controls the premises of the customer) has failed or refused to allow such terms and conditions to be satisfied; and

(2) The customer has received 90 days' written notice of such termination by certified mail or by hand delivery to the premises of the customer.

When the foregoing conditions have been satisfied, the utility official is authorized to abandon the facility and to terminate all utility service provided through such facility.
(Code 1968, § 49-612; Ord. No. 81-494, § 1, 3-17-81; Ord. No. 90-635, § 153, 5-23-90)

Secs. 47-278—47-300. Reserved.

ARTICLE IX. WASTEWATER IMPACT FEES AND CAPACITY RESERVATIONS*

DIVISION 1. GENERALLY

Sec. 47-301. Definitions.

As used in this article, the following terms and phrases shall have the following meanings:

(1) *Accelerated projects* means projects calling for the construction of specifically identified wastewater treatment or transportation facilities or both, with funds acquired in part from prepayments of capital recovery charges made by persons desiring new or additional service from the system in an area where such service would not otherwise be available.

(2) *Assessment* means the determination of the amount of the maximum impact fee per service unit which can be imposed on new development pursuant to this article, which determination occurs at the time specified in section 47-317.

(3) *Buffer zone* means an area of land which is owned or controlled by the owner of the private interim wastewater treatment plant or which is burdened by a public or private easement which renders it unsuitable for the location of habitable structures.

(4) *Building permit* means:

a. With respect to buildings or premises within the corporate limits of the city, the general permit required under the Construction Code; or

b. With respect to buildings or premises outside the corporate limits of the city or for which a general permit under the Construction Code is not required, a plumbing permit issued under the Construction Code or under section 47-14 of this chapter.

(5) *Capital recovery charge* means the fees imposed by the city on developments to provide financing for the costs of acquiring and constructing capital improvements to the system. These fees were established by the city pursuant to City of Houston Ordinances Nos. 83-650 and 84-1964.

(6) *City constructed wastewater facility* means a wastewater facility paid for wholly or partially by the city, a wastewater facility that has been acquired by the city upon assumption of obligations or debts for the construction costs thereof or by operation of law, a wastewater facility paid for by any other person, firm, corporation or governmental subdivision that has been purchased or otherwise acquired by the city, and a wastewater facility paid for partly by the city and partly by others when connection thereto is to be made from property to be served thereby and the owners of such property did not contribute their proportionate share of the cost for the intended land use.

(7) *Connection charge* means a charge on a property owner imposed pursuant to city ordinances referenced in section 47-42 for connection to the city's wastewater system.

*Editor's note—Section 4 of Ord. No. 90-675, adopted June 6, 1990, amended the title of Art. IX by adding the words "impact fees and" thereto.

(8) *Contractual reservation* means a reservation of wastewater capacity recognized in a legally enforceable written contract with the city where, either:

a. The contract was countersigned by the city controller prior to May 3, 1983; or

b. The city council, acting by motion, resolution or ordinance passed prior to May 3, 1983, authorized the director to negotiate the contract and identified the wastewater treatment facilities concerned, the contract negotiations were completed, and a final contract was approved by city council and countersigned by the city controller prior to October 24, 1985. The term "contractual reservation" also includes assignments of all or a portion of the original reservation when permitted under the terms of the contract; or

c. The contract was approved by a conservation and reclamation district that has been annexed by the city, where such contract provided wastewater capacity for property inside the city limits pursuant to consent of the city council.

(9) *Credit* means the amount determined under this article by which an impact fee for wastewater facilities is reduced as a result of a payment of connection charges for city constructed wastewater facilities imposed pursuant to city ordinances referenced in section 47-42, or payment of equivalent charges to a district providing such facilities within the city's wastewater benefit area, prior to June 20, 1990. Credit shall not include payment of a connection fee prior to June 20, 1990, or payment of charges under article IV of this chapter 47, which are imposed to reimburse a property owner for the costs of extending a wastewater main or lateral sewer.

(10) *Reserved.*

(11) *District reservation* means a written reservation of wastewater capacity which was:

a. Issued by a conservation and reclamation district which has been annexed to and abolished by the city and which has, prior to its abolition by the city, acquired or fully financed the acquisition of wastewater facilities which, when constructed and placed in operation, will have an aggregate wastewater capacity at least equal to the total of all wastewater capacity represented by the district's existing sanitary sewer system customers and its written reservations; and

b. Presented to the director, within three years after the latter of the date of abolition of the district or May 3, 1983, for written verification of its validity.

In the event that a district has issued written reservations of wastewater capacity in excess of the wastewater capacity the district has acquired or fully financed, then the director shall allocate the acquired or fully financed wastewater capacity of the district, first to the district's existing sanitary sewer system customers to the extent of their connections to the district's system, next to those persons who, within the 90 days immediately following the date of the district's abolition, present valid written reservations to the director for verification and finally, on a first-come-first-served basis, to those persons who present valid written reservations to the director for verification during the remainder of the three-year verification period.

(12) *Final plat recordation* means the filing of the final plat with the county clerk in the county in which the property platted is located, following compliance with all conditions of approval pursuant to chapter 42 of the Code.

(13) *Health-care facilities* means health-care facilities as defined in article 4418h, section 1.039(9), of the Texas Revised Civil Statutes Annotated.

(14) *Land use equivalency table* means the table approved by city council converting utilization of wastewater capacity required by various land uses to numbers of service units. Such table must be adopted by the city council as an element of its wastewater capital improvements plan.

(15) *New development* or *proposed development* means a project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use of extension of the use of land; any of which has the effect of increasing the requirements for wastewater capital improvements measured by the number of service units to be generated by such activity, and which requires either the approval of a plat pursuant to the city's subdivision regulations, the issuance of a building permit, or connection to the city's water or wastewater system, and which has not been exempted from these regulations by provisions herein.

(16) *Offset* means the amount of the reduction of an impact fee, determined under this article or pursuant to administrative guidelines, that is equal to the value of a wastewater facility or portion thereof included in the wastewater capital improvements plan, that is constructed or financed by a property owner.

(17) *Plat* means the plan or map for the subdivision to be filed for record in Harris County. Plat includes replat, but excludes development plat.

(18) *Property owner* means the owner in fee of a tract or parcel of land upon which new development is to be located, or his authorized representative.

(19) *Public education facilities* means buildings and other structures which are used by independent school districts or public or private junior or senior colleges or universities for the purpose of providing or supporting educational services.

(20) *Reservation application* means an application submitted to the director requesting a determination of the availability of adequate wastewater facilities and, if available, requesting a wastewater capacity reservation, subject to the provisions of this article.

(21) *Reservation for wastewater capacity* means either a contractual reservation, a district reservation, a restricted wastewater capacity reservation, or a wastewater capacity reservation acquired prior to June 20, 1990.

(22) *Restricted wastewater capacity reservation* means a reservation of wastewater capacity issued under authority of subsection 47-334(c) of this article.

(23) *Service area* means, for a particular wastewater facility or combination of wastewater facilities, a geographically defined area in which proposed developments can best be provided service by that wastewater facility or combination of wastewater facilities. The director shall determine the appropriate service area for each wastewater facility or combination of wastewater facilities by application of sound principles of civil engineering and in such a manner as to promote the safe and efficient operation of the system.

(24) *Service unit* means a standardized measure of consumption of wastewater system capacity which is equal to the average flow rate for a single-family dwelling unit in the Houston area.

(25) *Standard base level* means, for each acre of land, a level of utility service sufficient to receive, transport, treat and dispose of an average of 1,575 gallons per day of wastewater of the strength and character produced by typical residential customers of the city's system.

(26) *System* means the sanitary sewer system owned, maintained and operated by or on

behalf of the city in order to furnish sanitary sewer service, including but not limited to waste treatment facilities including fertilizer plants, plants, disposal fields and lagoons for the purpose of treating, neutralizing, stabilizing or disposing of wastewater, and sewer systems including pipelines, conduits, canals, pumping stations, force mains, and all other constructions, devices and related appliances used to transport wastewater, as such system may be now constituted or as it may be hereafter improved, enlarged or extended by construction, reconstruction, acquisition, annexation or otherwise.

(27) *Temporary reservation* means:

a. A reservation by a utility commitment letter issued by the city prior to May 3, 1983; or

b. A reservation of wastewater capacity which was not in the form of a utility commitment letter but which was:

1. Of a type customarily recognized by the city prior to May 3, 1983; and

2. For which the property owner had made a capital contribution which was accepted by motion, resolution or ordinance of city council.

(28) *Wastewater benefit area* means the area within the city and the city's extraterritorial jurisdiction, within which impact fees for wastewater capital improvements will be collected for new development occurring within such area and within which fees so collected will be expended for those improvements identified in the wastewater capital improvements plan applicable to the benefit area.

(29) *Wastewater capacity* means the capacity of the wastewater facilities, measured in units of volume per unit of time, to receive, transport, treat and dispose of wastewater produced by customers of the system.

(30) *Wastewater capacity reservation* means a commitment of the city, subject to the regulatory actions of the state and federal government, the applicable rules and regulations of the city and the terms and conditions contained in this article and in the wastewater capacity reservation itself, to permanently reserve capacity in wastewater facilities to serve a proposed development so that utility service will be available upon completion of the buildings or other structures contained in the proposed development. The phrase "wastewater capacity reservation" shall also include the written document evidencing its existence.

(31) *Wastewater capital improvement* means a wastewater facility, with a life expectancy of three or more years, to be owned and operated by or on behalf of the city.

(32) *Wastewater capital improvements plan* means the plan adopted by city council, as may be amended from time to time, which identifies the wastewater facilities and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of wastewater impact fees pursuant to this article.

(33) *Wastewater connection* means authorization to connect a new development to the city's wastewater system.

(34) *Wastewater facility* means a facility designed or utilized for the purpose of collecting, conveying, pumping, treating or disposing of wastewater and byproducts of wastewater treatment, including an existing facility, the capacity of which has been expanded to serve new development. Wastewater facility includes land, easements or structures associated with such facilities. Wastewater facility excludes those wastewater lines or mains or portions thereof which are constructed by property owners, the costs of which are

reimbursed from charges paid by subsequent users of such wastewater lines or mains.

(35) *Wastewater impact fee* means a fee for wastewater facilities imposed on new development pursuant to this article in order to generate revenue to fund or recoup the costs of capital improvements necessitated by and attributable to such new development. Wastewater impact fees do not include requirements for the dedication of rights-of-way or easements for such facilities, or for the construction of such improvements. Wastewater impact fees also do not include payment of connection charges by persons receiving service from a wastewater main, which charges are imposed to reimburse a property owner for the costs of extending such main.

(Code 1968, § 49-701; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 84-1673, §§ 1—3, 10-24-84; Ord. No. 90-635, § 167, 5-23-90; Ord. No. 90-675, § 1, 6-6-90; Ord. No. 91-64, § 1, 1-9-91; Ord. No. 93-514, § 127, 5-5-93; Ord. No. 02-399, § 92, 5-15-02)

Secs. 47-302—47-310. Reserved.

DIVISION 2. STATEMENT OF POLICY ON FINANCING OF SANITARY SEWERS SYSTEM CAPITAL IMPROVEMENTS

Sec. 47-311. Statement of city policy.

The following is established as the policy of the city for financing system:

(1) The city desires to finance the cost of acquiring and constructing capital improvements to the system necessary to maintain the level of wastewater capacity in the system so as to provide continued service at existing levels and new service to the holders of certain valid and unexpired commitments issued prior to May 3, 1983 in accordance with all applicable state and federal regulatory requirements which financing may be provided from the sale of revenue bonds, from state or federal grant funds or from any other funds available to the city other than from the proceeds of wastewater impact fees.

(2) The city intends to provide or cause to be provided financing for the cost of constructing special improvements to the system necessary to expand the level of wastewater capacity in order to provide service to new development through the establishment and collection of wastewater impact fees.

(3) Subject to the approval of the city council, special purpose conservation and reclamation districts organized under authority of article XVI, section 59 of the Constitution of the state may be utilized within the city to provide all or part of the funding for construction or enlargement of the system's wastewater treatment plants and capital facilities related to those plants.

(Code 1968, § 49-711; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 90-675, § 2, 6-6-90)

Sec. 47-312. Authority.

This article is adopted pursuant to chapter 395 of the Texas Local Government Code, section 26.176 of the Texas Water Code, and the Houston Charter. The provisions of this article shall not be construed to limit the power of the city to utilize other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution for or in conjunction with this article.

(Ord. No. 90-675, § 2, 6-6-90)

Sec. 47-313. Reservations and capital recovery charges.

(a) Except as provided in subsection (b) below, no building permit shall be issued with respect to any building or new development in the wastewater benefit area, which will require additional wastewater capacity from the system unless both of the following are provided to the director:

(1) A wastewater capacity reservation, a restricted wastewater capacity reservation, a district reservation or a contractual

reservation which has not expired, with respect to which all required conditions have been met and which includes:

a. A description of such building or new development; and

b. Reference to an amount of wastewater capacity at least as great as the additional amount required; and

(2) Satisfactory proof that any applicable wastewater impact fees have been paid with respect to such reservation.

(b) Subsection (a) of this section does not apply to any wholesale sewage treatment services supplied by the city to any conservation and reclamation district pursuant to a valid written contract. (Code 1968, § 49-712; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 90-675, § 2, 6-6-90)

Secs. 47-314, 47-315. Reserved.

DIVISION 3. WASTEWATER IMPACT FEES*

Sec. 47-316. Wastewater impact fees, in general.

(a) Except as otherwise provided herein, each new development within the city's wastewater benefit area shall pay an impact fee for wastewater facilities necessitated by and attributable to that development as provided in this division. Wastewater impact fees shall be assessed against and collected from new development on the basis of service units. The wastewater benefit area is established by the city council and may be amended from time to time.

(b) The maximum wastewater impact fee per service unit that is assessed against new developments is established as $1,495.59 per service unit, and the wastewater impact fee per service unit that shall be collected from new development is $1,067.47 per service unit. On July 1 of each year beginning in 2006, and the wastewater impact fee shall be adjusted based on the percentage change (if any) in the designated index for the preceding calendar year, but shall never exceed the maximum wastewater impact fee established herein. The director shall annually calculate the effective wastewater impact fee and make it available in his office upon request for public inspection.

For purposes of this subsection, the term designated index shall mean the United States Consumer Price Index for all Urban Consumers for the Houston-Galveston-Brazoria, Texas Metropolitan Area (1982-1984=100), as published by the Bureau of Labor Statistics, U.S. Department of Labor. If such index is subject to adjustment later, then the city shall use the adjusted index, together with any correlation factor necessary to relate the later adjusted index to the earlier index, as published by the entity publishing the index, or if such publication is discontinued, the designated index shall then refer to comparable statistics on changes in the cost of living for urban consumers as the same may be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority, which agency or periodical shall be selected by the city.

(c) The city council may amend wastewater impact fees to be collected from new developments without amending the wastewater capital improvements plan adopted herein, as long as the impact fees to be collected do not exceed the maximum impact fees per service unit that may be assessed for such facilities.
(Ord. No. 02-517, § 4, 6-26-02; Ord. No. 05-958, § 3, 8-24-05)

Editor's note—Ordinance No. 05-958, passed August 24, 2005, requires the annual adjustment of water impact fees as provided in Section 47-316. The adjusted wastewater impact fee beginning July 1, 2006, is now $1,105.90 per service unit.

Sec. 47-317. Assessment of fees.

Assessment of wastewater impact fees against new development shall be based on the maximum wastewater impact fee per service unit established by the city council. The time of assessment depends upon the time the development was platted pursuant to chapter 42 of the Code and

*Editor's note—Section 3 of Ord. No. 90-675, adopted June 6, 1990, amended Ch. 47, Art. IX, Div. 3 to read as herein set forth. Prior to such amendment, Div. 3, §§ 47-321—47-324, pertained to capital recovery charges and derived from §§ 49-271—49-274 of the 1968 Code; Ord. No. 83-650, § 1, adopted May 3, 1983; and Ord. No. 84-1964, §§ 1, 2, adopted Dec. 27, 1984.

when the development obtains a reservation for wastewater capacity. Assessment shall take place as follows:

(1) For new developments which have received final plat recordation and which have acquired a reservation for wastewater capacity prior to June 20, 1990, assessment shall occur at the time of application for a building permit or at the time of payment of the capital recovery charge specified in the reservation, whichever occurs first. If capital recovery charges for the new development have been paid prior to June 20, 1990, assessment for additional service units shall occur at the time of application for a building permit.

(2) For new developments which have received final plat recordation prior to June 20, 1990, but which have not acquired a wastewater capacity reservation by such date, assessment shall occur on the date a wastewater capacity reservation is obtained for the development.

(3) For new developments which have not received final plat recordation prior to June 20, 1990, but which have acquired a reservation for wastewater capacity prior to such date, assessment shall occur at the time of final plat recordation or the time at which the capital recovery charge specified in the reservation is paid, whichever occurs first. In the event that the capital recovery charge has been paid prior to June 20, 1990, assessment for additional service units shall occur at the time of final plat recordation, or if no final platting is required prior to development, at the time of application for a building permit.

(4) For new developments which have not received final plat recordation and which have not acquired a reservation for wastewater capacity prior to June 20, 1990, assessment shall occur at the time of final plat approval or at the time a wastewater capacity reservation is obtained, whichever occurs first.

(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-318. Time of fee collection.

Wastewater impact fees shall be collected at the time of issuance of building permits. In the event that a building permit is not required prior to development, collection shall be at the time of wastewater service connection. Provided, however, the developer and the department may agree to an earlier date for payment to reserve wastewater capacity for future development.

(Ord. No. 90-675, § 3, 6-6-90; Ord. No. 02-517, § 5, 6-26-02)

Sec. 47-319. Computation of fees.

The department shall compute the wastewater impact fees due for a new development in the following manner:

(1) Except as otherwise provided in this section, the amount of the impact fee due shall be determined by multiplying the number of service units generated by the new development by the wastewater impact fee per service unit then in effect.

(2) Development of low and moderate cost single family housing is exempt from payment of impact fees. In order to qualify for this exemption, the house must be a single family residence located within city limits having an initial purchase price as certified by the property owner that does not exceed the latest available 12-month listing for median price single family housing in the city as published by the Real Estate Center at Texas A&M University. In the event the initial purchase price exceeds this amount, the property owner making the certification shall pay to the city the full amount of the impact fee as calculated under this section. If publication of the median price for single family housing is discontinued by the Real Estate Center at the Texas A&M University, the mayor is authorized to select another publication that lists the median price of single family houses in the city.

(3) In the event that the new development has paid a capital recovery charge prior to computation of the impact fee, or in the event that the new development has a

valid district or contractual reservation, the capacity reserved by payment of such charge or such reservation shall be converted to service units using the land use equivalency table. If the wastewater service required for the new development exceeds such reserved capacity, the service units equivalent to the previously reserved capacity shall be subtracted from the total number of service units attributable to the new development, and the amount of the wastewater impact fee due shall be the number of additional service units multiplied by the wastewater impact fee per service unit then in effect.

(4) In the event that the new development involves razing or removing existing structures, the wastewater capacity utilized by such use or structure shall be converted into service units using the land use equivalency table. If the wastewater service required for the new development exceeds such utilized capacity, the service units equivalent to the previously reserved capacity shall be subtracted from the total number of service units attributable to the new development, and the amount of the wastewater impact fee due shall be the number of additional service units multiplied by the wastewater impact fee per service unit then in effect.

(5) The amount of each impact fee due shall be reduced by any allowable credits in the manner provided in section 47-321 of this Code.

(6) The amount of each impact fee due for a new development shall not exceed an amount computed by multiplying the maximum wastewater impact fee per service unit in effect at the time the new development was assessed by the number of service units generated by the development.

(7) If the property owner proposes to increase the number of service units for a development following payment of the wastewater impact fee, the additional wastewater impact fees collected for such new service units shall be determined in the same manner as provided in this section.

(Ord. No. 90-675, § 3, 6-6-90; Ord. No. 97-442, § 1, 4-23-97)

Sec. 47-320. Determination of service units.

The number of service units attributable to a new development shall be determined by using the land use equivalency table established by the

city council, which may be amended from time to time.
(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-321. Credits against wastewater impact fees.

(a) A property owner who has paid a connection charge prior to June 20, 1990 for a city-constructed wastewater facility, or who has paid an equivalent charge for a facility included in the wastewater capital improvements plan to a district created under authority of article III, section 52, or article XVI, section 59 of the Texas Constitution, for which no reimbursement was received, may reduce the wastewater impact fee due for the lot or tract for which the fee was paid by a like amount.

(b) A property owner who constructs or finances a wastewater facility included in the wastewater capital improvements plan pursuant to a development agreement approved by the city on or after June 20, 1990 may offset the value of such improvement against the wastewater impact fees due for the development. The offset shall be associated with the plat of the property that is to be served by the wastewater facility constructed or financed. The amount of the offset shall be determined pursuant to rules established in this section and administrative guidelines promulgated by the director. The city may also agree to offset against wastewater impact fees the value of a wastewater facility to be constructed or financed by the property owner, which has not been included in the wastewater capital improvements plan, if it is reasonably anticipated that the facility shall be included within the next revision to such plan. In no event shall the offset allowable under this subsection exceed the amount of the impact fees due, and no property owner shall be entitled to reimbursement for such excess amount unless the city otherwise agrees.

(c) The development agreement required by subsection (b) may provide for participation by the city in the costs of oversizing the wastewater facility to be constructed or financed by the property owner, or may provide for reimbursement according to the terms of the agreement. The amount of any offset shall be reduced by the amount of the city's participation.

(d) A credit or an offset associated with a plat shall be applied against a wastewater impact fee due at the time that the first fee for the new development is collected, and thereafter to all subsequently collected fees, until the credit or offset is exhausted.
(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-322. Accounting and refunds.

(a) All wastewater impact fees collected within the wastewater benefit area shall be deposited in a dedicated fund to which interest is allocated. All such amounts, together with all interest earned thereon, shall be used solely for the purposes set forth in subsection (b).

(b) The wastewater impact fees collected pursuant to this division may be used to finance or to recoup the costs of any capital improvements or facility expansions identified in the applicable wastewater capital improvements plan for the wastewater benefit area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and fees paid to an independent qualified engineer or financial consultant preparing or updating the wastewater capital improvements plan. Wastewater impact fees may also be used to pay the principal sum, interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the city to finance such capital improvements.

(c) Disbursement of funds shall be authorized by the department at such times as are reasonably necessary to carry out the purposes and intent of this article; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date wastewater impact fees are deposited into the fund.

(d) An owner of property for which a wastewater impact fee has been paid is entitled to a refund of all or a portion of the fee in the following circumstances:

(1) Upon application, any wastewater impact fee or portion thereof collected pursuant to

this division, which has not been expended within the wastewater benefit area within ten (10) years from the date of payment, shall be refunded to the record owner of the property for which the impact fee was paid together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in article 5069-1.03, Texas Revised Civil Statutes Annotated, or its successor statute. A wastewater impact fee shall be considered expended on a first-in, first-out basis. A wastewater impact fee shall also be considered expended if the total expenditures for wastewater facilities included in the wastewater improvements plan, as may be amended from time to time, within the wastewater benefit area within ten (10) years following the date of payment exceeds the total wastewater impact fees collected within the benefit area during such period.

(2) If a refund is due pursuant to paragraph (1), the department shall divide the difference between the amount of expenditures and the amount of the fees collected by the total number of service units for which wastewater impact fees have been paid within the benefit area for the period to determine the refund due per service unit. The refund to the record owner shall be calculated by:

a. Multiplying the refund due per service unit by the number of service units for the development for which the fee was paid; and
b. Determining interest due based on the amount calculated under subsection (d)(2)a.

(3) Upon completion of all the wastewater facilities identified in the wastewater improvements plan for the wastewater benefit area, the department shall recalculate the maximum impact fee per service unit using the actual costs for the improvements or expansions. If the maximum impact fee per service unit based on actual cost is less than the impact fee per service unit paid, the city shall refund the difference if such difference exceeds the wastewater impact fee paid by more than ten (10) percent. If the difference is less than ten (10) percent, no refund shall be due. The refund to the record owner shall be calculated by:

a. Multiplying such difference by the number of service units of the development for which the fee was paid; and
b. Determining interest due based on the amount calculated under subsection (d)(3)a.

(4) In no event shall a refund be due under this division for payment of any capital recovery charge.

(e) The department shall establish adequate financial and accounting controls to ensure that wastewater impact fees disbursed from the fund are utilized solely for the purposes authorized. The department shall maintain and keep financial records for wastewater impact fees, which shall show the source and disbursement of all fees collected in or expended within the wastewater benefit area. The records of the fund into which wastewater impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

(f) Nothing in these regulations shall prevent the city from paying all or part of the wastewater impact fees due for a new development pursuant to criteria adopted by the city council.
(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-323. Impact fee appeals.

(a) The property owner or applicant for new development may appeal the following administrative decisions to an administrative hearings official appointed by the director:

(1) The applicability of an impact fee to the development;

(2) The amount of the impact fee due;

(3) Classification of the development under the land use equivalency table;

(4) The applicability of a credit or an offset to the development;

(5) The amount of a credit or of an offset; or

(6) The amount of a refund due, if any.

(b) The burden of proof shall be on the applicant to demonstrate that the administrative decision was not made in accordance with this division or applicable state law.

(c) The applicant must file a written notice of appeal with the director within thirty (30) days following the decision from which an appeal is made. If the notice of appeal is accompanied by a payment or other sufficient security satisfactory to the department in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal is pending. Each appeal must include a fee equal to two hundred dollars ($200.00).
(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-324. Relief procedures.

(a) Any person who has paid an impact fee or an owner of land for which an impact fee has been paid may petition the city council to determine whether any duty required by this article or by chapter 395 of the Texas Local Government Code has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duty and request that the duty be performed within sixty (60) days of the request. If the city council determines that the duty is required pursuant to the ordinance and is late in being performed, it shall cause the duty to commence within sixty (60) days of the date of the request and to continue until completion. This subsection shall not apply to matters subject to appeal pursuant to section 47-323.

(b) The city council may grant a variance from any requirement of this article, upon written request by a property owner subject to this article, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property.

(c) If the city council grants a variance to the amount of the impact fee due for a new development under this section, it shall cause to be appropriated from other city funds the amount of the reduction in the impact fee to the fund for the service area in which the property is located.
(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-325. Replacement of existing charges.

On and after June 20, 1990, the provisions of this division 3 relating to the assessment and collection of wastewater impact fees replace and supersede those provisions for payment capital recovery charges as well as the payment of connection charges for city-constructed wastewater facilities pursuant to city ordinances referenced in section 47-42. On and after such date, the city shall neither impose on or collect from a new development any capital recovery charges or connection charges for city-constructed wastewater facilities.
(Ord. No. 90-675, § 3, 6-6-90)

Sec. 47-326. Connection of existing development.

If an owner of existing development within the wastewater benefit area requests connection to the city's wastewater system, and the department agrees to extend a wastewater main to serve the development, the owner shall pay a fee equivalent to that prescribed by and computed according to section 47-319 prior to connection to such system; provided, however, that an existing development so connected is entitled to a credit against the fee equal to the charge for one (1) service unit.
(Ord. No. 90-675, § 3, 6-6-90)

Secs. 47-327—47-330. Reserved.

DIVISION 4. RESERVATIONS

Sec. 47-331. Generally.

(a) The director is authorized and directed to establish and administer a system for determining whether wastewater facilities are available to serve proposed developments, for communicating the results of such determination to the property owner initiating the reservation request and, where necessary facilities are available, for reserving capacity in wastewater facilities to serve the proposed development.

(b) Any property owner who is contemplating a specific use of his property within the corporate limits of the city or within an area receiving utility services provided by the city which will require a change in the amount or character of utility service received from the city due to development, redevelopment or a change in occupancy must submit a reservation application to the director on the forms prescribed by the director. The application must be accompanied by the prescribed fee and must contain substantially the following information:

(1) An adequate legal description of the property.

(2) The number of existing buildings.

(3) The number of square feet within each of the existing buildings.

(4) The usage of each existing building (i.e., multifamily residence, office building, shop building, retail center, etc.).

(5) An explanation of the proposed construction projects and type of occupancies contemplated (*i.e.,* number of square feet and types of lease-occupancies, etc.).

(6) A map or sketch detailing the geographical location of the property.

(7) Copies of all wastewater capacity reservations associated with the property.

(8) Any other information reasonably requested by the director and necessary or useful to the director in performing a utility availability determination.

(Code 1968, § 49-731; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-332. Issuance of wastewater capacity reservations.

(a) Upon receipt of a completed application and the prescribed fee, the director shall determine whether the proposed development meets the requirements for issuance of a wastewater capacity reservation. In order for a proposed development to qualify for issuance of a wastewater capacity reservation the director must determine that there is sufficient unused and unreserved capacity in available wastewater facilities to meet the utility service requirements of the proposed development or that such capacity will be available before the proposed development will require it, that the proposed development will comply with applicable state and federal laws and regulations (including specifically regulations which restrict certain types of development in areas near the city's airports), written city policies which apply to city utility service and city ordinances, that utility service at the level required by the proposed development would not be in excess of any existing restrictions imposed under authority of section 47-333, and that any proposed private wastewater facilities are capable of providing safe and effective utility service.

If, upon completion of the determination, the director concludes that the proposed development meets all the requirements for issuance of a wastewater capacity reservation, he shall then calculate the capital recovery charge for the proposed development and issue a wastewater capacity reservation to the applicant conditioned upon payment of those charges within six (6) months of the date of issuance. If, upon completion of the determination, the director concludes that the proposed development does not meet one or more of the requirements for issuance of a wastewater capacity reservation, then the director shall prepare and deliver to the applicant a denial notice which shall describe the results of the determination and specifically detail the reasons for the denial.

(b) Provided, however, that the director may issue a wastewater capacity reservation subject to special conditions for an application not otherwise acceptable under subsection (a) as follows:

(1) The reservation is expressly conditioned upon the occurrence of some future event if the director determines that after the occurrence of that event the proposed development would be qualified for issuance of a wastewater capacity reservation. Events upon the occurrence of which a wastewater capacity reservation may be conditioned include, without limitation, the completion and acceptance of an accelerated project in which the property owner is a subscriber, the construction of a sewer main extension, or the construction of private wastewater facilities.

(2) The director determines that the wastewater capacity reservation is necessary for the immediate development or redevelopment of property, but will not overload the city's sanitary sewer system. A wastewater capacity reservation issued under this paragraph shall be subject to express conditions required by the director to assure that the proposed development requiring the wastewater capacity reservation is constructed within the time schedule specified by the director.

(c) Notwithstanding the other provisions of this section, the director shall issue a wastewater capacity reservation whenever the director determines that:

(1) A particular proposed development would qualify for issuance of a wastewater capacity reservation, if one (1) or more of the wastewater facilities available to serve the proposed development were not already fully reserved.

(2) All of the fully reserved wastewater facilities available to serve the proposed development are consistently operating at a level below their design and legally permitted capacities.

(3) The proposed development is to be composed solely of one (1) or more residential structures which would require utility service from the system at a level equal to or below the standard base level.

(4) The property owner has not obtained a wastewater capacity reservation under this subsection (c) during the preceding twelve (12) months.

A wastewater capacity reservation issued under authority of this subsection (c) can not be transferred to another lot, tract or subdivision and can not be used for any proposed development other than that for which it is issued.
(Code 1968, § 49-732; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 84-1673, § 6, 10-24-84; Ord. No. 88-646, § 1, 4-27-88)

Sec. 47-333. Service area restrictions.

(a) Whenever the director determines that particular existing wastewater facilities are operating at eighty-five (85) percent of their legally permitted capacity and that to allow additional reservations of capacity in such facilities at a level above the standard base level would result in an overloading of such facilities, then the director shall impose restrictions upon utility connections in that service area. The restrictions imposed under authority of this subsection shall provide that the director will not issue wastewater capacity reservations (other than ones conditioned upon the acquisition or construction of wastewater facilities) within the restricted service area for so long as the restrictions remain in effect, except in response to applications for proposed development which will require service at a level equal to or less than the standard base level. Notwithstanding the imposition of restrictions the director shall, where the provision of utility service is physically possible and where the proposed development otherwise complies with the requirements of this article, issue wastewater capacity reservations for proposed developments which provide for:

(1) Construction of fire and police facilities, public education facilities, and health-care facilities.

(2) Redevelopment which will not increase the amount of utility service required within the restricted service area.

(3) Extension of the system to areas presently served by septic tanks.

(4) Development which will require additional wastewater utility service at a level equal to or below the level authorized in a valid and unexpired previous commitment by the city.

(5) Other types of development or redevelopment, which, as of the effective date, were permitted by the provisions of the city's wasteload control plan imposed under the requirements of Texas Water Quality Board Order No. 74-0122-1.

(b) Whenever the director determines that particular existing wastewater facilities are regularly operating at a level which substantially exceeds their design or legally permitted capacity, the director shall impose restrictions upon utility connections in that service area. The restrictions imposed under authority of this subsection shall provide that the director will not issue wastewater capacity reservations (other than ones conditioned upon the acquisition or construction of wastewater facilities) within the restricted service area for so long as the restrictions remain in effect. Notwithstanding the imposition of restrictions the director shall, where the provision of utility service is physically possible and where the proposed development otherwise complies with the requirements of this article, issue wastewater capacity reservations for proposed developments which provide for:

(1) Construction of fire and police facilities, public education facilities and health-care facilities, but only where the director finds that the provision of utility service to those facilities will have only a minimal effect on overloaded wastewater facilities.

(2) Redevelopment which will not increase the amount of utility service required within the restricted service area.

(3) Development which will require additional utility service at a level equal to or below the level authorized in a valid and unexpired previous commitment by the city.

(4) Other types of development or redevelopment, which, as of the effective date, were permitted by the provisions of the city's wasteload control plan imposed under the requirements of Texas Water Quality Board Order No. 74-0122-1.

(c) The director shall remove or modify service area restrictions whenever he determines that a change in state or federal regulatory requirements or a change in the service area or its wastewater facilities has increased or decreased the wastewater capacity available in that service area.

(d) In order to impose, remove or modify restrictions on a service area, the director shall prepare a written notice which briefly describes the service area affected, the wastewater facility which serves the service area, the terms of the restrictions and the date upon which the imposition, removal or modification of restrictions is to take effect. The written notice shall be filed with the city secretary on or before the date the imposition, removal or modification is to take effect. The city secretary shall post a copy of the notice in a public place for a period of ten days, promptly publish a copy in a newspaper of general circulation in the city and shall thereafter maintain the notice in a file which shall be open to inspection by the public. The change in restrictions shall take effect on the date shown in the notice.
(Code 1968, § 49-733; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-334. Terms and conditions of reservations.

(a) A wastewater capacity reservation shall represent a commitment of the city subject to the regulatory actions of the state and federal governments, the applicable rules and regulations of the city and the terms and conditions contained in this article and in the wastewater capacity reservation itself, to permanently reserve capacity in wastewater facilities to serve a proposed development so that utility service will be available upon completion of the buildings or other structures contained in the proposed development. A wastewater capacity reservation is applicable only to the tracts, lots or subdivisions listed therein unless a transfer is approved as provided in section 47-335. A wastewater capacity reservation which

is issued on the basis of an application which contains materially false information shall be void.

(b) A temporary reservation shall expire on its stated expiration date and may, upon application in writing to the director, be converted on or before its expiration date to a wastewater capacity reservation by paying the capital recovery charge.

(c) A temporary reservation which was originally issued before April 2, 1983, shall, notwithstanding its stated expiration date, expire at 5 p.m. on April 2, 1984, and may, upon application in writing to the director, on or before its date of expiration, be converted to a restricted wastewater capacity reservation if, prior to the conversion of the temporary reservation, one or more of the following conditions have been met:

(1) All connection charges have been paid for the proposed development; or,

(2) The temporary reservation required the property owner to construct a public wastewater utility line extension and the extension has been constructed or is under construction; or,

(3) The temporary reservation required a contribution of funds or the construction by the property owner of particular wastewater facilities and the conveyance of such facilities to the city, the city council has approved the transaction if it required a contribution of funds, and the property owner has paid the funds to the city or conveyed the ownership of the particular wastewater facilities to the city.

(d) A restricted wastewater capacity reservation may, upon application in writing to the director, be converted to a wastewater capacity reservation by paying the capital recovery charge at the time of application.

(e) A property owner whose temporary reservation expires may make a new reservation application under the terms of this article.
(Code 1968, § 49-734; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-335. Transfers of reserved wastewater capacity.

(a) A wastewater capacity reservation may be transferred, in whole or in part, to another proposed development in the same service area. Any person desiring to transfer a wastewater capacity reservation must file with the director a written application for transfer and, if the transfer is approved, must pay the prescribed transfer fee. Upon receipt of a transfer application, the director shall determine whether the wastewater facilities in which capacity has been reserved are available to serve the proposed development to which the wastewater capacity reservation is to be transferred. If he determines the wastewater facilities are available, he shall so notify the applicant and, upon receipt of the transfer fee, approve the transfer. If he determines that the wastewater facilities are not available, he shall notify the applicant in writing.

(b) An existing customer of the system may transfer the wastewater capacity which has been allocated to that customer's connection in the same manner as a transfer of a wastewater capacity reservation if the customer:

(1) Removes any physical connection between his building or premises and the system; and

(2) Pays, in addition to the transfer fee, a sum equal to the capital recovery charge for issuance of a wastewater capacity reservation for the amount of wastewater capacity to be transferred.

(c) Whenever a transfer of wastewater capacity within a restricted service area reduces the amount of wastewater capacity available to the tract, lot or subdivision from which it is transferred to an amount less than the standard base level, the director shall, immediately upon approval of the transfer, file in the real property records of the county in which that tract, lot or subdivision is located a notice that all or a portion of the standard base level of wastewater capacity has been transferred and that service from the system at a level above the untransferred amount will not be available until such time as existing service area restrictions are removed or modified.

(d) Wastewater capacity reserved by district reservation may be transferred in whole or in part to other properties of the same owner in the annexed area, provided (i) the conditions in subsection (a) are met, (ii) the transfer is made within three years of abolition of the annexed conservation and reclamation district, (iii) the properties receiving the transfer have district reservations independent of the transfer and (iv) the application for a transfer is submitted with the request for the director's written verification of the validity of the district reservations for both the transferring and receiving properties. No transfers may be made for wastewater capacity reserved by district reservations subsequent to the director's verification of the validity of the district reservation for the properties.

(e) Wastewater capacity reserved by temporary reservations, contractual reservations, restricted wastewater capacity reservations, or reservations specially conditioned pursuant to section 47-332(b)(2) of this Code cannot be transferred to another property. In addition, wastewater capacity reservations for low and moderate cost housing under subsection 47-319(2), for which no impact fee has been paid, cannot be transferred to another property.

(Code 1968, § 49-735; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 88-646, § 2, 4-27-88; Ord. No. 97-442, § 2, 4-23-97; Ord. No. 97-910, § 1, 7-23-97)

Sec. 47-336. Private interim wastewater treatment plants.

In the event a reservation application is or would be denied because existing wastewater facilities are not adequate to serve the proposed development or because the proposed development requires utility service at a level in excess of the level available under existing service area restrictions, the property owner may, subject to the provisions of this section, construct and operate a private interim wastewater treatment plant to serve the

proposed development and receive a wastewater capacity reservation conditioned upon the construction and operation of the private interim treatment plant, participation in the next accelerated project in the same service area and payment of the applicable capital recovery charges at the time of subscribing to the accelerated project or, where there is no accelerated project, at the time adequate system wastewater facilities become available. In order to construct and operate a private interim wastewater treatment plant, the property owner must:

(a) Make written application to the director.

(b) Apply for and obtain waste discharge permits required by state and federal law and provide copies of the permit applications to the director and the city health department on the date of filing or, where the date of filing was prior to the effective date, within thirty (30) days after such effective date.

(c) Provide for a three hundred-foot buffer zone between the treatment plant and adjoining land uses or provide for complete enclosure of the treatment plant within a building with odor control facilities for the exhaust air from the building.

(d) Provide for the discharge from the treatment plant directly into, or conveyed through a private conduit into, an open natural river, bayou or creek or open constructed storm drainage facilities.

(e) Secure a franchise from the city permitting the operation of a private utility line within designated public rights-of-way if any such lines are necessary to the operation of the treatment plant.

(f) If the use of public utility easements is necessary in order to provide service to the proposed development, enter into a waste treatment service contract with the city in which contract the director, in consultation with the city health department, may specify operating criteria.

(g) Obtain approvals for the treatment plant design from the Texas Department of Health and the director.

(h) Agree that, in the event that an accelerated project is proposed for the construction or expansion of the system's wastewater facilities which, when completed or expanded, would be adequate to serve the proposed development, the property owner will subscribe to that accelerated project in an amount adequate to acquire sufficient wastewater capacity in the system to serve the proposed development.

(i) Agree that, within six (6) months of the date upon which adequate system wastewater facilities become available, the property owner, or his successors or assigns, will make proper application to the city for connection to the system and will discontinue operation of the treatment plant.

(j) Agree to provide to the city health department a copy of any and all reports on construction or operation of the treatment plant, including specifically all reports submitted to state or federal authorities, to provide any special reports reasonably required in writing by the director of the city health department and to maintain the treatment plant open to inspection by health department officials at all times.

(k) If the plant is not to be operated pursuant to a waste treatment service contract with the city, post with the director a "private sewage treatment plant operator's bond," in the form prescribed by the director, in a penal sum equal to one hundred fifty (150) percent of the estimated annual cost of operating the plant (including rental costs or an amount equivalent to the fair market rental value of the plant site and of any equipment or necessary facilities owned by the property owner and executed by the property owner and a corporate surety company licensed to do business in the state and shown on the most recent edition of the United States Treasury Circular 570 as having an "underwriting limitation" of at least the penal sum of the bond.

(l) Agree to provide for off-site disposal of all sludge produced by the treatment plant in the manner provided by applicable regulations, statutes and ordinances.

(m) Agree to have the treatment plant checked by a licensed sewage treatment plant operator at least once a day to insure that the plant is operating properly.

(Code 1968, § 49-736; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-337. Review board.

There is hereby created and established a wastewater capacity reservation review board to consider appeals of certain decisions of the director under this article.

(a) The board shall consist of five (5) members, three (3) of whom shall be appointed by the mayor and confirmed by the city council and two (2) of whom shall be appointed by the city council. Each member shall be appointed to one of five (5) numbered positions and shall hold the qualifications and serve the two-year term prescribed for that position. The board shall select its own chairman.

(b) The terms of office for Positions 1, 3 and 5 shall expire on March 1st of odd-numbered years and the terms of office for Positions 2 and 4 shall expire on March 1st of even-numbered years. A member whose term has expired shall continue to serve until a successor is appointed and confirmed.

(c) The persons appointed to Positions 1 and 4 shall be registered as professional engineers with the State of Texas and shall be actively engaged in the practice of civil engineering. The members holding Positions 1, 2 and 3 shall be appointed by the mayor, subject to confirmation by the city council, and the members holding Positions 4 and 5 shall be appointed by the city council. No employee of the city may serve on the board; provided, however, that the director, though not a member, shall have the right to receive notice of and attend all meetings of the board. Positions on the board which become vacant due to death, resignation or removal shall be filled in the manner provided for original appointments to that position and the person so appointed shall serve for the remainder of the unexpired term. Three (3) members of the board shall constitute a quorum.

(d) The board shall adopt reasonable rules of procedure for the conduct of its business.

(e) The board shall meet at such times and at such public places as may be required for the conduct of its business. The members shall serve without compensation.

(Code 1968, § 49-737; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-338. Appeals.

(a) A property owner who has made proper application under the terms of this article and is dissatisfied with a decision of the director on the application concerning:

(1) The issuance or recognition of a reservation of wastewater capacity;

(2) The applicability, amount or time of payment of capital recovery charges;

(3) The conversion of one type of reservation of wastewater capacity into another type; or

(4) The transfer of reserved wastewater capacity from one tract to another;

may appeal to the board in accordance with the provisions of this section.

(b) In order to appeal to the board a property owner must, within fifteen (15) days after receiving written notice of the director's decision, pay the applicable fee and file with the director a notice of appeal containing the following:

(1) A clear reference to the decision from which the property owner wishes to appeal.

(2) A short statement of the grounds for the appeal.

(3) A specific description of the action the property owner desires the board to take.

(4) The signature of the property owner.

(c) The director shall forward the notice of appeal to the board. During the ten (10) days immediately following receipt of the notice of appeal, the director shall be authorized to modify the decision in question. If, pursuant to this authority, the director modifies his initial decision in such a manner as to grant to the property owner

the relief requested, then in that event the board shall dismiss the appeal without action thereon.

(d) The board shall, upon receipt of a substantially complete notice of appeal, schedule a hearing on the matter and give reasonable notice of the time and location of the hearing. The hearing shall be held no earlier than ten (10) days and no later than forty (40) days after receipt of the notice of appeal. A decision must be rendered within fifteen (15) days after the hearing. The final decision of the board shall be in writing and shall either sustain the director's decision or grant all or a portion of the relief requested by the property owner.

(e) The board, in considering an appeal, may ascertain the relevant facts and may interpret the applicable provisions of this article, but may not grant exceptions to or variances from the provisions of this article except as provided in (f), below.

(f) (1) The board may order the director to issue a wastewater capacity reservation or restricted wastewater capacity reservation for a proposed development which would not otherwise qualify under the provision of this article, if the applicant files an application with the board prior to October 24, 1985, and can demonstrate that, prior to the effective date:

a. City officials represented to the applicant or his agents that wastewater capacity was reserved to serve the applicant's proposed development or that certain expenditures by the applicant would be credited against, or accepted in lieu of, any applicable charges for connecting to the system;

b. The applicant, in reasonable reliance upon such representation, incurred substantial expense in going forward with the proposed development and did not apply for issuance or renewal of a utility commitment letter for which the applicant's proposed development would have qualified; and

c. In view of the nature and extent of the city officials' representation and the actions taken by the property owner in reliance thereon it would be inequitable to require the property owner to comply with the provisions of this article.

(2) A reservation of wastewater capacity issued under authority of this subsection (f) may be conditioned in accordance with the circumstances under which it is issued and may provide for:

a. Restrictions against transfer;

b. Reduction or elimination of the capital recovery charge;

c. A change in the time at which the capital recovery charge is payable;

d. An amount of reserved wastewater capacity less than that applied for;

e. Such other restrictions, conditions or exceptions as may be appropriate.

(3) In no event shall the board order the director to issue a wastewater capacity reservation or restricted wastewater capacity reservation in wastewater facilities which are already fully loaded or reserved. In such circumstances the board may order the director to grant the appellant priority in the reservation of capacity in any new or expanded wastewater facilities which may be constructed in the future.

(g) The time limits prescribed for actions of the board are directory in nature and the board's failure to act within such limits shall not effect the validity of its actions. The time limit prescribed for the filing of a notice of appeal and payment of the applicable fee is mandatory and the failure of the property owner to act within such time limits shall extinguish the right of appeal. All notices required or authorized by this article must be in writing and must either be hand delivered or mailed by United States mail. A notice delivered by mail shall be deemed to be received on the earlier of the date it is actually received, or the third day following the date upon which the notice was deposited, properly addressed and with proper post-

age attached, in custody of the U.S. Postal Service. (Code 1968, § 49-738; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 84-1673, § 4, 10-24-84)

Sec. 47-339. Fees.

(a) The fee for processing a reservation application shall be the lesser of:

(1) Fifty dollars ($50.00) for the first acre or portion of an acre included in the proposed development, plus twenty-five dollars ($25.00) for each acre or portion of an acre in excess of one (1) acre: or

(2) Five hundred dollars ($500.00).

The city and all of its departments and divisions shall be exempt from the processing fee.

(b) The fee for transfer of reserved wastewater capacity to a tract, lot or subdivision shall be two hundred fifty dollars ($250.00) for the first tract from which capacity is transferred and fifty dollars ($50.00) for each additional tract (included in the same transfer application) from which capacity is transferred.

(c) The fee for transfer of a wastewater capacity reservation from one person to another without changing the proposed development is ten dollars ($10.00).

(d) The fee for filing an appeal with the wastewater capacity reservation board shall be two hundred dollars ($200.00).

(e) All fees collected under this section shall be deposited to the same accounts as are revenues received from the sanitary sewer service charges imposed by this chapter and shall be used to pay the administrative costs incurred in processing applications.
(Code 1968, § 49-739; Ord. No. 83-650, § 1, 5-3-83; Ord. No. 84-1673, §5, 10-24-84)

Secs. 47-340—47-350. Reserved.

DIVISION 5. ACCELERATED PROJECTS

Sec. 47-351. Accelerated projects authorized.

(a) In areas served by the system where existing wastewater capacity is insufficient to meet current demand for additional service and such demand is sufficient to support the immediate acquisition or construction of improvements to increase the wastewater capacity of the system, the director is authorized and directed to define accelerated projects, and to provide for the financing thereof by soliciting prepaid capital recovery charges.

(b) In each such case the director shall determine, and publish a notice which states:

(1) A description of the area which will be served by the accelerated project.

(2) The total estimated cost of the accelerated project.

(3) The estimated minimum amount (the "city's minimum share"), in dollars, of the total cost of the accelerated project which will be financed by funds other than those received as prepaid capital recovery charges.

(4) The minimum amount (the "minimum subscription amount"), in dollars, of subscriptions which must be received before the city will commit to proceed with the accelerated project (such minimum amount shall not exceed a sum equal to eighty-five (85) percent of the excess of the total estimated cost of the accelerated project over the city's minimum share).

(5) The maximum amount, in dollars, of subscriptions which will be accepted with regard to the accelerated project.

(6) The time period during which subscriptions will be accepted for the accelerated project (the "subscription period").

(7) The estimated date on which the accelerated project will become operational.
(Code 1968, § 49-751; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-352. Subscriptions to accelerated projects.

(a) In order to subscribe to an accelerated project a subscriber must file a reservation application for a proposed development located within the service area of the facilities constituting the accelerated project and, if the application is approved, must, within the time period prescribed, pay or

security for the payment of the capital recovery charges applicable to the proposed development. The director shall accept subscriptions on a first-come first-served basis in accordance with the date upon which each reservation application is received; provided, however, that subscriptions received for proposed developments which are currently served by private interim wastewater treatment plants will be given precedence over all other subscriptions regardless of the date of application. The director shall accept reservation applications which do not specify a proposed development. The aggregate total of such non-site specific reservation applications may not exceed 15 percent of the minimum subscription amount for the accelerated project.

(b) At the close of the subscription period, the director shall calculate the total dollar amount of subscriptions received and:

(1) If such amount equals or exceeds the minimum subscription amount; or

(2) If the director otherwise determines that the accelerated project should proceed and receives the approval of the city council;

then the director shall issue to each subscriber a wastewater capacity reservation in the amount of wastewater capacity for which application was made, conditioned upon the completion and acceptance of the accelerated project (or conditioned upon the occurrence of such other event in connection with the accelerated project as the director determines will reasonably assure that adequate facilities will be available prior to the initiation of utility service to the proposed developments).

(c) If, at the close of the subscription period, the director determines that less than the minimum subscription amount was received from subscribers and that the accelerated project should be cancelled, then the director shall notify each subscriber to the accelerated project of such cancellation and shall, within 60 days of the close of the subscription period, refund to each subscriber the amount of the capital recovery charges that subscriber has paid, plus interest earned by the city on such fund, if any, or release any security provided by that subscriber in connection with the subscription.

(d) The director shall accept as security for the payment of capital recovery charges, under this section, letters of credit which are:

(1) In the form or forms prescribed by the city attorney;

(2) Issued by a financial institution which meets the qualifications prescribed by the director of the department of finance and administration; and

(3) For the full amount of the applicable capital recovery charges.

In addition to letters of credit, the director may accept other forms of security for the payment of capital recovery charges under this section if the city determines that such forms of security will adequately protect the interests of the city and if such forms of security are specifically identified in the published notice for the accelerated project for which they are to be accepted.
(Code 1968, § 49-752; Ord. No. 83-650, § 1, 5-3-83)

Sec. 47-353. Establishment of project priorities.

Before proceeding with the design and initiation of accelerated projects, the director shall review the current status of the system and its individual facilities, formulate a recommended priority list to be followed in the selection of accelerated projects and submit that list to city council for its approval. In formulating the list the director shall consider:

(a) The current unfulfilled demand for service in each area.

(b) The amenability of existing facilities to expansion and the feasibility of constructing or otherwise acquiring new facilities.

(c) The time required to prepare necessary engineering plans.

(d) The availability of funds to finance the portion of the project which must be financed by revenue bonds, state or federal grant funds or other available funds.

(Code 1968, § 49-753; Ord. No. 83-650, § 1, 5-3-83)

Secs. 47-354—47-380. Reserved.

ARTICLE X. WATER IMPACT FEES

DIVISION 1. GENERAL PROVISIONS

Sec. 47-381. Purpose.

This article is intended to ensure the provision of adequate public facilities to serve new development in the city by requiring each such development to pay its pro rata share of the costs of water capital improvements necessitated by and attributable to such new development.
(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-382. Authority.

This article is adopted pursuant to chapter 395 of the Texas Local Government Code and pursuant to the Houston City Charter. The provisions of this article shall not be construed to limit the power of the city to utilize other methods authorized under state law or pursuant to other city powers to accomplish the purposes set forth herein, either in substitution for or in conjunction with this article.
(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-383. Definitions.

As used in this article, the following terms and phrases shall have the following meanings:

(1) *Assessment* means the determination of the amount of the maximum water impact fee per service unit that may be imposed on new development pursuant to this article, which determination occurs at the time specified in section 47-391.

(2) *Building permit* means:

a. With respect to buildings or premises within the corporate limits of the city, the general permit required by the Construction Code; or

b. With respect to buildings or premises outside the corporate limits of the city or for which a general permit under the Construction Code is not required, a plumbing permit under the Construction Code or under section 47-14 of this chapter.

(3) *City-constructed water facility* means a water facility paid for wholly or partially by the city, a water facility that has been acquired by the city upon assumption of obligations or debts for the construction costs thereof or by operation of law, a water facility paid for by any other person, firm, corporation or governmental subdivision that has been purchased or otherwise acquired by the city and water facilities paid for partly by the city and partly by others when connection thereto is to be made from property to be served thereby and the owners of such property did not contribute their proportionate share of the cost for the intended land use.

(4) *Credit* means the amount determined under this article by which a water impact fee is reduced as the result of a payment of a connection charge for city-constructed water facilities imposed pursuant city ordinances referenced in section 47-42 or payment of equivalent charges to a district providing such facilities within the city's water benefit area, prior to June 20, 1990. Credit shall not include payment of a connection fee prior to June 20, 1990, or a payment of charges that are imposed to reimburse a property owner for the cost of extending a water main.

(5) *Reserved.*

(6) *Final plat recordation* means the filing of the final plat with the county clerk in the county in which the property platted is located, following compliance with all conditions for plat approval pursuant to chapter 42 of this Code.

(7) *Improved lot* means a lot on a tract of land on which there is located a complete permanent building capable of being occupied as a dwelling place or place of business.

(8) *Land use equivalency table* means the table approved by city council converting utilization of water capacity required by various land uses to numbers of service units.

(9) *New development* means a project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which has the effect of increasing the requirement for water capital improvements, measured by the number of service units to be generated by such activity, and that requires either the approval of a plat pursuant to the city's subdivision regulations, the issuance of a building permit, or connection to the city's water system and which has not been exempted from compliance with these regulations by provisions herein.

(10) *Offset* means the amount of the reduction of a water impact fee, determined under this article or pursuant to administrative guidelines, that is equal to the value of a water facility or portion thereof included in the water capital improvements plan, that is constructed or financed by a property owner.

(11) *Plat* means the plan or map for the subdivision to be filed for record with the county clerk in the county in which the property is located. Plat includes replat, but excludes development plat.

(12) *Property owner* means the owner in fee of a tract or parcel of land upon which new development is to be located, or his authorized representative.

(13) *Service unit* means a standardized measure of consumption of treated water system capacity which is equal to the average flow rate for a single-family dwelling unit in the Houston area.

(14) *Water benefit area* means the area within the city and the city's extraterritorial jurisdiction within which water impact fees for water capital improvements will be collected for new development occurring within such area and within which fees so collected will be expended for those improvements identified in the water capital improvements plan applicable to the benefit area.

(15) *Water capital improvement* means a water facility with a life expectancy of three or more years, to be owned or operated by or on behalf of the city.

(16) *Water capital improvements plan* means the plan adopted by city council, as may be amended from time to time, that identifies the water facilities and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed ten years, and which are to be financed in whole or in part through the imposition of water impact fees pursuant to this article.

(17) *Water connection* means authorization to connect a new development to the city's treated water system.

(18) *Water facility* means a facility designed or utilized for the purpose of producing, collecting, supplying, storing, pumping or conveying water, including an existing facility, the capacity of which has been expanded to service new development. "Water facility" includes land, easements or structures and all appurtenances associated with such facilities. "Water facility" excludes those water lines or mains or portions thereof that are constructed by property owners, the costs of which are reimbursed from charges paid by subsequent users of the facilities.

(19) *Water impact fee* means a fee established by the city council for water facilities imposed on new development pursuant to this article in order to generate revenue to fund or recoup the costs of capital improvements necessitated by and attributable to such new development. Water impact fees do not include requirements for the dedication of rights-of-way or easements for such facilities, or for the construction of such improvements. Water impact fees also do not include payment of connection charges by persons receiving service from a water main, which charges are imposed to reimburse a property owner for the costs of extending such main.

(Ord. No. 90-676, § 1, 6-6-90; Ord. No. 93-514, § 128, 5-5-93; Ord. No. 02-399, § 93, 5-15-02)

Sec. 47-384. Water impact fees, in general.

(a) Except as otherwise provided herein, each new development within the city's water benefit area shall pay a water impact fee for water facilities necessitated by and attributable to that development as provided in division 2 of this article. Water impact fees shall be assessed against and collected from new development on the basis of service units. The water benefit area is established by the city council and may be amended from time to time.

(b) The maximum water impact fee per service unit that is assessed against new developments is established as $2,121.89 per service unit, and the water impact fee that shall be collected from new development is $300.93 per service unit. On July 1 of each year beginning in 2006, the water impact fee shall be adjusted based on the percentage change (if any) in the designated index for the preceding calendar year, but shall never exceed the maximum water impact fee established herein. The director shall annually calculate the effective water impact fee and make it available in his office upon request for public inspection.

For purposes of this subsection, the term designated index shall mean the United States Consumer Price Index for all Urban Consumers for the Houston-Galveston-Brazoria, Texas Metropolitan Area (1982-1984=100), as published by the Bureau of Labor Statistics, U.S. Department of Labor. If such index is subject to adjustment later, then the city shall use the adjusted index, together with any correlation factor necessary to relate the later adjusted index to the earlier index, as published by the entity publishing the index, or if such publication is discontinued, the designated index shall then refer to comparable statistics on changes in the cost of living for urban consumers as the same may be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority, which agency or periodical shall be selected by the city.

(c) This city council may amend water impact fees to be collected from new developments without amending the water capital improvements plan adopted herein, as long as the impact fees to be collected do not exceed the maximum water impact fees per service unit that may be assessed for such facilities.

(Ord. No. 90-676, § 1, 6-6-90; Ord. No. 00-497, § 5, 6-14-00; Ord. No. 02-517, § 3, 6-26-02; Ord. No. 05-958, § 2, 8-24-05)

Editor's note—Ordinance No. 05-958, passed August 24, 2005, requires the annual adjustment of water impact fees as provided in Section 47-384. The adjusted water impact fee beginning July 1, 2006, is $311.76 per service unit.

Sec. 47-385. Replacement of existing charges.

On and after June 20, 1990, the provisions of this article relating to the assessment and collection of water impact fees, replace and supersede those provisions for payment of connection charges for city-constructed water facilities which had been established pursuant to city ordinances referenced in section 47-42.

(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-386. Connection of existing development.

If any owner of existing development within the water benefit area requests to be connected to the city's water system, and the department agrees to extend a water main to serve the development, the property owner shall pay a fee equivalent to that prescribed by and computed according to section 47-393 prior to connection to such system; provided, however, that an existing development so connected is entitled to a credit against the fee equal to the charge for one service unit.

(Ord. No. 90-676, § 1, 6-6-90)

Secs. 47-387—47-390. Reserved.

DIVISION 2. ASSESSMENT, COLLECTION AND COMPUTATION OF WATER IMPACT FEES

Sec. 47-391. Assessment of fees.

Assessment of water impact fees against new development shall be based on the maximum water impact fee per service unit, established by the city council. The time of assessment depends

upon the time the development was platted pursuant to the city's subdivision regulations. Assessment shall take place as follows:

(1) For new developments that require platting prior to development and that have not received final plat recordation prior to June 20, 1990, assessment shall occur at the time of recordation of the final plat.

(2) For all other new development, assessment shall occur at the time of application for a building permit or at the time of water connection, whichever occurs first.

(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-392. Time of fee collection.

Water impact fees shall be collected at the time of issuance of building permits. In the event that a building permit is not required prior to development, collection shall be at the time of water connection.

(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-393. Computation of fees.

The department shall compute the water impact fees in the following manner:

(1) Except as otherwise provided in this section, the amount of the water impact fee due shall be determined by multiplying the number of service units generated by the new development by the water impact fee per service unit then in effect.

(2) Development of low and moderate cost single family housing is exempt from payment of impact fees. In order to qualify for this exemption, the house must be a sin-

gle family residence located within city limits having an initial purchase price as certified by the property owner that does not exceed the latest available 12-month listing for median price single family housing in the city as published by the Real Estate Center at Texas A&M University. In the event the initial purchase price exceeds this amount, the property owner making the certification shall pay to the city the full amount of the impact fee as calculated under this section. If publication of the median price for single family housing is discontinued by the Real Estate Center at the Texas A & M University, the mayor is authorized to select another publication that lists the median price of single family houses in the city.

(3) In the event that the new development involves the razing or removing of existing structures, the water capacity utilized by such use or structure shall be converted to service units using the land use equivalency table. If the water service required for the new development exceeds such reserved capacity, the service units equivalent to the previously utilized capacity shall be subtracted from the total number of service units attributable to the new development, and the amount of the water impact fee due shall be the number of additional service units multiplied by the water impact fee per service unit then in effect.

(4) The amount of each water impact fee due shall be reduced by any allowable credits in the manner provided in section 47-394 of this Code.

(5) The amount of each water impact fee due for a new development shall not exceed an amount computed by multiplying the maximum water impact fee per service unit in effect at the time the new development was assessed by the number of service units generated by the development.

(6) If the property owner proposes to increase the number of service units for development following payment of the water impact fee, the additional water impact fees collected for such new service units shall be determined in the same manner as provided in this section.

(Ord. No. 90-676, § 1, 6-6-90; Ord. No. 90-717, § 1, 6-20-90; Ord. No. 97-442, § 3, 4-23-97)

Sec. 47-394. Determination of service units.

The number of service units attributable to a new development shall be determined by using the land use equivalency table established by the city council, which may be amended from time to time.

(Ord. No. 90-676, § 1, 6-6-90; Ord. No. 90-717, § 1, 6-20-90)

Sec. 47-395. Credits and/or offsets against water impact fees.

(a) A property owner who has paid a connection charge pursuant to city ordinances referenced in section 47-42 prior to June 20, 1990 for a city-constructed water facility, or who has paid an equivalent charge for a facility included in the water capital improvements plan to a district created under authority of article III, section 52, or article XVI, section 59 of the Texas Constitution, for which no reimbursement was received, may reduce the water impact fee due for the lot or tract for which the fee was paid by a like amount.

(b) A property owner who constructs or finances a water facility included in the water capital improvements plan pursuant to a development agreement approved by the city on or after June 20, 1990 may offset the value of such improvement against the water impact fee due from the development. The offset shall be associated with the plat of the property that is to be served by the water facility constructed or financed. The amount of the offset shall be determined pursuant to rules established in this section and administrative guidelines promulgated by the director. The city may also agree to offset the value of a water facility to be constructed or financed by the property owner, which has not been included in the water capital improvements plan, against water impact fees if it is reasonably anticipated that the facility shall be included within the next revision to such plan. In no event

shall the offset allowable under this subsection exceed the amount of the water impact fees due, and no property owner shall be entitled to reimbursement for such excess amount unless the city otherwise agrees.

(c) The development agreement required by subsection (b) may provide for participation by the city in the costs of oversizing the water facility to be constructed or financed by the property owner, or may provide for reimbursement according to the terms of the agreement. The amount of any offset shall be reduced by the amount of the city's participation, or provision for reimbursement.

(d) A credit or offset associated with a plat shall be applied against a water impact fee due at the time that the first fee for the new development is collected, and thereafter to all subsequently collected fees, until the credit or offset is exhausted.
(Ord. No. 90-676, § 1, 6-6-90; Ord. No. 90-717, § 1, 6-20-90)

Secs. 47-396—47-400. Reserved.

DIVISION 3. ADMINISTRATION

Sec. 47-401. Accounting.

(a) All water impact fees collected within the water benefit area shall be deposited in a dedicated fund to which interest is allocated. All such amounts, together with all interest earned thereon, shall be used solely for the purposes set forth in subsection (b).

(b) The water impact fees collected pursuant to this article shall be used to finance or recoup the costs of any capital improvements identified in the water capital improvements plan for the water benefit area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees) and fees paid to an independent qualified engineer or financial consultant preparing or updating the water capital improvements plan. Water impact 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 the city to finance such capital improvements.

(c) Disbursement of funds shall be authorized by the department at such times as are reasonably necessary to carry out the purposes intended by this article; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed then ten years from the date water impact fees are deposited in the fund.

(d) An owner of property for which a water impact fee has been paid is entitled to a refund for all or a portion of the fee in the following circumstances:

(1) Upon application, any water impact fee or portion thereof collected pursuant to this article, that has not been expended within the water benefit area within ten years from the date of payment, shall be refunded to the record owner of the property for which the water impact fee was paid together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in article 5069-1.03, of the Texas Revised Civil Statutes Annotated, or its successor statute. A water impact fee shall be considered expended on a first-in, first-out basis. A water impact fee shall also be considered expended if the total expenditure for water facilities included in the water capital improvements plan, as may be amended from time to time, within the water benefit area within ten years following the date of payment, exceeds the water impact fees collected within the benefit area during such period.

(2) If a refund is due pursuant to paragraph (1), the department shall divide the difference between the amount of expenditures and the amount of the fees collected by the total number of service units for which water impact fees have been paid within the benefit area for the period to determine the refund due per service unit. The refund to the owner shall be calculated by:

a. Multiplying the refund due per service unit by the number of service units of the development for which the fee was paid; and

b. Determining interest due based on the amount calculated under subsection (d)(3)a.

(e) The department shall establish adequate financial and accounting controls to ensure that water impact fees disbursed from the fund are utilized solely for the purposes authorized. The department shall maintain and keep financial records for water impact fees, that shall show the source and disbursement of all fees collected in or expended within the water benefit area. The records of the fund into which water impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

(f) Nothing in this article shall prevent the city from paying all or part of the water impact fees due for a new development pursuant to criteria adopted by the city council.
(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-402. Impact fee appeals.

(a) The property owner or applicant for a new development may appeal the following administrative decisions to an administrative hearing official appointed by the director:

(1) The applicability of a water impact fee to the development;

(2) The amount of the water impact fee due;

(3) Classification of the development under the land use equivalency table;

(4) The applicability of the credit or an offset to the development;

(5) The amount of a credit or of an offset; or

(6) The amount of a refund due, if any.

(b) The burden of proof shall be upon the applicant to demonstrate that the administrative decision was not made in accordance with this article or applicable state law.

(c) The applicant shall file a written notice of appeal with the director within 30 days following the date of the decision from which an appeal is made. If the notice of appeal is accompanied by a payment or other sufficient security satisfactory to the department in an amount equal to the original determination of the water impact fee due, the development application may be processed while the appeal is pending. Each appeal must include a processing fee equal to $200.00.
(Ord. No. 90-676, § 1, 6-6-90)

Sec. 47-403. Relief procedures.

(a) Any person who has paid a water impact fee, or an owner of land for which a water impact fee has been paid, may petition the city council to determine whether any duty required by this article or by chapter 395 of the Texas Local Government Code has not been performed within the time so prescribed. The petition shall be in writing and shall state the nature of the unperformed duties and request that the duties be performed within 60 days of the request. If the city council determines that the duty is required pursuant to this article and is late in being performed, it shall cause the duty to commence within 60 days of the date of the request and to continue until completion. This subsection shall not apply to matters subject to appeal pursuant to section 47-402.

(b) The city council may grant a variance from any requirement of this article, upon written request by the property owner subject to the article, following a public hearing, and only upon finding that a strict application of such requirement would, when regarded as a whole, result in confiscation of the property.

(c) If the city council grants a variance to the amount of the water impact fee due for a new development under this section, it shall cause to be appropriated from other city funds the amount of the reduction in the water impact fee to the fund for the water benefit area in which the property is located.
(Ord. No. 90-676, § 1, 6-6-90)

Secs. 47-404—47-410. Reserved.