

ORDINANCE NO. 18-M-13
ROADWAY CAPITAL RECOVERY FEES

AN ORDINANCE OF THE CITY OF SCHERTZ, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF SCHERTZ, TEXAS BY ADOPTING CHAPTER 78, ARTICLE VII; ROADWAY CAPITAL RECOVERY FEES; INCORPORATING LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENT PLANS FOR SUCH FACILITIES; PROVIDING FOR COLLECTION OF IMPACT FEES; ESTABLISHING ACCOUNTS AND RECORDS OF IMPACT FEES COLLECTED; PROVIDING FOR USE OF PROCEEDS FROM IMPACT FEE ACCOUNTS; PROVIDING FOR SEVERABILITY CLAUSE; AND PROVIDING FOR A PENALTY CLAUSE FOR VIOLATIONS OF THIS ORDINANCE.

WHEREAS, the City of Schertz is responsible for and committed to the provision of public facilities at levels necessary to cure any existing roadway facility deficiencies in already developed areas and insure the provisions of adequate roadway facilities in the future; and

WHEREAS, such facilities shall be provided by the City utilizing funds allocated in the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein; and

WHEREAS, new residential and nonresidential development causes and imposes increased demands upon roadway facilities that would not otherwise occur; and

WHEREAS, planning projections indicate that such development will continue and will place ever-increasing demands on the City to provide necessary roadway facilities improvements and expansion; and

WHEREAS, to the extent that such new development places demands upon the roadway facility infrastructure, those demands should be satisfied by more equitably assigning responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands for them; and

WHEREAS, the amount of the roadway capital recovery fee to be imposed shall be determined by the cost of the additional roadway facilities needed to support such development, which roadway facilities shall be identified in a capital improvements program; and

WHEREAS, the City Council has previously approved land use assumptions and capital improvement plans for purposes of adopting roadway capital recovery fees; and,

WHEREAS, the City Council, after careful consideration of the matter, and upon recommendations from the Capital Improvements Advisory Committee hereby finds and declares that roadway capital recovery fees imposed upon residential and nonresidential development to finance specified public roadway facilities, the demand for which is created by such development, is in the best interests of the general welfare of the City and

its residents, is equitable, and does not impose an unfair burden on such development; and

WHEREAS, the City Council finds that in all things the City has complied with said Chapter 395 of the Texas Local Government Code as the applicable state statute in the notice, adoption, promulgation and methodology necessary to adopt Roadway Capital Recovery Fees;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS:

Section 1. The Code of Ordinances of the City of Schertz is hereby amended by adding Chapter 78 Article VII Roadway Capital Recovery Fees as set forth in Exhibit A and incorporated herein by reference.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

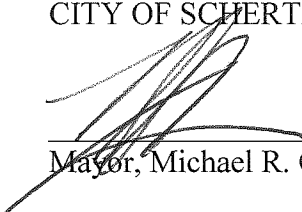
Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the 13th day of March 2018.

PASSED, APPROVED and ADOPTED ON SECOND READING, the 27th day of March 2018.

CITY OF SCHERTZ, TEXAS



Mayor, Michael R. Carpenter

ATTEST:



City Secretary, Brenda Dennis

(CITY SEAL)

EXHIBIT A: Code Amendment

EXHIBIT B: Schertz Roadway Impact Fee Capital Improvements Plan Final Report

EXHIBIT C: 2017 Schertz Roadway Impact Fee Final Report

EXHIBIT D: Schertz Roadway Impact Fee Land Use Assumptions Final Report

ARTICLE VII.- ROADWAY CAPITAL RECOVERY FEES

DIVISION 1. GENERALLY

Sec. 78-170. Short title.

This article be known and cited as the Schertz Roadway Capital Recovery Fees Article.

Sec. 78-171. - Purpose.

This article is intended to ensure the provision of adequate roadway facilities to serve new development in the city by requiring each development to pay its share of the costs of such improvements necessitated by and attributable to such new development.

Sec. 78-172. - Authority.

This article is adopted pursuant to V.T.C.A., Local Government Code Ch. 395 and the City Charter. The provisions of this article shall not be construed to limit the power of the city to utilize all powers and procedures authorized under V.T.C.A., Local Government Code Ch. 395, or other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this article. Guidelines may be developed by ordinance, resolution, or otherwise to implement and administer this article.

Sec. 78-173. - Definitions.

Assessment means the determination of the amount of the maximum capital recovery fee per service unit which can be imposed on new development pursuant to this article. The amount of the capital recovery fee per service unit is a measure of the traffic impact on system facilities created by the new development.

Capital improvement means a roadway facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the city (including the city's share of costs for roadways and associated improvements designated as a numbered highway on the official federal or state highway system). "Capital improvement" applies to a newly constructed roadway facility or to the expansion of an existing roadway facility necessary to serve new development.

Capital improvements plan for roadway capital recovery fees identifies the capital improvements or facility expansions and associated costs for each roadway service area that are necessitated by and which are attributable to new development within the service area, for a period not to exceed ten years, which capital improvements are to be financed in whole or in part through the imposition of roadway capital recovery fees pursuant to this article. The capital improvements plan for roadway capital recovery fees is set out in the adopted "Schertz Roadway Impact Fee Capital Improvements Plan Final Report" adopted by resolution of the city council, and attached to Ord. No. 18-M-13 as exhibit B.

Capital recovery fee or roadway capital recovery fee (also referred to as roadway impact fee) means a charge or assessment imposed by the city, pursuant to this article, 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. "Capital recovery fees" or "roadway capital recovery fees" do not include road escrow payments for site-related facilities imposed under facility agreements in existence on the effective date of

this article. The term also does not include dedication of rights-of-way or easements or construction or dedication of drainage facilities, streets, sidewalks, or curbs if the dedication or construction is required by the subdivision ordinance and is necessitated by and attributable to the new development.

Capital recovery plan or *Impact fee plan* means the plan that identifies the calculation of the maximum assessable capital recovery fee for each service area based on the adopted capital improvements plan and land use assumptions. The capital recovery plan is set out in the “2017 Schertz Roadway Impact Fee Final Report” and attached to Ord. No. 18-M-13 as exhibit C.

City means the City of Schertz, Texas.

Credit means:

- (1) When used in the context of determining the maximum assessable capital recovery fee per service unit, an amount equal to:
 - a. That 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; or
- (2) When used in the context of determining the offset for system facilities, the amount of the reduction of an capital recovery fee designed to fairly reflect the value of any construction of, contributions to, or dedications of a system facility agreed to or required by the city as a condition of development approval, pursuant to rules herein established or pursuant to city council-approved administrative guidelines which value shall be credited on a vehicle mile basis against roadway facilities capital recovery fees otherwise due from the development and which credits are hereinafter referred to as an "offset" or "offsets" to avoid confusion.

Development unit or *development units* is the expression of the magnitude of the transportation demand created by each land use planned within a particular development and is used to compute the number of service units consumed by each individual land use application.

Final plat recordation or *recordation of a final plat* means the point at which the applicant has complied with all conditions precedent to recording an approved final plat (minor plat or record plat) in the county, including the final completion of and acceptance by the city of any infrastructure or other improvements required by the subdivision ordinance or any other ordinance and the plat is filed for record with the county clerk's office.

Land use assumptions means and includes a description of the service areas and the projections of population and employment growth and associated changes in land uses, densities and intensities adopted by the city, as may be amended from time to time, in each service area over a ten-year period upon which the roadway improvements plan is based. The land use assumptions are set out in the adopted document “Schertz Roadway Impact Fee Land Use Assumptions Final Report” adopted by resolution of the city council, and attached to Ord. No. 18-M-13 as Exhibit D.

Land use vehicle-mile equivalency table or *LUVMET* is a table that provides the standardized measure of consumption or use of roadway facilities attributable to a new development based on the land use category of the development and historical data and trends applicable to the city during the previous ten years. The LUVMET recognizes and expresses the magnitude of the transportation demand created by different land use categories within a particular development and allow different uses of land to more accurately bear the cost and expense of the impacts generated by such uses. The LUVMET expresses the number of service units consumed by each individual land use application as "vehicle miles (per development unit)." The applicable LUVMET is included by reference as Table 7 of the capital recovery plan. For land use categories with no applicability to those on Table 7, the applicant may petition for the use of an appropriate vehicle-mile equivalent by submitting a trip generation study including trip rates and lengths reflecting specific conditions of the proposed land use and local trip lengths. The study must include enough data to be statistically valid and approval will be at the discretion of the City Manager or designee.

New development means a project involving the subdivision of land and/or the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land which has the effect of increasing the requirements for capital improvements, measured by an increase in the number of service units to be generated by such activity, and which requires either the approval and filing with the county of a plat pursuant to the city's subdivision ordinance or the issuance of a building permit.

Offset or *offsets* means the amount of the reduction of an capital recovery fee designed to fairly reflect the value of any construction of, contributions to, or dedications of a system facility agreed to or required by the city as a condition of development approval, pursuant to rules herein established, using the values established in the capital recovery plan, or pursuant to city council-approved administrative guidelines which value shall be credited on a vehicle mile basis against roadway facilities capital recovery fees otherwise due from the development.

Preliminary plat approval means the point at which the applicant has complied with all conditions of approval and the plat has been approved by the Planning and Zoning Commission.

Recoup means to reimburse the city for capital improvements which the city has previously installed or caused to be installed.

Roadway means any freeway, expressway or arterial or collector streets or roads designated in the city's adopted master thoroughfare plan, as may be amended from time to time. The term includes the city's share of costs for roadways designated as a numbered highway on the official federal or state highway system.

Roadway facility means an improvement or appurtenance to a roadway which includes, but is not limited to, rights-of-way, whether conveyed by deed or easement; intersection improvements; traffic signals; turn lanes; drainage facilities associated with the roadway; street lighting or curbs. "Roadway facility" also includes any improvement or appurtenance to an intersection with a roadway officially enumerated in the federal or state highway system. "Roadway facility" includes the city's share of costs for roadways and associated improvements designated as a numbered highway on the official federal or state highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, drainage appurtenances, and rights-of-way. "Roadway facility" excludes those improvements or appurtenances to a roadway which are site-related facilities.

Roadway service area or *roadway benefits area* means the geographic area(s) within the city's corporate limits, which do not exceed six miles and within which geographic area(s) roadway capital recovery fees for capital improvements will be collected for new development occurring within such area, and within which fees so collected will be expended for those capital improvements identified in the capital improvements plan to be located within the roadway service area. "Roadway service area" does not include any land outside the city limits. Roadway service areas are shown on Figure 1 of the capital recovery plan.

Service unit means one vehicle mile of travel in the afternoon peak hour of traffic and is also referred to as a "vehicle mile."

Service unit equivalent means the amount of capacity created by contribution of a capital improvement on behalf of a new development, expressed in vehicle miles.

Single family residential lot means a lot platted to accommodate a single family or a duplex dwelling unit, as authorized under the city's zoning regulations.

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

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

Sec. 78-174. - Applicability.

The provisions of this article apply to all new developments within the corporate boundaries of the city. The provisions of this article apply uniformly within each roadway benefit area.

Sec. 78-175. – Roadway capital recovery fees per service unit.

(a) The maximum assessable capital recovery fee per service unit (post-credit) for any use in each service area shall be as calculated and documented in the capital recovery plan as follows:

1. The capital recovery fee per service unit in Service Area 1 is \$1,647.53.
2. The capital recovery fee per service unit in Service Area 2 is \$1,327.89.
3. The capital recovery fee per service unit in Service Area 3 is \$1,044.48.
4. The capital recovery fee per service unit in Service Area 4 is \$2,392.72.

(b) The assessable capital recovery fee per service unit set forth herein that is assessed to new development, as may be amended from time to time, is declared to be the roughly proportionate measure of the impact(s) generated by a new unit of development on the city's transportation system. To the extent that the capital recovery fee per service unit collected is less than the maximum assessable capital recovery fee per service unit (post credit), as calculated and documented in the capital recovery plan, such difference is hereby declared to be founded on

policies unrelated to the measurement of the actual impacts of the development on the city's transportation system. The maximum assessable capital recovery fee per service unit may be used in evaluating any claim by an applicant, developer, or property owner that the dedication, construction, or contribution of a capital improvement imposed as a condition of development approval pursuant to the city's regulations is not roughly proportionate to the impact(s) of the new development on the city's transportation system.

Sec. 78-176. - Assessment of capital recovery fees.

- (a) Assessment of the capital recovery fee per service unit for any new development shall be made as follows:
 - 1. Assessment of capital recovery fee shall be made at the time of recordation of a final plat and shall be the amount of the maximum assessable capital recovery fee per service unit.
 - 2. Development on a lot for which a final plat has been recorded prior to the effective date of this ordinance (March 27, 2018) shall not be charged a capital recovery fee for any complete building permit application submitted within 18 months from the effective date of this ordinance (September 27, 2019).
 - 3. Development on a lot for which a preliminary plat was approved prior to the effective date of this ordinance (March 27, 2018) shall not be charged a capital recovery fee for any complete building permit application submitted within 1 year from the effective date of this ordinance (March 27, 2019).
 - 4. Any other development will be charged a capital recovery fee for a complete building permit application submitted after the date of adoption of the ordinance (March 27, 2018).
- (b) Following assessment of the capital recovery fee pursuant to subsection (a), the amount of the capital recovery fee assessed per service unit for that new development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or replat approval, in which case new assessment shall occur at the maximum assessable, applicable rate then in effect.
- (c) Following the vacating of any plat or submittal of any replat, a new assessment must be made in accordance with Sec. 78-175.
- (d) Approval of an amending plat pursuant to Texas Local Government Code § 212.016 and the UDC is not subject to reassessment of a capital recovery fee hereunder provided that the use of the property remains the same.

Sec. 78-177. - Payment and collection of capital recovery fees.

- (a) For all new developments, capital recovery fees shall be collected at the time of application for and in conjunction with the issuance of a building permit. The capital recovery fees to be paid and collected are as follows:
 - 1. The capital recovery fee per service unit for residential use shall be \$600.00 beginning the effective date of this ordinance (March 27, 2018) until the last day of the second year from the effective date of this ordinance (March 26, 2020).

2. The capital recovery fee per service unit for residential use shall be \$800.00 beginning on the first day of the third year from the effective date of this ordinance (March 27, 2020) and continuing until the last day of the third year from the effective date of this ordinance (March 26, 2021).
 3. The capital recovery fee per service unit for residential use shall be \$900.00 beginning on the first day of the fourth year from the effective date of this ordinance (March 27, 2021) and continuing until the last day of the fourth year from the effective date of this ordinance (March 26, 2022).
 4. The capital recovery fee per service unit for residential use shall be \$1000.00 beginning on the first day of the fifth year from the effective date of this ordinance (March 27, 2022) and continuing until a new rate is adopted.
- (b) The capital recovery fee per service unit for non-residential use for all roadway service areas shall be as follows:
1. The capital recovery fee per service unit for non-residential use shall be \$100.00 beginning the effective date of this ordinance (March 27, 2018) until the last day of the third year from the effective date of this ordinance (March 26, 2021).
 2. The capital recovery fee per service unit for non-residential use shall be \$175.00 beginning on the first day of the fourth year from the effective date of this ordinance (March 27, 2021) and continuing until a new rate is adopted.
- (c) The city reserves the right to enter into an agreement with a developer for a different time and manner of payment of capital recovery fees in which case the agreement shall determine the time and manner of payment.
- (d) The city shall compute the capital recovery fees to be paid and collected for the new development in the following manner:
1. Determine the number of development units for each land use category in the new development using Table 7 of the capital recovery plan.
 2. Multiply the number of development units for each land use category in the new development by the vehicle miles (per development unit) for each such land use category also found in Table 7 of the capital recovery plan to determine the number of service units attributable to the new development.
 3. If an offset agreement providing for offsets and credits against capital recovery fees exists, the number of service units attributable to the new development shall be reduced by subtracting available service unit equivalents as provided in Sec. 78-178. If adequate service unit equivalents for offsets and credits are available in an amount equal to or greater than the number of service units generated (required) by this new development, no fee is paid, but the pool of available service unit equivalents shall be reduced accordingly.
 4. The amount of capital recovery fees to be collected shall be determined by multiplying the number of service units for the new development by the applicable capital recovery fee per service unit identified herein and shall be calculated at the time of application for and in conjunction with the issuance of a building permit.

- (e) If the building permit for which a capital recovery fee has been paid has expired, and a new application is thereafter filed, the capital recovery fees shall be computed using the LUVMET and the applicable capital recovery fee per service unit identified herein with credits for previous payment of fees being applied against any new fees due.
- (f) Whenever the property owner proposes to increase the number of service units for a development, the additional capital recovery fees collected for such new service units shall be determined by using the LUVMET and applicable fee per service unit identified herein, and such additional fees shall be collected at the times prescribed by this section.

Sec. 78-178. - Offsets and credits against capital recovery fees.

- (a) The city shall offset the reasonable value of any system facility which has been dedicated to and has been accepted by the city no more than 18 months prior to the effective date of this ordinance (September 27, 2016), or offset the amount of any contributions to such facility, against the amount of the roadway capital recovery fees due, in accordance with the rules set forth in this section. The value of an offset must be stated in service units.
- (b) This subsection applies only to an offset associated with a capital improvement on the capital improvement plan contributed to the city no more than 18 months prior to the effective date of this ordinance (September 27, 2016).
 - 1. For purposes of this subsection (b), an offset associated with a capital improvement on the roadway improvement plan contributed to the city no more than 18 months prior to the effective date of this ordinance (September 27, 2016) is created at the time that the city accepts the system facility for dedication or as may be otherwise stipulated in a binding agreement for the facility pursuant to the city's subdivision regulations.
 - 2. At the time the offset is created, if no offset agreement exists, the developer shall apply for an offset agreement, and the agreement thereafter shall be enforced in accordance with the following terms, providing:
 - a. Identification of the plat with which the offset is to be associated;
 - b. The amount of the capacity created by the system facility, expressed in service unit equivalents;
 - c. A provision stating that the offset may be used to reduce capital recovery fees imposed on new developments contained within the land subject to the associated plat after the effective date of the agreement; and
 - d. A provision that the amount of the offset shall be determined by estimating the number of service unit equivalents of capacity supplied by the system facility (as set forth in the capital recovery plan), reduced by:
 - 1. The number of service units developed within the plat since the contribution of the system facility, using the LUVMET;
 - 2. The amount of the city's participation in the excess costs of the system facility (expressed in service unit equivalents); and
 - 3. The amount of any payments received from other new developments utilizing the system facility (expressed in service unit equivalents); and

- e. A provision for reimbursement of any unused offsets consistent with subsection (b)(4) of this section.
- f. A provision stating that in those instances where the city determines the unique characteristics of a roadway segment (such as drainage, topography, easements required, absence of roadway segments remaining in service area) and the projected cost to construct a section of roadway is not roughly proportionate to the dollar value of the vehicle mile credits which may be awarded for that roadway section, the city may consider, upon request of the developer, awarding capital recovery fee offsets based upon the developer's verified, actual costs of said roadway section.

The developer may assign the offset agreement with the city's consent, but in no event shall the offsets provided for in the agreement be transferred to any development not subject to the plat associated with such offsets.

- (3) The developer may petition the city council for offsets for contribution of a capital improvement, including road right-of-way, which is not identified in the capital improvements plan, if the improvement will supply capacity to new developments other than to the development seeking the offset, at the time the facility is accepted by the city or a binding facilities agreement for the facility is executed pursuant to the city's subdivision regulations. If the petition is granted, the terms shall be incorporated into an offset agreement as provided in subsection (b)(2) hereof. The agreement shall also provide that the amount of the offset shall not exceed the capacity of the capital improvement that is estimated to be provided.
- (4) As provided in the offset agreement required by subsection (b)(2), hereof, the developer may apply for reimbursement of excess offsets following either completion of all development subject to the plat with which the offsets are associated or after ten years following execution of the offset agreement. The following rules apply to such reimbursement, and shall be incorporated into the offset agreement.
 - a. The developer must apply for reimbursement within six months following either:
 - 1. Completion of all development subject to the plat with which the offsets are associated; or
 - 2. Ten years after the date of execution of the offset agreement.
 - b. The following terms shall be incorporated into the reimbursement agreement and the agreement shall be enforced in accordance with such terms:
 - 1. A provision stating that the amount to be reimbursed shall be equal to the number of unused offsets (expressed as a number of service units) multiplied by a fraction equal to the capital recovery fee per service unit to be collected, as set forth herein in effect on the date of execution of the offset agreement, divided by the maximum assessable capital recovery fee per service unit, as set forth herein and in the capital recovery plan in effect on the date of execution of the offset agreement;
 - 2. A provision stating that the amount to be reimbursed may be further equitably reduced, if fewer than 50 percent of the number of service units in the plat with

which the system facility giving rise to the offset have been developed on the date of application for reimbursement;

3. A provision stating that repayment shall be made within five years from the date of execution of the reimbursement agreement, from roadway capital recovery fees collected within the same roadway service area in which the property in question is located, subject to the availability of such funds;
 4. A provision that termination or reduction of the city's authority under state law to impose capital recovery fees for roadway facilities shall terminate or correspondingly reduce any obligation of the city to make payments under the offset agreement; and
 5. A provision stating that, in converting the offsets from service unit equivalents to a dollar value, the number of service unit equivalents shall be multiplied by the value of a service unit expressed in dollars using the rates set forth herein in effect at the time the offset agreement was executed.
- c. Execution of a reimbursement agreement shall automatically terminate any offsets associated with a plat pursuant to an offset agreement. Thereafter, new development within the area subject to the plat shall pay roadway capital recovery fees in accordance with schedule 1 then in effect.

Sec. 78-179. - Use of proceeds of roadway capital recovery fees.

- (a) The capital recovery fees collected within each roadway benefit area may be used to finance, pay for or to recoup the costs of any roadway facility identified in the capital improvements plan for the roadway benefit area, including 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 amounts designated in any reimbursement agreements executed pursuant to this ordinance.
- (b) Capital recovery fees may be used to pay for the contract services of an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.
- (c) Capital recovery fees also may 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 improvement.

Sec. 78-180. - Appeals.

- (a) The property owner or applicant for a new development may appeal the following administrative decisions to the city council:
 - (1) The applicability of a capital recovery fee to the new development;
 - (2) The amount of the capital recovery fee due;
 - (3) The availability of, the amount of, or the expiration of an offset or a credit;
 - (4) The application of an offset against a capital recovery fee due;

- (5) The amount of the capital recovery fee in proportion to the benefit received by the new development; or
- (6) The amount of a refund due, if any.
- (b) The appellant shall state the basis for the appeal in writing with particularity. The burden of proof shall be on the appellant to demonstrate that the amount of the fee or the amount of the offset was not calculated according to the rules set forth in this ordinance or by administrative guideline adopted by the city council. The appellant shall submit any traffic study or other documents upon which he relies to the city with the request for appeal.
- (c) The appellant must file a notice of appeal with the city secretary within 30 days following the decision. If the notice of appeal is accompanied by a bond or other sufficient surety with offices for local presentment in a form satisfactory to the city attorney in an amount equal to the original determination of the capital recovery fee due, the development application may be processed while the appeal is pending.
- (d) The appellant shall promptly pay to the city the full amount of the capital recovery fee determined to be due by the city council regarding such appeal. Failure to promptly pay such capital recovery fee within five business days after the city council's determination on the appeal shall serve as authority for the city to present the bond or other surety to the bonding company or financial institution for performance with no other or further notice or contact with the appellant.

Sec. 78-181. - Refunds.

- (a) Any capital recovery fee or portion thereof collected pursuant to this article which has not been expended within the applicable roadway service area for an authorized purpose within ten 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 § 302.002 of the Texas Finance Code or its successor statute. The application for refund pursuant to this section shall be submitted in writing within 60 days after the expiration of the ten-year period for expenditure of the fee. A capital recovery fee shall be considered expended on a first-in, first-out basis.
- (b) A capital recovery fee collected pursuant to this article shall be considered expended if the total expenditures for capital improvements authorized in this ordinance within the roadway service area within ten years following the date of payment exceed the total fees collected for such improvements during that time period.
- (c) If a refund is due pursuant to subsections (a) or (b), the city shall prorate the refund 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 roadway service area for the period to determine the refund due per service unit. The refund to the record owner shall be calculated by multiplying the refund due per service unit by the number of service units for the new development for which the fee was paid, and interest due shall be calculated upon that amount.

- (d) If the building permit for a new development for which a capital recovery fee has been paid has expired and a modified or new application has not been filed within six (6) months of such expiration, the city shall, upon written application, refund the amount of the capital recovery fee to the applicant. The city may establish guidelines for refunding of capital recovery fees collected for which construction plans have been abandoned.

Sec. 78-182. - Relief procedures.

- (a) Any person who has paid a capital recovery fee or an owner of land upon which an capital recovery fee has been paid may petition the city council to determine whether any duty required by this article has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the act be performed within 60 days of the request. If the city council determines that the duty is required, pursuant to the ordinance and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion.
- (b) The city 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 the ordinance, following a public hearing, and only upon finding that a strict application of such requirement would when regarded as a whole result in confiscation of the property.
- (c) If the city council grants a variance or waiver to the amount of the capital recovery fee due for a new development under this section, it may cause to be appropriated from other city funds the amount of the reduction in the capital recovery fee to the account, for the roadway benefit area, in which the property is located.

Secs.78-183—78-189-Reserved.