



# **Kemah City Council Meeting**

*July 15, 2020*

*7:00p.m.*



## AGENDA

**July 15, 2020 7:00P.M.**

### **CITY OF KEMAH - CITY COUNCIL AND KEMAH PUBLIC FACILITIES CORPORATION**

**Council Chambers, Kemah City Hall,  
1401 State Hwy 146, Kemah, Texas**

#### **Terri Gale – Mayor**

Teresa Vazquez-Evans	Wanda Zimmer	Kyle Burks	Robin Collins	Isaac Saldaña
Council Position 1	Council Position 2	Council Position 3	Council Position 4	Council Position 5

*In accordance with the Texas Open Meetings Act the agenda is posted for public information, at all times, for at least 72 hours preceding the scheduled time of the meeting on the bulletin board located on the front exterior wall of the City Hall Building, except in case of emergency meetings or emergency items posted in accordance with law.*

*Texas Criminal and Traffic Law Handbook Penal Code Sec. 38.13 Hindering Proceedings by Disorderly Conduct. A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance. Penal Code Section 42.05 Disrupting Meeting or Procession. A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.*

*The City Council reserves the right to meet in closed session on any of the below items should the need arise and if applicable, pursuant to authorization by Title 5, Chapter 551 of the Texas Government Code.*

#### **1. Pledges**

#### **2. Prayer**

#### **3. Invitation to Address Council**

*(State law prohibits the Mayor and members of the City Council from commenting on any statement or engaging in dialogue without an appropriate agenda item being posted in accordance with the Texas Open Meetings Law. Comments should be directed to the entire Council, not individual members. Engaging in verbal attacks or comments intended to insult, abuse, malign or slander any individual shall be cause for termination of speaking privileges and expulsion from Council Chambers. Your comments are limited to two (2) minutes.)*

#### **4. Council Members Comments and Announcements (Items of Community Interest Only)**

#### **5. Mayor's Comments**

#### **6. City Administrator Report:**

- Financials
- Economic Development

- Events and Operations

## 7. CIP

## 8. Police and Emergency Management Report

- Events and Operations
- Emergency Services

## 9. Communications and Marketing Report

## 10. Consent Agenda

*The following items are considered routine by the City Council and will be enacted by one motion. There will not be a separate discussion on these items unless a Council member requests it, in which event the item will be removed from the consent agenda and discussed after the consent agenda.*

### A. To approve an ordinance for No Wakes (Second Reading)

## 11. Consideration and Possible Action: Approval of an ordinance for Short Term Rentals, including all associated policies, procedures, and administration (Second Reading)

## 12. Consideration and Possible Action: to approve the Boardwalk Hospitality final plat located within that certain 1.850-acre and 0.312-acre tract of land situated in the M. Muldoon Survey, Abstract 18, Galveston County, Texas.

## 13. Consideration and Possible Action: on Process and Procedures for Adopting Municipal Impact Fees.

## EXECUTIVE SESSION

## 14. The Council will now hold a closed executive meeting pursuant to the provisions of Chapter 551 of the Texas Government Code, Vernon's Texas Codes Annotated in accordance with the authority contained in:

- A. Section 551.087, Local Government Code; Deliberations regarding Economic Development Negotiations
  - Hotel Conference Center
  - Update regarding contemplated development on 88 acre tract and other contemplated developments in other areas of the city.

## OPEN SESSION

## 15. Consideration and Possible Action: on Hotel Conference Center.

## 16. Consideration and Possible Action: regarding contemplated development on 88 acre tract and other contemplated developments in other areas of the city.

## 17. Council Members' Closing Comments

**18. Mayor's Closing Comments**

**19. Adjourn**

**ONLINE:** <https://global.gotomeeting.com/join/204030573>

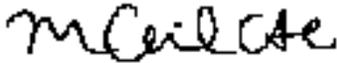
**PHONE:** United States (Toll Free): [1 866 899 4679](tel:18668994679)

United States: [+1 \(646\) 749-3117](tel:+16467493117)

**ACCESS CODE:** 204-030-573

**CERTIFICATION**

This is to certify that a copy of the Notice of the Regular City Council meeting for **Wednesday, July 15, 2020**, was posted on the bulletin board at City Hall, 1401 Highway 146, Kemah, Texas, on this the 10<sup>th</sup> day of July, 2020, prior to 7:00 p.m.



\_\_\_\_\_  
Melissa Chilcote, City Secretary

= 07/10/2020 \_\_\_\_\_  
Date

I certify this notice was removed by me from the Kemah City Hall bulletin board on the \_\_\_\_ day of \_\_\_\_\_, 2020. \_\_\_\_\_

**Kemah City Council Agenda Item**

**#10A To approve an ordinance for No Wakes (Second Reading)**

*Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.*

Date requested for Council consideration: 07/15/2020

Prepared by: Terri Gale

Subject: To approve an ordinance for No Wakes (Second Reading)

Proceeding: Ordinance

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: Yes

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

**SUMMARY / ORIGINATING CAUSE**

**IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY**

**RECOMMENDATIONS**

**ATTACHMENTS**

**Ordinance XXXX – No Wakes Second Reading**

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KEMAH, TEXAS TO REQUIRE NO WAKES ON FLOODED STREETS AND ROADWAYS IN THE CITY OF KEMAH, TEXAS; PROVIDING FOR A PENALTY, PROVIDING FOR SEVERABILITY AND PROVIDING FOR CODIFICATION.**

**WHEREAS**, the operation of motor vehicles on flooded roadways can create a wave or wake which carries beyond the street edge or curb line and causes damage to public and private property; and

**WHEREAS**, Council deems it prudent to create regulations in order to protect public and private property which can become damaged during flooding conditions on the streets of the City.

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

Chapter 98 - TRAFFIC AND VEHICLES of the Kemah Code of Ordinances is hereby supplemented to include the following sections which shall be codified as ARTICLE I. – GENERAL, Sections §98-5 through §98-6, sections that had previously been reserved for future use:

**Section 98-5. Operations of vehicles on flooded streets and roadways.**

- A. Statement of purpose. The City finds and declares that the operation of motor vehicles upon public streets and roadways during flooding conditions can create a wake which carries beyond the street or curblines causing damage to adjacent properties. The purpose of this Ordinance is to protect the property of the City and its citizens by regulating the manner of operation of motor vehicles driven upon the public streets and roadways of the City during flooding conditions.
- B. Prohibited operation. No motor vehicle shall be operated on any public street or roadway within the City where flooding exists in a manner as to cast or discharge a wave which carries beyond the edge of the street or curblines. For the purpose of this Ordinance flooding shall mean the existence of water on the surface of the center line of the roadway which exceeds six inches in depth.

**Section 98-6. Violations and penalties.**

Any person violating or failing to comply with any other provision of this Ordinance shall, upon conviction thereof, be punishable by a fine in an amount up to the maximum permitted by law. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

**Severability.** If any sentence, phrase, clause or any part of this Ordinance shall, for any reason,

be held invalid, such invalidity shall not affect the remaining portions of this Ordinance, and it is hereby declared to be the intention of this City Council to have passed each sentence, phrase or clause, or part thereof, irrespective of the fact that any other sentence, phrase or clause, or part thereof, may be declared invalid.

**Codification.** This Ordinance is hereby incorporated into and made a part of the Kemah City Municipal Code.

**Duly Passed and Approved on First Reading this the 17<sup>th</sup> day of June, 2020**

**Duly Passed and Approved on Second and Final Reading this the \_\_\_\_ day of \_\_\_\_\_, 2020.**

\_\_\_\_\_  
**Terri Gale, Mayor  
City of Kemah, Texas**

**ATTEST:**

\_\_\_\_\_  
**Melissa Chilcote, City Secretary**

**APPROVED AS TO FORM AND CONTENT**

\_\_\_\_\_  
**Dick Gregg, Jr., City Attorney  
City of Kemah, Texas**

**Kemah City Council Agenda Item**

**#11 Short Term Rentals, including associated policies, procedures, and administration. (Second Reading)**

*Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.*

Date requested for Council consideration: 07/15/2020

Prepared by:

Subject: to approve the Short Term Rentals, including associated policies, procedures, and administration.  
(Second Reading)

Proceeding: Consent

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: Yes

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

**SUMMARY / ORIGINATING CAUSE**

**IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY**

**RECOMMENDATIONS**

To approve the second reading.

**ATTACHMENTS**

**Ordinance XXXX- Short Term Rentals (Second Reading)**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KEMAH, TEXAS PROVIDING FOR REGULATIONS AND THE REGISTRATION FOR THE OPERATION AND USE OF SHORT TERM RENTALS AND PROVIDING FOR A PENALTY AND SEVERABILITY.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMAH, TEXAS:

**Section 1.** Purpose.

The purpose of this Ordinance is to establish regulations for the use of privately owned dwellings as Short Term Rentals, to minimize negative ancillary impact on surrounding properties, and to ensure the collection and payment of Hotel Occupancy Tax.

**Section 2.** Definitions.

As used in this Ordinance, the following terms shall have the following meanings:

*City.* The City of Kemah, Texas.

*Guest.* The overnight occupants renting a Short Term Rental Unit for a specified period and the daytime visitors of the overnight occupants.

*Local Contact Person.* The Owner, Operator, or person designated by the Owner or the Operator for the purpose of responding to concerns or requests for assistance related to the Owner's Short Term Rental.

*Operator.* The Owner or the Owner's authorized representative who is responsible for compliance with this Ordinance while advertising and/or operating a Short Term Rental.

*Owner.* The person or entity that holds legal or equitable title to the Short Term Rental property.

*Short Term Rental.* A privately owned dwelling, including but not limited to, a single family dwelling, multiple family attached dwelling, apartment house, condominium, duplex, mobile home, or any portion of such dwellings, rented by the public for consideration, and used for dwelling, lodging or sleeping purposes for any period less than 30 consecutive days.

The following are exempt from the regulations under this Ordinance: hotel, motel, dormitory, public or private club, recreational vehicle park, hospital and medical clinic, nursing home or convalescent home, foster home, halfway house, transitional housing facility, any housing operated or used exclusively for religious, charitable or educational purposes, and any housing owned by a governmental agency and used to house its employees or for governmental purposes.

*Short Term Rental Permit.* A permit issued by the City authorizing the use of a privately owned dwelling as a Short Term Rental.

*Short Term Rental Unit.* One or more habitable rooms forming a single habitable division within a Short Term Rental, or an entire undivided Short Term Rental, which is advertised to

be occupied, is occupied, or is intended to be occupied by a single party of Guests under a single reservation and/or single rental payment.

**Section 3.** Short Term Rental Permit required.

It shall be unlawful for any person or entity to rent, or offer to rent, any Short Term Rental without a valid Short Term Rental Permit issued under this Ordinance.

**Section 4.** Short Term Rental Permit registration fee and application.

- A. An owner shall submit an application for a Short Term Rental Permit using a format and method promulgated by the City Administrator or his/her designee. The application form shall require, at a minimum, the following information from applicants:
  - (1) The name, address, email and telephone number of the Owner of the Short Term Rental;
  - (2) The name, address, email and telephone number of the Operator of the Short Term Rental;
  - (3) The name, address, email and 24 hour telephone number of the Local Contact Person;
  - (4) The name and address of the Short Term Rental;
- B. An applicant for a Short Term Rental Permit shall pay to the City a permit fee of \$150.00.
- C. A Short Term Rental Permit issued under this Ordinance shall be valid for a period of one calendar year from the date of issuance. The Short Term Rental Permit shall expire immediately upon any change in Owner of the Short Term Rental Unit.
- D. The Owner has a duty to notify the City within 20 calendar days, in writing, of any changes to information submitted as part of a Short Term Rental Permit application under this Ordinance.
- E. An application for Short Term Rental Permit may be denied if the Short Term Rental is disallowed by an applicable Homeowners Association or Deed Restriction. A deed restriction that merely states that the property shall be used only for residential purposes shall not be a basis for dis-allowance of permit because Texas law provides that a short term rental is residential use.
- F. An application for Short Term Rental Permit may be denied if the Owner has had a Short Term Rental Permit suspended or revoked during the previous 365 calendar days.

**Section 5.** Short Term Rental operational requirements.

- A. The Operator shall post the following information in a prominent location within the

Short Term Rental Unit, using a form promulgated by the City:

- (1) Operator name and number;
  - (2) Local Contact Person name and number;
  - (3) The location of any on-site and off-site parking spaces available for Guests;
  - (4) The overnight and daytime occupancy limits as set by the Fire Marshal by the permitting process.
  - (5) Instructions to Guests concerning disposal of garbage and handling of garbage containers;
  - (6) Notification that the Guests are responsible for compliance with all applicable laws, rules and regulations pertaining to the use and occupancy of the Short Term Rental, and that Guests may be fined by the City for violations of this Ordinance.
- B. The Operator shall operate a Short Term Rental in compliance with the following:
- (1) City of Kemah Hotel Occupancy Tax Ordinance set forth in the Code of Ordinances;
  - (2) During any period when a Short Term Rental is occupied or intended to be occupied by Guests, the Local Contact Person shall make reasonable efforts to be available 24 hours per day for the purpose of responding to concerns or requests for assistance related to the condition, operation, or conduct of Guests of the Short Term Rental. If contacted by the City for assistance regarding the condition, operation, or conduct of Guests of the Short Term Rental, the Local Contact Person shall make reasonable efforts to resolve such concerns or request for assistance.
- C. During the term of any short term rental, the Owners shall display a short term rental sign that contains the owner and operator's names, phone numbers, and the permit number and that sign shall be visible readable sight line from the street. ~~from any street abutting the property.~~

**Section 6.** Notification of complaints.

Complaints related to the operation of a Short Term Rental, including but not limited to complaints concerning noise, garbage, parking, and disorderly conduct by Guests, shall be reported to the City Administrator..

**Section 7.**

The Owner, Operator, Local Contact Person, and Guests shall comply with all applicable laws, rules and regulations pertaining to the operation, use, and occupancy of a Short Term Rental. No Owner shall be responsible for violations of this ordinance by ~~the~~ persons other than the Owner.

Nothing in this Ordinance shall be construed to relieve any person or Owner of any other applicable requirements of federal, state, or local law, rules, or regulations. Nothing in this Ordinance shall be construed to provide any property owner with the right or privilege to violate any private conditions, covenants, and restrictions applicable to the Owner's property that may prohibit the use of such Owner's property as a Short Term Rental as defined in this Ordinance.

**Section 8.** Compliance and Penalty provision.

- A. Any violation of this Ordinance shall be a Class C misdemeanor and shall be punished by a fine not to exceed the maximum permitted by law.
- B. Prosecution under this Ordinance shall not require the pleading or proving of any culpable mental state.
- C. Penalties provided for in this Ordinance are in addition to any other criminal or civil remedies that the City may pursue under federal, state, or local law.

**Section 9.** Permit suspension or revocation; appeal.

Upon conviction for any 2 or more violations of this Ordinance in ~~any calendar year~~ a 12 month period or if it is discovered after issuance of the Short Term Rental Permit that the Short Term Rental is disallowed by an applicable Homeowners Association or Deed Restriction, the City Administrator may suspend or revoke any Short Term Rental Permit issued for the Short Term Rental, however see Section 4E. The City Administrator shall notify an Owner of a suspension or revocation under this Section in writing, delivered by Certified Mail, Return Receipt Requested, and mailed to the address of the Owner as set forth on the most recent Short Term Rental Permit application submitted to the City.

An Owner may appeal a notice of suspension or revocation under this Section by filing a written appeal with the City Administrator within ten business days following the date said notice was deposited in the U.S. Mail. Following a timely filing of an appeal hereunder, the Owner may present evidence to the City Administrator related to the suspension or revocation under this Section. Following the City Administrator's final decision on appeal, the Owner may appeal an adverse decision of the City Administrator by filing a written appeal with the City Council within five business days following the date of the City Administrator's final decision.

**Duly Passed and Approved on First Reading this the 17th day of June, 2020**

**Duly Passed and Approved on Second and Final Reading this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.**

\_\_\_\_\_  
Terri Gale, Mayor  
City of Kemah, Texas

ATTEST:

\_\_\_\_\_  
Melissa Chilcote, City Secretary

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Dick Gregg Jr., City Attorney

**Kemah City Council Agenda Item**

**#12 plat located within that certain 1.850-acre and 0.312-acre tract of land situated in the M. Muldoon Survey, Abstract 18, Galveston County, Texas.**

*Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.*

Date requested for Council consideration: 07/15/2020

Prepared by: Jimmy Thompson

Subject: To approve a plat located within that certain 1.850-acre and 0.312-acre tract of land situated in the M. Muldoon Survey, Abstract 18, Galveston County, Texas.

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: Yes

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

**SUMMARY / ORIGINATING CAUSE**

**IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY**

**RECOMMENDATIONS**

**ATTACHMENTS**

- Boardwalk Hospitality Plat**
- Abastractors Search**
- Consent to Encroachment - recorded**



**Fidelity National Title**  
**13101 Northwest Freeway, Suite 100**  
**Houston, TX 77040**

## **CITY PLANNING LETTER**

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**GF#: FAHCS18002357**

Through an effective date of:  
 April 19, 2020

### **Property**

*Address:* 1729 Soloman GF# CTT17679911  
*City/State/Zip Code:* Kemah, Texas 77565  
*Legal Description:*

SEE EXIHBIT A, ATTACHED HERETO:

### *Metes and Bounds:*

Based on a search of the Public Records of the County of Galveston County, Texas the last instrument purporting to convey title to the land described above was:

BOARDWALK HOSPITALITY LLC, by virtue of Deed recorded under Galveston County Clerk's File No. 2017054178.

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This report hereby reports that the instruments listed below have been filed of record in the office of the County Clerk of Galveston County, Texas, and are affecting title to the property above described during the time frame as set out above:

### **RESTRICTIONS:**

**None of Record**

### **EASEMENTS:**

**Subject to that certain Utility Easement set out and defined by instrument recorded under Galveston County Clerk's File No. 2019025574.**

**Subject to that certain Consent to Encroachment as set out and defined by instrument recorded under Galveston County Clerk's File No. 2020010647.**

### **LIENS:**



**CITY PLANNING LETTER**

(Continued)

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**None of Record**

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This report is issued for the use of and shall inure to the benefit of **Cathy Fontenot** and is issued in consideration of **\$54.13** paid by the benefited party named above, and no others, and to whom said sum shall be returned as agreed liquidated damages in the event of any mistakes herein. By accepting this search, the benefited party agrees that the said sum and no more shall constitute the full measure for damages against the issuing company.

SPECIAL NOTE AND LIMITATION OF LIABILITY: This report is issued with the express understanding, evidenced by the acceptance of same, that this report does not undertake to give or express any opinion as to the validity of the title hereinabove described or the authority of those executing the above listed instruments, but is simply reporting herein and hereby as to the recitals of instruments listed. The Company assumes no liability greater than the consideration paid for this certificate by reason of issuance, delivery and/or use of same, nor for any error or omissions herein.

This report does NOT reflect title to any of the oil, gas and other mineral interests affecting subject property, nor any documents creating and/or affecting said estates, nor the validity of any rights, privileges and immunities relating thereto.

Further, this report does not address and no search has been performed regarding the following: claims and rights of parties in possession; discrepancies in area and boundaries; unpaid bills for labor or material in connection with repairs or new improvements; unpaid taxes; change in marital or corporate status of owner(s) since date of purchase; homestead rights or claims; easements and restrictions.

Fidelity National Title

By: Steve Barola





**CONSENT TO ENCROACHMENT**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**THE STATE OF TEXAS    }**

**COUNTY OF GALVESTON}**

WHEREAS, Boardwalk Hospitality LLC (hereinafter referred to as "Owner" whether one or more) has requested consent to encroach within an easement located within that certain 1.850-acre and 0.312-acre tract of land situated in the M. Muldoon Survey, Abstract 18, Galveston County, Texas, being the same property described as Tract 1 and Tract 2 in a deed from Bruce Adam Gordy to Boardwalk Hospitality LLC, dated September 7, 2017 and filed for record under County Clerk's File No. 2017054178 in the Official Public Records of said County and State and also known as 1729 Soloman Lane, Kemah, Texas.

WHEREAS, the above described property is subject to a ten (10) foot wide easement, together with its adjoining aerial easement described in an instrument from J.A. Gordy and wife, Pauline Gordy to Houston Lighting & Power Company, dated March 30, 1990, and recorded under County Clerk's File No. 9012297 in the Official Public Records of Real Property of said County and State, **AND** a ten (10) foot wide easement described in an instrument from J.A. Gordy to Entex, Inc., dated February 26, 1981 and recorded under County Clerk's File No. 8106128 in the Official Public Records of Real Property of said County and State (hereinafter referred to as "Easement Area") created in favor of CenterPoint Energy Houston Electric, LLC, a Texas limited liability company, and CenterPoint Energy Resources Corp., a Delaware corporation, d/b/a CenterPoint Energy Texas Gas Operations, or the legal antecedent entity of any or all of them, for the erection and maintenance of gas, communication and/or electric transmission and/or distribution lines and appurtenances (hereinafter referred to as "Facilities") across, over, along, upon and under said property; and

WHEREAS, Owner has requested consent for the installation, construction, maintenance and/or removal of a twenty-six (26) foot wide fire lane and paving for parking (hereinafter referred to as "Structure", whether one or more) within said Easement Area.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that CenterPoint Energy Houston Electric, LLC, and/or CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Texas Gas Operations, (hereinafter referred to as "Utilities" and which term also includes their affiliates, successors and assigns) hereby consents to

said Structure within said Easement Area, as illustrated on the attached certified survey labeled Exhibit "A".

Owner, its successors, assigns, agents, and licensees, are forever subject to all the provisions stated herein.

If Owner utilizes the Easement Area for parking purposes, protective barriers shall be erected and maintained around Utilities' ground structures as shown on Exhibit "B" attached hereto and made a part hereof, and Utilities retain the right to prohibit and/or restrict parking during periods of construction or maintenance work upon its facilities. Owner shall not place any parking sub-base material within twenty-four (24) inches of Utilities' Facilities.

Owner shall observe and exercise all notification laws as per the Underground Facility Damage Prevention and Safety Act, also known as "ONE CALL" & "CALL BEFORE YOU DIG", when working in or near the Easement Area.

Owner shall maintain a minimum two (2) foot vertical and/or horizontal clearance between Owner's Structure and Utility's underground gas Facilities.

WHEREAS, Owner's Structure shall be installed, at its own cost and expense, as shown on said attached Exhibit "A". If at a later date any of Owner's Structure is found existing outside the locations and elevations on said attached Exhibit "A", then Owner will, at its own cost and expense, relocate this Structure to its approved location within the Easement Area to occur within ninety (90) days of any formal notice of incorrect placement. **IN THE EVENT ANY PORTION OF OWNER'S STRUCTURE ARE CONSTRUCTED OR REMAIN OUTSIDE OF THE LOCATION APPROVED BY UTILITIES, OWNER HEREBY AGREES TO FORFEIT ANY AND ALL RIGHTS OR CAUSES OF ACTION TO CLAIM A PRESCRIPTIVE EASEMENT OR EXERCISE ADVERSE POSSESSION OR EMINENT DOMAIN, AGAINST UTILITIES OR ANY PORTION OF UTILITIES' PROPERTY AND SHALL BECOME LIABLE TO PAY UTILITIES THE SUM OF FIVE THOUSAND DOLLARS (\$5,000.00). AFTER BEING INVOICED BY UTILITIES IN SUCH INSTANCE, SHOULD OWNER FAIL TO PAY UTILITIES SUCH SUM WITHIN SIXTY (60) DAYS, THEN UTILITIES MAY, AT ITS SOLE ELECTION AND WITHOUT NOTICE, REVOKE THIS AGREEMENT AND RECIND ANY CONSENTS PREVIOUSLY GRANTED TO OWNER RELATED TO SAID STRUCTURE, WITHOUT FURTHER LIABILITY TO UTILITIES.**

In consideration of the consent hereinabove granted by the Utilities to Owner, and in consideration of the use of said portions of the Easement Area Owner obtains hereby, **OWNER HEREBY BINDS ITSELF, ITS SUCCESSORS, ASSIGNS, AGENTS, AND LICENSEES TO INDEMNIFY AND HOLD HARMLESS THE UTILITIES FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES, IN CONTRACT, STRICT LIABILITY OR IN TORT, INJURY TO ANY PERSON (INCLUDING DEATH) OR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION, USE AND EXISTENCE OF**

**SAID STRUCTURE ON SAID PORTION OF SAID EASEMENT AREA, WHERE SUCH INJURY OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF OWNER, ITS AGENTS, OR EMPLOYEES, AND EVEN WHEN CAUSED BY THE JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF THE UTILITIES, THEIR AGENTS OR EMPLOYEES, AND EVEN WHEN THE INJURY OR DAMAGE IS CAUSED BY THE SOLE NEGLIGENCE OF THE UTILITIES, THEIR AGENTS, OR EMPLOYEES.**

**OWNER HEREBY AGREES TO ASSUME ALL LIABILITY FOR ANY DAMAGE TO THE UTILITIES' FACILITIES CAUSED BY OR ANY WAY CONNECTED WITH THE MAINTENANCE OF SAID STRUCTURE AND FURTHER AGREES TO REIMBURSE UTILITIES FOR ALL COST, INCLUDING BUT NOT LIMITED TO, LOSS OF RELATED INCOME, PROPERTY DAMAGES, REIMBURSEMENTS, LEGAL FEES, PERSONAL DAMAGES AND ANY DAMAGES NOT COVERED BY THE KEMAH VOLUNTEER FIRE DEPARTMENTS INSURANCE COVERAGE.**

Owner further agrees that if the Utilities shall at any time in its sole discretion determine that it is necessary to do so for the purpose of properly maintaining its gas or electrical facilities, it shall be privileged to remove or alter the Structure, or any part thereof, and which the Utilities agree to restore as nearly as practical to their former condition, all at Owner's cost. Owner hereby releases the Utilities from any and all liability for damage caused to the Structure by any such removal, alteration or restoration and further agrees to pay to the Utilities the cost of removing, altering or restoring such Structure upon receipt of its billing therefore. Owner hereby further releases the Utilities from any and all liability for loss of or damage to such Structure which may be caused by, result from or be related to the presence or malfunctioning of its gas or electric facilities and regardless of whether the negligence of the Utilities may contribute to such loss or damage.

Owner further agrees that if the Utilities shall at any time, and because of the presence of such Structure within said Easement Area, be ordered by any public authority having jurisdiction to remove or relocate its gas and/or electrical facilities, it shall be privileged to comply with such order at Owner's cost, unless Owner, shall alter or remove said Structure to the satisfaction of such public authority upon reasonable notice to do so, at which time Owner will have thirty (30) days from completion of said alteration or removal to notify Utilities in writing; and if such gas and/or electrical facilities are removed or relocated by the Utilities, Owner agrees to pay the cost thereof upon receipt of its billing therefor.

**IF THIS PROPERTY CHANGES HANDS BEFORE RECORDATION OF THIS INSTRUMENT, OWNER AGREES TO GIVE NOTICE OF THIS INSTRUMENT TO THE PURCHASER.**

If this Consent to Encroach is not accepted and agreed, notarized and returned by March 6, 2020, this document shall become null and void.

EXECUTED this 24<sup>TH</sup> day of FEBRUARY, 2020.

CenterPoint Energy Houston Electric, LLC And CenterPoint Energy Resources Corporation, d/b/a CenterPoint Energy Texas Gas Operations

BY: Matthew R. Dowell  
Matthew R. Dowell

*KDV* Manager, Land Management Division  
*MED* Agent & Attorney-in-Fact

ACCEPTED and agreed to this 13<sup>th</sup> day of Feb., 2020.

Boardwalk Hospitality LLC

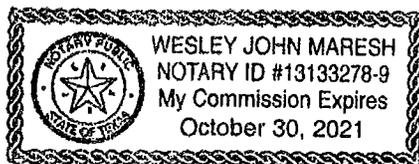
BY: [Signature]  
Mehul Bhakta

**Acknowledgment Block for CenterPoint Energy's Use Only:**

STATE OF TEXAS        }

COUNTY OF HARRIS    }

This instrument was acknowledged before me on February 24<sup>th</sup>, 2020 by Matthew R. Dowell, Manager of the Land Management Division, as Agent and Attorney-in-Fact of CenterPoint Energy Houston Electric, LLC and CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Texas Gas Operations, on behalf of said corporations.



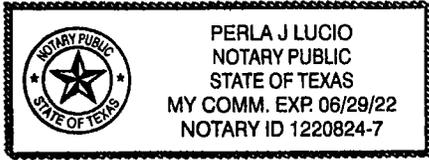
[Signature]  
Notary Public in and for  
The State of Texas

**Acknowledgment Block for a Corporate Officer Only:**

STATE OF TEXAS }

COUNTY OF *Harris* }

This instrument was acknowledged before me on Feb. 13, 2020 2020 by Mehul Bhakta, of Boardwalk Hospitality LLC, a limited liability company, on behalf of said company.



*Perla J. Lucio*  
 \_\_\_\_\_  
 Notary Public in and for  
 The State of Texas

AFTER RECORDING RETURN TO:  
 SURVEYING & RIGHT OF WAY  
 CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC  
 P. O. BOX 1700  
 HOUSTON, TX 77251-1700

TITLE COMPANY:



281-893-5773

O.F. #: 17679911

ISSUE DATE: 5-15-2017

GALVESTON COUNTY, TEXAS  
VICINITY MAP  
NOT TO SCALE

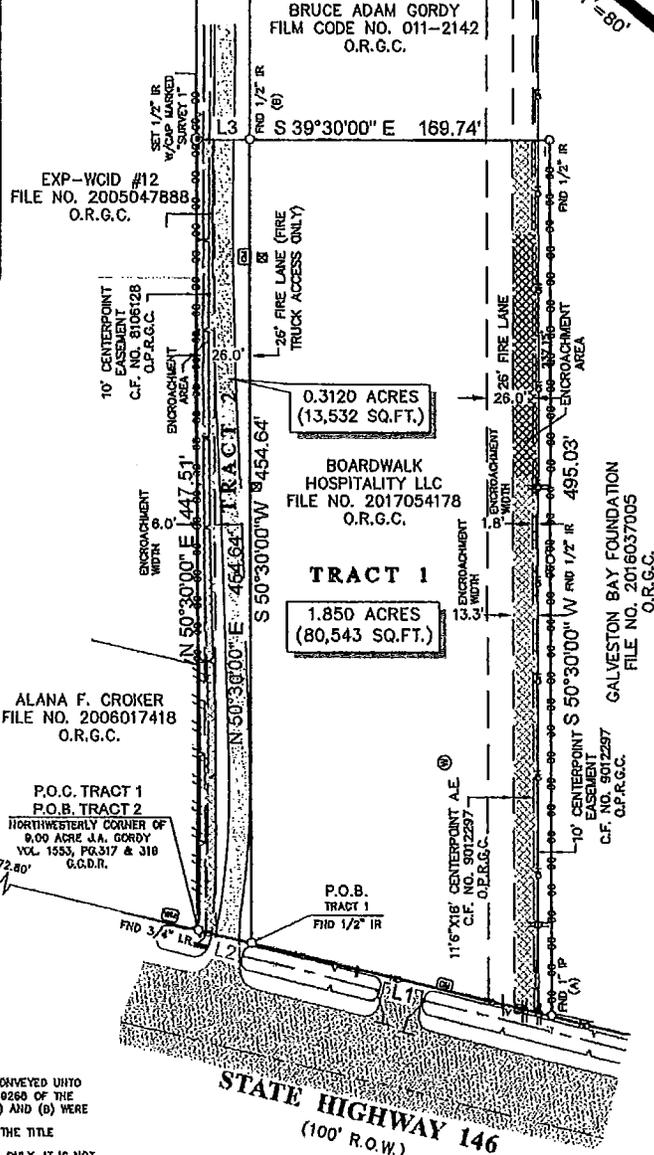
Exhibit "A"  
Page 1/1  
Job No. 135014

LEGEND

FENCE		A.E. - AERIAL EASEMENT	
///	WOOD	□	CONCRETE
—○—○—	CHAIN LINK	▨	ENCROACHMENT AREA
▨	GRAVEL	□	ASPHALT
—●—	BURIED CABLE MARKER	⊕	GAS METER
— —	GUY WIRE	⊕	WATER WELL
⊕	TELEPHONE PEDESTAL	⊕	WATER METER
⊕	POWER POLE	—○—	APPROXIMATE HIGH BANK
—○—	OVERHEAD POWERLINES		

LINE	BEARING	DISTANCE
L1	N 26°08'55" W	174.48'
L2	N 26°07'28" W	30.84'
L3	S 39°30'00" E	30.00'

CIEN ROAD  
(60' R.O.W.)

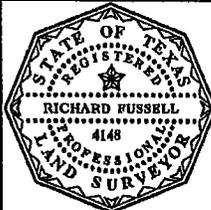


SCALE 1" = 80'

NOTES:

1. ALL BEARINGS SHOWN HEREON ARE REFERENCED TO A PRIOR DEED CONVEYED UNTO BRUCE ADAM GORDY, RECORDED IN COUNTY CLERK'S FILE NO. 2013070266 OF THE OFFICIAL PUBLIC RECORDS OF GALVESTON COUNTY, TEXAS, PORTS (A) AND (B) WERE HELD FOR HORIZONTAL CONTROL.
2. ABSTRACT INFORMATION FOR THE SUBJECT TRACT WAS PROVIDED BY THE TITLE INSURANCE COMPANY LISTED ABOVE.
3. THIS SURVEY IS CERTIFIED TO MEHUL BHAKTA FOR THIS TRANSACTION ONLY, IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
4. ALL EASEMENTS AND BUILDING LINES SHOWN ARE PER THE RECORDED PLAT UNLESS OTHERWISE NOTED.
5. THERE ARE NO NATURAL DRAINAGE COURSES ON SUBJECT PROPERTY.

LEGAL DESCRIPTION: TRACT 1: A TRACT OF LAND CONTAINING 1.850 ACRES (80,543 SQUARE FEET), SITUATED IN THE M. MULDOON SURVEY, ABSTRACT 18, GALVESTON COUNTY, TEXAS. SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS ATTACHED.  
TRACT 2: A TRACT OF LAND CONTAINING 0.3120 ACRES (13,532 SQUARE FEET), SITUATED IN THE M. MULDOON SURVEY, ABSTRACT 18, GALVESTON COUNTY, TEXAS. SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS ATTACHED.



SURVEYOR'S CERTIFICATE:  
IN MY PROFESSIONAL OPINION, THIS PLAT REPRESENTS THE FACTS FOUND BY THE SURVEYOR DURING THE COURSE OF A BOUNDARY SURVEY CONDUCTED UNDER MY SUPERVISION ON JUNE 8, 2017 AND THAT THIS PLAT SUBSTANTIALLY COMPLIES WITH THE CURRENT STANDARDS AS ADOPTED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING AND THAT THERE ARE NO ENCROACHMENTS OR PROVISIONS EXCEPT AS SHOWN.  
RICHARD RUSSELL  
RPLS# 4148

FEWSED: 01/22/2020

CLIENT:

MEHUL BHAKTA

ADDRESS:

1729 SOLOMON ROAD

www.survey1inc.com  
survey1@survey1inc.com



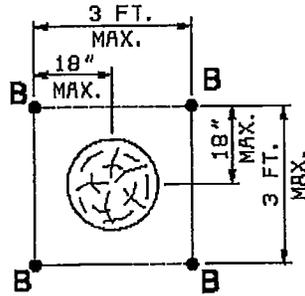
FIELD CREW: KR	TECH: RG
DRAFTER: RG	FINAL CHECK: RG
DATE: FEB. 5, 2019	
JOB#: 1-69850-19	

Exhibit "B"

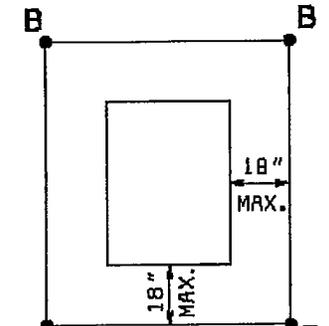
Page 1/1

Job No. 135014

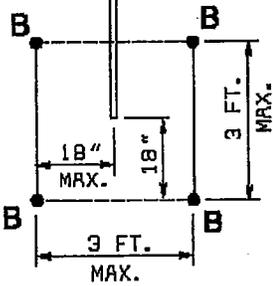
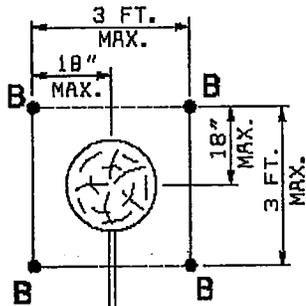
16.10 Protective Barrier Layout



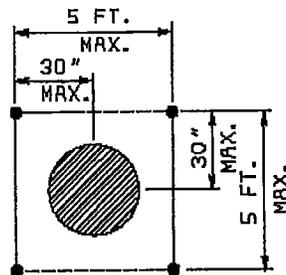
WOOD POLE



CABLE TERMINAL BOX



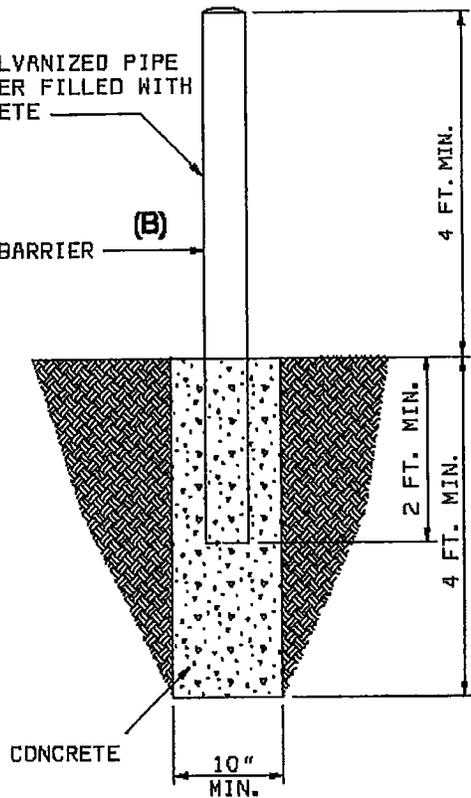
DOWN GUY



STEEL POLE

4" GALVANIZED PIPE  
BARRIER FILLED WITH  
CONCRETE

BARRIER (B)



BARRIER DETAIL

# FILED AND RECORDED

Instrument Number: 2020010647

Recording Fee: 50.00

Number Of Pages:8

Filing and Recording Date: 02/24/2020 9:43AM

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Galveston County, Texas.



A handwritten signature in black ink that reads "Dwight D. Sullivan". The signature is written in a cursive style with a horizontal line underneath it.

Dwight D. Sullivan, County Clerk  
Galveston County, Texas

**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*

**Kemah City Council Agenda Item**

**#13 Process and Procedures for Adopting Municipal Impact Fees.**

*Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.*

Date requested for Council consideration: 07/15/2020

Prepared by: Teresa Vazquez-Evans

Subject: Process and Procedures for Adopting Municipal Impact Fees.

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: Yes

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

**SUMMARY / ORIGINATING CAUSE**

The purpose of the agenda item is to consider and confirm the requirements, next steps/plan and potential timeline for adopting a drainage impact fee for the City of Kemah. Another potential impact fee that is eligible for discussion is a roadway impact fee.

**IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY**

**RECOMMENDATIONS**

**ATTACHMENTS**

**TML Impact Fees**

## **Are cities required to annually report hotel occupancy tax information?**

Yes. Legislation passed in 2017 that requires cities to annually report hotel occupancy tax information to the comptroller.<sup>171</sup> Not later than February 20 of each year, a city that imposes a hotel occupancy tax must submit to the comptroller: (1) the rate of the city's hotel occupancy tax and, if applicable, the rate of the city's hotel occupancy tax supporting a venue project; (2) the amount of revenue collected during the city's preceding fiscal year from the city's hotel occupancy tax and, if applicable, the city's hotel occupancy tax supporting a venue project; and (3) the amount and percentage of hotel occupancy tax revenue allocated by the city for certain categories of expenditure during the city's preceding fiscal year.<sup>172</sup> Cities must comply with the annual reporting requirements by either submitting the report to the comptroller on a form prescribed by the comptroller, or alternatively providing the comptroller a direct link to, or a clear statement describing the location of, the information required to be reported that is posted on the city's website.<sup>173</sup>

## **IMPACT FEES**

### **What are impact fees?**

The Texas impact fee statute defines an impact fee as “a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition.”<sup>174</sup>

Put more simply, impact fees are a way for a city to charge developers for some of the cost that new development places on the infrastructure and resources of a city.

The state of Texas allows cities to impose impact fees pursuant to Chapter 395 of the Local Government Code. Within the code, what qualifies as an “impact fee” is defined, and specific guidelines are set forth in regard to utilizing impact fees.

### **What may impact fees be spent on?**

To determine if an expenditure of impact fees is proper, two separate tests must be satisfied: (1) the expenditure must be for a *proper impact fee facility*; and (2) even if it is a proper impact fee facility, the expenditure must be a *permissive cost* that may be funded relative to that facility.

<sup>171</sup> Senate Bill 1221, 85th Legislature, Regular Session (2017).

<sup>172</sup> TEX. TAX CODE § 351.009(a).

<sup>173</sup> TEX. TAX CODE § 351.009(b).

<sup>174</sup> TEX. LOC. GOV'T CODE § 395.001(4).

- (1) **Proper impact fee facilities** include: (1) water supply, treatment, and distribution facilities; (2) wastewater collection and treatment facilities; (3) storm water, drainage and flood control facilities; and (4) roadway facilities.<sup>175</sup>
- (2) **Permissive costs** relative to a proper facility include: (1) facility expansion; (2) facility construction contract price; (3) surveying and engineering fees; (4) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees; (5) fees to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan, provided the person is not an employee of the city; and (6) interest charges and other finance costs related to improvements or expansions identified in the capital improvements plan (but only if used for payment of principal and interest on bonds, notes, or other obligations).<sup>176</sup>

### **What items may not be paid for by an impact fee?**

The Local Government Code also states that certain items may not be paid for by impact fees: (1) construction, acquisition, or expansion of public facilities or assets not 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 provide better service to existing development; (4) administrative and operating costs of the city; and (5) principal payments of interest or other finance charges on bonds or other indebtedness unless otherwise authorized in the impact fee statute.<sup>177</sup>

### **Where may impact fees be assessed?**

Any type of impact fee authorized by Chapter 395 may be imposed within the corporate limits of a city.<sup>178</sup> Impact fees may also be imposed in the extraterritorial jurisdiction (ETJ), except that impact fees may not be imposed in the ETJ for roadway facilities.<sup>179</sup> In areas outside both the corporate boundaries and ETJ, the city may only impose impact fees by contract (but not for roadway facility fees).<sup>180</sup>

### **How much in impact fees may a city charge?**

The amount of an impact fee is an amount that may not exceed the cost of capital improvements and facility expansions required by the new development (as calculated by a professional engineer), minus a credit in an amount equal to either: (1) the new property taxes and utility

<sup>175</sup> TEX. LOC. GOV'T CODE § 395.001(1).

<sup>176</sup> TEX. LOC. GOV'T CODE § 395.012.

<sup>177</sup> TEX. LOC. GOV'T CODE § 395.013.

<sup>178</sup> TEX. LOC. GOV'T CODE § 395.011(b).

<sup>179</sup> TEX. LOC. GOV'T CODE § 395.011(b).

<sup>180</sup> TEX. LOC. GOV'T CODE § 395.011(c).

revenue generated by the development; or (2) 50 percent of total costs of the capital improvements, with that figure being divided by the total number of projected service units attributable to the new development.<sup>181</sup> It is up to the city to determine which of the two credits above will be subtracted from the costs when calculating the impact fee.

### **What is the procedure for adopting an impact fee?**

Adoption of an impact fee requires compliance with several detailed steps. These rules are the result of intensive negotiations over the years between cities and developers, and strict compliance with each step is strongly recommended, lest the city open itself up to potential litigation. Following is a summary of the procedural steps:

- (1) **Capital Improvements Plan.** The city must first prepare a draft of a capital improvements plan (CIP). The CIP must be developed by qualified professionals using generally accepted engineering and planning practices.<sup>182</sup> The CIP is a detailed document that forms the basis for calculating precisely what impact fees are permissible for a particular facility.
- (2) **Capital Improvements Advisory Committee.** The city council must appoint an advisory committee to assist with the impact fee process. The statute requires that the committee be appointed sometime before the ordinance setting the public hearing on the CIP and land use assumptions (step four, below).<sup>183</sup>

The advisory committee must be made up of at least five members. At least 40 percent of the members of the advisory committee must be representatives of the real estate, development, or building community, and not employees or officials of the city.<sup>184</sup>

The advisory committee's purpose is to: (1) advise and assist the city in adopting the land use assumptions; (2) review the CIP and file written comments at least six business days before the city's hearing on the proposed impact fees; (3) monitor and evaluate implementation of the CIP; (4) file semiannual reports with respect to the progress of the CIP and report to the city any perceived inequities in implementing the plan or imposing the impact fee; and (5) advise the city of the need to update or revise the land use assumptions, CIP, or impact fee.<sup>185</sup>

- (3) **Land Use Assumptions.** Next, the city must prepare a draft of its "land use assumptions."<sup>186</sup> Land use assumptions are essentially a document that includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.<sup>187</sup>

<sup>181</sup> TEX. LOC. GOV'T CODE § 395.015.

<sup>182</sup> TEX. LOC. GOV'T CODE § 395.0411.

<sup>183</sup> TEX. LOC. GOV'T CODE § 395.058(a).

<sup>184</sup> TEX. LOC. GOV'T CODE § 395.058(b).

<sup>185</sup> TEX. LOC. GOV'T CODE § 395.058(c) and 395.050.

<sup>186</sup> TEX. LOC. GOV'T CODE § 395.042.

<sup>187</sup> TEX. LOC. GOV'T CODE § 395.001(5).

- (4) **Set Hearing on CIP and Land Use Assumptions.** The council must adopt an order, resolution, or ordinance establishing a public hearing date to consider the CIP and land use assumptions for the “designated service area” (defined as the area served by the facilities funded by the impact fee).<sup>188</sup>
- (5) **Make Public CIP and Land Use Assumptions.** After setting the hearing date in step four above, and prior to giving notice of the hearing, the city shall make the CIP and land use assumptions available to the public.<sup>189</sup> Essentially, this means making both documents available for inspection or copying at city hall by any interested person.
- (6) **Notice of Hearing on CIP and Land Use Assumptions.** At least 31 days before the date of the hearing on the CIP and land use assumptions, the city must provide notice of the hearing by both of the following methods:

*Certified Mail Notice.* The city must send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the city secretary or other designated city official requesting notice of such hearings within two years preceding the date of the order, ordinance, or resolution setting the public hearing.<sup>190</sup>

*Newspaper Notice.* The city must publish notice of the hearing in one or more newspapers of general circulation in each county where the city lies.<sup>191</sup>

Both notices, certified mail and published, must contain the following:

- (a) A headline that reads exactly as follows: “NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES”.
- (b) The time, date, and location of the hearing.
- (c) A statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed.
- (d) A statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan (CIP).<sup>192</sup>

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<sup>188</sup> TEX. LOC. GOV'T CODE § 395.042.

<sup>189</sup> TEX. LOC. GOV'T CODE § 395.043.

<sup>190</sup> TEX. LOC. GOV'T CODE § 395.044(a).

<sup>191</sup> TEX. LOC. GOV'T CODE § 395.044(b).

<sup>192</sup> TEX. LOC. GOV'T CODE § 395.044(c).

- (7) **Hold Public Hearing on CIP and Land Use Assumptions.** At the hearing, the council should allow all who desire to speak for or against the CIP or land use assumptions, or any other topic related to the upcoming impact fees, to present their views to the council.
- (8) **Vote to Adopt an Ordinance Approving the CIP and Land Use Assumptions.** At the conclusion of the hearing, preferably at the same meeting, the council should “determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.”<sup>193</sup> To comply, there should be a council vote, with a proper agenda posting, on whether or not to adopt such an ordinance, order, or resolution.

Whether this step is a distinct requirement from actually adopting the ordinance (step nine, below) is debatable, but it is the safest course to assume so.

- (9) **Approve CIP and Land Use Assumptions.** Within 30 days after the hearing, the city council must adopt an ordinance, order, or resolution approving the CIP and land use assumptions.<sup>194</sup> The ordinance, order, or resolution approving the CIP and land use assumptions must not be adopted as an emergency measure.<sup>195</sup>
- (10) **Set Hearing on Impact Fees.** After adoption of the ordinance approving the CIP and land use assumptions, and preferably at the same meeting that the ordinance was adopted, the city council must adopt an order or resolution (note: but not an ordinance) setting a public hearing to discuss the imposition of the impact fee.<sup>196</sup>
- (11) **Notice of Hearing on Impact Fees.** At least 31 days before the hearing on the imposition of the impact fee, the city must provide notice of the hearing by both of the following methods:

*Certified Mail Notice.* The city must send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the city secretary or other designated city official requesting notice of such hearings within two years preceding the date of the order, ordinance, or resolution setting the public hearing.<sup>197</sup>

*Newspaper Notice.* The city must publish notice of the hearing in one or more newspapers of general circulation in each county where the city lies.<sup>198</sup>

Both notices, certified mail and published, must contain the following:

- (a) A headline that reads exactly as follows: “NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES”.

<sup>193</sup> TEX. LOC. GOV'T CODE § 395.045(a).

<sup>194</sup> TEX. LOC. GOV'T CODE § 395.045(b).

<sup>195</sup> TEX. LOC. GOV'T CODE § 395.045(c).

<sup>196</sup> TEX. LOC. GOV'T CODE § 395.047.

<sup>197</sup> TEX. LOC. GOV'T CODE § 395.049(a).

<sup>198</sup> TEX. LOC. GOV'T CODE § 395.049(b).

- (b) The time, date, and location of the hearing.
  - (c) A statement that the purpose of the hearing is to consider the adoption of an impact fee.
  - (d) The amount of the proposed impact fee per service unit.
  - (e) A statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.<sup>199</sup>
- (12) **Advisory Committee Comments.** At least six business days before the hearing on the impact fees, the advisory committee must file written comments concerning the proposed impact fees.<sup>200</sup>
- (13) **Hold Public Hearing on Impact Fees.** At the hearing, the council should allow all who desire to speak for or against the impact fees, or any other topic related to the upcoming impact fees, to present their views to the council.
- (14) **Approve Impact Fees.** Within 30 days after the hearing on impact fees, the city council must approve or disapprove the impact fees by order, ordinance, or resolution.<sup>201</sup>
- (15) **Five-Year Review.** A city imposing impact fees must hold hearings and update the CIP and land use assumptions at least every five years.<sup>202</sup> Chapter 395 of the Local Government Code contains detailed procedures for hearings, review, and amendment of the CIP.<sup>203</sup>

### **When may an impact fee be collected from a developer?**

Once water and wastewater capacity is available, impact fees are generally collectable when the city issues the building permit.<sup>204</sup>

### **When is it too late to levy an impact fee on new development?**

If an impact fee ordinance is adopted after the land being developed is platted, fees cannot be assessed on any service unit that receives its building permit within one year after adoption of the impact fee.<sup>205</sup>

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<sup>199</sup> TEX. LOC. GOV'T CODE § 395.049(c).

<sup>200</sup> TEX. LOC. GOV'T CODE § 395.050.

<sup>201</sup> TEX. LOC. GOV'T CODE § 395.051.

<sup>202</sup> TEX. LOC. GOV'T CODE § 395.052.

<sup>203</sup> TEX. LOC. GOV'T CODE §§ 395.053-395.0575.

<sup>204</sup> TEX. LOC. GOV'T CODE § 395.016(d)(1).

<sup>205</sup> TEX. LOC. GOV'T CODE § 395.016(c).

### **May impact fees be pledged to repay debt service on a bond, note, or other obligation?**

Yes, impact fees may be pledged to pay off bonds and other notes, provided the improvement being paid for is identified in the CIP.<sup>206</sup> Further, at the time of the pledge the city council must certify in a written order, ordinance, or resolution that none of the impact fee will be used on an improvement not in the CIP.<sup>207</sup>

### **What fees and other development tools are not considered impact fees (and thus not subject to the procedures or restrictions under Chapter 395 of the Local Government Code)?**

The following are not considered impact fees, and thus are not subject to the detailed procedures and formulas set forth in Chapter 395: (1) dedication of land for public parks; (2) payment in lieu of the dedication of parks; (3) dedication of rights-of-way or easements of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development; (4) construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development; (5) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; and (6) other pro rata fees (see *Pro Rata Fees* elsewhere in this manual) for reimbursement of water or sewer mains or lines extended by the political subdivision.<sup>208</sup>

## **INTERLOCAL AGREEMENTS**

### **What are interlocal agreements?**

Interlocal agreements are contracts between units of local government, including cities, and other units of local government or the state to perform services or acquire goods on mutually beneficial terms.

### **In what sense can an interlocal agreement be considered a revenue source?**

Cities with “excess” capacity in a service department can benefit by selling that excess capacity to neighboring units of government. For example, suppose that a small but growing city forms its first professional fire department. Such a city may find that demand may not be present within

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<sup>206</sup> TEX. LOC. GOV'T CODE § 395.012(d)(1).

<sup>207</sup> TEX. LOC. GOV'T CODE § 395.012(d)(2).

<sup>208</sup> TEX. LOC. GOV'T CODE § 395.001(4).