF IMPACT FEE FORMULATION

Several policy and technical decisions must be made in the course of developing an impact fee. These include:

- Definition of service area
- System-wide vs. geographic-specific fees
- Selection of a unit measurement as the basis for fee assessment
- Identification of the specific types of facilities to be funded by the fee
- Eligibility and exemptions
- Level of cost recovery desired
- Fee offset approach

#### 3.1 SERVICE AREA DEFINITION

As a first step in the impact fee study, the boundaries of the service areas in which water and sewer fees will be applied must be defined. The purpose of this potential service area designation is to define the area of growth for which the fee is developed, to estimate service demand arising from that particular growth, and to develop a capital improvements program (CIP) to meet those service needs. Thus, development of a CIP for a defined service area ensures that impact fees will be closely tied to the other planning and regulatory documents of the City and that the rational nexus tests will be addressed.

The delineation of the service area primarily serves to guide the CIP derivation and unit costing. It is not strictly binding on the utility management in regard to future flexibility on service area decisions; the impact fee service area boundary does not impose any additional obligation on the City to serve a particular development at a particular point in time, nor does it restrict the City from serving areas which were not anticipated during the impact fee study. It is unclear, however, whether the City could impose impact fees in areas which were not specifically identified as a potential service area during the fee development. Because the exact location of future growth will be, to some degree, unknowable, it would be best to include all areas of potential growth in the foreseeable future to avoid possible future questions about whether the fee is applicable to any given area. This approach will result in a larger CIP than might otherwise be developed, but since the fee is calculated on a per-unit basis, a larger CIP, per se, should have little impact on the fee magnitude.

An exception to this, however, relates to whether a new service area might have unique service requirements and costs which would tend to make the average cost increase. For example, service to the entirety of a drainage basin might be a reasonable service area assumption. On the other hand, proposing a potential service area extending into new and unserved basins could imply higher per-unit costs associated with pump-overs of sewage or construction of new treatment facilities not otherwise needed. The City will have to carefully balance these considerations in the determination of the service area used in fee calculation.

In defining utility service areas, it should also be remembered that in five years the City must decide if any factors used in the fee formulation have substantially changed, and if so, a full update process will be needed. At minimum, the service area should be the City's best approximation of the possible boundaries of its service within the next ten years, with the possibility of amending those at regular updates.



Chapter 395 stipulates that the City may apply its impact fee ordinance within the City limits, within the extraterritorial jurisdiction (ETJ), and to customers with which they have a service contract. Thus, the service area adopted must acknowledge any limits to the future City limits or ETJ and must recognize any existing or future contracted service outside those limits.

In addition, the impact fee for the Seguin utilities can only be collected in areas which are served by those particular utilities. Other service providers which may be located within the current or future City ETJ will have to adopt impact fees (if appropriate) through a separate compliance process.

## 3.2 GEOGRAPHIC CONSIDERATIONS

Chapter 395 does not require that water and sewer fees be disaggregated into service subareas, although geographically disaggregated fees are permissible. Thus, the costs of the system may be pooled and shared equally among all feepayers, or alternatively, costs may be specifically allocated to various sub-regional service areas if certain facilities can be uniquely assigned to serving specific areas. In either case, the direct linkage between feepayer and fee amount and funded facility must be maintained.

### 3.2.1 Pooled Costs

Pooled costs can be justified from several perspectives. First, from the perspective of an individual customer, the location of treatment plant, size and placement of lines, method of wastewater disposal, etc. are discretionary decisions made by the Utility. For example, whether an individual should live close to a treatment plant or several miles distant is determined more by discretionary decisions by the City than by service demands of a customer. It is possible that two customers in generally identical geographic locations with similar system demands could have significantly different individual costs of service due to these discretionary siting and design decisions.

Moreover, a water utility, in particular, is designed with features to ensure system-wide reliability. This is especially illustrated by the fact that special mains are often installed to allow various supply and treatment facilities to serve several areas of the city. Moreover, many systems are "looped" to provide somewhat redundant transmission facilities. These system reliability aspects make it difficult or impossible to assign certain costs by geographic area.

Additionally, in some instances there are facilities which serve functions for various geographic areas and therefore present geographically costs that can't be allocated. For example, a sludge treatment facility might treat sludges from various wastewater treatment plants and thus from several geographic areas.

In summary, because (1) many siting and design decisions are discretionary rather than locational; (2) systems are often designed with redundant facilities for system reliability; and (3) some facilities have no geographic-specific service area, it can be argued that each utility operates as a complete, integrated system. Therefore, any customer which receives service from such a system may reasonably be considered to be receiving sufficient benefit from the payment of an impact fee, thus meeting the benefit nexus of the rational nexus test.

An argument against pooled costs can best be made when customers in various areas impose truly unique and distinct costs upon the utility due to topography or other factors making service more costly, which are not the result of discretionary engineering decisions about technical approaches to service delivery.



### 3.2.2 Geographic-Specific Costs

The pros and cons of geographic-specific costs mirror those of pooled costs. A favorable aspect is that the linkage between a customer's specific demands and specific costs may be much stronger than with pooled costs, especially under conditions discussed above when engineering discretion does not determine the cost differential. Also, some court rulings have required a very strict linkage between specific facilities and fees such that the customer could only be required to pay for the specific lines, etc. that provided that customer with service -- as opposed to a pooled service cost. However, that type of strict nexus interpretation is outside of the mainstream of court opinions and such strict linkage is not required by Chapter 395. Nevertheless, where notable cost differentials occur -- as in differences in topography or soils -- cities would be justified in developing geographic-specific fees.

On the negative side, geographic-specific fees are more complex to calculate and administer. At its logical extreme, geographic-specific costs would require a different fee for each user, depending on the line lengths utilized. Obviously, some level of pooled average costs must be used for the fee. Among those costs which could most easily be segregated are wastewater capital costs for a particular drainage basin, facility costs (particularly lines) according to broad soil classifications, and approach main costs for a defined array of developments in a particular location.

## 3.3 UNIT MEASUREMENT / LEVEL OF SERVICE

### 3.3.1 Units of Measurement

During the impact fee study, units of measurement must be selected for two separate purposes -- for *system-wide demand* projections and CIP development, and for *individual demand* determination and fee sizing for each feepayer. This unit of measurement may be any logical and technically defensible basis such as meter size, dwelling units, acreage, square footage, employees, or other standard.

Seguin currently uses living units equivalent (LUE's), based on the size of the water meter. Water meter size is a generally good indicator for both residential and nonresidential water demand. The reason for this is that a meter is a physical element which constrains the upper limits of demand from a particular connection. Moreover, meters can be maintained and controlled by the utility, thus allowing the monitoring of the accuracy of meter sizing. The utility can require any necessary replacement of meters which can be shown to have been sized too small for a development and collect additional impact fees required by the change in meters. Typically, the Utility's smallest water meter would be the base unit for impact fee assessment (that is, one living unit equivalent). The ratio of each larger meter's continuous-duty maximum flow rate to the rate of the base meter would determine the fee multiplier and the scale for other calculations relating to this fee. Because water meter size translates demand into a common measurement for all land uses, the use of water meter size allows equitable cost assignment to each of the three customer classes identified in Chapter 395 (residential, commercial and industrial) without administrative complexity.

An equity concern relates to multifamily (apartment) customers. Oftentimes, a master meter will be placed on an entire apartment building. Because larger meter sizes represent some economies in regard to peaking, a master-metered apartment complex will be assessed a lower impact fee than a similar apartment building with individually metered units. Much study has been performed on this issue, with the result that each community either chooses to charge master-metered apartments in the same manner as all other customers, or it assigns a number of LUE's to each unit based on water use relative to a typical residential meter, often 0.5 or 0.7 LUE's per unit. Similar concerns arise with master-metered mobile home parks.



A table of meter equivalencies is shown in [Table 3-1](#). In this table, the smallest meter used is 5/8" x 3/4", which is the typical household meter size in Seguin.

TABLE 3-1  
LUE EQUIVALENCIES FOR VARIOUS TYPES AND SIZES  
OF WATER METERS  
Base = 5/8" x 3/4"

METER TYPES	METER SIZE	CONTINUOUS DUTY MAXIMUM RATE (gpm)	RATIO TO 5/8" x 3/4" METER
SIMPLE	5/8" x 3/4"	10	1.0
SIMPLE	3/4"	15	1.5
SIMPLE	1"	25	2.5
SIMPLE	1-1/2"	50	5.0
SIMPLE	2"	80	8.0
COMPOUND	2"	80	8.0
TURBINE	2"	160	16.0
COMPOUND	3"	175	17.5
TURBINE	3"	350	35.0
COMPOUND	4"	300	30.0
TURBINE	4"	650	65.0
COMPOUND	6"	675	67.5
TURBINE	6"	1400	140.0
COMPOUND	8"	900	90.0
TURBINE	8"	2400	240.0
COMPOUND	10"	1150	115.0
TURBINE	10"	3500	350.0
TURBINE	12"	4400	440.0

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

### 3.3.2 [Level of Service](#)

A level of service must be established for each type of facility included in the fee. Some facilities are designed for average day demand (water supply), some for peak day demand (water treatment) and some for peak hour (distribution lines), for example. The City's engineers must establish what design criteria are needed for each type of facility in order to set fees consistent with cost incurrence.

Once the design criteria have been established, City engineers and planners must adopt a "level of service" for each facility. In essence, this is a measurement of the number of gallons of capacity needed for each new development in water treatment facilities, storage capacity, wastewater treatment, etc. Chapter 395 requires that unit usage standards be developed "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".

### 3.4 TYPES OF FACILITIES FUNDED BY THE FEES

Chapter 395 applies to fee monies or contributions which fund all water and sewer capital facilities with a few specific exceptions. Exempted from the Chapter 395 process are:

- Dedication of rights-of-way or easements, or construction or dedication of on-site or off-site water distribution or wastewater collection when these dedications and construction are required by valid ordinances and are necessitated by and attributable to new development;
- 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; and
- Other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

Otherwise , Chapter 395 governs all "charge[s] or assessment[s] 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 . . . new development" .

On the other hand, the City is not required to charge a fee for any type of facility -- whether it be lines or other capital facility. Whatever type of facilities are chosen for impact fee funding, however, must be funded with a Chapter 395-regulated fee. In the past, Seguin has included a full range of facilities in their impact fee programs.

### 3.5 ELIGIBILITY AND APPLICATION CONSIDERATIONS

A consideration in the impact fee program is whether fees are to be assessed to all new development or whether exceptions will be made on some public policy basis.

The City may also wish to consider whether a full fee should be paid by all customers in the same manner or in the same proportion. For example, some utilities wish to assess lower fees to low-cost housing residents. Others choose to assess a lower percentage of the full fee to residential customers (or exempt them altogether) as compared to commercial/industrial users (and vice versa for communities which determine that an overall community economic benefit is derived by special considerations for businesses). In any case, the exempted fee revenues cannot be recovered by charging higher fees to other fee payers; rather, rate revenues or other City source of revenue must be used. In order to maintain the financial integrity of the utilities, any exemptions adopted by the City should be reimbursed to the utilities from City funds.

When considering differential treatment for various customer classes or for uniquely situated customers, the ordinance may benefit by containing language referring to the public welfare as a reason for such differential treatment, to help avoid legal challenges.

### 3.6 LEVEL OF COST RECOVERY

The consultant's impact fee study will calculate the maximum legal fee. The Committee and Staff will address in their recommendations to the City Council whether the city should collect the maximum possible fee or something less, due to potential economic effects or other community concern.



### 3.7 FEE OFFSET APPROACHES

When a feepayer funds or constructs a facility which is contained in the impact fee CIP and which is a part of the cost basis for the fee calculation, that owner may not also be required to pay a fee for the same facility. Assuming that costs are passed along from the developer to the builder to the owner of the property, such credits must also follow the same progression. That is, a developer may put in various facilities but the builder may be the entity paying the fee due to the timing of fee collection ; in this instance the builder would receive the fee credit (but presumably paid for the facility dedications in the purchase price).

As one means of crediting the developer for such contributions , the legislation allows the City to enter into contracts with developers , who are compensated for their dedications through "credits" against the impact fees due from their developments and through future reimbursements from impact fees paid by subsequent users of the excess capacity of the dedicated facilities. Specifically, the law states that:

. . . impact fees may be assessed, but shall not be collected, in areas where services are not currently available unless . . . the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new development s which will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat.

One fairness problem which might arise would be if the facility dedicated by a developer exceeded the impact fees otherwise due from the development. In this case, the builder or ultimate owner would receive a fee credit, but might pay, through the purchase price, for the extra costs beyond the impact fee amount. The developer would thus receive compensation twice -- once through the purchase price and once from the City through subsequent user impact fee payments.

It is important to note that irrespective of the time at which the City typically collects impact fees (at building permit issuance or tap purchase), fees for subsequent users of privately contributed water and sewer facilities must be passed through at time of plat.



## 4.0 EQUITY RESIDUAL APPROACH TO IMPACT FEE CALCULATION

Chapter 395 requires that the calculation of an impact include:

*a plan for awarding:*

- (A) *a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or*
- (B) *in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan. (§ 395. 014)*

In response to option (A), this portion of the report describes the Equity Residual approach to calculating an impact fee. The City may wish to perform a credit calculation using this approach and compare the results to the fee which would be derived with option (B).

The Equity Residual methodology provides that each new user contributes "equity" in the City systems comparable to that owned by other existing users. Once that equity payment is made through the impact fee, each new user would pay the remainder of his or her capital-related cost of service through rate or tax payments equal to the rate or tax payments of existing users. This minimizes cross-subsidization (one user group paying for the costs of another) and provides for full cost recovery for the utilities. All users then pay for excess capacity in the system.

This section contains a full discussion of the Equity Residual Model.

## 4.1 DEFINITION OF TERMS

Terms which will be used throughout the conceptual presentation of this approach are defined below:

Cost of Service (Construction) - The full off-site construction costs associated with providing one unit of service, including costs of all facilities required to provide a single unit of service. Construction costs include engineering design costs and other cost components permitted by Chapter 395.

Cost of Service (Bonding) - Costs incurred in the issuance of bonds, such as ratings, fees for financial advisors, bond counsel, etc.

Cost of Service (Interest) - The interest cost applied to construction costs and bonding costs when payments are made over time.

Cost of Service (Full) - The sum of payments made for a single unit of service. This is equivalent to capital construction costs only when cash payments are made instead of bond financing. For bonded improvements, full cost of service includes construction, bonding and interest costs.

Debt Service - Regular principal and interest payments made by the City to repay bonded costs of facilities.

Equity - Value of contributions made toward full payment of cost of service; full cost of service minus outstanding debt service payments.



Existing Users - All users of the utilities prior to the adoption of a particular impact fee ordinance.

Existing Service Unit Demand - One unit of service demand in existence as of the date of the proposed impact fee ordinance.

Future Users - New development after the date of impact fee ordinance adoption.

Future Service Unit Demand - One unit of service demand occurring on or after the date of impact fee ordinance adoption.

Indebtedness (Debt Service Payback) - Total amount outstanding for all debt service payments at the time an impact fee ordinance is adopted.

Times Coverage - Excess revenue collections required by bond covenants to ensure the City's ability to meet its debt service revenue requirements (for water and sewer utilities). Minimum times coverage is generally 25% over the amount of debt service; for greater security, greater times coverage is preferred.

User Class - A group of users with historically documented, common use characteristics.

## 4.2 CONCEPTUAL METHODOLOGY

Figure 4-1 presents a conceptual illustration of the Equity Residual methodology and will be referenced throughout this section. Although the discussion of the methodology references water and sewer utility impact fees, the same concepts apply to all other types of impact fees.

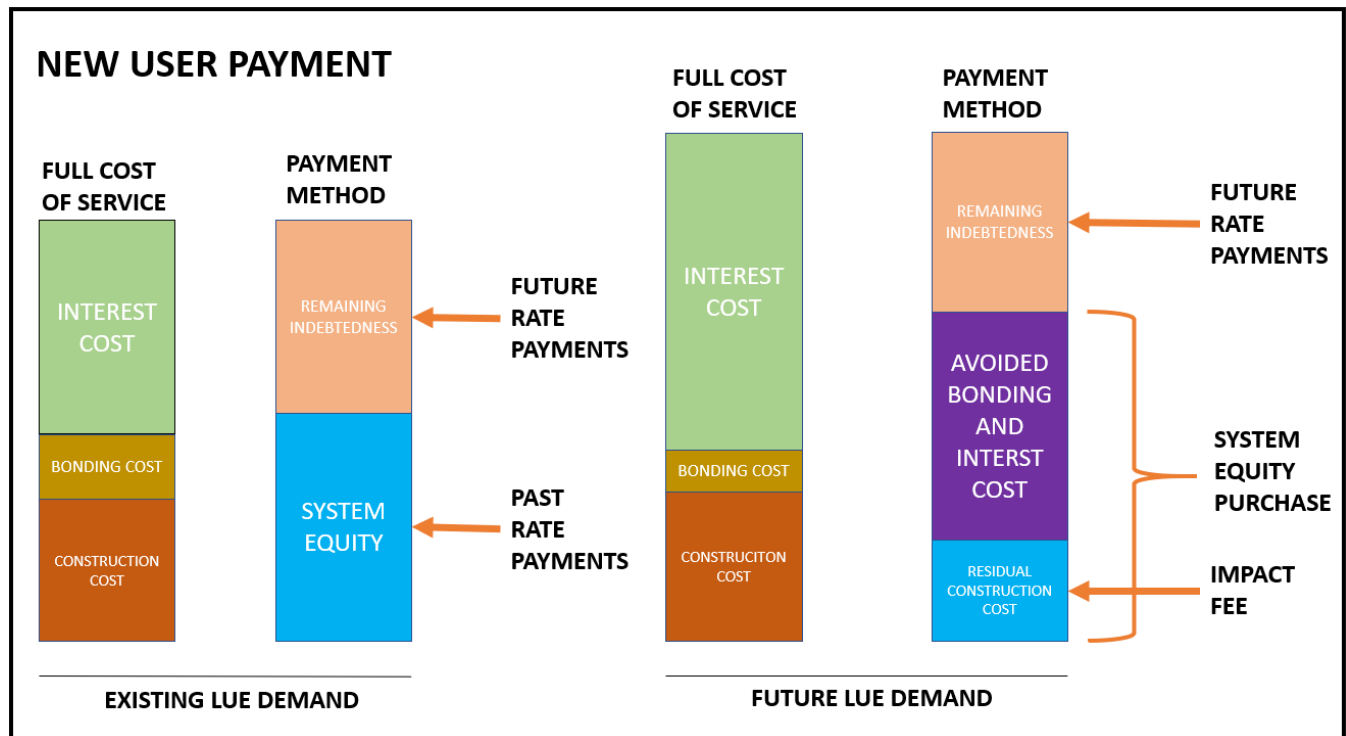
### 4.2.1 Components of Capital Cost of Service

For purposes of this conceptual discussion, costs are defined for a common measurement of capacity and demand; that service unit of measurement is "Living Unit Equivalent", or LUE. Each service unit has a capital cost associated with the comprehensive group of facilities required to provide service. This value is the Construction Cost of Service (see brown bars in Figure 4-1).

If a facility is funded through bonding, however, three additional costs are incurred for each service unit of demand: bonding costs, interest costs, and times coverage costs. Bonding costs for bond issues are statistically small -- in the neighborhood of 3% to 15%. On the other hand, interest costs can effectively double or triple costs, depending on the current interest rate and term of the bonds. Times coverage, although an expense for utility rate payers, is not actually a cost of service; these revenues are excess funds which can be carried over from one year to another to finance system improvements, pay overhead and maintenance costs, or meet other expenses. Therefore, times coverage is not included as a cost of service element in the Equity Residual model and is not shown on Figure 4-1.



FIGURE 4-1



#### 4.2.2 Methods for Recovering Costs of Service

Generally speaking, costs can be financed through either the public sector or the private sector. Financing through the public sector is primarily accomplished by bonding projects and recovering costs through rates/taxes. Financing through the private sector occurs when a developer or builder contributes assets, either facilities or cash, and passes along this cost (including carrying and financing costs) to the ultimate buyer or renter of the development. An impact fee is one mechanism for private financing; other examples are developer contribution, developer cost participation in City facilities, etc. Whether private or public financing is more cost-effective is determined by many variables, including interest rates, term, mark-up percentage, bonding costs, etc.

The Equity Residual methodology recognizes and utilizes the concept that all users pay part or all of their cost of service through public-sector financing by virtue of the fact that they pay rates/taxes to retire debt service. The central tenet of the Equity Residual approach is that future users will partially pay for their own costs of service through rate or tax payments in an amount typically equal to the remaining debt service payback for existing users. The remainder of their costs of service, or the "residual" amount, will be subject to payment through an impact fee. Thus, future users will be permitted to pay a portion of their costs of service through rates or taxes, similar to existing users. However, existing users will not, in the long-term, bear the cost of facilities for future users. Thus, the Equity Residual approach allows future users to pay their costs of service partially through the public sector (with rate or tax payments equal to existing users) and partially through the private sector (through an impact fee). The following sections provide a more detailed discussion of this conceptual approach.



### 4.2.3 System Equity and Remaining Indebtedness for Existing LUE Demand

On the left side of [Figure 4-1](#) is a representation of the Cost of Service for each unit of existing demand and the method for paying those costs. Theoretically, each existing unit of service has a full cost associated with it, consisting of construction costs, bonding costs, and interest costs. (Prior to the adoption of impact fees, construction costs were fully bonded and thus subjected to bonding and interest costs.)

Users in this group have, for the most part, been permitted to pay their full Cost of Service through the rates without an up-front cash payment of costs, as shown in the second bar for existing service demand. The second left-hand bar is divided into two segments: system equity and remaining indebtedness. Existing users, on the date an impact fee ordinance is adopted, will have theoretically paid some portion of their full Cost of Service through past rate payments. Thus, they have a certain amount of "equity" in the existing City system. This is shown on the bottom portion of the second bar. Existing users also have a corresponding amount of remaining indebtedness to be paid through future rate payments over the next 20-30 years. This is depicted on the top portion of the bar. These two payment components -- equity and remaining indebtedness -- thus describe the Total Payment of each user's Full Cost of Service for existing service unit demand.

### 4.2.4 Calculation of Cost of Service for Future Service Unit Demand

On the right side of [Figure 4-1](#) is a depiction of the Cost of Service for future LUE demand. The Cost of Service for future users will be higher than that for existing users due to inflation and possibly due to technological and regulatory changes. If these new facilities are bonded, they will have not only construction-related costs, but also bonding and interest costs (similar to those for existing users). These latter costs will also be higher than comparable costs for existing users because bonding and interest costs are directly proportional to the higher new construction costs.

### 4.2.5 Fairness Between User Through the Rate Structure

A key concept in the Equity Residual methodology is that rate payments of future users are dedicated to retirement of debt for facilities for future needs, while rate payments of existing users are used to pay for facilities for existing needs. Application of this concept has two primary results:

- Cross-subsidization between existing and future users is minimized; and
- Future users enter the City systems on an equal basis with existing users.

This approach is affected by purposefully setting the total payback indebtedness of future users to the same amount as the total payback for existing users. Thus, in [Figure 4-1](#), the remaining indebtedness for each service unit of existing demand is the same as for each service unit of future demand. In order to accomplish this equalization, however, future users will have to submit a "system equity" payment to contribute their remaining Cost of Service and to put them on a par status with existing users (see discussion below).

### 4.2.6 Equity Residual and Equity Contribution for Future LUE Demand

The second bar in the right-hand diagram of [Figure 4-1](#) shows the payment methods for future users. At the top of the bar is indebtedness equal to that of existing users. This indebtedness includes construction and bonding costs (both principal payments) and interest payments.



Below the indebtedness payback are shown the components of the remaining Cost of Service, or that portion which must be paid to achieve fairness through the rate structure. This portion of the Cost of Service has been designated "System Equity", similar to past debt payments by existing users. System Equity has three components, as do all Costs of Service: construction cost, bonding cost, and interest cost. If the construction costs in the System Equity portion of the Cost of Service were to be paid in cash, corresponding bonding and interest costs would be avoided. The remaining construction costs, or "residual", would be the actual payment necessary to achieve fairness -- or equity -- in the system. This residual cost is the amount which should be subjected to payment in an impact fee.

In sum, the Equity Residual approach to funding improvements will result in a payment for Cost of Service for future service demand which has the following characteristics:

- A portion of the Cost of Service will be paid through the rates or taxes; the total payback on this portion of the Cost of Service will equal that for total capital indebtedness for existing users reflected in the rate structure;
- New users will contribute equity status in the system by paying the remaining, unbonded portion of construction costs ("residual") through an impact fee;
- Bonding and interest costs associated with residual construction costs will be avoided.
- This approach will result in full cost recovery for growth from payments made by future users.

#### 4.2.7 Potential Benefits of the Equity Residual Approach

As shown in [Figure 4-1](#), the Equity Residual approach to calculating the impact fee has some benefits for all parties. Although this method does not achieve absolute equity among users, it is designed to minimize cross-subsidization and thereby provide appropriate benefits to all affected parties.

##### 4.2.7.1 Existing Users

First of all, the Equity Residual approach benefits existing users because they would pay for their own costs of service and would not substantially subsidize new users. Therefore, future rate or tax increases will generally reflect only renovation and operations costs and not growth-related system expansion costs.

It is important to note, however, that a stabilization of the rates/taxes is a benefit which will likely be achieved over several years. It is very possible that there will be near-term rate increases because of the immediate need or timing for system expansion or due to prior contract commitments. Moreover, the short period in which impact fee revenues have been generated may necessitate bonding while awaiting fee revenues to accumulate; i.e., some system improvements may be necessary before sufficient building permits can be issued and fees collected. This is especially true because of the grandfathering provisions of Chapter 395 (which occurred when the first Seguin fee was adopted in 2000).

##### 4.2.7.2 Future Users

Future users will also be benefitted by the Equity Residual approach to fee calculation. Although these users will be required to make a partial cash payment for service, their overall cost of service will be less than it would have been if the entire amount had been bonded and subjected to interest costs. Thus, even though construction costs for new facilities are higher than those for older facilities (due to inflation and other changes), new users will not realize that entire cost increase. This occurs because bonding and



interest costs are avoided on a portion of the construction costs. Thus, future users would enjoy lower rates than would have otherwise been required to pay their cost of service and would realize an overall cost savings in spite of high construction costs.

It is important to note, however, that these overall cost savings are achieved by private financing of City facilities. Thus, the future user must either have cash for fee payment or must finance the fee, and thus incur associated interest costs through the private sector. However, mortgage interest payments (which includes in the home cost the impact fee payments) made through the private sector are currently deductible items on federal income tax payments. Because a portion of interest payments could be deducted on income tax returns (while utility rate payments could not), future users would not experience the full effect of interest costs applied to impact fee financing.

#### 4.2.7.3 The City

The City also receives benefits from the Equity Residual model. This methodology will produce a relatively predictable source of revenues and will thus facilitate cost- and service-effective planning by the City. Although this model is not intended to totally avoid bonding of facility improvements, it will reduce the need for bonding.

In addition to the economic benefits to the City, the Equity Residual method is designed to meet the tests of reasonableness and to operate within the defined legal parameters of Chapter 395. As a result, all users would be treated on an equitable basis with fee schedules based on cost of service. This approach, therefore, should provide the City with a legally defensible methodology which will protect the impact fee revenue source in the event of legal challenge. [Table 4-1](#) provides a summary of the Equity Residual model's responsiveness to tests of reasonableness and legal constraints.



TABLE 4-1  
 RESPONSIVENESS OF EQUITY RESIDUAL APPROACH  
 TO TESTS OF REASONABLENESS AND LEGAL CONSTRAINTS

EVALUATION FACTOR	COMMENTS
<b>Basis in Cost of Service</b>	Based on proportional cost of service calculation, with a portion of the cost paid through the rates or taxes and the remainder through an impact fee.
<b>Equity:</b>	
Among Classes	Costs are leveled among classes due to administrative and data limitations. However, cost leveling of this type has long historical precedent. The only likely inter-class inequities are those due to administrative and technical limitations.
Between Generations (Existing vs. Future Users)	After an initial adjustment period, the net effect would be to substantially eliminate cross-subsidization between users who enter the system at various points in time.
<b>Punitive Effects</b>	No punitive effects.
<b>Rational Nexus:</b>	
Demand Nexus	The need for facilities supported by an impact fee is documented; the fee is based on CIP and cost of service consistent with Chapter 395 requirements, thus the fee is proportional to demand.
Benefit Nexus	The fee is based on cost of service; thus, benefits received are proportional to fees paid. The utilities are established as integrated systems such that fees do not need to be geographically dedicated in order to establish the benefit nexus.
<b>Administrative Feasibility</b>	Capital cost of service calculation as required by Chapter 395 is somewhat complex; requirements of Chapter 395 may require detailed accounting. However, actual administration of fee collection activities can be simple and efficient.
<b>Potential Community Concerns:</b>	
Growth Effects	Does not require a full cash payment for growth-related costs, but does essentially eliminate cross-subsidization. May require public education efforts.
Rate Effects	Expected to stabilize rates (related to system-expansion debt retirement) after initial adjustment period.
<b>Economic Impacts</b>	Economic effects are generally predictable and will change gradually over time, provided projections of future growth are relatively accurate. Probability for prohibitively high fee is reduced because a portion of costs is paid through utility rates or taxes, and because the City may adjust its fee downward to be competitive with nearby cities. Thus, users should not be particularly encouraged to seek locations and service delivery outside the City's jurisdictional control.
<b>Legal Vulnerability</b>	Specifically designed to respond to external legal constraints, both those contained in Chapter 395 and those implied by recent case law.



## 5.0 TECHNICAL BASIS FOR FEE CALCULATION

This chapter presents water and wastewater impact fee technical development.

### 5.1 LAND USE AND PLANNING ASSUMPTIONS

Chapter 395 requires the following in the land use and planning assumptions:

- Definition of the service area
- Projections in changes in land uses, densities, intensities and population within the service area for full buildout and the next 10 years
- Land use assumptions differentiated by at least residential, commercial and industrial land uses

The following sections provide a discussion of these assumptions.

#### 5.1.1 Service Area Definition

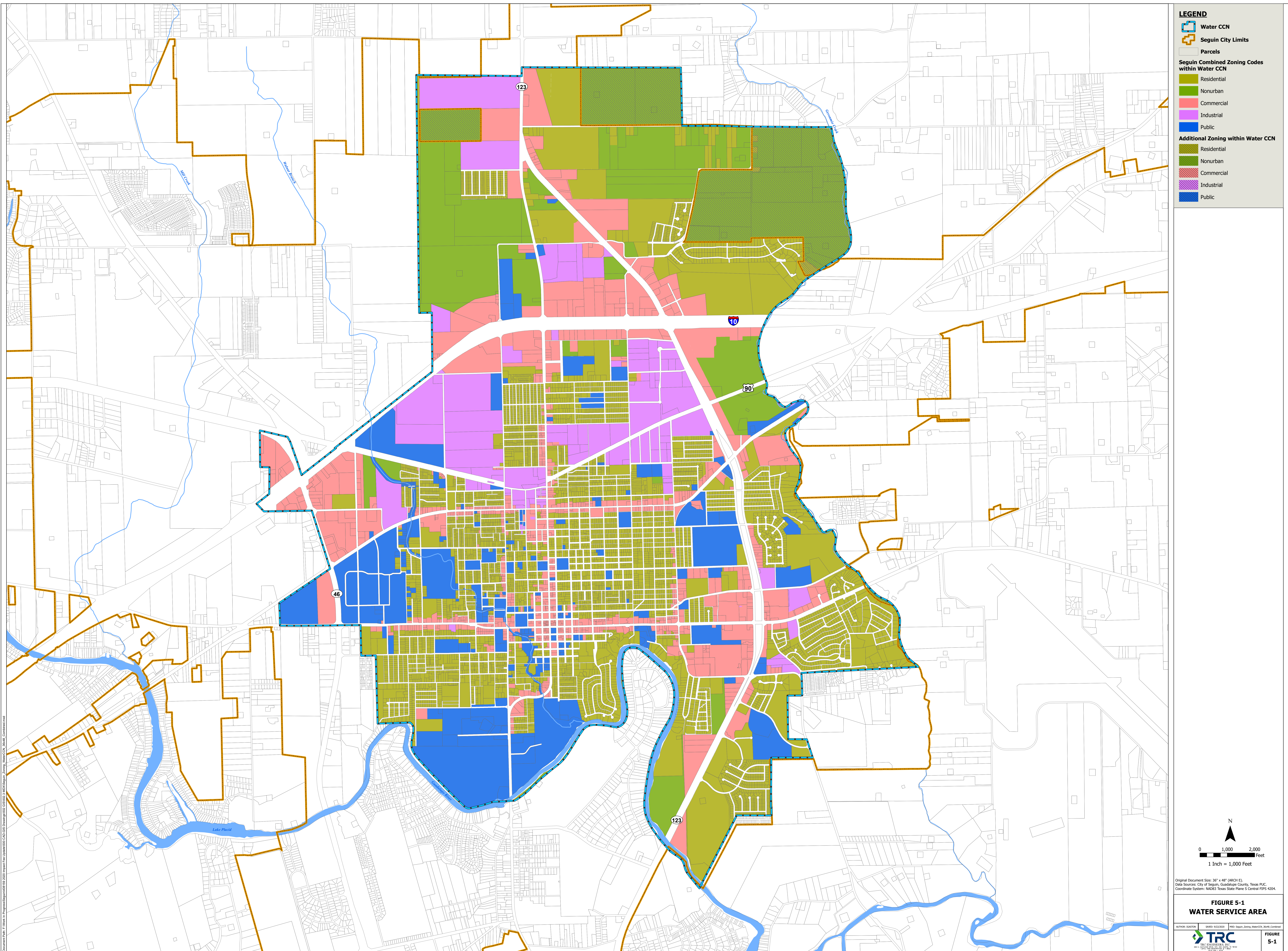
**Figure 5-1** illustrates the Water Service Area and **Figure 5-2** illustrates the Wastewater Service Area. The service area for the water utility is somewhat smaller than the corporate city limits. The sewer service area is considerably larger, including areas not only within the City limits, but also areas currently in the City's extraterritorial jurisdiction (ETJ) that are likely to be provided sewer service, but which may not receive City water. (Other water providers in the City or the ETJ are Springs Hill Water Supply Corporation, Crystal Clear Water Supply Corporation, Green Valley Special Utility District, and the Guadalupe-Blanco River Authority (GBRA)). The service areas represent the general geographic bases for planning the utility capital improvement programs, used to formulate the fees. The impact fees service areas are conceptual in nature and do not necessarily represent a definitive commitment for service by the City; the service area boundaries also do not necessarily represent limits to service potential or fee assessment (which is governed by specific provisions for fee application in Chapter 395).



**FIGURE 5-1**

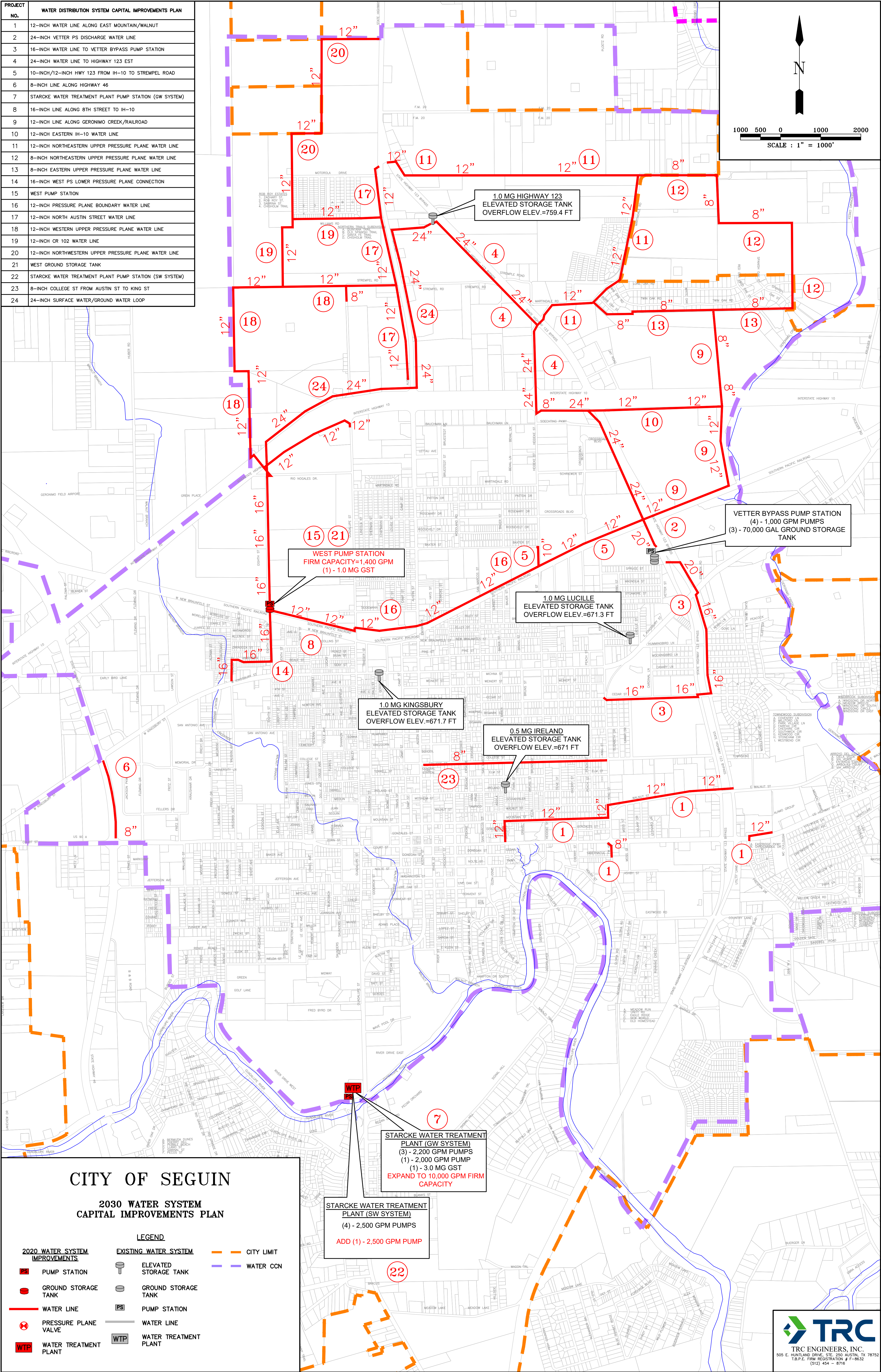
Provided by TRC Engineers, Inc.







PROJECT NO.	WATER DISTRIBUTION SYSTEM CAPITAL IMPROVEMENTS PLAN
1	12-INCH WATER LINE ALONG EAST MOUNTAIN/WALNUT
2	24-INCH VETTER PS DISCHARGE WATER LINE
3	16-INCH WATER LINE TO VETTER BYPASS PUMP STATION
4	24-INCH WATER LINE TO HIGHWAY 123 EST
5	10-INCH/12-INCH HWY 123 FROM IH-10 TO STREMPER ROAD
6	8-INCH LINE ALONG HIGHWAY 46
7	STARCKE WATER TREATMENT PLANT PUMP STATION (GW SYSTEM)
8	16-INCH LINE ALONG 8TH STREET TO IH-10
9	12-INCH LINE ALONG GERONIMO CREEK/RAILROAD
10	12-INCH EASTERN IH-10 WATER LINE
11	12-INCH NORTHEASTERN UPPER PRESSURE PLANE WATER LINE
12	8-INCH NORTHEASTERN UPPER PRESSURE PLANE WATER LINE
13	8-INCH EASTERN UPPER PRESSURE PLANE WATER LINE
14	16-INCH WEST PS LOWER PRESSURE PLANE CONNECTION
15	WEST PUMP STATION
16	12-INCH PRESSURE PLANE BOUNDARY WATER LINE
17	12-INCH NORTH AUSTIN STREET WATER LINE
18	12-INCH WESTERN UPPER PRESSURE PLANE WATER LINE
19	12-INCH CR 102 WATER LINE
20	12-INCH NORTHWESTERN UPPER PRESSURE PLANE WATER LINE
21	WEST GROUND STORAGE TANK
22	STARCKE WATER TREATMENT PLANT PUMP STATION (SW SYSTEM)
23	8-INCH COLLEGE ST FROM AUSTIN ST TO KING ST
24	24-INCH SURFACE WATER/GROUND WATER LOOP

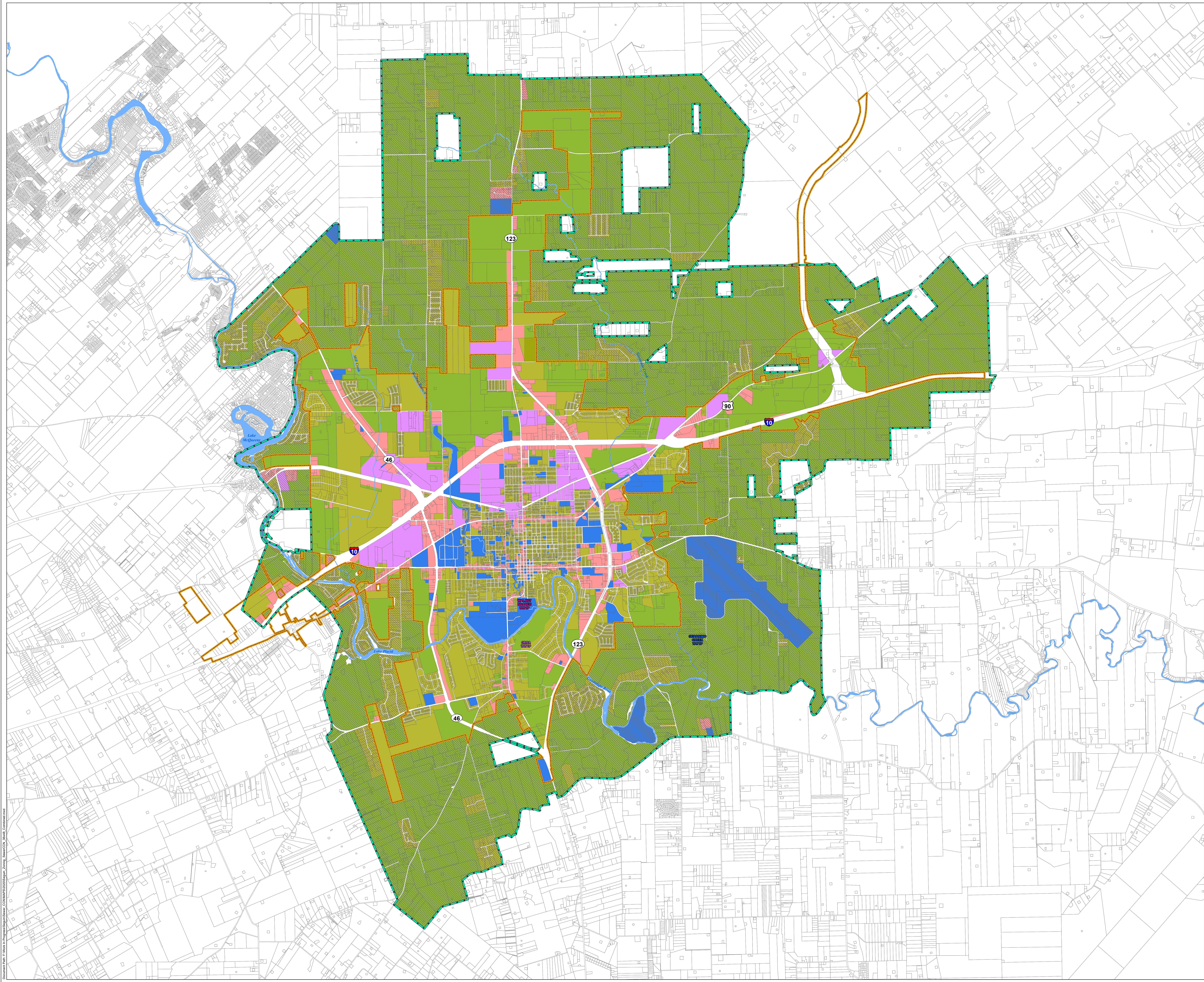




**FIGURE 5-2**

Provided by TRC Engineers, Inc.





**LEGEND**

Sanitary Sewer CCN

Seguin City Limits

Parcels

**Seguin Combined Zoning Codes within City Limits**

Residential

Nonurban

Commercial

Industrial

Public

**Additional Zoning within Sanitary Sewer CCN**

Residential

Nonurban

Commercial

Industrial

Public

Original Document Size: 36" x 48" (ARCH E)  
Data Sources: City of Seguin, Guadalupe County, Texas PLU  
Coordinate System: NAD83 Texas State Plane S Central FIPS 4204

**FIGURE 5-2  
WASTEWATER SERVICE AREA**

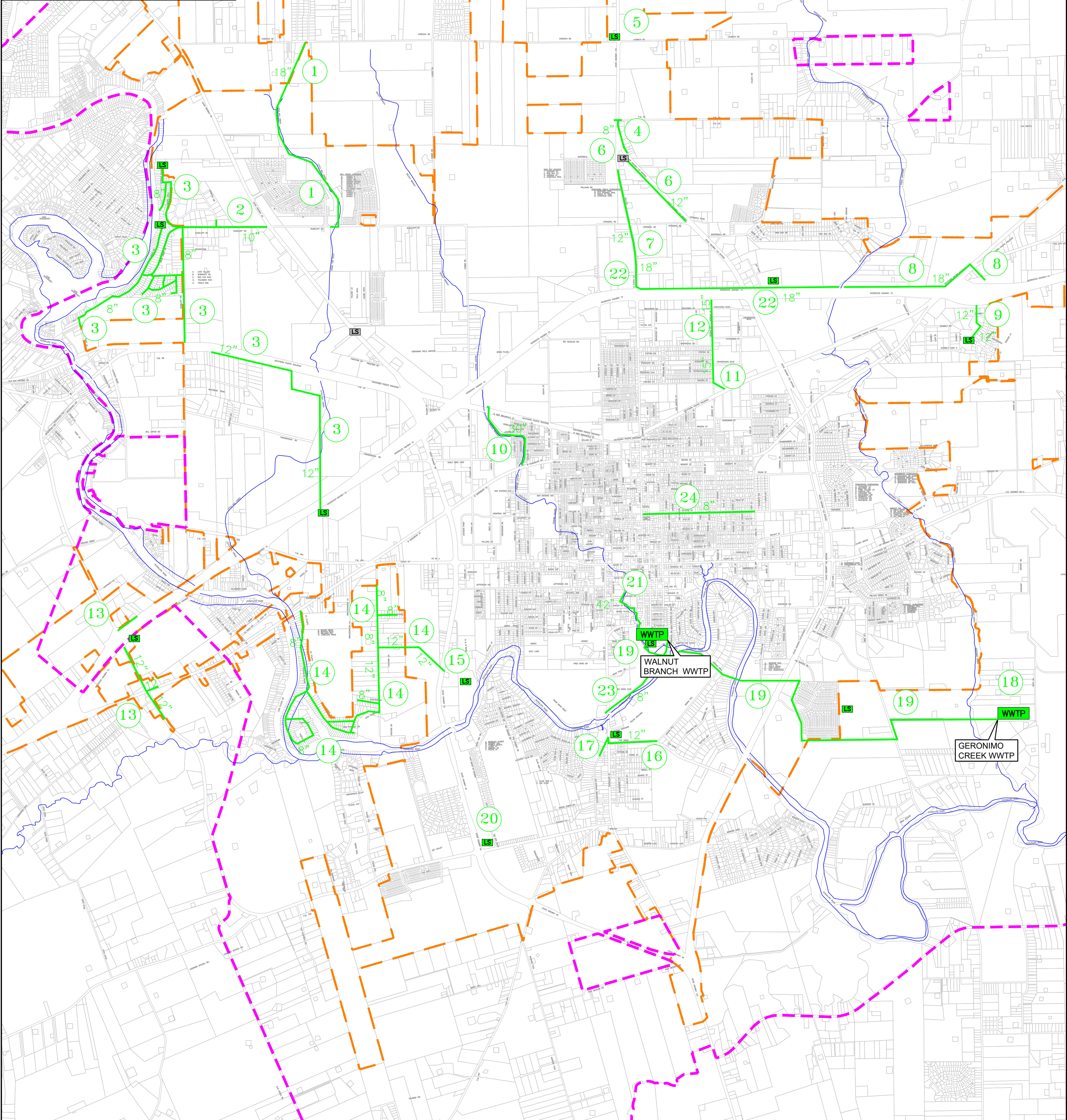
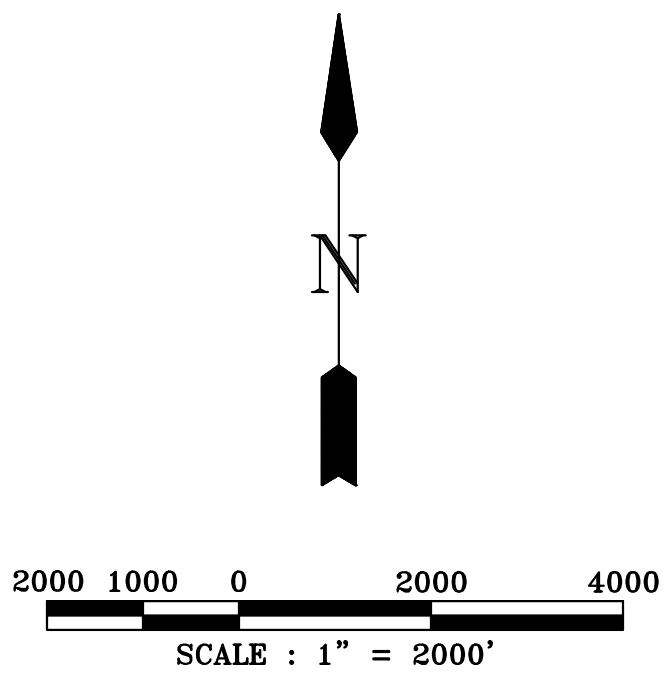
Author: [Redacted] Date: 10/10/2019 Project: Seguin, Texas, SewerCCN, SHHS, Continual

**TRC**  
TRC ENGINEERS, INC.  
10000 N. LOOP WEST, SUITE 1000  
DALLAS, TEXAS 75243

**FIGURE  
5-2**



PROJECT NO.	WASTEWATER SYSTEM CAPITAL IMPROVEMENTS PLAN
1	MILL CREEK 18" GRAVITY
2	RUDELOFF ROAD 10" GRAVITY
3	LAKE MCQUEENY SANITARY
4	FM 20 12" GRAVITY
5	NAVARRO SCHOOL LIFT STATION UPGRADE
6	SH 123 BYPASS NORTH 12" GRAVITY
7	SH 123 NORTH 12" GRAVITY
8	IH 10/US 90 18" GRAVITY
9	IH 10 12" GRAVITY
10	ALDAMA STREET FROM IH-10 TO KINGSBURY STREET 30" GRAVITY
11	HEIDEKE STREET FROM BAXTER STREET TO MARTINDALE 15" GRAVITY
12	HEIDEKE STREET FROM MARTINDALE TO IH-10 15" GRAVITY
13	FM 725 12" GRAVITY
14	TURTLE LANE SANITARY SEWER SYSTEM
15	BURGES STREET LIFT STATION UPGRADE
16	TOR DRIVE 12" GRAVITY
17	SOUTHLAND SPRING ROAD 15" GRAVITY
18	GERONIMO CREEK WWTP EXPANSION TO 12 MGD
19	WALNUT BRANCH LIFT STATION & FORCE MAIN
20	RIVER OAK DRIVE LIFT STATION & FORCE MAIN
21	WALNUT BRANCH TO LIBRARY 42" GRAVITY
22	SOUTH OF CONTINENTAL TO GERONIMO CREEK 18" GRAVITY
23	SLUDGE LINE FROM STARCKE WTP TO WB WWTP 8" FORCE MAIN
24	COLLEGE ST FROM AUSTIN ST TO KING ST 8" GRAVITY



CITY OF SEGUIN  
SEWER SYSTEM  
CAPITAL IMPROVEMENTS PLAN

LEGEND

- |  |                              |  |             |
|--|------------------------------|--|-------------|
|  | LIFT STATION                 |  | CITY LIMITS |
|  | WASTEWATER TREATMENT PLANT   |  | SEWER CCN   |
|  | PROPOSED SANITARY SEWER LINE |  |             |
|  | ABANDONED LIFT STATION       |  |             |





## 5.1.2 Land Use Assumptions

It is the intent of Seguin's Chapter 395 effort to utilize system-wide land use and planning approaches, as provided in §395.0455. That section provides:

In lieu of adopting land use assumptions for each service area, a political subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt system wide land use assumptions which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter... After adoption of system wide and use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system wide land use assumptions.

**Table 5-1** shows current and projected land use assumptions for the water utility, while **Table 5-2** shows similar information for the wastewater utility. Land uses were derived by TRC Engineers from the City's most recently updated zoning maps and expected development. Land uses for 2030 were assumed to have increased at the same rate as the population increase and discussions with City staff.

**TABLE 5-1**

### POPULATION AND LAND USE PROJECTIONS FOR THE CITY OF SEGUIN Water Utility

LAND USE	2020		2030		Full Buildout	
	ACRES	%	ACRES	%	ACRES	%
Residential	2,677	28.54%	2,818	30.04%	2,968	31.64%
Right of Way	1,079	11.50%	1,219	12.99%	1,268	13.52%
Commercial	1,629	17.36%	1,769	18.86%	1,969	20.99%
Industrial	882	9.40%	1,022	10.89%	1,221	13.02%
Public	1,109	11.82%	1,249	13.31%	1,273	13.57%
Nonurban	2,005	21.37%	1,304	13.90%	682	7.27%
<b>TOTAL ACREAGE</b>	<b>9,381</b>	<b>100.00%</b>	<b>9,381</b>	<b>100.00%</b>	<b>9,381</b>	<b>100.00%</b>
City Limit Population (a)	31,884		42,849		60,009	
Service Population (b) (c)	27,250		31,625		36,702	
Population per Urban Acre	5.25		5.64		5.96	
Population per Total Acre	2.90		3.37		3.91	

Sources:

(a) Based on annual growth of 3% per year – City Staff 10-05-2020

(b) From Freese and Nichols Water Master Plan dated 8-11-2015.

(c) Based on annual growth of 1.5% per year.



**TABLE 5-2**  
**POPULATION AND LAND USE PROJECTIONS FOR THE CITY OF SEGUIN**  
**Wastewater Utility**

LAND USE	2020		2030		Full Buildout	
	ACRES	%	ACRES	%	ACRES	%
Residential	7,418	11.41%	8,722	13.41%	10,223	15.72%
Right of Way	246	0.38%	1,548	2.38%	1,801	2.77%
Commercial	3,122	4.80%	4,423	6.80%	4,676	7.19%
Industrial	1,824	2.80%	3,122	4.80%	3,375	5.19%
Public	1,430	2.20%	2,732	4.20%	2,777	4.27%
Nonurban	50,998	78.41%	44,491	68.41%	42,186	64.86%
<b>TOTAL ACREAGE</b>	<b>65,038</b>	<b>100.00%</b>	<b>65,038</b>	<b>100.00%</b>	<b>65,038</b>	<b>100.00%</b>
City Limit Population (a)	31,884		42,849		60,009	
Service Population (b) (c)	31,097		37,908		54,745	
Population per Urban Acre	2.52		2.33		3.00	
Population per Total Acre	0.48		0.58		0.84	

Sources:

(a) Based on annual growth of 3% per year – City Staff 10-05-2020

(b) Based on number of residential customers on November 3, 2020 (7,434); plus number of apartments (2,474) times occupancy rate of 85.0% equaling 2,103 occupied apartment units; to yield 9,537 housing units. Number of housing units times 3.40 persons per household for residential customers and 2.0 per household for occupied apartment units; equals service household population of 29,481. Added is the Texas Lutheran University population of 876 living on campus, plus nursing home population of 740, equaling a total sewer service population in 2020 of 31,097.

(c) Based on annual growth of 2% per year.

## 5.2 CAPITAL IMPROVEMENTS PROGRAM PLAN

Chapter 395 requires the following elements be included in the Capital Improvements Plan (CIP) used as the basis for impact fees:

- Table of service usage for each category of capital improvements and a conversion table of service units per acre (or other measure) of residential, commercial and industrial land uses
- Projections of total service units for new development, within the service area:
  - At full buildout
  - Within 10 years or less
- Description of existing capital improvements, including:
  - Existing capital improvements within the service area
  - Analysis of total capacity of existing improvements Analysis of current usage of existing improvements Analysis of commitments for usage of existing capacity
  - Costs to upgrade, update, improve, expand or replace for existing needs



- Description of capital improvements needed to serve new development within the next 10 years or less (based on adopted service area, land use and unit usage assumptions), including:
  - All or portions of the existing CIP All or portions of the future CIP
  - Costs associated with both existing and future CIP facilities needed for new development

In addition, the legislation provides that the CIP may include construction price, survey and engineering fees, land acquisition costs (including "soft" costs), and the costs of consulting work to develop Chapter 395 fees.

Various assumptions used in the development of the CIP are shown in [Table 5-3](#) and [Table 5-4](#).

**TABLE 5-3  
CAPACITY DEMAND FOR EACH NEW WATER LUE**

FACILITY	BASIS	CAPACITY PER LUE
Supply	Peak Day	1,067 gallons daily
Treatment	Peak Day	1,067 gallons daily
Booster Pumps	Peak Day	1,067 gallons daily
Ground Storage	TCEQ Standard	100 gallons
Elevated Storage	TCEQ Standard	100 gallons
Major Transmission	Engineering Analysis	2,160 gallons daily

Source: TRC Engineers, Inc.

**TABLE 5-4  
CAPACITY DEMAND FOR EACH NEW WASTEWATER LUE**

FACILITY	BASIS	CAPACITY PER LUE
Treatment	Peak Day	883 gallons/day
Pumping	Peak Day	883 gallons/day
Major Collection	Engineering Analysis	883 gallons/day

Source: TRC Engineers, Inc.

### 5.2.1 [Conversion Table](#)

Section 395.014(a)(4) of the Impact Fee Act requires:

... an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, and industrial...

Unit usage statistics were converted into living units equivalent (LUE's) as determined by water meter size, as discussed in **Section 3.3**, to provide a common unit of measurement for all unit usage figures for water and sewer.



**Table 5-5** illustrates the use of water meters of various sizes in determining the LUE capacity of any individual customer. **Table 5-6** applies this conversion table to current Seguin active retail water meters (with the exception of multifamily master meters). Water meter size was selected as the unit determinant for fee collection for the following reasons:

- It allows the use of an American Water Works Association (AWWA) published standard.
- This standard includes both safe continuous flow and safe maximum flow which will there by accommodate all requests for service.
- These standards are those used by building owners, professional engineers and architects, and City staff for sizing meters and plumbing fixtures.
- Meters are a physical element which can be maintained and controlled by the City, thus allowing the monitoring of the accuracy of meter sizing.
- The City can require any necessary replacement of meters which can be shown to have been sized too small for a development and collect additional impact fees required by the change in meters.
- Particularly in the larger meter sizes, the builder may have to pay for more capacity than needed for the development, thus resulting in a potential payment above actual costs.

However, these large-meter customers will be able to use that excess capacity if later building expansions occur or if use patterns change. Moreover, the capacity purchased would be a marketable amenity which would add value to the property.

- The use of water meter size allows equitable cost assignment to each of the three customer classes identified in Chapter 395 (residential, commercial and industrial).

Since water meter size is the basis for calculation of both water and wastewater fees, the base fee should be applied to the smallest meter size used by the City. The following policies were suggested by the Consultants:

- The standard used for the ratio of the continuous duty maximum flow rate would be derived from AWWA C700-C703 (in gallons per minute - gpm).
- The City's smallest water meter (5/8") would be the base unit for impact fee assessment.
- The ratio of each larger meter's continuous duty maximum flow rate to the rate of the base meter would determine the fee multiplier and the scale for other calculations relating to this fee.
- The Impact Fee Ordinance should have the schedule published as shown in **Table 5-5**, which includes both compound and turbine meters.
- The use of a turbine meter, in connection with displacement meters in a compound meter installation, would require the use of the turbine meter schedule.
- The impact fee assessment should be adjusted when the City determines that unique water pressure conditions of the system result in a meter size which is not indicative of actual flow



(as when pressure is unusually low or high). In this instance, the ordinance should provide for individual review.

Responsive to these recommendations, **Table 5-5** shows a conversion table for various types and sizes of water meters in the Seguin water system. Because the fee calculation was based on water meter size, the LUE/meter conversion table applies equally to all land uses, except for master-metered residential units, discussed below. **Table 5-6** shows the current number of LUE's on the Seguin water system.

Although master-metered residences use can be charged an impact fee based on meter size like all other customers, fees applied to the use of a master meter between the City service line and the ultimate users can be perceived as somewhat inequitable. For example, if the master meter is one used by a wholesale customer, it is likely that there are far more LUEs behind the master meter than are suggested by the meter size. Thus, an impact fee to a wholesale customer that was based on meter size would tend to charge less per ultimate user than comparable retail users, and thus lower housing costs and unfairly decrease cost recovery for housing outside the City's retail service area and perhaps outside the City limits. Thus, it is equitable to bypass the meter for wholesale customers and charge a fee based on the number of LUEs behind the master meter.

A similar argument can be made regarding apartment buildings and other types of multifamily housing that use master meters. Studies in nearby communities (e.g., San Antonio) have shown that apartments typically use approximately half as much water per apartment unit as a typical detached household.



**TABLE 5-5  
LUE EQUIVALENCIES FOR VARIOUS TYPES AND SIZED  
OF WATER METERS**

METER TYPE	METER SIZE	CONTINUOUS DUTY MAXIMUM RATE (gpm)	RATIO TO 5/8" METER
SIMPLE	5/8" x 3/4"	10	1.0
SIMPLE	3/4"	15	1.5
SIMPLE	1"	25	2.5
SIMPLE	1-1/2"	50	5.0
SIMPLE	2"	80	8.0
COMPOUND	2"	80	8.0
TURBINE	2"	160	16.0
COMPOUND	3"	175	17.5
TURBINE	3"	350	35.0
COMPOUND	4"	300	30.0
TURBINE	4"	650	65.0
COMPOUND	6"	675	67.5
TURBINE	6"	1400	140.0
COMPOUND	8"	900	90.0
TURBINE	8"	2400	240.0
COMPOUND	10"	1150	115.0
TURBINE	10"	3500	350.0
TURBINE	12"	4400	440.0

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

In regard, to wastewater fees, some concern is typically expressed that water meters are not always a reasonable means of calculating wastewater flows, particularly for certain consumptive types of commercial uses (car washes, restaurants) or industrial processes. Additionally, any land use might have a large meter for irrigation purposes, thus over representing its wastewater flows. However, experience has indicated that few such customers choose to have a separate wastewater meter because of the installation and maintenance expense incurred. Because no alternative means for assessing flow is technically feasible, the consultants recommended that the water meter also be adopted as the basis for wastewater impact fees.

However, given the potential that some consumptive commercial and industrial customers may be considerably overcharged for sewer capacity demand when water meter size is used for calculating wastewater impact fees, the ordinance provides for exceptions. Specifically, the ordinance permits individual wastewater customers to present data, prepared by a professional engineer, documenting expected wastewater flow below that indicated by meter-size determinations for a lower sewer fee. For irrigation-only water meters, the fee payer only pays the water impact fee, with no sewer impact fee.



**TABLE 5-6**  
**CURRENT METER COUNT AND ESTIMATION OF LIVING UNITS EQUIVALENT**

METER SIZE (Excluding Residential and Wholesale Master Meters)	LUEs PER METER (b)	NUMBER OF METERS (a)	NUMBER OF RETAIL LUEs (Excluding Residential Master Meters)
5/8"	1.0	7,309	7,309
3/4"	1.5	0	0
1"	2.5	194	485
1-1/4", 1-1/2"	5.0	129	645
2"	8.0	210	1,680
3"	17.5	34	595
4"	30.0	17	510
6"	67.5	7	473
8"	90.0	3	270
<b>Total</b>		<b>7,903</b>	<b>11,967</b>
Water Service Population			27,250
Sewer Service Population			31,097
Population/LUE			2.28

Sources:

(a) City of Seguin, 12-07-2020.

(b) See [Table 5-5](#).



## 5.2.2 Projected Service Units for New Development

Chapter 395 also requires the projection of service units for new development in the service area. Estimated demand-per-capita standards ([Table 5-3](#) and [Table 5-4](#)) were applied to projected populations shown in [Table 5-1](#) and [Table 5-2](#) to yield the estimated water and wastewater service demands shown in [Tables 5-7](#) and [5-8](#), expressed in LUE's. As required by the legislation, projections are shown for both 2030 and ultimate buildout.

**TABLE 5-7  
ESTIMATED WATER SERVICE DEMAND BY FACILITY TYPE**

FACILITY TYPE	VOLUME		
	2020	2030	BUILDOUT
LUE'S (a)	11,967	13,871	16,097
WATER SUPPLY PEAK MGD: (b)			
Estimated Demand	12.768	14.800	17.176
Existing Capacity (g)	12.023	12.023	12.023
<b>Excess/(Deficiency)</b>	<b>(0.745)</b>	<b>(2.777)</b>	<b>(5.153)</b>
WATER TREATMENT PEAK MGD: (c)			
Estimated Demand	12.768	14.800	17.176
Existing Capacity (g)	10.529	10.529	10.529
<b>Excess/(Deficiency)</b>	<b>(2.240)</b>	<b>(4.271)</b>	<b>(6.647)</b>
BOOSTER PUMP MGD: (d)			
Estimated Demand	12.768	14.800	17.176
Existing Capacity (g)	14.544	14.544	14.544
<b>Excess/(Deficiency)</b>	<b>1.776</b>	<b>(0.256)</b>	<b>(2.632)</b>
GROUND STORAGE MG: (e)			
Estimated Demand	1.197	1.387	1.610
Existing Capacity (g)	3.210	3.210	3.210
<b>Excess/(Deficiency)</b>	<b>2.013</b>	<b>1.823</b>	<b>1.600</b>
ELEVATED WATER STORAGE MG: (f)			
Estimated Demand	1.197	1.387	1.610
Existing Capacity (g)	3.500	3.500	3.500
<b>Excess/(Deficiency)</b>	<b>2.303</b>	<b>2.113</b>	<b>1.890</b>

- (a) 2020 LUE's based on count of equivalent meters. 2030 and ultimate LUE's determined by 2020 persons per LUE (LUE = 2.28 persons).
- (b) Capacity Demand= 1,067 gallons/LUE/day.
- (c) Capacity Demand= 1,067 gallons/LUE/day.
- (d) Capacity Demand= 1,067 gallons/LUE/day.
- (e) Capacity Demand= 100 gallons/LUE.
- (f) Capacity Demand= 100 gallons/LUE.
- (g) Existing Capacity details are contained in [Table 5-9](#).



**TABLE 5-8**  
**ESTIMATED WASTEWATER SERVICE DEMAND BY FACILITY TYPE**

FACILITY TYPE	VOLUME		
	2020	2030	BUILDOUT
LUE'S (a)	13,639	16,626	24,011
WASTEWATER TREATMENT PEAK MGD:			
Estimated Demand (b)	12.043	14.681	21.202
Existing Capacity (c)	7.030	7.030	7.030
<b>Excess/(Deficiency)</b>	<b>(5.013)</b>	<b>(7.651)</b>	<b>(14.172)</b>
WASTEWATER PUMPING:			
Estimated Demand (b)	12.043	14.681	21.202
Existing Capacity (c)	11.742	11.742	11.742
<b>Excess/(Deficiency)</b>	<b>(0.301)</b>	<b>(2.939)</b>	<b>(9.460)</b>

- (a) Same number of LUE's per person as water.
- (b) Capacity demand = 883 gallons/LUE/daily. Apparent pumping deficiency cured by use of treatment plant rather than pumps for some flows.
- (c) Existing Capacity details are contained in [Table 5-10](#).

### 5.2.3 CIP Development for Existing and Future Needs

Several steps were necessary in order to perform the required inventory of existing facilities; develop the 10-year CIP; and allocate the capacity and associated costs to the appropriate customer groups.

First, as discussed above, projected service demands for each utility were expressed in LUE's. These demands were then used to project specific facility needs for both existing and future customers. [Tables 5-7](#) and [5-8](#) show current needs and deficiencies for existing 2020 customers, if any, and projected capacity needs for future growth.

There is currently a deficiency in water supply/treatment capacity which is being cured by the addition of new facilities by the Schertz-Seguin Local Government Corporation (SSLGC). These facilities are not part of the fee base for Seguin's impact fee but are instead funded through SSLGC impact fees.

The deficiency shown for wastewater treatment plant capacity is being cured by a plant expansion project, while the apparent deficiency shown for wastewater pumping is mitigated by the fact that some flows are directed to the plant without the need to use current or future lift stations (and thus there is no real pumping deficiency).

Although not reflected in [Table 5-7](#) or [Table 5-8](#), both the water and sewer systems will require additional lines by 2030, which are addressed in the capital improvements program (see [Table 5-9](#) and [Table 5-10](#)). Also, there will be a need for additional pumping and elevated water storage facilities due to locational operational requirements of the system.

[Tables 5-9](#) and [5-10](#) present the inventory of facilities as required in Chapter 395. They show the required allocation of existing and future CIP facility needs for existing development; future development within the next ten years; and excess capacity for subsequent future development. For each generation of utility customers, these tables show facility needs which will be met by a combination of Existing Facilities and Future Facilities.



Cost allocations are also shown in [Tables 5-9](#) and [5-10](#). Cost estimates for each facility were taken from actual costs of existing facilities; projected costs of future facilities were developed by TRC Engineers, Inc. or from the Water Master Plan by Freese and Nichols. Costs were expressed on a per-LUE basis. Finally, an appropriate cost share was attributed to 2020-2030 growth, as determined from capacity allocations shown. Total capital costs for 2020-2030 growth were then summed for each utility.

#### 5.2.4 Conclusions of CIP Analysis and Capital Cost Allocation

In addition to existing facilities, demand calculations indicate that the City of Seguin may need to purchase additional water rights in the next ten years (recovered through SSLGC impact fees rather than City impact fees). Additional pumping facilities and major lines will also be required to provide for future growth.

For the sewer utility, an expansion will be required for Geronimo Creek wastewater treatment plant. Additional lift stations and major lines will also be required. In addition, there may be a need for "localized" lift stations within the service area. The location and cost of these are unknown; lift station fees would be equal to the pro-rata cost of the station for each new development and would not be precisely calculated in the fee ordinance.

In addition to capital costs, the City is permitted to add the costs of the study to the fee amount, as is shown in the [Table 5-11](#), following. As a final cost calculation, costs for each facility type, per LUE, were weighted according to the capacity demand on both existing and future facilities. The results of the cost analysis are shown in [Table 5-11](#).



**TABLE 5-9  
WATER CIP INVENTORY AND COSTING**

FACILITY		TOTAL CONSTRUCT COST	FACILITY CAPACITY (mgd or gals)				2020-2030	
TYPE	NAME		TOTAL	CURRENT CUST.	2020-2030 GROWTH	POST-2030 GROWTH	CAPITAL COST TOTAL	COST PER LUE (a)
SUPPLY								
EXISTING FACILITIES			PEAK MGD					
Wells 1-12		\$0	12.023	12.023	0.000	0.000	\$0	
Subtotal Existing Facilities		\$0	12.023	12.023	0.000	0.000	\$0	
TOTAL WATER SUPPLY		\$0	12.023	12.023	0.000	0.000	\$0	\$0.00
TREATMENT								
EXISTING FACILITIES			PEAK MGD					
Water Treatment Plant		\$0	10.529	10.529	0.000	0.000	\$0	
Subtotal Existing Treatment		\$0	10.529	10.529	0.000	0.000	\$0	
TOTAL WATER TREATMENT		\$0	10.529	10.529	0.000	0.000	\$0	\$0.00
PUMPING								
EXISTING FACILITIES			PEAK MGD					
High Service Pumping		\$0	10.224	10.224	0.000	0.000	\$0	
Vetter Bypass Pump Station		\$1,557,275	4.320	2.544	1.491	0.285	\$537,476	
Subtotal Existing Pumpage		\$1,557,275	14.544	12.768	1.491	0.285	\$537,476	
FUTURE FACILITIES								
Starke WTP Pump Station (GW)		\$5,980,000	5.184	0.000	0.500	4.684	\$576,775	
West Pump Station		\$1,950,000	2.016	0.000	0.020	1.996	\$19,345	
Starke WTP Pump Station (SW)		\$2,000,000	3.600	0.000	0.021	3.579	\$11,667	
Subtotal Future Facilities		\$9,930,000	10.800	0.000	0.541	10.259	\$607,787	
TOTAL WATER PUMPAGE		\$11,487,275	25.344	12.768	2.032	10.544	\$1,145,263	\$601.47
GROUND STORAGE								
EXISTING FACILITIES			MG					
Nixon Water Treatment Plant		\$0	2.000	1.197	0.190	0.613	\$0	
Starke Park		\$750,000	3.000	0.987	0.000	2.013	\$0	
SH 123 Bypass		\$50,000	0.140	0.140	0.000	0.000	\$0	
SH 123 Ground Storage Tank		\$282,275	0.070	0.070	0.000	0.000	\$0	
Subtotal Existing Facilities		\$1,082,275	3.210	1.197	0.000	2.013	\$0	
FUTURE FACILITIES			MG					
West Ground Storage Tank		\$1,560,000	1.000	0.000	0.190	0.810	\$296,400	
Subtotal Future Facilities		\$1,560,000	1.000	0.000	0.190	0.810	\$296,400	
TOTAL GROUND STORAGE		\$2,642,275	4.210	1.197	0.190	2.823	\$296,400	\$155.66
ELEVATED STORAGE								
EXISTING FACILITIES			MG					
123		\$2,800,000	1.000	0.178	0.190	0.632	\$532,000	
Lucille		\$1,126,000	1.000	0.397	0.000	0.603	\$0	
Kingsbury		\$400,000	1.000	0.393	0.000	0.607	\$0	
Ireland		\$197,000	0.500	0.229	0.000	0.271	\$0	
Subtotal Existing Facilities		\$4,523,000	3.500	1.197	0.190	2.113	\$532,000	
TOTAL ELEVATED STORAGE		\$4,523,000	3.500	1.197	0.190	2.113	\$532,000	\$279.40



**TABLE 5-9  
WATER CIP INVENTORY AND COSTING**

FACILITY		TOTAL CONSTRUCT COST	FACILITY CAPACITY (mgd or gals)				2020-2030	
TYPE	NAME		TOTAL	CURRENT CUST.	2020-2030 GROWTH	POST-2030 GROWTH	CAPITAL COST TOTAL	COST PER LUE (a)
MAJOR TRANSMISSION LINES								
EXISTING FACILITIES (b)			MGD					
	42" Water Supply Line from Nixon WTP	\$0	31.023	17.103	2.721	11.199	\$0	
	30" Water Supply Line from Nixon WTP	\$0	15.863	8.745	1.392	5.726	\$0	
	30" River/Cedar St. & 16" Lucille Tank	\$1,054,670	15.863	12.312	0.000	3.551	\$0	
	16" Boening, Waveshore, Vaughan, San Antonio & Cedar St.	\$840,699	4.512	4.512	0.000	0.000	\$0	
	16" Milam to WTP	\$196,700	4.512	4.512	0.000	0.000	\$0	
	16" River and Milam	\$606,945	4.512	4.512	0.000	0.000	\$0	
	Subtotal Existing Facilities	\$2,699,014	29.399	25.848	0.000	0.000	\$0	
FUTURE FACILITIES (c)			MG					
	10"/12" Water Hwy. 123 from IH-10 to Strempel Rd.	\$543,400	2.538	0.000	0.170	2.368	\$36,398	
	12" Northeastern Upper Pressure Plan Water Line	\$1,842,620	2.538	0.000	0.210	2.328	\$152,463	
	12" Eastern I-10 Water Line	\$626,340	2.538	0.000	0.180	2.358	\$44,421	
	8" Water Line along Hwy. 46	\$355,680	1.128	0.000	0.180	0.948	\$56,757	
	12" CR 102 Water Line	\$654,680	2.538	0.000	0.190	2.348	\$49,011	
	12" Pressure Plane Boundary Water Line	\$676,520	2.538	0.000	0.180	2.358	\$47,980	
	12" Northwestern Upper Press. Plane Water Line	\$811,200	2.538	0.000	0.190	2.348	\$60,728	
	12" Western Upper Pressure Plane Water Line	\$1,591,070	2.538	0.000	0.210	2.328	\$131,649	
	12" Along Geronimo Creek/Railroad	\$926,640	2.538	0.000	0.210	2.328	\$76,672	
	12" Water Along East Mountain/Walnut	\$1,634,141	2.538	0.000	0.200	2.338	\$128,774	
	12" North Austin Street Water Line	\$1,243,605	2.538	0.000	0.331	2.207	\$162,188	
	16" West PS Lower Pressure Plane Connection	\$693,030	4.512	0.000	0.270	4.242	\$41,471	
	16" Along 8th Street to IH-10	\$1,630,200	4.512	0.000	0.330	4.182	\$119,230	
	24" Vetter PS Discharge Water Line	\$2,054,801	10.152	0.000	0.380	9.772	\$76,913	
	16" Water Line to Vetter Bypass Pump Station	\$1,971,450	4.512	0.000	0.330	4.182	\$144,188	
	24" Water Line to Highway 123 EST	\$3,045,941	10.152	0.000	0.330	9.822	\$99,011	
	8" Northeastern Upper Pressure Plane Water Line	\$729,560	1.128	0.000	0.080	1.048	\$51,742	
	8" Eastern Upper Pressure Plane Water Line	\$439,140	1.128	0.000	0.080	1.048	\$31,145	
	8" College St from Austin to King St	\$1,545,000	1.128	0.000	0.031	1.097	\$42,460	
	24" Surface Water/Ground Water Loop	\$4,700,000	10.152	0.000	0.031	10.121	\$14,352	
	Subtotal Future Facilities	\$27,715,018	73.884	0.000	4.113	69.771	\$1,567,554	
TOTAL TRANSMISSION LINES		\$30,414,032	103.283	25.848	4.113	69.771	\$1,567,554	\$823.25
TOTALS		\$49,066,582					\$3,541,217	\$1,859.77

\*SSLGC facilities are not included in Seguin's impact fee base. SSLGC is in the process of upgrading its infrastructure. For purpose of the impact fee, facilities are shown but not included in the capacity, growth, or capital cost.

(a) Assumes the following gals to LUE conversion factors:

Treatment/Supply/Pumpage: 1,067 gals daily  
Ground/Elevated Storage: 100 gals

(b) Incomplete inventory of existing facilities; existing customers use capacity in other lines. Future customers use capacity in existing main trunk lines as well as in future transmission lines.



- (c) Includes typical facilities for service to new development. Costs are based on the following projects. Similar projects may be substituted, dependent on actual development demand.

Note: Totals may not add due to rounding.

Source: TRC Engineers, Inc. 2020.



**TABLE 5-10  
WASTEWATER CIP INVENTORY AND COSTING**

FACILITY		TOTAL CONSTRUCT COST	FACILITY CAPACITY (mgd or gals)				2020-2030	
TYPE	NAME		TOTAL	CURRENT CUST.	2020-2030 GROWTH	POST-2030 GROWTH	CAPITAL COST TOTAL	COST PER LUE (a)
TREATMENT								
EXISTING FACILITIES			PEAK MGD					
	Walnut Creek WWTP	\$5,392,408	4.900	4.900	0.000	0.000	\$0	
	Geronimo Creek WWTP	\$5,655,641	2.130	2.130	0.000	0.000	\$0	
Subtotal Existing Facilities		\$11,048,049	7.030	7.030	0.000	0.000	\$0	
FUTURE FACILITIES								
	Geronimo Creek WWTP Expansion	\$143,000,000	9.870	5.013	2.637	2.220	\$38,205,775	
Subtotal Future Facilities		\$143,000,000	9.870	5.013	2.637	2.220	\$38,205,775	
TOTAL WASTEWATER TREATMENT		\$154,048,049	16.900	12.043	2.637	2.220	\$38,205,775	\$12,791.07
PUMPING								
EXISTING FACILITIES			MGD					
	All lift Stations	\$2,200,000	9.202	9.202	0.000	0.000	\$0	
	Pecan Orchard Lift Station	\$1,000,000	2.54	0.300	0.000	2.240	\$0	
Subtotal Future Facilities		\$3,200,000	11.742	9.502	0.000	2.240	\$0	
FUTURE FACILITIES								
	IH-10 Lift Station & Force Main	\$465,850	0.432	0.000	0.200	0.232	\$215,671	
	River Oak Dr. Lift Station & Force Main	\$1,000,000	0.684	0.000	0.200	0.484	\$292,398	
	SH123 Bypass S. Lift Station & FM	\$2,200,000	0.864	0.000	0.200	0.664	\$509,259	
	Burgess Street Lift Station Upgrade	\$800,000	0.432	0.000	0.200	0.232	\$370,370	
	Navarro Lift Station Upgrade	\$546,000	0.864	0.000	0.277	0.587	\$175,049	
	Walnut Branch Lift Station & Force Main	\$54,000,000	20.000	0.000	0.250	19.750	\$175,049	
	Localized Lift Stations	(b)		0.000				
Subtotal Future Facilities		\$59,011,850 (b)	23.276	0.000	1.327	21.949	\$2,237,747 (b)	
TOTAL WASTEWATER PUMPAGE		\$62,211,850 (b)	35.018	9.502*	1.327	24.189	\$2,237,747 (b)	\$749.18 (b)



FACILITY		TOTAL CONSTRUCT COST	FACILITY CAPACITY (mgd or gals)				2020-2030	
TYPE	NAME		TOTAL	CURRENT CUST.	2020-2030 GROWTH	POST-2020 GROWTH	CAPITAL COST TOTAL	COST PER LUE (a)
MAJOR COLLECTION LINES								
EXISTING FACILITIES (c)			MG					
	Mill Creek 24" Gravity	\$2,287,013	4.061	0.388	0.200	3.473	\$112,633	
	S.H. 123 Bypass South 12" Gravity	\$881,325	1.015	0.388	0.050	0.577	\$43,415	
	S.H. 123 Bypass 12" Gravity	\$339,244	1.015	0.388	0.100	0.527	\$33,423	
	Hueber Road 24" Gravity	\$1,438,105	4.061	0.389	0.030	3.642	\$10,624	
	Walnut Branch 30" Gravity	\$2,589,304	6.345	0.389	0.400	5.556	\$163,234	
	Geronimo Creek (16", 18", 20", 30")	\$3,089,137	6.345	1.500	0.200	4.645	\$97,372	
	Geronimo Creek IV & V (15" & 18")	\$5,000,000	2.284	1.000	0.200	1.084	\$437,828	
	Court Street to Plant (15" & 18")	\$350,000	2.284	2.000	0.090	0.194	\$13,792	
	Geronimo Crk Ph I & II 18" & 24" Gravity	\$304,195	4.061	1.500	0.070	2.491	\$5,243	
	Geronimo Crk Phase III 12" Gravity	\$407,449	1.015	0.500	0.070	0.445	\$28,100	
	Westside (24" & 18")	\$480,000	4.061	3.601	0.090	0.370	\$10,638	
	Subtotal Existing Facilities	\$17,165,772	36.547	12.043	1.500	23.004	\$956,303	
FUTURE FACILITIES								
	Mill Creek 18" Gravity	\$1,930,000	2.284	0.000	0.226	2.058	\$190,972	
	S.H. 123 Bypass North 12" Gravity	\$442,125	1.015	0.000	0.126	0.889	\$54,884	
	S.H. 123 North 12" Gravity	\$558,112	1.015	0.000	0.056	0.959	\$30,792	
	F.M. 725 12" Gravity	\$276,325	1.015	0.000	0.046	0.969	\$12,523	
	Southland Spring Road 15" Gravity	\$653,000	1.586	0.000	0.047	1.539	\$19,351	
	IH-10 12" Gravity	\$325,000	1.015	0.000	0.056	0.959	\$17,931	
	Tor Drive 12" Gravity	\$534,425	1.015	0.000	0.000	1.015	\$0	
	Lake McQueeney Sanitary Sewer System	\$6,500,000	2.284	0.000	0.000	2.284	\$0	
	Turtle Lane Sanitary Sewer System	\$3,650,000	1.015	0.000	0.000	1.015	\$0	
	F.M. 20 12" Gravity	\$543,125	1.015	0.000	0.057	0.958	\$30,501	
	IH 10 / US 90 18" Gravity	\$1,100,000	2.284	0.000	0.057	2.227	\$27,452	
	Aldama Street from I-10 to Kingsbury Street 30" Gravity	\$1,376,060	6.345	0.000	0.107	6.238	\$23,205	
	Heideke Street from Baxter Street to Martindale 15" Gravity	\$325,125	1.586	0.000	0.097	1.489	\$19,885	
	Heideke Street from Martindale to IH-10 15" Gravity	\$510,350	1.586	0.000	0.097	1.489	\$31,213	
	Rudeloff Road 10" Gravity	\$1,730,000	0.705	0.000	0.057	0.648	\$139,872	
	Walnut Branch to Library 42" Gravity	\$2,781,062	12.434	0.000	0.027	12.407	\$6,039	
	South of Continental to Geronimo Creek 18" Gravity	\$3,075,000	2.284	0.000	0.027	2.257	\$36,351	
	Sludge Line from Starcke WTP to WB WWTP 8" Force Main	\$431,000	0.451	0.000	0.027	0.424	\$25,803	
	College St from Austin St to King St 8" Gravity	\$1,545,000	0.451	0.000	0.027	0.424	\$92,494	
	Subtotal Future Facilities	\$28,285,709	41.385	0.000	1.137	40.248	\$759,269	
TOTAL TRANSMISSION LINES		\$45,451,481	77.932	12.043	2.637	63.252	\$1,715,572	\$574.36
WASTEWATER CONSTRUCTION COST TOTAL		\$261,711,380					\$42,159,094	\$14,114.61 (b)



\*A portion of the flow is directed to the treatment plants without flowing through any future or existing lift stations thus demand is somewhat less than shown in Table 5-4.

- (a) Assumes the following gals to LUE conversion factors:
 

Treatment:	883	gals daily
Pumpage:	883	gals daily
Collection:	883	gals daily
- (b) Fee payers requiring construction of additional new lift station will also be assessed cost of their pro-rata share of the facilities.
- (c) Incomplete inventory of existing facilities. New growth uses these major trunk lines which serve all customers, as well as more localized collection lines.
- (d) Includes typical facilities for service to new development. Costs are based on the following projects. Similar projects may be substituted, dependent on actual development demand.

Note: Totals may not add due to rounding.

Source: TRC Engineers, 2020.



**TABLE 5-11  
SUMMARY OF CAPITAL COSTING**

UTILITY	FACILITY TYPE	COST/LUE *
WATER	Supply	\$0.00
	Treatment	\$0.00
	Pumping	\$601.47
	Ground Storage	\$155.66
	Elevated Storage	\$279.40
	Major Transmission	\$823.25
	Study Costs	\$12.08
	<b>TOTAL WATER CAPITAL COSTS</b>	<b>\$1,871.86</b>
WASTEWATER	Treatment	\$12,791.07
	Pumping **	\$749.18
	Major Collection	\$574.36
	Study Costs	\$7.70
	<b>TOTAL WASTEWATER CAPITAL COSTS</b>	<b>\$14,122.32</b>
<b>TOTAL WATER AND WASTEWATER CAPITAL COSTS</b>		<b>\$15,994.17</b>

\* A LUE is equal to use by a typical household with a 5/8" water meter for the water and sewer utilities.

\*\* Fee payers will also pay all costs for localized lift stations, if any.



## 6.0 FEE CALCULATION

As noted in earlier discussion, Chapter 395 states that the maximum fee amount may not exceed the full capital cost per unit. The statute also requires:

*a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.*

The Equity Residual Model described in **Section 4.0** was used in fee calculation for the water and sewer utilities. **Table 6-1** contains calculations of rate credits for the water utility, and **Table 6-2** shows similar calculations for the wastewater utility. These tables show the dollar amount of capital debt service payback proportionately attributed to each LUE of existing service.

**Table 6-3** shows the remainder of the fee calculation process. According to Chapter 395, the City may either calculate actual rate credits, or it may simply reduce the construction costs by 50% to approximate a fee credit. **Table 6-3** performs both rate calculations for each type of facility, for each utility. The higher fee between the two credit approaches is then shown in the right-most column.

**Table 6-4** shows maximum fee amounts for various sizes of water meters.



**TABLE 6-1  
CATEGORIZATION OF UTILITY DEBT  
WATER UTILITY**

FACILITY TYPE/NAME	BOND ISSUE			FACILITY CAPACITY		Total Per LUE
	ISSUANCE DATE	Utility Allocation of Issue Amount	Remaining Principal (a)	TOTAL	FOR CURRENT CUST.	
WATER PUMPING				MGD		
Existing						
Pumping	2016	\$477,942.00	\$441,767.00	14.544	12.768	\$32.4
Pumping	2017	\$4,650,000.00	\$4,288,941.00	14.544	12.768	\$314.65
Future						
Pumping	Prospective	\$9,930,000.00	\$9,930,000.00	10.800	-	\$0.00
Sub Total Pumping		\$15,057,942.00	\$14,660,708.00			\$347.05
GROUND STORAGE				MG		
Existing						
Ground Storage		\$ -	\$ -			
Future						
Ground Storage	Prospective	\$1,560,000.00	\$1,560,000.00	1.000	-	\$0.00
Sub Total Ground Storage		\$1,560,000.00	\$1,560,000.00			\$0.00
ELEVATED STORAGE				MG		
Existing						
Misc. Storage Facilities	2015	\$808,997.01	\$289,803.00	3.500	1.197	\$8.28
Ireland & Kingsbury Tanks	2018	\$681,705.00	\$661,151.00	3.500	1.197	\$18.90
Future						
Elevated Storage		\$ -	\$ -			
Sub Total Elevated Storage		\$1,490,702.01	\$950,954.00			\$27.18
TRANSMISSION				MGD		
Misc. Lines	2013	\$3,313,973.00	\$1,021,681.00	29.399	25.848	\$75.07
Misc. Lines	2014	\$3,412,628.00	\$3,073,710.00	29.399	25.848	\$225.83
Misc. Lines	2015	\$1,103,525.40	\$395,311.00	29.399	25.848	\$29.04
Misc. Lines	2016	\$424,837.00	\$392,682.00	29.399	25.848	\$28.85
Misc. Lines	2018	\$140,471.00	\$136,236.00	29.399	25.848	\$10.01
Misc. Lines	2019	\$1,223,684.00	\$1,221,711.00	29.399	25.848	\$89.76
Misc. Lines	2020	\$475,301.00	\$432,646.00	29.399	25.848	\$31.79
Transmission [a]	Prospective	\$27,715,018.00	\$27,715,018.00	73.884	-	\$0.00
Sub Total Transmission		\$37,809,437.40	\$34,388,995.00			\$490.36
TOTAL WATER		\$55,918,081.41	\$51,560,657.00			\$864.59

(a) Includes engineering costs and contingencies.



**TABLE 6-2  
CATEGORIZATION OF UTILITY DEBT  
WASTEWATER UTILITY**

FACILITY TYPE/NAME	BOND ISSUE			FACILITY CAPACITY		Total Per LUE
	ISSUANCE DATE	Utility Allocation of Issue Amount	Outstanding Principal	TOTAL	FOR CURRENT CUST.	
TREATMENT				MGD		
Existing						
WWTP Improvements	2014	\$3,450,000.00	\$3,107,370.00	7.030	7.030	\$227.83
WWTP Improvements	2016	\$545,135.00	\$503,875.00	7.030	7.030	\$36.94
WWTP Improvements	2017	\$3,650,000.00	\$3,366,588.00	7.030	7.030	\$246.83
WWTP Improvements	2020	\$1,124,368.00	\$1,023,463.00	7.030	7.030	\$75.04
Future						
Treatment	Prospective	\$143,000,000.00	\$143,000,000.00	9.870	5.013	\$5,325.09
Sub Total Treatment		\$151,769,503.00	\$151,001,296.00			\$5,911.73
PUMPING				MGD		
Pumping Additions	2013	\$51,037.00	\$15,734.00	11.742	9.502	\$0.93
Pumping Additions	2016	\$2,803,709.00	\$2,591,501.00	11.742	9.502	\$153.76
Pumping Additions	2017	\$200,000.00	\$184,471.00	11.742	9.502	\$10.94
Future						
Pumping	Prospective	\$59,011,850.00	\$59,011,850.00	23.276	-	\$0.00
Sub Total Pumping		\$62,066,596.00	\$61,803,556.00			\$165.64
COLLECTION				MGD		
Misc. Lines	2013	\$1,913,311.00	\$589,864.00	36.547	12.043	\$14.25
Misc. Lines	2014	\$4,159,528.00	\$3,746,433.00	36.547	12.043	\$90.51
Misc. Lines	2015	\$3,451,222.00	\$1,236,315.00	36.547	12.043	\$29.87
Misc. Lines	2016	\$108,377.00	\$100,174.00	36.547	12.043	\$2.42
Misc. Lines	2018	\$9,127,824.00	\$8,852,613.00	36.547	12.043	\$213.88
Misc. Lines	2019	\$4,976,316.00	\$4,968,289.00	36.547	12.043	\$120.03
Misc. Lines	2020	\$2,300,331.00	\$2,093,891.00	36.547	12.043	\$50.59
Major Collection	Prospective	\$28,285,709.00	\$26,309,709.00	40.793	-	\$ -
Sub Total Collection		\$54,322,618.00	\$49,873,288.00			\$521.55
TOTAL WASTEWATERWATER		\$268,158,717.00	\$262,678,140.00			\$6,598.92

(a) Includes engineering costs and contingency costs.



**TABLE 6-3  
WATER AND WASTEWATER MAXIMUM IMPACT FEES**

UTILITY/FACILITY TYPE	COST PER LUE*	ALTERNATIVE ADJUSTMENTS		MAXIMUM FEE AMOUNTS		HIGHER OF A OR B
		A Rate Credit	B 50% Credit	A Rate CREDIT	B 50% CREDIT	
WATER						
Pumping	\$601.47	\$347.05	\$300.73	\$254.41	\$300.73	\$300.73
Ground Storage	\$155.66	\$0.00	\$77.83	\$155.66	\$77.83	\$155.66
Elevated Storage	\$279.40	\$27.18	\$139.70	\$252.22	\$139.70	\$252.22
Transmission	\$823.25	\$490.36	\$411.62	\$332.89	\$411.62	\$411.62
Study Costs	\$12.08	\$0.00	\$6.04	\$12.08	\$6.04	\$12.08
Subtotal Water	\$1,871.86	\$864.59	\$935.93	\$1,007.27	\$935.93	\$1,132.32
WASTEWATER						
Treatment	\$12,791.07	\$5,911.73	\$6,395.53	\$6,879.33	\$6,395.53	\$6,879.33
Lift Stations (a)	\$749.18	\$165.64	\$374.59	\$583.55	\$374.59	\$583.55
Collection	\$574.36	\$521.55	\$287.18	\$52.81	\$287.18	\$287.18
Study Costs	\$7.70	\$0.00	\$3.85	\$7.70	\$3.85	\$7.70
Subtotal Wastewater	\$14,122.32	\$6,598.92	\$7,061.16	\$7,523.40	\$7,061.16	\$7,757.77
TOTAL WATER AND WASTEWATER	\$15,994.17	\$7,463.51	\$7,997.09	\$8,530.66	\$7,997.09	\$8,890.09

- \* An LUE is equal to use by a typical household with a 5/8" water meter.
- (a) Fee payers requiring construction of additional new lift stations will also be charged the cost of their prorate shares of those facilities.



**TABLE 6-4**  
**WATER AND WASTEWATER MAXIMUM IMPACT FEES**

METER TYPE	METER SIZE	MULTIPLIER	MAXIMUM IMPACT FEE		
			WATER	WASTEWATER	BOTH
SIMPLE	5/8 X 3/4"	1.0	\$1,132.32	\$7,757.77	\$8,890.09
SIMPLE	3/4"	1.5	\$1,698.48	\$11,636.65	\$13,335.13
SIMPLE	1"	2.5	\$2,830.80	\$19,394.41	\$22,225.22
SIMPLE	1 1/2"	5.0	\$5,661.61	\$38,788.83	\$44,450.43
SIMPLE	2"	8.0	\$9,058.57	\$62,062.13	\$71,120.69
COMPOUND	2"	8.0	\$9,058.57	\$62,062.13	\$71,120.69
TURBINE	2"	16.0	\$18,117.14	\$124,124.25	\$142,241.39
COMPOUND	3'	17.5	\$19,815.62	\$135,760.90	\$155,576.52
TURBINE	3"	35.0	\$39,631.24	\$271,521.80	\$311,153.03
COMPOUND	4"	30.0	\$33,969.63	\$232,732.97	\$266,702.60
TURBINE	4"	65.0	\$73,600.87	\$504,254.77	\$577,855.64
COMPOUND	6"	67.5	\$76,431.67	\$523,649.19	\$600,080.85
TURBINE	6"	140.0	\$158,524.94	\$1,086,087.20	\$1,244,612.14
COMPOUND	8"	90.0	\$101,908.89	\$698,198.91	\$800,107.80
TURBINE	8"	240.0	\$271,757.04	\$1,861,863.77	\$2,133,620.81
COMPOUND	10"	115.0	\$130,216.92	\$892,143.06	\$1,022,359.97
TURBINE	10"	350.0	\$396,312.35	\$2,715,218.00	\$3,111,530.35
TURBINE	12"	440.0	\$498,221.24	\$3,413,416.91	\$3,911,638.15



## 7.0 CONCLUSIONS AND RECOMMENDATIONS

### 7.1 CONCLUSIONS AND RECOMMENDATIONS OF THE CONSULTANTS

This report represents the technical compliance activities of the City of Seguin responsive to Chapter 395 of the Texas Local Government Code. In addition to the adoption of the fees calculated herein, the Consultants recommended:

- Use of fee revenues to avoid future bonding, whenever possible.
- As a second-best option, fee proceeds should be used for early retirement of the growth-related portion of existing bonds for growth-related capacity in the CIP.
- Only when the two options immediately above are infeasible should fee proceeds be used for debt service for future customers.
- The Consultants recommend that the City maintain separate dedicated accounts for water and sewer fee revenues, respectively, and retain accrued interest in each account, as stipulated in Chapter 395.

The Consultants also recommend that the City's records include the following information for each impact fee payment made:

- Date of final plat (i.e., date of fee assessment)
- Ordinance number (date) by which property is assessed an impact fee
- Date of tap purchase and building permit issuance
- Size of water meter
- Number of water and wastewater LUE's for which an impact fee is assessed
- Amount of impact fees paid for each impact fee
- Date of payment of impact fees
- Special conditions or exceptions, if any
- Sufficient locational information, consistent with city or county deed records, to enable the City to establish ownership of property for which fees have been paid



## 7.2

## RECOMMENDATIONS AND CONCLUSIONS OF ADVISONRY COMMITTEE



**8.0     CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE**



LOCAL GOVERNMENT CODE

TITLE 12. PLANNING AND DEVELOPMENT

SUBTITLE C. PLANNING AND DEVELOPMENT PROVISIONS APPLYING TO MORE THAN  
ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 395. FINANCING CAPITAL IMPROVEMENTS REQUIRED BY NEW  
DEVELOPMENT IN MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL  
GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 395.001. DEFINITIONS. In this chapter:

(1) "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:

(A) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and

(B) roadway facilities.

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

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

(4) "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.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section [395.019\(2\)](#), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(5) "Land use assumptions" includes 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 10-year period.

(6) "New development" means the 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.

(7) "Political subdivision" means a municipality, a district or authority created under Article III, Section [52](#), or Article XVI, Section [59](#), of the Texas Constitution, or, for the purposes set forth by Section [395.079](#), certain counties described by that section.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements



designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six miles. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "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.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 1989, 71st Leg., ch. 566, Sec. 1(e), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 345, Sec. 1, eff. Sept. 1, 2001.

#### SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

Sec. 395.011. AUTHORIZATION OF FEE. (a) Unless otherwise specifically authorized by state law or this chapter, a governmental



entity or political subdivision may not enact or impose an impact fee.

(b) Political subdivisions may enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this chapter, except that impact fees may not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities.

(c) A municipality may contract to provide capital improvements, except roadway facilities, to an area outside its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee under the contract, but if an impact fee is charged in that area, the municipality must comply with this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.012. ITEMS PAYABLE BY FEE. (a) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the:

- (1) construction contract price;
- (2) surveying and engineering fees;
- (3) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees; and
- (4) fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.

(b) Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan and are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan.

(c) Notwithstanding any other provision of this chapter, the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as



impact fees may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this chapter.

(d) A municipality may pledge an impact fee as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or public facility expansion if:

(1) the improvement or expansion is identified in a capital improvements plan; and

(2) at the time of the pledge, the governing body of the municipality certifies in a written order, ordinance, or resolution that none of the impact fee will be used or expended for an improvement or expansion not identified in the plan.

(e) A certification under Subsection (d)(2) is sufficient evidence that an impact fee pledged will not be used or expended for an improvement or expansion that is not identified in the capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 1995, 74th Leg., ch. 90, Sec. 1, eff. May 16, 1995.

Sec. 395.013. ITEMS NOT PAYABLE BY FEE. Impact fees may not be adopted or used to pay for:

(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 political subdivision, except the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay its administrative and operating costs;



(6) principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed by Section 395.012.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.014. CAPITAL IMPROVEMENTS PLAN. (a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

(1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and



calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

(b) The analysis required by Subsection (a)(3) may be prepared on a systemwide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

(c) The governing body of the political subdivision is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.015. MAXIMUM FEE PER SERVICE UNIT. (a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

(b) If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to projected



new service units described by Section 395.014(a)(6) by the projected new service units described in that section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 3, eff. Sept. 1, 2001.

Sec. 395.016. TIME FOR ASSESSMENT AND COLLECTION OF FEE. (a) This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(c) This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the date of adoption of the impact fee.



(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall collect the fees at the time the political subdivision issues a building permit;

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision's water or wastewater system.

(e) For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

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

(g) Notwithstanding Subsections (a)-(e) and Section 395.017, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If



affordable housing as defined by 42 U.S.C. Section 12745, as amended, is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 345, Sec. 4, eff. Sept. 1, 2001.

Sec. 395.017. ADDITIONAL FEE PROHIBITED; EXCEPTION. After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract for any reason unless the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.018. AGREEMENT WITH OWNER REGARDING PAYMENT. A political subdivision is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.019. COLLECTION OF FEES IF SERVICES NOT AVAILABLE. Except for roadway facilities, impact fees may be assessed but may not be collected in areas where services are not currently available unless:

(1) the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the political subdivision commits to commence construction within two years, under duly awarded and executed contracts or commitments of staff time covering



substantially all of the work required to provide service, and to have the service available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years;

(2) the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat; or

(3) an owner voluntarily requests the political subdivision to reserve capacity to serve future development, and the political subdivision and owner enter into a valid written agreement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.020. ENTITLEMENT TO SERVICES. Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive immediate service from any existing facilities with actual capacity to serve the new service units, subject to compliance with other valid regulations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.021. AUTHORITY OF POLITICAL SUBDIVISIONS TO SPEND FUNDS TO REDUCE FEES. Political subdivisions may spend funds from any lawful source to pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.



Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES.

(a) Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

(b) A school district is not required to pay impact fees imposed under this chapter unless the board of trustees of the district consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board of trustees considers advisable to provide for the payment of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 250 (S.B. 883), Sec. 1, eff. May 25, 2007.

Sec. 395.023. CREDITS AGAINST ROADWAY FACILITIES FEES. Any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.024. ACCOUNTING FOR FEES AND INTEREST. (a) The order, ordinance, or resolution levying an impact fee must provide that all funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under this chapter.

(c) Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this chapter.

(d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.



Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.025. REFUNDS. (a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section [395.019](#) (1).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section [302.002](#), Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 37, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.82, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

#### SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE



Sec. 395.041. COMPLIANCE WITH PROCEDURES REQUIRED. Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN. The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section [395.014](#).

Added by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC. On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the capital improvement facilities that may be proposed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. (a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall send a notice of the hearing by



certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.



(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.0455. SYSTEMWIDE LAND USE ASSUMPTIONS. (a) In lieu of adopting land use assumptions for each service area, a political subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt systemwide land use assumptions, which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter.

(b) Prior to adopting systemwide land use assumptions, a political subdivision shall follow the public notice, hearing, and other requirements for adopting land use assumptions.

(c) After adoption of systemwide land use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment, and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the systemwide land use assumptions.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(b), eff. Aug. 28, 1989.

Sec. 395.047. HEARING ON IMPACT FEE. On adoption of the land use assumptions and capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution imposing an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.



Sec. 395.049. NOTICE OF HEARING ON IMPACT FEE. (a) Before the 30th day before the date of the hearing on the imposition of an impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) the amount of the proposed impact fee per service unit; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON IMPACT FEES. The advisory committee created under Section [395.058](#) shall file its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the fees.



Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.051. APPROVAL OF IMPACT FEE REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an impact fee, shall approve or disapprove the imposition of an impact fee.

(b) An ordinance, order, or resolution approving the imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.052. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

(b) The political subdivision shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with Subchapter B.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 6, eff. Sept. 1, 2001.

Sec. 395.053. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. The governing body of the political subdivision shall, within 60 days after the date it receives the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and review the update and shall determine whether to amend the plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.054. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. A public hearing must be held by the governing body of the political subdivision to discuss



the proposed ordinance, order, or resolution amending land use assumptions, the capital improvements plan, or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. (a) The notice and hearing procedures prescribed by Sections 395.044(a) and (b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee.

(b) The notice of a hearing under this section must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 345, Sec. 7, eff. Sept. 1, 2001.

Sec. 395.056. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS. The advisory committee created under Section 395.058 shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee before the fifth business day before the date of the public hearing on the amendments.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.



Sec. 395.057. APPROVAL OF AMENDMENTS REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the amendments, shall approve or disapprove the amendments of the land use assumptions and the capital improvements plan and modification of an impact fee.

(b) An ordinance, order, or resolution approving the amendments to the land use assumptions, the capital improvements plan, and imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0575. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES IS NEEDED. (a) If, at the time an update under Section 395.052 is required, the governing body determines that no change to the land use assumptions, capital improvements plan, or impact fee is needed, it may, as an alternative to the updating requirements of Sections 395.052-395.057, do the following:

(1) The governing body of the political subdivision shall, upon determining that an update is unnecessary and 60 days before publishing the final notice under this section, send notice of its determination not to update the land use assumptions, capital improvements plan, and impact fee by certified mail to any person who has, within two years preceding the date that the final notice of this matter is to be published, give written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of hearings related to impact fees. The notice must contain the information in Subsections (b)(2)-(5).

(2) The political subdivision shall publish notice of its determination once a week for three consecutive weeks in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and



classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.

(b) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO UPDATE

LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS

PLAN, OR IMPACT FEES";

(2) a statement that the governing body of the political subdivision has determined that no change to the land use assumptions, capital improvements plan, or impact fee is necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least 60 days after publication of the first notice, a person makes a written request to the designated official of the political subdivision requesting that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body must comply with the request by following the requirements of Sections 395.052-395.057; and

(5) a statement identifying the name and mailing address of the official of the political subdivision to whom a request for an update should be sent.

(c) The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plans, and impact fee before the fifth business day before the earliest notice of the government's decision that no update is necessary is mailed or published.

(d) If, by the date specified in Subsection (b)(4), a person requests in writing that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body shall cause an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 395.052-395.057.



(e) An ordinance, order, or resolution determining the need for updating land use assumptions, a capital improvements plan, or an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(d), eff. Aug. 28, 1989.

Sec. 395.058. ADVISORY COMMITTEE. (a) On or before the date on which the order, ordinance, or resolution is adopted under Section 395.042, the political subdivision shall appoint a capital improvements advisory committee.

(b) The advisory committee is composed of not less than five members who shall be appointed by a majority vote of the governing body of the political subdivision. Not less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the political subdivision has a planning and zoning commission, the commission may act as the advisory committee if the commission includes at least one representative of the real estate, development, or building industry who is not an employee or official of a political subdivision or governmental entity. If no such representative is a member of the planning and zoning commission, the commission may still act as the advisory committee if at least one such representative is appointed by the political subdivision as an ad hoc voting member of the planning and zoning commission when it acts as the advisory committee. If the impact fee is to be applied in the extraterritorial jurisdiction of the political subdivision, the membership must include a representative from that area.

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

- (1) advise and assist the political subdivision in adopting land use assumptions;
- (2) review the capital improvements plan and file written comments;
- (3) monitor and evaluate implementation of the capital improvements plan;



(4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

(d) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

(e) The governing body of the political subdivision shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

#### SUBCHAPTER D. OTHER PROVISIONS

Sec. 395.071. DUTIES TO BE PERFORMED WITHIN TIME LIMITS. If the governing body of the political subdivision does not perform a duty imposed under this chapter within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the political subdivision stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the governing body of the political subdivision finds that the duty is required under this chapter and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.072. RECORDS OF HEARINGS. A record must be made of any public hearing provided for by this chapter. The record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the date of the hearing.



Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.073. CUMULATIVE EFFECT OF STATE AND LOCAL RESTRICTIONS. Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed are cumulative with the restrictions in this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.074. PRIOR IMPACT FEES REPLACED BY FEES UNDER THIS CHAPTER. An impact fee that is in place on June 20, 1987, must be replaced by an impact fee made under this chapter on or before June 20, 1990. However, any political subdivision having an impact fee that has not been replaced under this chapter on or before June 20, 1988, is liable to any party who, after June 20, 1988, pays an impact fee that exceeds the maximum permitted under Subchapter B by more than 10 percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.075. NO EFFECT ON TAXES OR OTHER CHARGES. This chapter does not prohibit, affect, or regulate any tax, fee, charge, or assessment specifically authorized by state law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.076. MORATORIUM ON DEVELOPMENT PROHIBITED. A moratorium may not be placed on new development for the purpose of awaiting the completion of all or any part of the process necessary to develop, adopt, or update land use assumptions, a capital improvements plan, or an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Amended by Acts 2001, 77th Leg., ch. 441, Sec. 2, eff. Sept. 1, 2001.



Sec. 395.077. APPEALS. (a) A person who has exhausted all administrative remedies within the political subdivision and who is aggrieved by a final decision is entitled to trial de novo under this chapter.

(b) A suit to contest an impact fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee.

(c) Except for roadway facilities, a person who has paid an impact fee or an owner of property on which an impact fee has been paid is entitled to specific performance of the services by the political subdivision for which the fee was paid.

(d) This section does not require construction of a specific facility to provide the services.

(e) Any suit must be filed in the county in which the major part of the land area of the political subdivision is located. A successful litigant shall be entitled to recover reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.078. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS. An impact fee may not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.079. IMPACT FEE FOR STORM WATER, DRAINAGE, AND FLOOD CONTROL IN POPULOUS COUNTY. (a) Any county that has a population of 3.3 million or more or that borders a county with a population of 3.3 million or more, and any district or authority created under Article XVI, Section 59, of the Texas Constitution within any such county that is authorized to provide storm water, drainage, and flood control facilities, is authorized to impose impact fees to provide storm water, drainage, and flood control improvements necessary to accommodate new development.

(b) The imposition of impact fees authorized by Subsection (a) is exempt from the requirements of Sections 395.025, 395.052-395.057,



and 395.074 unless the political subdivision proposes to increase the impact fee.

(c) Any political subdivision described by Subsection (a) is authorized to pledge or otherwise contractually obligate all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued or incurred by or on behalf of the political subdivision and to the payment of any other contractual obligations.

(d) An impact fee adopted by a political subdivision under Subsection (a) may not be reduced if:

(1) the political subdivision has pledged or otherwise contractually obligated all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision; and

(2) the political subdivision agrees in the pledge or contract not to reduce the impact fees during the term of the bonds, notes, or other contractual obligations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 107, eff. Sept. 1, 2001.

Sec. 395.080. CHAPTER NOT APPLICABLE TO CERTAIN WATER-RELATED SPECIAL DISTRICTS. (a) This chapter does not apply to impact fees, charges, fees, assessments, or contributions:

(1) paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under that constitutional provision if both districts are required by law to obtain approval of their bonds by the Texas Natural Resource Conservation Commission; or

(2) charged by an entity if the impact fees, charges, fees, assessments, or contributions are approved by the Texas Natural Resource Conservation Commission.

(b) Any district created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution may petition the Texas Natural Resource Conservation Commission for approval of any proposed impact fees, charges, fees, assessments, or contributions. The commission shall adopt rules for reviewing the petition and may



charge the petitioner fees adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required by this chapter for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.257, eff. Sept. 1, 1995.

Sec. 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 115,000 or less that constitutes more than three-fourths of the population of the county in which the majority of the area of the municipality is located.

(b) A municipality that has not adopted an impact fee under this chapter that is constructing a capital improvement, including sewer or waterline or drainage or roadway facilities, from the municipality to a development located within or outside the municipality's boundaries, in its discretion, may allow a landowner whose land adjoins the capital improvement or is within a specified distance from the capital improvement, as determined by the governing body of the municipality, to connect to the capital improvement if:

(1) the governing body of the municipality has adopted a finding under Subsection (c); and

(2) the landowner agrees to pay a proportional share of the cost of the capital improvement as determined by the governing body of the municipality and agreed to by the landowner.

(c) Before a municipality may allow a landowner to connect to a capital improvement under Subsection (b), the municipality shall adopt a finding that the municipality will benefit from allowing the landowner to connect to the capital improvement. The finding shall describe the benefit to be received by the municipality.

(d) A determination of the governing body of a municipality, or its officers or employees, under this section is a discretionary function of the municipality and the municipality and its officers or employees are not liable for a determination made under this section.



Added by Acts 1997, 75th Leg., ch. 1150, Sec. 1, eff. June 19, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1043 (H.B. [3111](#)), Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 100, eff. September 1, 2011.



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**ADMINISTRATIVE DOCUMENTS**