

**ORDINANCE NO. 2018-13**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAGLE PASS, TEXAS APPROVING THE IMPOSITION OF A WATER IMPACT FEE TO BE KNOWN AS A WATER CAPITAL RECOVERY FEE; AMENDING SECTION 2-212, ARTICLE VI, CHAPTER 2 (ADMINISTRATION), OF THE CITY OF EAGLE PASS CODE OF ORDINANCES TO REVISE THE NAME OF THE IMPACT FEE ADVISORY COMMITTEE; REPEALING SECTIONS 23-66(b), ARTICLE IV, CHAPTER 23 (SUBDIVISIONS) AND 27-121 TO 27-145, ARTICLE IV, CHAPTER 27 ( WATER AND SEWERS) OF THE CITY OF EAGLE PASS CODE OF ORDINANCES TO DELETE ALL PROVISIONS INVOLVING THE WASTEWATER CAPITAL RECOVERY FEE AND ANY OTHER RELATED SANITARY SEWER SYSTEM CONNECTION AND/OR CAPITAL RECOVERY FEES AND ADDING SECTIONS 27-146 TO 27-170, ARTICLE IV, CHAPTER 27 (WATER AND Sewers) TO THE CITY OF EAGLE PASS CODE OF ORDINANCES TO INCORPORATE PROVISIONS INVOLVING THE APPLICABILITY, CALCULATION, ASSESSMENT, COLLECTION, PAYMENT, USE, ACCOUNTING, OFFSETS AND CREDITS TO, REFUNDS, AND UPDATES OF THE WATER CAPITAL RECOVERY FEE IMPOSED ON NEW DEVELOPMENT; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the City of Eagle Pass, is Texas municipal corporation operating as a home rule municipality ("City") in accordance with the provisions of Chapter 26 of the Texas Local Government Code and the Eagle Pass City Charter; and

**WHEREAS**, the City created and established a separate water and wastewater system pursuant to Article X, Section 10-4(d) of the Eagle Pass City Charter for the use of the public to furnish water and wastewater service and to make and collect such charges and fees for such water and wastewater service as may be fixed by the City Council of the City ("City Council"); and

**WHEREAS**, the City's water and wastewater system known as the City of Eagle Pass Water Works System ("EPWWS") (a) is owned by and is an agency of the City; and (b) manages and operates (i) a water supply, treatment, storage, transmission and distribution system; and (ii) a wastewater collection, transmission, treatment and disposal system; and

**WHEREAS**, pursuant to Chapter 395 of the Texas Local Government Code, the City is authorized to impose impact fees from new development on behalf of its agency, EPWWS, in order to allow EPWWS to generate revenue for funding or recouping the costs of water and wastewater capital improvements or facility expansions necessitated by and attributable to new development within EPWWS' certificated water and wastewater service areas (that are within the City's corporate boundaries and extraterritorial jurisdiction ("ETJ")); and

**WHEREAS**, Section 395.058 of the Texas Local Government Code provides that on or before the date on which an order, ordinance or resolution is adopted under Section 395.042 of the Texas Local Government Code establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area to be served by the capital improvements or facilities expansions, a political subdivision like the City must appoint a capital improvements advisory committee; and

**WHEREAS**, in 1990 the City desired to only adopt a wastewater impact fee; and

**WHEREAS**, in 1990 the City Council appointed a capital improvements advisory committee known as the Impact Fee Advisory Committee in accordance with Section 395.058 of the Texas Local Government Code to advise the City on adopting system-wide land use assumptions as well as review, monitor and evaluate implementation of the wastewater capital improvements plan, and the appointment of such Committee complied in all respects to the provisions of law; and

**WHEREAS**, in 1990 the City adopted a wastewater impact fee and has since levied a wastewater impact fee to pay for the wastewater capital improvements and facility expansions identified in the wastewater capital improvements plan and necessitated by and attributable to new development; and

**WHEREAS**, on August 25, 2015, the City Council amended Chapter 27, Article IV, Section 27-141(2) of the City's Code of Ordinances to expand the focus of the City's Impact Fee Advisory Committee to include both wastewater and water capital improvements; and

**WHEREAS**, the City Council appointed new members to the Impact Fee Advisory Committee in 2015; and

**WHEREAS**, the City desires to adopt a water impact fee; and

**WHEREAS**, the process of adopting a water impact fee involves the preparation of system-wide land use assumptions and a water capital improvements plan; and

**WHEREAS**, EPWWS on behalf of the City hired the firms of Tetra Tech, Inc. and Capex Consulting Group ("Consultants") to prepare and provide the City proposed system-wide land use assumptions that will describe the service area and projection of changes in land uses, densities, intensities, and population in the service area over at least a ten-year period in order to calculate the total number of projected service units necessitated by and attributable to new development within the service area; and

**WHEREAS**, EPWWS on behalf of the City also hired the Consultants to prepare and provide the City a proposed water and wastewater capital improvements plan that identifies the

water capital improvements and facility expansions necessitated by and attributable to new development for which a water impact fee may be assessed and prepared by a qualified professional engineer licensed to perform the professional engineering services in this state; and

**WHEREAS**, the proposed system-wide assumptions and water and wastewater capital improvements plan are combined into one document (known as and referred to as the “Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions”) for ease and convenience of use; and

**WHEREAS**, the proposed Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions were filed with the City Secretary on 06/30/, 2016, such date being prior to the public hearing in accordance with Section 395.043 of the Texas Local Government Code with a copy of such proposed Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions attached to this Ordinance as Exhibit “1” and incorporated herein for all purposes; and

**WHEREAS**, the City, as required by Section 395.043 of the Texas Local Government Code, therefore, made available to the public the proposed Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions, the time period of the projections, and a description of the water capital improvement facilities that may be proposed on or before the date of the first publication of the notice of the public hearing on the proposed Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions; and

**WHEREAS**, the City Council scheduled, provided notice and held a public hearing on December 12, 2017, in accordance with Sections 395.042, 395.043 and 395.044 of the Texas Local Government Code to consider the proposed Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions for the service area comprised of EPWWS’ certificated water service area (that are within the City’s corporate boundaries and ETJ (“Service Area”)); and

**WHEREAS**, on December 12, 2017, the City Council, in accordance with Section 395.045 of the Texas Local Government Code, approved the proposed Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions; and

**WHEREAS**, additionally, EPWWS on behalf of the City hired the Consultants to prepare a proposed water impact fee; and

**WHEREAS**, the proposed water impact fee was filed with the City Secretary prior to the public hearing to discuss the imposition of the impact fee with a copy of such proposed water impact fee included in the Eagle Pass Water Works System Water & Wastewater Capital Improvements Plan and Land Use Assumptions; and

**WHEREAS**, the Impact Fee Advisory Committee reviewed and recommended the adoption of the proposed water impact fee; and

**WHEREAS**, the City Council scheduled, provided notice and held a public hearing on March 20, 2018, in accordance with Sections 395.047 and 395.049 of the Texas Local

Government Code to discuss the imposition and amount of a proposed water impact fee in the Service Area, which includes EPWWS' certificated water service area; and

**WHEREAS**, after considering the input of the community, EPWWS, the Consultants and the Impact Fee Advisory Committee, the City Council believes that approval of the proposed water impact fee attached to this Ordinance as Exhibit "2" and incorporated herein for all purposes is in the best interest of the EPWWS' customers; and

**WHEREAS**, Section 23-66(b) and Sections 27-121 to 27-145 of the City of Eagle Pass Code of Ordinances will need to be repealed to repeal all provisions involving the wastewater capital recovery fee and any other related sanitary sewer system connection and/or capital recovery fees and Section 2-212 will need to be amended to revise the name of the impact fee advisory committee and Sections 27-146 to 27-170 shall need to be added to provide for the assessment and collection of a water impact fee to be known as a water capital recovery fee;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EAGLE PASS, TEXAS:**

- SECTION 1.** That the facts in the preamble of this Ordinance are true and correct.
- SECTION 2.** That Section 2-212 of the City of Eagle Pass Code of Ordinances is hereby amended as shown on Exhibit "3" attached hereto and incorporated herein for all purposes.
- SECTION 3.** That Section 23-66(b) of the City of Eagle Pass Code of Ordinances is hereby repealed.
- SECTION 4.** That Sections 27-121 to 27-145 of the City of Eagle Pass Code of Ordinances are hereby repealed and the following new Sections 27-146 to 27-170 as shown on Exhibit "3" are hereby added to Chapter 27, Article IV Division 1.
- SECTION 5.** That approval by this Ordinance imposing the water impact fee is within 30 days of the date of the public hearing as required by Section 395.051 of the Texas Local Government Code.
- SECTION 6.** That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.
- SECTION 7.** If any part, word, phrase, sentence, paragraph, section or provision of this Ordinance is for any reason declared to be unconstitutional, illegal, inoperative, invalid or ineffective by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the City Council in passing this Ordinance that its parts shall be severable, and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**SECTION 8.** This Ordinance becomes effective immediately after being passed and approved on the third and final reading.

**READ, PASSED, AND APPROVED ON FIRST READING, this 3<sup>rd</sup> day of April, 2018.**

ATTEST:

\_\_\_\_\_  
Ramsey English Cantu  
Mayor

\_\_\_\_\_  
Imelda B. Rodriguez  
City Secretary

AYES: English-Cantu, Ramon, Davis, Villalpando, Sifuentes  
NAYS: None  
ABSTAINED: None  
ABSENT: None

**READ, PASSED, AND APPROVED ON SECOND READING, this 10<sup>th</sup> day of April, 2018.**

ATTEST:

\_\_\_\_\_  
Ramsey English Cantu  
Mayor

\_\_\_\_\_  
Imelda B. Rodriguez  
City Secretary

AYES: English-Cantu, Davis, Villalpando, Sifuentes  
NAYS: None  
ABSTAINED: None  
ABSENT: Ramon

**READ, PASSED, AND APPROVED ON THIRD AND FINAL READING this 17<sup>th</sup> day of April, 2018.**

ATTEST:

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Ramsey English Cantu  
Mayor

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Imelda B. Rodriguez  
City Secretary

AYES: English-Cantu, Ramon, Davis, Villalpando, Sifuentes  
NAYS: None  
ABSTAINED: None  
ABSENT: None

**APPROVED AS TO FORM AND LEGALITY:**

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Langley & Banack, Inc.  
City Attorney



## **EXHIBIT “1”**

Eagle Pass Water Works System Water & Wastewater  
Capital Improvements Plan and Land Use Assumptions



## **EXHIBIT “2”**

### **Capital Recovery Fee for Water Capital Improvements or Facility Expansions**

The Maximum Capital Recovery Fee for Water Capital Improvements or Facility Expansions Necessitated by or Attributable to New Development Within the Service Area of the City of Eagle Pass, Texas equals \$828.00 per Living Unit Equivalent.

## **EXHIBIT “3”**

### Sec. 2-212. - Definitions.

*Official:* Except in Subdivision E, the term “official” or “city official” included the following persons:

Delete “sewer capital recovery fee advisory committee” and “subdivision and wastewater capital recovery fee advisory committee” and substitute in their place “Impartial Fee Advisory Committee.”

### Sec. 27-146. - Short title.

This article shall be known and cited as the Water Capital Recovery Fee Ordinance.

### Sec. 27-147. - Intent.

This article is intended to impose a water capital recovery fee, as established in this chapter, in order to finance public facilities, the demand for which is generated by new development in the designated service area.

### Sec. 27-148. - Authority.

The city is authorized to enact this article by Chapter 395 of the Local Government Code, (Senate Bill 336 enacted by the 70th Texas Legislature) and its successors, which authorize home rule cities, among others, to enact or impose impact fees (capital recovery fees) on land within their corporate boundaries or extraterritorial jurisdictions, and to persons with whom they have a water service contract, as charges or assessments imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development and by the Eagle Pass City Charter. The provisions of this article shall not be construed to limit the power of the city to adopt such article pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

### Sec. 27-149. - Definitions.

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

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

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

*Capital construction cost of service:* Costs of constructing capital improvements or facility expansions, including and limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees) and the fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the city.

*Capital improvements plan (CIP):* A plan which identifies water capital improvements or facility expansions for which capital recovery fees may be assessed.

*Capital recovery fee:* A fee to be imposed upon new development, calculated based upon the costs of facilities in proportion to development creating the need for such facilities. Capital recovery fees do not include dedication of rights-of-way or easements, or construction or dedication of on-site or off-site water distribution facilities if the dedication or construction is required by a valid ordinance of the city and is necessitated by and attributable to the new development; or lot or acreage fees placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water mains or lines; or other pro rata fees for reimbursement of water mains or lines extended by the city.

*City:* The City of Eagle Pass.

*City council (council):* The governing body of the City of Eagle Pass.

*City engineer (engineer):* The city engineer of the City of Eagle Pass.

*City manager:* The chief executive officer of the city, appointed by the council.

*Commercial development:* For the purposes of this article, all development which is neither residential nor industrial.

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

*Credit:* The amount of the reduction of a capital recovery fee for fees, payments or charges for the same type of capital improvements for which the fee has been assessed.

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

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

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

*Growth-related costs:* Capital construction costs of service related to providing additional service units to new development, either from excess capacity in existing facilities, from facility expansions or from new capital facilities. Growth-related costs do not include:

- (1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;
- (2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;

- (3) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- (5) Administrative and operating costs of the city; and
- (6) Principal payments and interest or other finance charges on bonds or other indebtedness, except for such payments for growth-related facilities contained in the capital improvements plan.

*Impact fee advisory committee (advisory committee):* An advisory committee, appointed by the city council, consisting of at least five (5) members, not less than forty (40) percent of whom shall be representatives of the real estate, development or building industries who are not employees or officials of the city, and if capital recovery fees are to be applied within the extraterritorial jurisdiction of the city, including one (1) member representing the extraterritorial jurisdiction. The advisory committee may consist of the planning and zoning commission, including one (1) regular member who is not an employee or official of the city and who is representative of the real estate, development or building industry, and, if capital recovery fees are to be applied within the extraterritorial jurisdiction of the city, one (1) representative of the extraterritorial jurisdiction area. The advisory committee is appointed to regularly review on the progress of the capital improvements plan and update or revise the land use assumptions, capital improvements plan, and impact fee in accordance with the requirements of Chapter 395 of the Texas Local Government Code, as amended, or any successor statute.

*Industrial development:* Development which will be assigned to the industrial customer class of the water utility; generally, development in which goods are manufactured or development which is ancillary to such manufacturing activity.

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

*Living unit equivalent (LUE):* Basis for establishing equivalency among and within various customer classes based upon the relationship of the continuous duty maximum flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a five-eighths-inch diameter simple water meter, using American Water Works Association C700-C703 standards. LUEs for water meters are as follows:

Meter Size/Type	LUEs
5/8 " Simple	1.0
3/4" Simple	1.5

1" Simple	2.5
1½" Simple	5.0
2" Simple	8.0
2" Compound	8.0
2" Turbine	10.0
3" Compound	16.0
3" Turbine	24.0
4" Compound	25.0
4" Turbine	42.0
6" Compound	50.0
6" Turbine	92.0
8" Compound	80.0
8" Turbine	160.0
10" Compound	115.0
10" Turbine	250.0
12" Turbine	330.0

*New development:* Subdivision of land; or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land, any of which increases the number of service units for water service and purchase of a new water tap.

*Offset:* The amount of the reduction of a capital recovery fee designed to fairly reflect the value of system-related facilities, pursuant to rules herein established or administrative guidelines, provided and funded by a developer pursuant to the city's subdivision regulations or requirements.

*Residential development:* A lot developed for use and occupancy as a residence or residences, according to the city's zoning ordinance.

*Service area:* An area within the corporate boundaries and within the extraterritorial jurisdiction, as defined by Chapters 42 and 43 of the Texas Local Government Code, as amended, or any successor statute, to be served by the water capital improvements or facilities expansions specified in the capital improvements plan applicable to the service area.

*Service unit:* Standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the city in which the individual unit of development is located during the previous ten (10) years for a particular category of capital improvements or facility expansions, expressed in living units equivalent.

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

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

*Tap purchase:* The filing with the city of a written application for a water tap and the acceptance of applicable fees by the city.

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

*Water facility expansion:* Expansion of the capacity of any existing water 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 water facility to better serve existing development.

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

Sec. 27-150. - Applicability of capital recovery fees.

- (a) This article shall be uniformly applicable to new development which occurs within the water service area.

- (b) No new development shall be exempt from the assessment of capital recovery fees as defined in this article. However, the city council may pay fees from nonutility funds on behalf of any new development for reasons of general community welfare.

Sec. 27-151. - Capital recovery fees as conditions of development approval.

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

Sec. 27-152. - Establishment of the water service area.

- (a) The water service area is established as shown on the service area map which is Exhibit A for this article.
- (b) The service areas shall be established consistent with any facility service area established in the CIP for the utility. Additions to the service area may be designated by the city council consistent with the procedure set forth in Chapter 395 of the Texas Local Government Code, as amended, or any successor statute.

Exhibit A, referred to in § 27-152 above, has not been included herein, but can be found on file for inspection in the city secretary's office.

Sec. 27-153. - Land use assumptions.

Land use assumptions used in the development of the capital recovery fees are contained in Exhibit A of this article. These assumptions may be revised by the city council according to the procedure set forth in Chapter 395 of the Texas Local Government Code, as amended, or any successor statute.

Exhibit A, referred to in § 27-153 above, has not been included herein, but can be found on file for inspection in the city secretary's office.

Sec. 27-154. - Service units.

- (a) *Establish in accordance with standards.* Service units are established in accordance with generally accepted engineering and planning standards.
- (b) *Calculation.* Service units shall be calculated based on living units equivalent as determined by the size of the water meter(s) for the development or, alternatively, as approved by city council, based on the recommendation of the city manager as a result of an engineering report prepared by a qualified professional engineer licensed to perform such professional engineering services in the State of Texas, which demonstrates that the number of LUEs of service for the new development will be different than those indicated by the size of the water meter.
- (c) *Adjustment in number of LUEs.* If the engineer determines that the water pressure in the city's transmission main is significantly higher or lower than standard pressure such that the size of the water meter is not indicative of actual service demand, the council may adjust the

number of LUEs based on a smaller or larger sized meter which more accurately reflects the flow rate and the system pressure conditions.

- (d) *Fire demand meters.* If a fire demand meter (tap) is purchased for a property, the meter size utilized to calculate the number of LUEs shall be the dimension of the portion of the fire demand meter which reflects the meter size which would provide only domestic service to the property. Such reduced meter size shall then be utilized to calculate the number of LUEs. The meter types used to calculate the number of LUEs shall be either simple or compound meters. To avoid the use of fire flow volumes for domestic usage, the owner of any property for which a fire demand meter is purchased shall be required to execute a restrictive covenant on a form approved by the city attorney, which covenant shall acknowledge the right of the city to assess such fees to subsequent owners of the property. Such covenant shall be executed prior to the purchase of the fire demand meter and shall be filed in the deed records of the county.
- (e) *Establishment, review and presentation of service units upon water tap purchases for lots.* Upon water tap purchase for lots for which no water meter has been purchased, service units shall be established by a professional engineer licensed in the State of Texas, shall be reviewed by the engineer and shall be presented to council which shall designate the appropriate number of service units.
- (f) *Revision of service unit designation.* The city council may revise the service unit's designation according to the procedure set forth in Chapter 395 of the Texas Local Government Code, as amended, or any successor statute.

Sec. 27-155. - Capital recovery fees per service unit.

- (a) The maximum capital recovery fee per service unit for the service area shall be computed by taking the growth-related capital construction cost of service in the service area identified in the capital improvements plan, reducing it by any allowable credits and dividing that amount by the total number of projected service units anticipated within the service area which are necessitated by and attributable to new development based on the approved land use assumptions for the service area. Maximum capital recovery fees per service unit for each service area shall be set forth in Exhibit B to this article.
- (b) Exhibit B may be amended by the city council according to the procedure set forth in Chapter 395 of the Texas Local Government Code, as amended, or any successor statute.

Exhibit B, referred to in § 27-155 above, has not been included herein, but can be found on file for inspection in the city secretary's office.

Sec. 27-156. - Assessment of capital recovery fees.

- (a) *Assessment included in approval of subdivision of land or new development.* The approval of any subdivision of land or of any new development shall include as a condition the assessment of the capital recovery fee applicable to such development.
- (b) *Manner of assessment.* Assessment of the capital recovery fee for any new development shall be made as follows:



- (1) For a development which is submitted for approval pursuant to the city's subdivision regulations following the effective date of this article, assessment shall be before or at the time of recordation of a subdivision plat or other plat and shall be the value of the capital recovery fee per service unit then in effect, as provided in Exhibit B as set forth in section 27-155(a). The city may provide the subdivider with a copy of Exhibit B prior to final plat approval, but such shall not constitute assessment within the meaning of this article.
- (2) For a development which has received final plat approval prior to the effective date of this article and for which no replatting is necessary prior to tap purchase, assessment shall be upon tap purchase and shall be the value of the capital recovery fee per service unit set forth in Exhibit B.
- (3) Because fire protection is of critical concern to the community as a whole, water meter size related solely to fire protection is not subject to collection of a capital recovery fee. However, if the fire protection capacity of the fire demand meter is routinely utilized for domestic purposes, as evidenced by the registration of consumption recorded on the city's meter-reading and billing systems, the current owner of the property shall be assessed the current capital recovery fee for the fire protection capacity which has been converted to domestic capacity by its routine usage as domestic capacity.
- (c) *Increase in assessments limited.* Following assessment of the capital recovery fee pursuant to subsection (b), no additional capital recovery fees or increases thereof shall be assessed against that development unless the number of service units increases, as set forth under section 27-154.
- (d) *New assessment required following lapse of plat approval.* Following the lapse or expiration of approval for a plat, a new assessment must be performed at the time a new application for such development is filed.
- (e) *Determination of fee assessments.* The amount of fee assessments in nominal dollars shall be determined by application of the fee values set forth in Exhibit B, which are expressed in real dollars.

Sec. 27-157. - Calculation of capital recovery fees.

- (a) Following the request for new development as provided in section 27-156 of this article, the city shall compute capital recovery fees due for new development in the following manner:
  - (1) The number of LUEs shall be determined by the size of the water meter(s) or by evaluation of the engineer and determination of council upon review of reports provided by a professional engineer licensed in the State of Texas, as determined according to section 27-154 of this article;
  - (2) LUEs shall be summed for all meters purchased for the development;
  - (3) The total LUEs shall be multiplied by the appropriate per-unit fee value determined as set forth in section 27-155; and
  - (4) Fee credits and offsets shall be subtracted as determined by the process proscribed in section 27-159 of this article.

- (b) The maximum capital recovery fee due for a new development shall not exceed the amount provided for in section 27-155.

Sec. 27-158. - Collection of capital recovery fees.

- (a) No water tap shall be issued until all capital recovery fees have been paid to the city or until a "notice of capital recover fee due" is recorded as provided in this section, except as provided otherwise by contract:
  - (1) For a development which is submitted for approval pursuant to the city's subdivision regulations subsequent to the effective date of the ordinance from which this article was derived, the full amount of the water capital recovery fee shall be collected at the time the city issues a building permit if the land is inside the city limits or at the time of an application for a water tap purchase if the land is outside the city limits. In some instances, the capacity needed to serve a development will change between the time of plat submittal and the time of tap purchase. If so, any increase in the fee amount shall be paid at the time of an application for a tap purchase.
  - (2) For a development which has received final plat approval prior to the effective date of this article or for which no replatting is necessary prior to provision of a water tap, capital recovery fees shall be collected at the time the city issues a building permit if the land is inside the city limits or at the time of an application for a water tap purchase if the land is outside the city limits.

Sec. 27-159. - Suspension of fee collection.

- (a) For any new development which has received final plat approval prior to the effective date of this article in accordance with Texas Local Government Code, Chapter 212, or pursuant to the city's subdivision regulations, or for which an application for final plat approval has been made prior to the effective date of this article, the city may assess but shall not collect any capital recovery fee as herein defined on any service unit for which a valid building permit is issued within one (1) year subsequent to the effective date of this article.
- (b) If the building permit, which is obtained within the period provided for in subsection (a), subsequently expires and no new application is made and approved within such period, the new development shall be subject to the payment of a capital recovery fee as provided in section 27-158.
- (c) It is hereby declared that it is the intention and purpose of this article not to repeal any other ordinance or provision of this Code now in effect and applicable to water system fees now being charged by the city and this article is intended and made cumulative with all other such applicable ordinances and provisions; provided, however, that in the event of any conflict in language between any section of this article and any other ordinance, section or provision of this Code applicable to water system fees now being charged by the city, the language of this article shall prevail.

Sec. 27-160. - Offsets and credits against capital recovery fees.

- (a) *Offset of value of system-related facilities against value of capital recovery fee.* The city shall offset the present value of any system-related facilities, pursuant to rules established in

this section, which have been dedicated to and have been received by the city, including the value of rights-of-way or capital improvements constructed pursuant to an agreement with the city, against the value of the capital recovery fee due for that category of capital improvement.

- (b) *Credit of fees paid prior to effective date of article against capital recovery value.* The city shall credit capital recovery, pro rata, acreage or lot fees which have been paid pursuant to any other section of the Code of Ordinances of the city prior to the effective date of this article against the value of a capital recovery due for that category of capital improvement, subject to guidelines established by the city.
- (c) *Limitations.* All offsets and credits against capital recovery fees shall be subject to the following limitations and shall be granted based on this article and additional standards promulgated by the city which may be adopted as administrative guidelines.
  - (1) No offset or credit shall be given for the dedication or construction of site-related facilities.
  - (2) The unit costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the capital improvements plan for the category of facility within the service area for which the capital recovery fee is imposed.
  - (3) If an offset or credit applicable to a plat has not been exhausted within ten (10) years from the date of the acquisition of the first tap purchase made after the effective date of this article or within such period as may be otherwise designated by contract, such offset or credit shall lapse.
  - (4) In no event will the city reimburse the property owner or developer for an offset or credit when no capital recovery fees for the new development can be collected pursuant to this article or for any value exceeding the total capital recovery fees due for the development for that category of capital improvement, unless otherwise agreed to by the city.
- (d) *Application.* An applicant for new development must apply for an offset or credit against capital recovery fees due for the development either at or before the time of plat recordation, unless the city agrees to a different time. The applicant shall file a petition for offsets or credits with the city on a form provided for such purpose. The contents of the petition shall be established by administrative guidelines. The city must provide the applicant, in writing, with a decision on the offset or credit request, including the reasons for the decision. The decision shall specify the maximum value of the offset or credit which may be applied against a capital recovery fee, which value and the date of the determination shall be associated with the plat for the new development.
- (e) *Application of offset or credit against capital recovery fee.* The available offset or credit associated with the plat shall be applied against a capital recovery fee in the following manner:
  - (1) Such offset or credit shall be prorated equally among all living units equivalent, as calculated in section 27-157, and remain applicable to such LUEs, to be applied at time of plat recordation or application for a water tap purchase, as appropriate, against capital recovery fees due.

- (2) If the total number of LUEs used by the city in the original offset or credit calculation described in subsection (1) above is eventually exceeded by the number of total LUEs realized by the actual development, the city may, at its sole discretion, collect the full capital recovery fee exclusive of any associated offset or credits for the excess LUEs.
- (3) At its sole discretion, the city may authorize alternative credit or offset agreements upon petition by the owner in accordance with guidelines promulgated by the city.

Sec. 27-161. - Establishment of accounts and records.

- (a) The city shall establish a separate interest-bearing account in a bank authorized to receive deposits of city funds.
- (b) Interest earned by the account shall be credited to that account and shall be used solely for the purposes specified for funds authorized in section 27-162.
- (c) The city shall establish adequate financial and accounting controls to ensure that capital recovery fees disbursed from the account are utilized solely for the purposes authorized in section 27-162. Disbursement of funds shall be authorized by the city at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date the fee is deposited into the account.
- (d) The city shall maintain and keep adequate financial records for such account, which shall show the category of capital improvements or facility expansions within the service area for which the capital recovery fee was adopted, the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from the account shall be used solely and exclusively for the provision of uses specified in the capital improvements plan as system-related capital projects. The city finance department shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provision in section 27-164 of this article and such other information as may be necessary for the proper implementation of this article.

Sec. 27-162. - Use of proceeds of capital recovery fee accounts.

- (a) The capital recovery fees collected pursuant to this article may be used to finance or to recoup capital construction costs of service. Capital recovery fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvements or facilities expansions identified in the capital improvements plan.
- (b) Capital recovery fees collected pursuant to this article shall not be used to pay for any of the following expenses:
  - (1) Construction, acquisition or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;
  - (2) Repair, operation or maintenance of existing or new capital improvements or facility expansions;

- (3) Upgrading, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) Upgrading, expanding or replacing existing capital improvements to provide better service to existing development; provided, however, that capital recovery fees may be used to pay the costs of expanding existing capital improvements in order to meet the need for new capital improvements generated by new development; or
- (5)

Sec. 27-163. - Appeals.

- (a) The property owner or applicant for new development may appeal the following decisions to the impact fee advisory committee:
  - (1) The applicability of a capital recovery fee to the development;
  - (2) The value of the capital recovery fee due;
  - (3) The availability or the value of an offset or credit;
  - (4) The application of an offset or credit against a capital recovery fee due;
  - (5) The amount of the refund due, if any.
- (b) The burden of proof shall be on the appellant to demonstrate that the value of the fee or the value of the offset or credit was not calculated according to the applicable capital recovery fee schedule or the guidelines established for determining offsets and credits.
- (c) The appellant may appeal the decision of the impact fee advisory committee to the council. A notice of appeal to the council must be filed by the applicant with the city secretary within thirty (30) days following the committee's decision. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the city attorney in an amount equal to the original determination of the capital recovery fee due, the development application or water tap purchase may be processed while the appeal is pending.
- (d) Any further appeals shall comply with Section 395.077 of the Texas Local Government Code, as amended, or any successor statute.

Sec. 27-164. - Refunds.

- (a) *Refund of unexpended fees.* Any capital recovery fee or portion thereof collected pursuant to this article which has not been expended within ten (10) years from the date of payment shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or if the capital recovery fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002 of the Texas Finance Code, as amended, or any successor statute.
- (b) *Method of determining refund.* If a refund is due pursuant to subsection (a), the city shall prorate the same by dividing the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record

owner or governmental entity shall be calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid and interest due shall be calculated upon that amount.

- (c) *Recalculation of maximum impact fee per service unit and resultant refund.* Upon completion of all the capital improvements or facilities expansions identified in the capital improvements plan upon which the fee was based, the city shall recalculate the maximum impact fee per service unit using the actual costs for the improvements or expansions. If the maximum impact fee per service unit based on actual cost is less than the impact fee per service unit paid, the city shall refund the difference, if such difference exceeds the impact fee paid by more than ten (10) percent. The refund to the record owner or governmental entity shall be calculated by multiplying such difference by the number of service units for the development for which the fee was paid and interest due shall be calculated upon that amount.
- (d) *Conditions upon which property owners can request refunds.* Upon the request of an owner of the property on which a capital recovery fee has been paid, the city shall refund such fees if:
  - (1) Existing service is available and service is denied;
  - (2) Service was not available when the fee was collected and the city has failed to commence construction of facilities to provide service within two (2) years of fee payment; or
  - (3) Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event later than five (5) years from the date of fee payment.
- (e) *Proportional refund when previously purchased meter replaced with smaller meter.* The city shall refund an appropriate proportion of capital recovery fee payments in the event that a previously purchased water meter is replaced with a smaller meter, based on the LUE differential of the two (2) meter sizes and the per-LUE fee at the time of the original fee payment, less an administrative charge of fifty dollars (\$50.00).
- (f) *Petition for refund.* Petition for refunds shall be submitted to the engineer on a form provided by the city for such purpose. Within one (1) month of the date of receipt of a petition for refund, the engineer must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision. If a refund is due to the petitioner, the engineer shall notify the finance director and request that a refund payment be made to the petitioner. The petitioner may appeal the determination to the impact fee advisory committee and council, as set forth in section 27-163.

Sec. 27-165. - Updates to plan and revision of fees.

The city shall review the land use assumptions and capital improvements plan for water facilities at least every five (5) years. The five-year period which shall commence from the date of adoption of the capital improvements plan referenced herein. The city council shall accordingly then make a determination of whether changes to the land use assumptions, capital improvements plan or capital recovery fees are needed and shall, in accordance with the

procedures set forth in Chapter 395 of the Texas Local Government Code, as amended, or any successor statute, either update the fees or make a determination that no update is necessary.

Sec. 27-166. - Functions of advisory committee.

- (a) The functions of the advisory committee are those set forth in Chapter 395 of the Texas Local Government Code, as amended, or any successor statute, and shall include the following:
  - (1) Advise and assist the city in adopting land use assumptions;
  - (2) Review the capital improvements plan regarding (a) roadway; (b) storm water, drainage, and flood control; (c) water; and (d) wastewater capital improvements or facilities expansions and the written comments thereon;
  - (3) Monitor and evaluate implementation of the capital improvements plan;
  - (4) Advise the city of the need to update or revise the land use assumptions, capital improvements plan and capital recovery fees; and
  - (5) File a semiannual report evaluating the progress of the city in achieving the capital improvements plan and report to the city any perceived inequities in implementing the plan or imposing the capital recovery fee.
- (b) The city shall make available to the advisory committee any professional reports prepared in the development or implementation of the capital improvements plan.
- (c) The council shall adopt procedural rules for the committee to follow in carrying out its duties.

Sec. 27-167. - Agreement for capital improvements.

- (a) The city council may approve the owner of a new development to construct or finance some of the public improvements identified in the CIP. In the case of such approval, the property owner must enter into an agreement with the city prior to fee collection. The agreement shall be on a form approved by the city and shall establish the estimated cost of improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement shall be completed to city standards and any other terms and conditions the city deems necessary. The engineer shall review the improvement plan, verify costs and time schedules, determine if the improvement is contained in the CIP and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable capital recovery fee before submitting the proposed agreement to the council for approval.
- (b) The city and such owner either may agree that the costs incurred or funds advanced will be credited against the capital recovery fees otherwise due from the new development or they may agree that the city shall reimburse the owner for such costs from capital recovery fees paid from other new developments which will use such capital improvements or facility expansions.

Sec. 27-168. - Use of other financing mechanisms.

- (a) The city may finance water capital improvements or facilities expansions designated in the capital improvements plan through the issuance of bonds, through the formation of public improvement districts or other assessment districts or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of capital recovery fees.
- (b) Except as herein otherwise provided, the assessment and collection of a capital recovery fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

Sec. 27-169. - Capital recovery fees as additional and supplemental regulation.

- (a) Capital recovery fees established by this article are additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits or the sale of water taps or the issuance of certificates of occupancy. Such fees are intended to be consistent with and to further the policies of city's comprehensive plan, capital improvements plan, zoning ordinance, subdivision regulations and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of adequate public facilities in conjunction with the development of land.
- (b) This article shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the city, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Sec. 27-170. - Relief procedures.

- (a) Any person who has paid a capital recovery fee or an owner of land upon which a capital recovery fee has been paid may petition the council to determine whether any duty required by this article has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within sixty (60) days of the request. If the council determines that the duty is required pursuant to this article and is late in being performed, it shall cause the duty to commence within sixty (60) days of the date of the request and continue until completion.
- (b) The council may grant a variance or waiver from any requirement of this article, upon written request by a developer or owner of property subject to this article, following a public hearing, upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property.
- (c) The council may grant a waiver from any requirement of this article on other grounds, as may be set forth in administrative guidelines.



**Exhibit “A”**

Legal Description and Map of Service Area

## **Exhibit “B”**

The Maximum Capital Recovery Fee for Water Capital Improvements or Facility Expansions Necessitated by or Attributable to New Development Within the Service Area of the City of Eagle Pass Equals \$828.00 Per Living Unit Equivalent.