

## Exhibit A



### MEMORANDUM

TO: Mayor and Council Members

FROM: J. R. (Hank) Kidwell, P.E., Chair

DATE: October 3, 2013

SUBJECT: Impact Fee Advisory Committee Recommendation

The Impact Fee Advisory Committee is required under the Texas Impact Fee Act, Local Government Code, Chapter 395, to "file its written comments on the proposed amendments to the land use assumptions, impact fee capital improvements plan, and impact fees before the fifth business day before the date of the public hearing on the amendments." The committee has reviewed the documents prepared by the Austin Water Utility staff titled WATER & WASTEWATER IMPACT FEE REPORTS: ASSESSED AND COLLECTED FEES AND LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN dated August 28, 2013.

Attached for your information relative to the City Council public hearing set for October 17, 2013 on this issue are the Impact Fee Advisory Committee's comments:

1. Update of the Land Use Assumptions, Impact Fee Capital Improvements Plan including the Impact Fee Service Area boundary amendments, and the setting the Assessed Fees, which were adopted unanimously on September 30, 2013.
2. Update of the Water and Wastewater Impact Fees collected/charged by the City including recommendations from the Committee Members as noted below:
  - o 4 in favor of Option-5
  - o 1 in favor of Option-4i
  - o 1 in favor of Option-3C
  - o 1 with no preference other than the need for a reduction from the calculated maximum allowable amount and accepting of the Staff recommendation (Option-4i) as consistent with the State law.

If you should have any questions, I can be reached at 512-327-9204

Sincerely,

*Hank Kidwell*

J. R. (Hank) Kidwell, P.E., Chair  
Impact Fee Advisory Committee

Attachments

## **Exhibit A**

cc: Mark A. Ott, City Manager  
Robert D. Goode, P.E., Assistant City Manger  
Greg Meszaros, Director, Austin Water Utility  
Ross Crow, Assistant City Attorney, Law Department  
Brian L. Long, P.E., Division Manager, Austin Water  
Impact Fee Advisory Committee Members

## **Exhibit A**

### **WATER AND WASTEWATER IMPACT FEE ADVISORY COMMITTEE ACTION**

1. (Item #2 on Sept. 30 IFAC Agenda) Discuss components and status of the update to the Impact Fee Land Use Assumptions, Impact Fee Capital Improvements Plan including the Impact Fee Service Area boundary amendments; and prepare a recommendation to the City Council on the update as set forth in the functions of the advisory committee, Austin City Code and Chapter 395.050 of the Texas Local Government Code. Water and Wastewater Impact Fees collected/charged by the city will be discussed in a separate item.

Impact Fee Advisory Committee Regular Meeting  
Waller Creek Center, Room 104, 625 East 10th Street, Austin, Texas  
September 30, 2013

**VOTE: 7-0-0-0**

Motion made and seconded by: Brian Rodgers and David Vitanza

Committee Members Consenting: J.R. (Hank) Kidwell, P.E. (Chair)  
Kris Bailey  
Richard Kallerman  
William Moore  
Brian Rodgers  
David Vitanza  
Rick Coneway, P.E.

Committee Members Dissenting: None

Committee Members Abstaining: None

Committee Members Absent: None

The Impact Fee Advisory Committee recommends that the City Council adopt the 5-Year Update of the Impact Fee Land Use Assumptions and Capital Improvements Program. The Committee has reviewed the 5-Year Updates, and found them to be comprehensive. The Committee recommends that the City Council and the citizens utilize these reports and the information contained therein.

Hank Kidwell  
J.R. (Hank) Kidwell, P.E., Chairperson  
Impact Fee Advisory Committee  
Water and Wastewater Utility

Oct 7, 2013  
Date

## **Exhibit A**

### **WATER AND WASTEWATER IMPACT FEE ADVISORY COMMITTEE ACTION**

2. (Item #3 on Sept. 30 IFAC Agenda) Discuss components and status of the update to the Assessed and Collected Fees; and consider a recommendation for approval to amend Ordinance No. 20130909-003, the Fiscal Year 2014 Fees, Fines, and Other Charges to be set or charged by the City, to revise Austin Water Utility Impact Fees collection policy. (Recommendation from AWU to use Option 4i)

Impact Fee Advisory Committee Regular Meeting  
Waller Creek Center, Room 104, 625 East 10th Street, Austin, Texas  
September 30, 2013

**VOTE: 4-3-0-0**

Motion made and seconded by: Brian Rodgers and David Vitanza

Amended Motion: The IFAC recommends Option 5, which eliminates all discount zones and maximizes fee collection for all the reasons provided by the Resolution approved by the Water and Wastewater Commission (attached to this document for reference).

Committee Members Consenting: Kris Bailey  
Richard Kallerman  
Brian Rodgers  
David Vitanza

Committee Members Dissenting: J.R. (Hank) Kidwell, P.E. (Chair)  
Rick Coneway, P.E.  
William Moore

Committee Members Abstaining: None

Committee Members Absent: None

The Impact Fee Advisory Committee discussed many issues regarding Impact Fee collection policy. As seen above 4 members were in favor of Option 5, which is the maximum allowable Option. Of the 3 dissenting members, Committee Member (CM) Coneway was in favor of Option 4i, CM Moore was in favor of Option 3C, and CM Kidwell had no preference other than the need for a reduction from the calculated maximum allowable amount and was accepting of the Staff recommendation (Option 4i) as consistent with the State law. The Water and Wastewater Commission Resolution and supplemental reports by Committee Members are attached for further review.

Hank Kidwell  
J.R. (Hank) Kidwell, P.E., Chairperson  
Impact Fee Advisory Committee  
Water and Wastewater Utility

Oct 7, 2013  
Date

**Exhibit A**  
**Attachment 1**

**RESOLUTION OF THE CITY OF AUSTIN WATER AND WASTEWATER COMMISSION  
RECOMMENDING ACTION ON AUSTIN WATER UTILITY'S  
REVISED WATER AND WASTEWATER IMPACT FEE PROGRAMS**

*Whereas*, Austin Water Utility must update its water and wastewater impact fee programs at least every five years in conformance with Chapter 395 of the Texas Local Government Code; and

*Whereas*, City Council Resolution 20120112-063 charged the Austin Water Utility Staff to work with the Joint Committee on Austin Water Utility's Financial Plan ("Joint Committee"), among other responsibilities, to develop recommendations regarding "Discount policies for water and wastewater impact fees"; and

*Whereas*, the Joint Committee expressed concerns regarding (a) identification of the maximum allowable fees under Chapter 395 requirements, and (b) effectiveness of discounted impact fee zones in influencing locational decisions by new growth ; and

*Whereas*, academic research published by national experts, unaffiliated with particular interests, has found over a period of years that in cities which are attractive for development, the amount of impact fees has little impact on locational decisions but rather may have the effect of reducing land costs for development; and

*Whereas*, the Joint Committee recommended to the City Council that Austin Water Utility "Adopt an impact fee policy that calculates the maximum impact fee allowed by law" and "Consider the elimination of the current zone discount policy that has the effect of subsidizing infrastructure for new development"; and

*Whereas*, Austin Water Utility currently projects sharply increasing debt service costs prior to the end of the 2013-2023 impact fee program period, which will result in higher rates for customers; and

*Whereas*, the Impact Fee Advisory Committee and City Staff have worked diligently and conscientiously to respond to Joint Committee recommendations; and

*Whereas*, the updated impact fee program, at maximum, is expected to produce \$414 million in revenue during the several decade lifetime of the 2013-2023 impact fee program (\$307 million more than current fees), assuming a total program cost of \$541 million and projected waivers of \$127 million; and

**Exhibit A**  
**Attachment 1**

*Whereas*, the updated impact fees at the fair maximum allowable fee calculation is expected to produce \$282 million of the \$414 million lifetime total revenue during the first 10 years of the program (\$175 million more than current fees), and

*Whereas*, increases in impact fees will provide an additional source of revenue to help stabilize available revenue sources, partially offset revenue reductions from reduced consumption caused by drought or conservation efforts, reduce debt service, and thus will be used to offset the need for utility rate increases; and

*Whereas*, Chapter 395 provides remedies to feepayers for any perceived deficiency of performance by the City;

**NOW, THEREFORE,  
BE IT RESOLVED BY THE AUSTIN WATER AND WASTEWATER COMMISSION:**

The Impact Fee Advisory Committee and Staff of the Austin Water Utility are to be commended for their high level of professional skill and diligence in responding to the recommendations of the Joint Committee involved in bringing forward their recommendations for updated impact fee programs.

The impact fee programs presented by Staff are found to be calculated in a conservative manner, including only facilities which are already constructed, in the process of being constructed, or in advanced planning stages. Feepayers are thus protected from excessive fees.

City Staff has calculated the actual cost to Austin Water Utility to serve growth during the next ten years by using an Austin-specific credit against capital costs, which gives feepayers credit for future rate payments for the same facilities funded by the water and wastewater service revenue. This addresses the concern of the Joint Committee to calculate the maximum allowable fee under Chapter 395, and also represents more correctly and fairly the actual growth-related costs to Austin Water Utility than the previous practice of applying a non-specific 50% fee credit.

**BE IT FURTHER RESOLVED:**

The Staff recommended option (Option 4i, page ACF-15, WATER & WASTEWATER IMPACT FEE REPORTS, August 28, 2013) is expected to offer fee reductions to builders and other impact fee payers, at maximum, of \$165 million over the lifetime of the 2013-2023 program (\$94.6 million in the first ten years), which will impose growth-related costs on ratepayers and require higher rates than would occur with the maximum allowable impact fees. Of that \$165 million, \$65 million would be for a "risk management reduction" and \$100 million would be for geographic reductions.

**Exhibit A**  
**Attachment 1**

Because of the conservative construct of the fee calculations, and because fee payers may utilize remedies provided in Chapter 395 if they perceive any deficiencies in calculation or application of impact fees, there is no reason to reduce the maximum allowable fees by a blanket 15% as a "risk management reduction". Such a reduction would reduce fee revenues by approximately \$65 million and impose higher costs and utility rates on existing customers for growth.

Because there is little credible evidence that reductions of impact fees will significantly influence locational decisions, and because providing blanket reductions to various areas proposed by different stakeholders and the Austin Water Utility's recommendation would reduce impact fee collections by \$100 million over the lifetime of the 2013-2023 impact fee program, thus causing additional increases in utility rates, no discounts should be provided to any geographic area.

**BE IT FURTHER RESOLVED:**

The Water and Wastewater Commission recommends the adoption of the following fee amounts (Option 5, page ACF-15, WATER & WASTEWATER IMPACT FEE REPORTS, August 28, 2013):

	<u>Maximum Allowable Fair Fee</u>	<u>Recommended Collected Fee</u> (Option 5)
Water Impact Fee:	\$5,415	\$5,400
Wastewater Impact Fee:	\$2,284	\$2,200

**PASSED AND APPROVED:**

September 11, 2013

  
Dale Gray, Chairperson  
Austin Water and Wastewater Commission

**Exhibit A**  
**Attachment 2**

**IFAC Committee Member Coneway Report justifying Option 4i**

As a Committee Member appointed to specifically represent the City's ETJ, I believe Option 4i, the staff recommendation, offers a fair approach in establishing impact fees that can be collected for water and wastewater utilities. Much of the projected growth of the City's water and wastewater utilities will occur in the ETJ. This option increases revenues associated with new growth while maintaining a price differentiation between the DWPZ and the DDZ. This option also creates a link to the Imagine Austin plan by including an additional 10% fee discount for priority areas identified within the plan. When compared with impact fees from nearby competing local jurisdictions, Option 4i provides a competitive pricing structure for development in the DDZ. Therefore, on behalf of those working and living in the ETJ, I fully support the staff's recommendation of Option 4i.



**Exhibit A**  
**Attachment 3**

TO: Mayor and Council Members

FROM: William Moore, IFAC Member

DATE: October 7, 2013

SUBJECT: Impact Fee Advisory Committee Recommendation Objections

While the recommendation of four other members of the Impact Fee Advisory Committee is to set the Impact Fee to the Maximum Allowable, I feel that the Charged Fee should be 15% less than the Maximum Allowable for two reasons:

1. The first is that because the new Water Rate Revenue Calculation method using a year by year, straight line, amortization of new growth users may possibly be challengeable because new growth is very chaotic and this method increased that allowable by a significant amount.
2. The second reason is that while I agree with the majority of members that incentive zones really do not come into play with the proposed pricing structures because of the very high cost of real estate in the city, I feel that the maximum rate would be an occasional burden to those independent entrepreneurs that are trying to develop areas of the city that are more marginal in scope, not in any special zone and may not be politically able to apply for full or partial fee waivers from the Council.

I should also mention that I feel that as only a Committee we should not have voted to make a group recommendation to the Council about policy but should only offer our individual comments so that each committee member representing different sub-sets of the community could be equally heard.

William Moore

William Moore

IFAC Member

## **Exhibit A**

### **Attachment 4**

#### **IFAC Committee Member Kidwell Report regarding the need for a reduction from the calculated maximum allowable amount**

Following is background information relating why any collected impact fee option being considered should include a reduction from the maximum allowable fee as calculated in the LUA/CIP update reports. It is not the intent to offer a recommendation of any of the options or to state what that reduction should be. It does relate to why Option 5 should not be considered.

The first part presents one way that the current LUA/CIP updates, although well formulated by the Austin Water Utility staff in conformance with the State law, may be challenged as having calculated a maximum allowable impact fee in excess of what the State law allows. The second part opines on some of the Option 5 arguments and the third part is a reminder of three items to always remember when dealing with impact fees.

I. The derivation of the maximum allowable impact fee starts with the total number of existing service units. This number is divided into the weather normalized water (or wastewater) usage and the result applied to less subjective parameters (derived peaking factors, facility capacities, and facility costs) to determine service unit costs per facility. If the number of existing service units is overestimated, the cost per service unit decreases and the maximum allowable impact fee calculated is less than the law allows. If the number of existing service units is underestimated, the cost per service unit increases and the maximum allowable impact fee calculated is greater than the law allows.

The number of existing service units is based on the number, size, and type of water meters and their respective service unit equivalents. Table 4 in the LUA report develops the number of existing service units. It is, in part, based on the service unit equivalents shown in Table 3. Problems arise in that a) turbine and compound meters have multiple styles and flow ratings; b) the efficiencies of flow ratings of the turbine and compound meters with regard to the AWWA standards referenced in the report have changed over the years; but c) the service unit equivalents for the size and generic type of meter (Table 3) has not changed in decades. As an example, Table 3 lists a 2" turbine meter having an equivalence of 10 service units or 100 gpm (one service unit is the AWWA stated maximum continuous flow rating for a 5/8" displacement meter, which is 10 gpm). That may be the maximum rating of a Class I 2-inch turbine meter, however, as long ago as 1986, AWWA stopped listing the 2-inch Class I turbine as a recommended meter in favor of the Class II 2-inch turbine due to the higher performance of Class II models. The Class II 2-inch turbine meter has an AWWA maximum continuous flow of 160 gpm, which would be equivalent to 16 service units. When a flow less than capacity is assumed for a meter, the equivalent service unit count is diminished and the total number of existing service units is underestimated, which leads to a calculated maximum allowable impact fee in excess of that allowable by State law. This does not mean the LUA/CIP updates are invalid, just that they have some subjective areas that are significant drivers to include a reduction of the maximum a calculated impact fee when setting the collected impact fee.

## **Exhibit A**

### **Attachment 4**

II. With regards to some of the arguments offered in support of Option 5, please consider the following:

Comment 1: The LUA/CIP update reports are conservative.

Response: I disagree. In choosing the CIP projects to be included in the updates, a conservative approach was used. However once the chosen projects were included in the reports, the reports themselves are not conservative and the choice of projects for inclusion is moot. If the LUA/CIP update reports are challenged, what is not in the reports is of no relevance.

Comment 2: There is a finite period of time to challenge the reports and LUA/CIP reports are seldom challenged anyway.

Response: This is a “we can get away with it so let’s do it” philosophy, or as a friend of mine put it – the scarlet letter approach. I would hope the Council does not share this philosophy in their decision making processes.

Comment 3: The Joint Subcommittee recommended to calculate the maximum impact fee allowed by law and consider eliminating zone discounts.

Response: The LUA/CIP update broke new ground and switched to a less conservative methodology to, indeed, calculate the maximum impact fee allowed by law. Zone discounts are a debatable measure, and would be up to the Council to determine. What is important is that the Joint Subcommittee did NOT recommend implementing a collected impact fee equivalent to the maximum allowable fee. I was on the Joint Subcommittee, and the subcommittee specifically excluded language relating the collected impact fee to the maximum impact fee allowable by law.

III. Lastly, in reviewing impact fee reports please remember that:

1. The impact fee law, as written and implemented, (regardless of any waivers granted by the local authority) is neither intended to recover, nor can it ever result in recovering, the total reimbursement for those CIPs “necessitated by and attributable to new development”.
2. Service units are not LUEs:
  - a. One service unit is kind of like but not really close to one LUE.
  - b. Comparing 10 service units to 10 LUEs is more like comparing apples to oranges.
  - c. Comparing 100 service units to 100 LUEs is more like comparing apples to orangutans.
3. The impact fees of large and small municipalities should not be compared. The impact fees of large municipalities can only be compared to the impact fees of other large municipalities.

As always, thank you for consideration of these items. The opinions herein are based on 22 years of service on the City’s IFAC, over 30 years of design as a water and wastewater engineer, and countless discussions regarding the relations between service units, LUEs, meter capacities, water use, design criteria, and impact fees, both assessed and collected.