

SUBCHAPTER M: APPLICATION FOR APPROVAL OF STANDBY FEES
§§293.141-239.150
Effective September 14, 2000

§293.141. Standby Fees.

(a) Districts, as defined by Water Code, §49.001, which provide or propose to provide retail potable water, wastewater, or drainage services may, with commission approval, adopt and levy standby fees.

(b) Standby fee, as authorized by Water Code, §49.231, means a charge, other than a tax, imposed on undeveloped property for the availability of water, wastewater, or drainage facilities and services. Standby fee does not mean an impact fee, tap fee, or a connection fee.

(c) Undeveloped property means a tract, lot or reserve in the district to which no vertical improvements and water or wastewater connections or drainage services have been made to serve the property utilizing substantially the full amount of the capacity allocated to the property as shown in the district's land development plan submitted with creation applications, bond applications, (including supporting documents) or by written commitment and for which:

(1) any portion of water, wastewater, or drainage facilities and services are available;

(2) water supply or wastewater treatment plant capacity or drainage capacity sufficient to serve any portion of the property is available; or

(3) major water supply lines or wastewater collection lines or major drainage outfall facilities with capacity sufficient to serve any portion of the property are available.

(d) A district may not impose a debt service standby fee unless the facilities and services available to the property were financed by the district; however, a district may impose a standby fee for operating and maintaining facilities that it has not financed.

(e) Standby fees levied under this section may be used for the purpose of paying the following costs:

(1) operation and maintenance costs associated with maintaining the facilities; and/or

(2) debt service payments for water wastewater, or drainage facilities.

(f) Commission approval and adoption of standby fees is valid for a period of not more than three successive years. A district may charge a standby fee of an amount not to exceed the maximum amount approved by the commission. A district may submit an application to increase or renew its standby fee at any time.

(g) It is not required that standby fees be uniform throughout the district, only that the fees fairly allocate the cost of district water, wastewater, and drainage facilities and service among property owners of the district. The standby fee may be a single fee expressed as a unit cost per single family equivalent connection or the fee per single family equivalent unit may be divided into separate components (tiers) such as water distribution facilities, water supply facilities, wastewater collection facilities, wastewater treatment facilities, internal drainage facilities, or outfall drainage facilities.

(h) Standby fees as approved by the commission may be collected for monthly, quarterly or annual billing periods, but may not be imposed retroactively or in arrears beyond January 1 of the calendar year in which such standby fees are adopted unless authorized by the commission. A district may not require payment of standby fees in advance of a current billing period.

(i) To the extent that standby fees are imposed and collected in contravention of applicable rules or order(s) of the commission, the commission may require that such improperly collected fees be refunded, together with interest thereon.

Adopted September 30, 1996

October 22, 1996

§293.142. Application Requirements for Imposition of Standby Fees To Be Used to Supplement the Debt Service Account.

(a) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenues to supplement the debt service account:

(1) the district's combined tax rate as defined under §293.59(f) of this title (relating to Economic Feasibility of Projects) and calculated as described in subsection (c) (1) of this section, excepting standby fees and developer contribution, over the period over which standby fees are to be levied exceeds those limits defined under §293.59(k)(3) of this title, for the county in which the district is situated. Any increases in assessed valuation used in calculating the combined projected tax rate shall be based on historical growth rates experienced in the district; and

(2) the district's actual buildout is less than the buildout projected under the most recent bond issue.

(b) In determining whether a district which meets the requirements of subsection (a) of this section is to be allowed to impose standby fees and the amount of the standby fees authorized to be imposed, the following factors may be considered:

(1) the tax rate projected in the district's most recent bond application;

(2) actual buildout compared to projected buildout;

(3) actual tax bill for various types of land uses compared to projected tax bills for such land uses, which have resulted from increases or decreases in appraised values or the granting or denial of exemptions or special valuations;

- (4) historical tax rates of the district;
 - (5) whether the developer(s) or other landowner(s) have made or have agreed to make contributions;
 - (6) whether the developer(s) or other landowner(s) have materially reduced the value of their unimproved property from that projected in the district's bond application or other representations to the district;
 - (7) the availability of other funds such as impact fee revenue for debt service purposes or the availability of advance refunding to reduce debt service;
 - (8) a comparison of actual buildout to projected buildout as between various developers or landowners within the district; and
 - (9) evidence of an active building program not otherwise demonstrated by historical growth rates;
- (c) Standby fee amounts shall be determined so that:
- (1) the resultant combined projected tax rate as defined under §293.59(f) of this title is not less than those limits defined under §293.59 (k)(3) of this title when calculated based on:
 - (A) the current debt service fund balance, less 25% of the average annual debt service payment, being drawn down equally over the life of the outstanding bonds,
 - (B) interest earnings on the ending debt service fund balance being applied toward the next year's debt service payments for the first two years of a standby fee levy,
 - (C) the cumulative ending debt service fund balance not increasing to an amount greater than 25% of the next year's debt service payment, and
 - (D) not less than 90% collection of ad valorem taxes and standby fee(s) unless the district's historical collection rate(s) justify different percentage(s);
 - (2) the total taxes and standby fee assessment for debt service for water, wastewater, and drainage facilities against undeveloped property does not exceed the amount of district taxes levied for water, wastewater, and drainage facilities against a comparable lot or tract with completed improvements. In the absence of a comparable lot or tract with completed improvements, the projected value of the lot or tract with completed improvements as contained in the district's bond application(s) shall be used; and
 - (3) in the case of nonuniform standby fees, the relative standby fee assessments are consistent with the level of service available. A suggested form for calculating nonuniform fees may be obtained from the commission on request.

(d) Applications shall include the following items.

(1) a filing fee of \$100;

(2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee, the three years for which the fee is proposed for levy, and the projected debt service and operations and maintenance tax rates the district expects to achieve through the levy of the standby fee;

(3) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information cannot be located in agency files, the executive director may require that water, wastewater, and drainage facilities serving those properties and financed by the district be identified. An accounting of district-financed water supply, wastewater treatment facilities, and drainage facilities and capacity available in those facilities may also be required;

(4) a copy of the most recent tax appraisal roll by the Central Appraisal District accompanied by a table prepared by the district which delineates the district's assessed valuation. The table should list each component of the district's assessed valuation attributable to raw acreage and acreage with and without vertical improvements. The component attributable to acreage with vertical improvements should be further divided into single family residential sections according to similar home value, multi-family sections, commercial sections, industrial sections, and any other type of vertical development existing within the district;

(5) a table which compares the cumulative buildout for the current fiscal year to the cumulative buildout for the same fiscal year projected at the time of the bond issue. Indicate according to section, the number of lots, homes, commercial and industrial development, etc., and raw acreage within the district;

(6) A list by source of the following tax rates:

(A) the combined tax rate projected at the time of the most recent bond issue;

(B) the actual combined tax rate set for the current fiscal year; and

(C) the combined tax rate projected over the period during which the standby fee will be levied. Any increases in assessed valuation for this calculation should be based on the district's historical growth rate.

(7) a debt service schedule for all bonds outstanding.

(8) a cash flow table based on the reduced combined projected tax rate the district expects to achieve through the standby fee levy. Distinguish between debt service revenues obtained from taxes and other sources of debt service revenues. List as a separate column the additional revenues

required to produce the reduced debt service tax rate. Any increases in assessed valuation shown on this table should be based on the historical buildout rate experienced in the district. If the district's assessed valuation has been declining, show the assessed valuation as fixed at the current value. The district shall use the latest certified assessed value or estimated assessed valuation provided by the central appraisal district.

(9) a comparison of the actual versus the approved cost summary from the district's most recent bond issue with separate costs shown for water, wastewater and drainage projects.

(10) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein.

(11) in the event that a district provides the executive director with a written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (4), and (5) of this subsection except that the district shall provide a copy of the most recent tax appraisal roll by the central appraisal district.

Adopted September 30, 1996

October 22, 1996

§293.143. Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund.

(a) In calculating standby fees to be used to supplement the operation and maintenance fund, the following definitions apply.

(1) Connection, as used in this section, 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 used to calculate the standby fee. Connections may be described in terms of single family equivalent connections, living unit equivalents or any other generally accepted unit of consumption typically attributable to a single family household. The assumed population equivalent per connection should be indicated.

(2) Active connection, as used in this section, means a lot or tract with vertical improvements and a meter in service for which water and/or wastewater usage is billed.

(3) Inactive connection, as used in this section, means a lot or tract with existing vertical improvements, and where water and/or wastewater connections were made but such service is not being provided nor billed.

(4) Undeveloped property (expressed in terms of connections), as used in this section, means a tract, lot or reserve in the district to which no water or wastewater connections or drainage services exist and for which:

(A) water, wastewater, or drainage facilities and services are available;

(B) water supply, wastewater treatment plant capacity, or drainage capacity sufficient to serve any portion of the property is available; or

(C) major water supply lines, wastewater collection lines, or drainage facilities with capacity sufficient to serve any portion of the property are available.

(b) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenue to supplement the operation and maintenance fund:

(1) all capitalized funds or reserves for operating purposes which were derived from all prior bond issues (except an amount not to exceed a three-month reserve) have been depleted or are projected to be depleted within the three years in which the standby fees are to be levied; and

(2) the operation and maintenance fund is operating at a deficit or is projected to operate at a deficit within the three years in which the standby fees are to be levied with:

(A) rates for the first 10,000 gallons of water and wastewater usage for residential users (or equal or greater amounts for other users) which exceed \$40; or

(B) rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed \$27 if the district is a provider of only water or wastewater service.

(c) In determining the revenue to be generated from water and wastewater rates if such rates do not equal or exceed the rates stated in subsection (b)(2) of this section, an amount will be added to the minimum charge such that the total bill for 10,000 gallons of usage will equal the rates stated in subsection (b)(2) of this section.

(d) Standby fee amounts shall be determined so that all of the following are true:

(1) The total revenue projected to be generated from the fee is not more than that necessary to balance the projected operation and maintenance budget assuming:

(A) a 90% collection rate of the proposed fee;

(B) maintenance tax revenue based on a 90% collection rate is applied toward the budget;

(C) all of the water, wastewater, or drainage revenue projected for the coming year is applied toward the budget, with rates or revenues established or assumed at an amount equal to or higher than those in the preceding subsection (b)(2) of this section; and

(D) an operating reserve not to exceed three months included in the first year's budget if that reserve is not already existing.

(2) The fee amount shall not exceed the rate charged to active connections for 10,000 gallons actual water and wastewater usage;

(3) The fee amount equitably distributes the fixed costs of operating and maintaining the district's water, wastewater, or drainage facilities among active connections, inactive connections, and undeveloped property owners. In the absence of an allocation of a district's budget to fixed and variable expenses in an application, the staff shall make its own determination based on a predetermined fixed and variable allocation, a copy of which shall be made available from the executive director. A district may submit, with supporting and substantiating documentation, an allocation specific to that district.

(e) In determining whether a district which meets the foregoing requirements be allowed to impose standby fees for operation and maintenance revenue and the amount of the standby fee levy against the various categories of development authorized to be imposed, the following factors may be considered:

- (1) the amount of the operating deficit;
- (2) the amounts charged or proposed to be charged for water and/or wastewater services usage;
- (3) the efficiency and prudence of utilization of operating funds;
- (4) the capacity of the various components of the system;
- (5) the projected buildout compared to actual buildout.
- (6) the amounts charged by districts with comparable land uses;
- (7) maintenance tax levy, if any;

(f) Applications shall include the following:

- (1) an application fee of \$100;
- (2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee and the intervals or periods of billing for such standby fees (either monthly, quarterly or annually);
- (3) a proposal for the standby fee amount including substantiating calculations to show how the standby fee was derived;

(4) a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information is not available within agency files, the executive director may require that water, wastewater, or drainage facilities serving those properties be identified. An accounting of water supply, wastewater treatment facilities, or drainage facilities and capacity available in those facilities may also be required.

(5) a table indicating the ultimate number of connections according to section for which the district has water, wastewater, or drainage facilities. Indicate active connections, inactive connections, and the number of connections attributable to undeveloped property;

(6) a copy of the district's operating budget for the past two years and the proposed budget for the coming year. Indicate those fixed costs required to operate and maintain the water, wastewater, or drainage facilities, including a proportionate share of consultant and organizational fees attributable to operating and maintaining the water, wastewater, or drainage facilities and those expenses not related to operating and maintaining the district's water, wastewater, or drainage facilities, such as operating a recreational facility;

(7) an indication of revenues available for operation and maintenance costs and the sources of those revenues. Include water consumption records, wastewater flow records, or drainage maintenance records (if used in determining charge for service) for the previous two years and projected for the coming year as reflected in the proposed budget;

(8) a certified copy of the district's most current order establishing the water and/or wastewater rates or drainage charges, as applicable;

(9) any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein.

(10) in the event that a district provides the executive director with written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (3), (5) and (6) of this subsection except that the district shall provide a copy of the district's operating budget for the past two years and the coming year.

Adopted August 23, 2000

Effective September 14, 2000

§293.144. Application Requirements for Imposition of Standby Fees to Supplement the Debt Service Account and the Operation and Maintenance Account.

Applications for standby fees to be used for both debt service costs and operation and maintenance costs should distinguish between that portion of the fee intended for debt service costs and that portion intended for operation and maintenance costs. Each application requirement listed under §293.142 of this title (relating to Application requirements for Debt Service) and §293.143 of this title

(relating to Application Requirements for Operation and Maintenance) should be addressed for that portion intended for debt service and that portion intended for operation and maintenance costs. Only one \$100 filing fee is required.

§293.145. Public Notice Requirements.

(a) On receipt by the executive director of all required documentation associated with an application for standby fees as required by §§293.141- 293.144 of this title (relating to Standby Fees, Application Requirements for Imposition of Standby Fees To Be Used to Supplement the Debt Service Account, Application Requirements for Standby Fees to Be Used To Supplement the Operation and Maintenance Fund, Application Requirements For Imposition of Standby Fees To Supplement the Debt Service Account and the Operation and Maintenance Account), the executive director shall notify the chief clerk that the application is administratively complete.

(b) The chief clerk shall send a copy of a notice to the applicant indicating that an application has been received and notifying interested persons of the procedures for requesting a public hearing. 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 is proposed to be located 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, copies of the notice by certified mail, return receipt requested, to each owner of undeveloped property in the district identified on the district's tax rolls. Notice must be provided by certified mail, return receipt requested, to each mortgagee of record that has submitted a written request to be informed of any application. The written request for notice must include the name and address of the mortgagee, the name of the property owner in the district, and a brief property description.

(c) The district shall submit an affidavit certifying compliance with the requirements of subsection (b) of this section to the Commission at least one week prior to commission consideration.

(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

§293.146. District Actions Following Approval of a Standby Fee.

(a) The governing board of the district shall, within 30 days from the date of the adoption of a standby fee by the district pursuant to commission order, cause a certified copy of the commission order approving the standby fee and a certified copy of the district's order adopting the standby fee to be recorded in the office of the county clerk of each county in which a portion of the district lies.

(b) The governing board of the district shall, within seven days from the date of the district's order adopting the standby fees, submit to the executive director and file with the county clerk of each county in which a portion of the district lies an update of the information required by Water Code, §49.452.

Adopted September 30, 1996

October 22, 1996

§293.147. Material Changes.

A developer or landowner who owns undeveloped property may petition the commission to review its authorization of standby fees if there is a material change in the financial condition of the district subsequent to the commission's approval. The burden of proof will be on the landowner to show that there has been a material change and that the district no longer meets eligibility requirements set forth in §§293.142 of this title (relating to Application Requirements for Imposition of Standby Fees to be used to Supplement the Debt Service Account) and §293.143 of this title (relating to Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund) or that the amount of the standby fee should be reduced. If the executive director is satisfied that the landowner has presented a prima facie case, then the district will be required to submit information and/or materials in rebuttal. Only if the landowner presents a prima facie case to the executive director will the commission review its authorization of a standby fee.

§293.148. Termination of Standby Fees.

(a) Commission approved standby fees other than those for drainage only shall cease and no longer be valid or enforceable with respect to a particular lot or parcel at the end of the current billing period, during which either a connection is made to the district's water distribution system or wastewater collection system and service is billed, or construction of the vertical improvements on such lot or parcel is completed.

(b) Commission approved standby fees for drainage only shall cease and no longer be valid or enforceable with respect to a particular lot or parcel at the end of the current billing period, during which construction of the vertical improvements on such lot or parcel is completed.

Adopted September 30, 1996

October 22, 1996

§293.149. Deed Restrictions.

Standby fees and associated liens which inure to the benefit of a district and are authorized by recorded deed restrictions or covenants shall be enforceable in accordance with their terms and applicable general law and shall not be subject to review or approval by the commission.

Adopted September 30, 1996

October 22, 1996

§293.150. Variance Provision.

A district may request a variance to §293.142(a) and (c) of this title (relating to Application Requirements for Imposition of Standby Fees to be Used to Supplement the Debt Service Account) and §293.143(b), (c), and (d) of this title (relating to Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund) if it does not meet the guidelines contained in §293.142(a) of this title or §293.143(b) of this title; a majority of a district's board of directors finds by resolution that the district would be justified in requesting a variance; the fee was in place on August 28, 1989, and had been previously approved by the commission; and the elimination of the fee would cause a significant increase in the taxes or rates currently being assessed by the district. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance.

Adopted September 30, 1996

October 22, 1996