

SUBCHAPTER N: PETITION FOR APPROVAL OF IMPACT FEES
§§293.171 - 293.176
Effective November 13, 2014

§293.171. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Actual costs under paragraph (1)(A) and (B) of this section, as determined by the district's governing board of directors, may include non-construction expenses attributable to the design, permitting, financing, and construction of those facilities, and reasonable interest on those costs calculated at a rate not to exceed the net effective interest rate on any district bonds issued to finance the facilities.

(1) Impact fee--A charge or assessment imposed by a district 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. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district water, wastewater, or drainage facilities, including all necessary service lines and meters, for capacity in storm water detention or retention facilities and related storm water conveyances, or for wholesale facilities that serve such water, wastewater, drainage, or storm water detention or retention facilities, shall not be deemed to be an impact fee under Local Government Code, Chapter 395 if the charge or fee:

(A) does not exceed three times the actual and reasonable costs to the district for such tap or connection;

(B) is made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the district; or

(C) is made by a district for retail or wholesale service on land that at the time of platting was not being provided with water, wastewater, drainage, or storm water detention or retention service by the district.

(2) Capital improvement plan--Capital improvement plan means a plan which identifies capital improvements or facility expansions pursuant to which impact fees may be assessed.

(3) Capital improvements--Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, storm water, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers.

(4) Connection--Connection means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards. Connections shall be described in terms of single family equivalent connections, living unit equivalents, or other generally accepted unit typically attributable to a single family household. The assumed population equivalent per service unit shall be indicated.

(5) Service area--Service area means an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvement plan. The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvement plan.

Adopted October 22, 2014

Effective November 13, 2014

§293.172. Information Required to Accompany Applications for Approval of Impact Fees.

Pursuant to the Local Government Code, §395.080, a district proposing to assess impact fees shall submit to the executive director an application for review. Upon submission of an application for review, the executive director has the responsibility for reviewing and the commission has the responsibility for approving or denying impact fee requests by all districts created pursuant to Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution. Each application submitted shall contain the following:

- (1) A \$100 filing fee.
- (2) A certified board resolution requesting approval of the impact fee and stating the amount of the proposed fee.
- (3) A capital improvements plan report prepared, signed and sealed by a professional engineer registered to practice in the State of Texas and which identifies the

proposed capital improvements for which impact fees will be assessed and which shall specifically include the following:

(A) An accounting of the capacity of the existing facilities, the level of current usage, the outstanding capacity commitments, and any unallocated excess capacity. This information should be presented in terms of flows and in terms of connections.

(B) An established land use plan including both the number of connections and the method used in determining the number of connections associated with each category of development.

(C) A map of the service area (on sheets not larger than 24 inches by 36 inches) which clearly:

(i) indicates the properties against which the impact fees shall be assessed;

(ii) identifies proposed land uses;

(iii) identifies existing facilities servicing the area including line sizes and approximate peak daily flow capacities; and

(iv) identifies proposed facilities necessary to serve the area including line sizes and approximate peak daily flow capacities.

(4) The projected number of connections attributable to the new development may not be based on a development period exceeding ten years.

(5) A table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the commission.

(6) A description of the facilities intended to be financed through impact fees and a detailed analysis of all costs required to finance those improvements.

(7) A detailed calculation of the impact fee amount, including a complete explanation of all assumptions used in the calculation. All terms used should be defined.

(8) Any other information as the executive director may require.

§293.173. Impact Fee Notice Actions and Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for impact fees as required by §§293.171 - 293.172 of this title (relating to Definitions of Terms and Information Required To Accompany Applications for Approval of Impact Fees), the executive director shall notify the chief clerk that the application is administratively complete.

(b) The chief clerk shall send to the applicant a copy of a notice indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. The notice shall also:

(1) be of sufficient size to be easily legible;

(2) include an easily understandable map showing the location of the district in relation to roads and other major landmarks and designating the areas upon which impact fees will be imposed;

(3) state the amount of the impact fee; and

(4) state that the impact fee application and supporting information are available for inspection and copying in the commission's offices during regular business hours and that the capital improvements plan is available for inspection and copying at the district's office during regular business hours.

(c) The applicant shall cause the notice to be published and mailed as follows:

(1) Notice must be published once a week for two consecutive weeks in a newspaper regularly published or circulated in the county or counties where the district intends to levy an impact fee with the last publication not later than the 30th day before the date on which the commission may consider the application;

(2) The district shall send not later than the 30th day before the date of consideration by the commission, notice of the application to each owner of property within the service area, as of the date of submitting the application to the executive director, unless good cause is shown why such notice should not be given. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls or by the appraisal district for the county, as applicable, as of the date of submitting of the application to the commission; and

(3) The district shall file an affidavit certifying compliance with the requirements of this subsection with the chief clerk at least one week prior to the date of consideration by the commission.

(d) The commission may act on an application without holding a public hearing, if a public hearing is not requested by the commission, the executive director, or an affected person in the manner prescribed by commission rule during the 30 days following the final publication of notice under this section. If the commission determines that a public hearing is necessary, the chief clerk shall advise all parties of the time and place of the hearing. The commission is not required to provide public notice of a hearing under this subsection.

Adopted May 7, 1998

Effective June 5, 1998

§293.174. Commission Actions Following Consideration of the Impact Fee Application.

(a) If the commission finds that the impact fee is reasonable, equitable and necessary as a mechanism to finance improvements to serve the designated service area, the commission shall approve the capital improvements plan and impact fee. The commission may approve an impact fee amount that is different than the impact fee amount requested in the application for commission approval; however, in no event shall the commission approve an impact fee amount higher than the impact fee amount contained in the notice required under Section 293.173(b).

(b) The commission shall issue an order defining the impact fee to be imposed based on evidence presented.

Adopted May 7, 1998

Effective June 5, 1998

§293.175. Material Changes.

A district's capital improvements plan may be amended from time to time as development needs of the district change; provided, however, that to the extent that such amendments constitute a revision of the impact fee structures, commission approval of the amended plan and impact fee shall be required. A property owner affected by an impact fee may petition the commission to review its authorization of impact fees if there is a substantial amendment to or change in the conditions described in the capital improvements plan subsequent to the commission's approval. The burden of proof will be on the landowner to show that there has been a substantial change which would materially change the amount or applicability of the impact fee. If the executive director is satisfied that the landowner has presented a prima facie case, the district will be required to submit information and/or materials in rebuttal.

Effective June 30, 1993

§293.176. Prior Approval of Overlapping Impact Fees.

If a district is required to collect an impact fee for another political subdivision which has complied with the procedures set out in V.T.C.A. Local Government Code, Chapter 395, then the district is not required to seek further approval from the commission of the same fee. A test for applying this section shall be that the district does not retain any portion of said impact fee for its own use, but that it passes all such fees through to the political subdivision which has adopted said impact fee.

Effective June 30, 1993