

ORDINANCE NO. 2018-_____

AN ORDINANCE AMENDING CHAPTER 130, ARTICLE VI, SECTIONS 130-336 THROUGH 130-410, CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS RELATING TO WATER AND WASTEWATER CAPITAL RECOVERY FEES; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; CONTAINING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of New Braunfels, Texas, owns and operates by and through New Braunfels Utilities its own water and wastewater systems in accordance with the laws of the State of Texas and the charter of said City; and

WHEREAS, the Council of the City of New Braunfels has heretofore established an ordinance providing for assessment and collection of water and wastewater capital recovery fees in accordance with Chapter 395 of the Texas Local Government Code, and which ordinance has been codified as Chapter 130, Article VI, Code of Ordinances of the City of New Braunfels; and

WHEREAS, Section 130-405 of the Code of Ordinances of the City requires an update every five years by the City and New Braunfels Utilities (NBU) of the land use assumptions and capital improvements plan upon which impact fees to be collected are based; and

WHEREAS, the staff of the City has provided NBU with updated land use assumptions; and

WHEREAS, the Impact Fee Advisory Committee appointed by City Council as required by law, after considering the reports of New Braunfels Utilities and its consultant, Freese and Nichols, has recommended that the ordinance be amended; and

WHEREAS, pursuant to Section 395-014 of the Act and City ordinances, NBU has updated its capital improvements plan for water and wastewater facilities, and based on such updated capital improvements plan and land use assumptions, NBU has calculated the amended maximum impact fees for the 2018-2028 planning period; and

WHEREAS, in order to change the maximum amount of such impact fees, it is now necessary and advisable that Sections 130-336 through 130-410 of Chapter 130, Article VI, Code of Ordinances, as heretofore established by ordinance, be amended.

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

SECTION 1.

THAT, the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2.

THAT, Sections 130-336 through 130-410 of Chapter 130, Article VI, New Braunfels Code of Ordinances, as heretofore established by ordinance, be and are hereby amended in the following sections with deleted language signified by strikethrough font and new language signified by underlined font:

ARTICLE VI. - WATER AND WASTEWATER CAPITAL RECOVERY FEES

DIVISION 1. - GENERALLY

Sec. 130-336. - Definitions.

Words and terms used in this article shall have the same meaning and definition as contained in the Act.

Act, as used in this article, means V.T.C.A., Local Government Code § 395.001 et seq, as amended.

Capital recovery fees shall have the same meaning and refer to "impact fees" as defined in the Act.

Living unit equivalent (LUE) is the standardized measure referred to in the definition of service unit in the Act and in this article. LUE shall be established by policy of NBU.

Sec. 130-337. - Intent.

This article is intended to impose water and wastewater capital recovery fees, as established in this article, in order to finance public facilities, the demand for which is generated by new development in the NBU service area, and to replace existing capital recovery or impact fees.

Sec. 130-338. - Authority.

The city is authorized to enact this article by V.T.C.A., Local Government Code § 395.001 et seq., and its successors, which authorize home rule cities, among others, to enact or impose impact fees (capital recovery fees) on land within their corporate boundaries or extraterritorial jurisdictions, as charges or assessments imposed against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development; and by the city Charter. The provisions of this article shall not be construed to limit the power of the city to adopt such article pursuant to any other source of local authority, nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this article. Guidelines may be developed by resolution or otherwise to implement and administer this article.

Sec. 130-339. - Applicability of capital recovery fees.

- (a) This article shall be uniformly applicable to new development which occurs within the water and wastewater service areas.
- (b) Except as otherwise provided in this article, no new development shall be exempt from the assessment of capital recovery fees.

Sec. 130-340. - Capital recovery fees as conditions of development approval.

No new development shall be approved by the city or NBU without assessment of capital recovery fees pursuant to this article. No water and wastewater tap shall be connected unless the applicant has paid the capital recovery fees imposed by this article.

Sec. 130-341. - Limitation of liability.

The provisions of this article shall be liberally construed to effectively carry out its purposes, which are hereby found and declared to be in furtherance of the public health, safety, and welfare. Any member of the city council, city official or employee, member of the board of trustees of NBU, and any official or employee of NBU charged with the enforcement of this article, acting for the city or NBU in the discharge of his duties, shall not thereby render himself personally liable, and is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of such duties.

Sec. 130-342. - Remedies for violation of article.

Any violation of this article can be enjoined by a suit filed in the name of the city or NBU in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this article or in this Code or the policies of NBU.

Secs. 130-343—130-355. - Reserved.

DIVISION 2. - ADOPTION OF FEES

Sec. 130-356. - Establishment of water and wastewater service areas.

- (a) The water and wastewater service areas for development of impact fee purposes have been approved by the city council and the maps showing such service areas shall be maintained in NBU's offices.
- (b) The service areas shall be established consistent with any facility service area established in the capital improvement plan. Additions to the service area may be designated by the city council consistent with the procedure set forth in the Act and its successors.

Sec. 130-357. - Land use assumptions.

Land use assumptions used in the development of the capital recovery fees have been approved by the city council and shall be maintained in NBU's offices. These assumptions may be revised by the city council according to the procedure set forth in the Act and its successors.

Sec. 130-358. - Capital recovery fees per service unit.

- (a) The maximum capital recovery fee per service unit in the service area shall be computed by dividing the growth-related capital construction cost of service in the service area identified in the capital improvements plan for that category of capital improvements, by the total number of projected service units anticipated within the service area which are necessitated by and attributable to new development, based on the land use assumptions for that service area, and subtracting credits in the form of future rate contributions to CIP funding.
- (b) The maximum capital recovery fees per service unit that could be assessed and collected have been established under the regulatory provisions of the Act and are as follows:

Type of Service	Maximum Fee per LUE
Water	\$7,989
Sewer	\$3,251

- (c) The maximum capital recovery fees per service unit may be amended from time to time according to the procedures set forth in the Act upon approval of the city council.

Sec. 130-359. - Assessment of fees.

- (a) The approval of any subdivision of land or of any new development shall include as a condition the assessment of the capital recovery fee applicable to such development.
- (b) Assessment of the capital recovery fee for any new development shall be made in accordance with the Act and its successors pursuant to the policy from time to time adopted by the board of trustees of NBU.
- (c) Because fire protection is of critical concern to the community as a whole, water demand related solely to fire protection is not subject to assessment of a capital recovery fee. Water demand related solely to fire protection shall be supplied through unmetered infrastructure.
- (d) Assessment of capital recovery fees shall be at the maximum capital recovery fees rates established in section 130-358.

Sec. 130-360. - Calculation of fees.

- (a) Upon application for a water or wastewater tap, NBU shall compute the capital recovery fees due in accordance with the provisions of the Act and its successors pursuant to policy adopted by the board of trustees thereof from time to time.
- (b) The amount of each capital recovery fee due for a new development, whether calculated at time of final plat recordation or at time of water or wastewater tap purchase, shall not exceed an amount computed by multiplying the fee assessed per service unit pursuant to section 130-359 by the number of service units generated by the development.

Sec. 130-361. - Collection of fees.

- (a) No water or wastewater tap shall be connected until all capital recovery fees have been paid, except as provided otherwise by contract.
- (b) Capital recovery fees shall be collected in accordance with the Act and pursuant to the policy from time to time adopted by the board of trustees of NBU.

Secs. 130-362—130-370. - Reserved.

DIVISION 3. - WATER FACILITIES

Sec. 130-371. - Water service area.

- (a) There is hereby established a water service area for planning and CIP fee calculation as depicted on the service area maps maintained in NBU's offices.
- (b) The boundaries of the water service area may be amended from time to time, and new water service areas may be delineated, pursuant to the procedures in section 130-356.

Sec. 130-372. - Water improvement plan.

- (a) The water improvement plan for NBU for capital recovery fee calculation purposes is hereby adopted and shall be maintained in NBU's offices.
- (b) The water improvement plan adopted in this section may be amended from time to time, pursuant to the procedures set forth in the Act and its successors.

Sec. 130-373. - Water facilities fees adopted, amendment.

- (a) The maximum capital recovery fees per service unit for water facilities are hereby adopted and are set forth in section 130-358.
- (b) The capital recovery fees per service unit for water facilities may be amended from time to time, pursuant to the procedures in section 130-358.
- (c) The capital recovery fee per service unit to be collected may be amended from time to time by the board of trustees of NBU, but shall not exceed the maximum impact fee per service unit calculated pursuant to section 130-358.

Secs. 130-374—130-385. - Reserved.

DIVISION 4. - WASTEWATER FACILITIES

Sec. 130-386. - Wastewater service area.

- (a) There is hereby established a wastewater service area for planning and CIP fee calculation as depicted on the service area maps maintained in NBU's offices.
- (b) The boundaries of the wastewater service area may be amended from time to time, and new wastewater service areas may be delineated, pursuant to the procedures in section 130-356.

Sec. 130-387. - Wastewater improvement plan adopted, amendment.

- (a) The wastewater improvement plan for NBU for capital recovery fee calculation purposes is hereby adopted and shall be maintained in NBU's offices.
- (b) The wastewater improvement plan adopted in this section may be amended from time to time, pursuant to the procedures set forth in the Act and its successors.

Sec. 130-388. - Fees adopted, amendment.

- (a) The maximum capital recovery fees per service unit for wastewater facilities are hereby adopted and are set forth in section 130-358.
- (b) The capital recovery fees per service unit for wastewater facilities may be amended from time to time, pursuant to the procedures in section 130-358.
- (c) The capital recovery fee per service unit to be collected may be amended from time to time by the board of trustees of NBU, but shall not exceed the maximum impact fee per service unit calculated pursuant to section 130-358.

Secs. 130-389—130-400. - Reserved.

DIVISION 5. - ADMINISTRATION

Sec. 130-401. - Establishment of accounts.

- (a) NBU shall establish separate interest bearing accounts with its authorized depository for water impact fees and for wastewater impact fees.

- (b) Interest earned by each account shall be credited to that account and is subject to all restrictions placed on the use of such capital recovery fee under the Act.
- (c) NBU shall establish adequate financial and accounting controls to ensure that capital recovery fees disbursed from the account are utilized solely for the purposes authorized in section 130-402. Disbursement of funds shall be authorized by the board of trustees of NBU at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten years from the date the fee is deposited into the account.
- (d) NBU shall maintain and keep adequate financial records for each account established under this article, which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program as area related capital projects. NBU shall also maintain such records as are necessary to ensure that refunds are appropriately made under the provisions of V.T.C.A., Local Government Code § 395.025 and its successors. The records of the accounts into which capital recovery fees are deposited shall be open to public inspection and copying during ordinary business hours.

Sec. 130-402. - Use of proceeds of capital recovery fee accounts.

- (a) The capital recovery fees collected pursuant to this article may be used to finance or to recoup capital construction costs of service. Capital recovery fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of NBU to finance such capital improvements or facilities expansions.
- (b) Capital recovery fees collected pursuant to this article shall not be used to pay for any of the following expenses:
 - (1) Construction, acquisition or expansion of capital improvements or assets other than those identified in the capital improvements plan;
 - (2) Repair, operation, or maintenance of existing or new capital improvements or facilities expansions;
 - (3) Upgrading, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
 - (4) Upgrading, expanding or replacing existing capital improvements to provide better service to existing development; provided, however, that capital recovery fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or
 - (5) Administrative and operating costs of the city or NBU.

Sec. 130-403. - Appeals.

A person or entity who has exhausted all administrative remedies set out in the policy adopted by the board of trustees of NBU pursuant to the Act and its successors and who is aggrieved by a final decision is entitled to trial de novo under the Act.

Sec. 130-404. - Refunds.

Capital recovery fees shall be refunded only in accordance with the provisions of the Act and its successors. NBU shall adopt a policy with respect to refunds pursuant to the Act.

Sec. 130-405. - Updates to plan and revision of fees.

The city and NBU shall review the land use assumptions and capital improvements plan for water and wastewater facilities at least every five years, the first five-year period of which shall commence from the date of adoption of the capital improvements plan referenced herein. The city council shall accordingly then make a determination of whether changes to the land use assumptions, capital improvements plan or capital recovery fees are needed and shall, in accordance with the procedures set forth in the Act, or any successor statute, either update the fees or make a determination that no update is necessary.

Sec. 130-406. - Advisory committee, functions.

- (a) The city has appointed a capital improvements advisory committee (the "advisory committee") in accordance with the provisions of the Act.
- (b) The functions of the advisory committee are those set forth in the Act, or any successor statute, and shall include the following:
 - (1) Advise and assist the city in adopting land use assumptions;
 - (2) Review the capital improvements plan regarding water and wastewater capital improvements and file written comments thereon;
 - (3) Monitor and evaluate implementation of the capital improvements program;
 - (4) Advise the city of the need to update or revise the land use assumptions, capital improvements program and capital recovery fees; and
 - (5) File semiannual reports evaluating the progress of NBU in achieving the capital improvements plans and identifying any problems in implementing the plans or administering the capital recovery fees.
- (c) The city or NBU shall make available to the advisory committee any professional reports prepared in the development or implementation of the capital improvements plan.
- (d) The city council shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Sec. 130-407. - Agreement for capital improvements.

NBU is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of capital recovery fees.

Sec. 130-408. - Relief procedures.

NBU shall adopt a policy consistent with the provisions of the Act and its successors with respect to variances or waivers of provisions of this article. Such policy may provide for a waiver or variance if there is a finding that the proposed waiver would result in substantial economic benefit to the city.

Sec. 130-409. - Use of other financing mechanisms.

- (a) NBU may finance water and wastewater capital improvements of facilities expansions designated in the capital improvements plan through the use of operating cash transfers, issuance of bonds, the formation of public improvement districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of capital recovery fees.

- (b) Except as otherwise provided in this article, the assessment and collection of a capital recovery fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.

Sec. 130-410. - Capital recovery fees as additional and supplemental regulation.

- (a) Capital recovery fees established by this article are additional and supplemental to, and not in substitution of, any other requirements imposed by the city or NBU on the development of land or the issuance of building permits or the sale of water or wastewater taps or the issuance of certificates of occupancy. Such fees are intended to be consistent with and to further the policies of the city's comprehensive plan, capital improvements plan, zoning ordinance, subdivision regulations and other city or NBU policies, ordinances and resolutions by which the city or NBU seeks to ensure the provision of adequate public facilities in conjunction with the development of land.
- (b) This article shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the city or NBU which shall be operative and remain in full force and effect without limitation with respect to all such development.

Secs. 130-411—130-430. - Reserved.

SECTION 3.

THAT, this ordinance shall be and is hereby declared to be cumulative to all other ordinances of the City of New Braunfels relating to water and wastewater capital recovery fees for the New Braunfels Utilities water and wastewater systems, and same shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinance or ordinances are inconsistent or in conflict with the provisions of this ordinance, in which instance or instances those provisions shall be and they are hereby repealed.

SECTION 4.

THAT, if any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 5.

THAT, this ordinance shall be effective on November 13, 2018.

SECTION 6.

PASSED AND APPROVED: First Reading this 23rd day of July, 2018.

PASSED AND APPROVED: Second Reading this 13th day of August, 2018.

CITY OF NEW BRAUNFELS

BARRON CASTEEL, Mayor

ATTEST:

PATRICK ATEN, City Secretary

APPROVED AS TO FORM:

VALERIA ACEVEDO, City Attorney