

ORDINANCE NO. 2008 - 09

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF PORT ARANSAS, TEXAS, BY ADOPTING A NEW CHAPTER TWENTY-SIX CONCERNING IMPACT FEES FOR ROADWAY FACILITIES; INCORPORATING LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENT PLANS FOR SUCH FACILITIES; ESTABLISHING SERVICE AREAS FOR SUCH FACILITIES; PROVIDING DEFINITIONS; PROVIDING FOR COLLECTION AND ASSESSMENT OF IMPACT FEES; PROVIDING FOR CREDITS AGAINST IMPACT FEES; PROVIDING FOR ESTABLISHMENT OF ACCOUNTS FOR IMPACT FEES AND USE OF PROCEEDS OF SUCH ACCOUNTS; PROVIDING FOR APPEALS, RELIEF PROCEDURES AND EXEMPTIONS; PROVIDING FOR REFUNDS; PROVIDING FOR UPDATES TO PLANS AND REVISION OF FEES; PROVIDING FOR AGREEMENTS FOR CAPITAL IMPROVEMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REMEDIES; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1987 the Texas Legislature adopted Senate Bill 336, subsequently amended and adopted as Chapter 395 of the Local Government Code authorizing impact fees for roadway facilities; and

WHEREAS, the City Council for the City of PORT ARANSAS previously has approved land use assumptions and capital improvements plans for purposes of adopting roadway impact fees by resolution; and

WHEREAS, the City of PORT ARANSAS has appointed a Capital Improvements Advisory Committee to advise the City Council concerning the land use assumptions, impact fee capital improvements plans and impact fees for roadway facilities; and

WHEREAS, this ordinance is intended to and satisfies the statutory requirements for adoption of impact fees; and

WHEREAS, the City Council finds that in all things the City has complied with Chapter 395 of the Texas Local Government Code in the notice, adoption, promulgation and methodology necessary to adopt impact fees; and

WHEREAS, the City Council further finds that exempting certain subsidized housing from the payment of impact fees advances the goal of creating affordable housing opportunities for the citizens of PORT ARANSAS; and

WHEREAS, the City Council further finds that the adoption of impact fees and the periodic updates and amendments to the adopted ordinance are intended to assure the availability of adequate roadway facilities in order to serve new development consistent with the policies in the City's Comprehensive Plan.

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

ORDINANCE

PART 1

That the Code of Ordinances, City of PORT ARANSAS, Texas, hereby is amended by adding a new chapter 26 entitled "Impact Fees", to read as follows:

Chapter 26

IMPACT FEES

Article I. General Provisions

SECTION 26-1. Short Title

This Chapter shall be known and cited as the PORT ARANSAS Impact Fee Regulations.

SECTION 26-2. Purpose

This Chapter is intended to assure the provision of adequate public facilities to serve new development in the City by requiring each development to pay its share of the costs of such improvements necessitated by and attributable to such new development.

SECTION 26-3. Authority

This Chapter is adopted pursuant to Texas Local Government Code Chapter 395 and the PORT ARANSAS City Charter. The provisions of this Chapter 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 or in conjunction with this Chapter. Guidelines may be developed by ordinance, resolution, or otherwise to implement and administer this Chapter.

SECTION 26-4. Definitions

- A. 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 Chapter.

- B. Capital improvement means a roadway facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the City.

- C. Capital Improvements Advisory Committee means the City's Planning and Zoning commission, together with such ad hoc representatives as may be appointed from time to time, to fulfill the composition mandated by Tex. Loc. Government Code Sec. 395.058.

- D. City means the City of PORT ARANSAS, Texas.

- E. Credit means the amount of the reduction of an impact fee for fees, payments or charges for the same type of capital improvements for which the fee has been assessed.
- F. Facilities expansion means a roadway facility expansion.
- G. Final plat approval or approval of a final plat means the point at which the applicant has complied with all conditions of approval and the plat has been released for filing with Nueces County.
- H. Impact fee means a fee for roadway imposed on new development by the City pursuant to this Chapter in order to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to such new development. Impact fees do not include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements, imposed pursuant to the City's zoning or subdivision regulations.
- I. Impact fee capital improvements plan means a roadway capital improvements plan adopted or revised pursuant to these impact fee regulations.
- J. Land use assumptions means the projections of population and employment growth and associated changes in land uses, densities and intensities adopted by the City, as may be amended from time to time, upon which the impact fee capital improvements plans are based.

- K. Land use equivalency table means a table converting the demands for capital improvements generated by various land uses to numbers of service units, as may be amended from time to time, which table is attached hereto and incorporated by reference herein as Exhibit 1.
- L. 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 land, which has the effect of increasing the requirements for capital improvements or facility expansions, measured by the number of service units to be generated by such activity, and which requires either the approval and filing with Nueces County of a plat pursuant to the City's subdivision regulations, the issuance of a building permit, and which has not been exempted from these regulations by provisions herein.
- M. Plat has the meaning given the term in the City's subdivision regulations. Plat includes replat.
- N. Property owner means any person, corporation, legal entity or agent thereof having a legal or equitable interest in the land for which an impact fee becomes due. Property owner includes the developer for the new development.
- O. Recoupment means the imposition of an impact fee to reimburse the City for capital improvements which the City has previously oversized to serve new development.

- P. Roadway means any freeway, expressway, principal or minor arterial or collector roadways designated in the City's adopted Thoroughfare Plan, as may be amended from time to time. Roadway also includes any roadway designated as a numbered highway on the official federal or Texas highway system, to the extent that the City incurs capital improvement costs for such facility.
- Q. Roadway facility means an improvement or appurtenance to a roadway which includes, but is not limited to, rights-of-way, whether conveyed by deed or easement; intersection improvements; traffic signals; turn lanes; drainage facilities associated with the roadway; street lighting or curbs. Roadway facility also includes any improvement or appurtenance to an intersection with a roadway officially enumerated in the federal or Texas highway system, and to any improvements or appurtenances to such federal or Texas highway, to the extent that the City has incurred capital costs for such facilities, including without limitation local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances and rights-of-way. Roadway facility excludes those improvements or appurtenances to any roadway which is a site-related facility.
- R. Roadway facility expansion means the expansion of the capacity of an existing roadway in the City, but does not include the repair, maintenance, modernization, or expansion of an existing roadway to better serve existing development.
- S. Roadway improvements plan means the adopted plan, as may be amended from time to time, which identifies the roadway facilities or roadway expansions and their costs

for each road service area, which are necessitated by and which are attributable to new development, for a period not to exceed 10 years, which are to be financed in whole or in part through the imposition of road facilities fees pursuant to this Chapter.

- T. Service area means a roadway service area within the City within which impact fees for capital improvements or facility expansion may be collected for new development occurring within such area and within which fees so collected will be expended for those types of improvements or expansions identified in the type of capital improvements plan applicable to the service area.

- U. Service unit means a unit equivalent which serves as the standardized measure of consumption, use or generation attributable to the new unit of development; for roadway facilities, service unit means a vehicle.

- V. Site-related facility means an improvement or facility which is for the primary use or benefit of a new development and which is not included in the impact fees capital improvements plan and for which the developer or property owner is solely responsible under subdivision or other applicable regulations.

- W. System facility means a capital improvement or facility expansion which is designated in the impact fee capital improvements plan and which is not a site-related facility. System facility may include a capital improvement which is located offsite, or within or on the perimeter of the development site.

SECTION 26-5. Applicability

The provisions of this Chapter concerning roadway impact fees apply to all new, non-exempt development within the corporate boundaries of the City. The provisions of this Chapter apply uniformly within each service area.

SECTION 26-6. Impact Fees Per Service Unit

A. Maximum impact fees per service unit for each service area shall be established by category of capital improvements. The maximum impact fee per service unit for each service area for each category of capital improvement shall be computed in the following manner:

- (1) Calculate the total projected costs of capital improvements necessitated by and attributable to new development in the service area identified in the impact fee capital improvements plan for each category of capital improvements;
- (2) From such amount, subtract a credit equal to 50 percent of the such total projected costs; and
- (3) Divide the resultant amount by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area.

- B. As an alternative to the fifty percent (50%) credit referenced in subsection (A)(2), the City may incorporate within the capital improvements plan for any category of capital improvements a discount against the total costs of capital improvements, in the amount of that portion of ad valorem tax, if any, including the payment of debt, to be generated by new service units during the period the capital improvements plan is in effect, including the payment of debt, associated with the capital improvements in the plan.
- C. The impact fee per service unit which is to be paid by each new development within a service area shall be that established by ordinance by the City Council, as such may be amended from time to time, and shall be an amount less than or equal to the maximum impact fee per service unit established in subsection A.
- D. The amount of the impact fees to be assessed by vehicle mile shall be as set forth in Schedule 1, attached hereto and made a part of this Chapter by reference. The amount of the Impact fees which are to be paid by vehicle mile shall be as set forth in Schedule 2 attached hereto and made a part of this Chapter by reference. Impact fee Schedules 1 and 2 may be amended from time to time utilizing the amendment procedure set forth in Section 26-15.
- E. The maximum impact fee per service unit for a category of capital improvements set forth in Schedule 1, as may be amended from time to time, hereby is declared to be an approximate and appropriate measure of the impacts generated by one new unit of development on the City's capital improvements system for that category of capital improvements. To the extent that the impact fee charged against a new development

under Schedule 2, as may be amended from time to time, is less than the maximum impact fee per service unit in Schedule 1, such difference hereby is declared to be founded on policies unrelated to measurement of the impacts of the new development on the City's capital improvements system. The Schedule 1 impact fee rate may be used in assessing any claim by a property owner that the dedication or construction of a capital improvement imposed as a condition of development approval pursuant to the City's subdivision or development regulations is disproportionate to the impact created by the development on the City's capital improvements system for the same type of capital facility.

SECTION 26-7. Assessment of Impact Fees

A. Assessment of the impact fee for any new development shall be made as follows:

- (1) For land which is unplatted at the time of application for a building permit, or for a new development which received final plat approval prior to the effective date of this ordinance, and for which no replatting is necessary pursuant to the City's subdivision regulations prior to development, assessment of impact fees shall occur at the time application is made for the building permit, whichever first occurs, and shall be the amount of the maximum impact fee per service unit as set forth in Schedule 1 then in effect.
- (2) For a new development which is submitted for approval pursuant to the City's subdivision regulations on or after the effective date of this ordinance, or for which replatting results in an increase in the number of service units after

such date, assessment of impact fees shall be at the time of final plat approval, and shall be the amount of the maximum impact fee per service unit as set forth in Schedule 1 then in effect.

- B. Following assessment of the impact fee pursuant to subsection (A), the amount of the impact fee assessment per service unit for that development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or other development application that results in approval of additional service units, in which case a new assessment shall occur at the Schedule 1 rate then in effect for such additional service units.
- C. Following the vacating of any plat or submittal of any replat, a new assessment must be made in accordance with (A)(2) above.
- D. Approval of an amending plat pursuant to Tex. Loc. Gov. Code, Section 212.016 and the City's subdivision regulations is not subject to reassessment for an impact fee.

SECTION 26-8. Payment and Collection of Impact Fees.

- A. Impact fees shall be collected at the time the City issues a building permit for land within the corporate limits.
- B. The impact fees to be paid and collected by vehicle mile shall be the amount listed in Schedule 2. The City may enter into an agreement with a developer for a different

time and manner of payment of impact fees, in which case the agreement shall determine the time and manner of payment.

C. The City shall compute the impact fees for the new development in the following manner:

(1) The amount of each impact fee shall be determined by multiplying the number of service units generated by the new development by the impact fee per service unit for the service area using Schedule 2. The number of service units shall be determined by using the land equivalency table (Exhibit 1).

(2) The amount of each impact fee shall be reduced by any allowable offsets or credits for that category of capital improvements, in the manner provided in Section 26-9.

(3) The total amount of the impact fees for the new development shall be calculated and attached to the development application or request for connection as a condition of approval.

D. The amount of each impact fee for a new development shall not exceed an amount computed by multiplying the fee assessed per service unit pursuant to Section 8 by the number of service units generated by the development.

E. If the building permit for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees shall be computed using Schedule 2

then in effect, with credits for previous payment of fees being applied against the new fees due.

- F. Whenever the property owner proposes to increase the number of service units for a development, the additional impact fees collected for such new service units shall be determined by using Schedule 2 then in effect, and such additional fee shall be collected at the times prescribed by this section.

- G. Notwithstanding any other provision of this section, no impact fee may be collected for a new development which was finally platted prior to the effective date of these regulations and for which a building permit was issued prior to such effective date or within one year thereof; provided that if a building permit expires or is withdrawn for such new development and a new building permit is not issued prior to one year from the effective date of these regulations such new development shall thereafter be subject to collection of impact fees in accordance with this section.

SECTION 26- 9. Credits Against Impact Fees.

- A. The City shall credit the present value of any system facility, pursuant to rules established in this section or pursuant to administrative guidelines promulgated by the City, which has been dedicated or contributed to and received by the City, including the value of rights-of-ways or capital improvements constructed pursuant to an agreement with the City, against the amount of the impact fee due for that category of capital improvement. The credit shall be associated with the plat of the property that is to be served by the capital improvement constructed.

B. All credits against impact fees shall be based upon standards promulgated by the City, which may be adopted as administrative guidelines, including the following standards:

- (1) No credit shall be given for the dedication or construction of site-related facilities.
- (2) No credit shall exceed an amount equal to the eligible costs of the improvement multiplied by a fraction, the numerator of which is the impact fee per service unit due for the new development as computed using schedule 2 and the denominator of which is the maximum impact fee per service unit for the new development as computed using Schedule 1.
- (3) The unit costs used to calculate credits shall not exceed those assumed for the capital improvements included in the impact fees capital improvements plan for the category of facility for which the impact fee is imposed.
- (4) No credit shall be given for an oversized facility which is not identified within the applicable impact fees capital improvements plan, unless the City agrees that such improvement supplies capacity to new developments other than the development paying the impact fee and provisions for offsets or credits are incorporated in an agreement for capital improvements pursuant to section 26-17.

- (5) In no event will the City reimburse the property owner or developer for a credit when no impact fees for the new development can be collected pursuant to these impact fee regulations or for any amount exceeding the total impact fees due for the development for that category of capital improvements, unless expressly agreed to by the City in writing.
- (6) Credits for system facilities dedicated to and accepted by the City for a development prior to the effective date of this ordinance shall be prorated among the total number of service units within such development and reduced by an amount equivalent to the number of existing service units within such development and shall be further reduced by the amount of any participation funds received from the City and by any payments received from other developments who utilize the system facility.
- (7) The City may participate in the costs of a system improvement to be dedicated to the City, including costs that exceed the amount of the impact fees due for the development under Schedule 1 for that category of capital improvements, in accordance with policies and rules established under the City's subdivision regulations.

C. Credits created after the effective date of this ordinance shall expire within 10 years from the date the credit was created. Credits arising prior to such effective date shall expire ten years from such effective date.

- D. Unless an agreement for capital improvements is executed providing for a different manner of crediting impact fees due, a credit associated with a plat shall be applied to reduce an impact fee at the time of application for the first building permit, and, thereafter, to reduce impact fees subsequently to be collected, until the credit is exhausted.

SECTION 26-10. Establishment of Accounts

- A. The City's Finance Department shall establish an account to which interest is allocated for each service area for each category of capital facility for which an Impact Fee is imposed pursuant to this Chapter. Each impact fee collected within the service area shall be deposited in such account.
- B. Interest earned on the account into which the impact fees are deposited shall be considered funds of the account and shall be used solely for the purposes authorized in Section 26-11.
- C. The City's Finance Department shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in Section 26-11. Disbursement of funds shall be authorized by the City at such times are reasonably necessary to carry out the purposes and intent of this Chapter; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date the fee is deposited into the account.

- D. The City's Finance Department shall maintain and keep financial records for impact fees, which shall show the source and disbursement of all fees collected in or expended from each service area. The records of the account into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours. The City may establish a fee for copying services.

- E. The Finance Department shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.

SECTION 26-11. Use of Proceeds of Impact Fee Accounts

- A. The impact fees collected for each service area pursuant to these regulations may be used to finance or to recoup the costs of any capital improvements or facility expansion identified in the applicable capital improvements plan for the service area, including but not limited to the construction contract price, surveying and engineering fees, land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees). 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 or facility expansions. Impact fees also may be used to pay fees actually contracted to be paid to an independent qualified engineer or financial consultant for preparation of or updating the impact fee capital improvements plan.

B. Impact fees collected pursuant to this ordinance shall not be used to pay for any of the following expenses:

- (1) construction, acquisition or expansion of capital improvements or assets other than those identified in the applicable capital improvements plan;
- (2) repair, operation, or maintenance of existing or new capital improvements or facility expansion;
- (3) upgrade, expansion or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (4) upgrade, expansion, or replacement of existing capital improvements to provide better service to existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or
- (5) administrative and operating costs of the City.

SECTION 26-12. Appeals

A. The property owner or applicant for new development may appeal the following administrative decisions to the City Council:

- (1) the applicability of an impact fee to the development;
- (2) the amount of the impact fee due;
- (3) the availability of, the amount of, or the expiration of an offset or credit;
- (4) the application of an offset or credit against an impact fee due;
- (5) the amount of the impact fee in proportion to the benefit received by the new development; or
- (6) the amount of a refund due, if any.

B. The burden of proof shall be on the appellant to demonstrate that the amount of the fee or the amount of the offset or credit was not calculated according to the applicable schedule of impact fees or the guidelines established for determining offsets or credits.

C. The appellant must file a written notice of appeal with the City within thirty (30) days following the decision. If the notice of appeal is accompanied by a payment or other security satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal is pending.

SECTION 26-13. Refunds

- A. Upon application, any impact fee or portion thereof collected pursuant to these regulations, which has not been expended within the service 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 or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Chapter 1.03, Title 79, Revised Statutes (Chapter 5069-1.03, Vernon's Texas Civil Statutes), or its successor statute. The application for refund pursuant to this section shall be submitted within sixty (60) days after the expiration of the ten-year period for expenditure of the fee. An impact fee shall be considered expended on a first-in, first out basis.
- B. An impact fee collected pursuant to these regulations shall also be considered expended if the total expenditures for capital improvements or facility expansion authorized in Section 11 within the service area within ten (10) years following the date of payment exceeds the total fees collected within the service area for such improvements or expansions during such period.
- C. Reserved.
- D. If a refund is due pursuant to subsections A, B or C, the City shall divide the difference between the amount of expenditures and the amount of the fees collected by the total number of service units assumed within the service area for the period to determine the refund due per service unit. The refund to the record owner shall be

calculated by multiplying the refund due per service unit by the number of service units for the development for which the fee was paid, and interest due shall be calculated upon that amount.

SECTION 26-14. Rebates

- A. If a tract of land for which an impact fee has been paid is replatted, resulting in a reduction in the number of service units, and the new impact fee to be collected is less than that paid, the City shall rebate the difference.

- B. If the building permit for a new development for which an impact fee has been paid has expired, and a modified or new application has not been filed within six months of such expiration, the City shall, upon written application, rebate the amount of the impact fee to the record owner of the property for which the impact fee was paid. If no application for rebate pursuant to this subsection has been filed within this period, no rebate shall become due.

SECTION 26-15. Updates to Plans and Revision of Fees

- A. The City shall update its land use assumptions and capital improvements plans at least every five (5) years, commencing from the date of adoption of such plans, and shall recalculate the impact fees based thereon in accordance with the procedures set forth in Texas Local Gov't Code, Ch. 395, or in any successor statute.

- B. The City may review its land use assumptions, impact fees, capital improvements plans and other factors such as market conditions more frequently than provided in subsection (a) to determine whether the land use assumptions and capital improvements plans should be updated and the impact fee recalculated accordingly, or whether Schedules 1 or 2 should be changed. Schedule 2 may be amended without revising land use assumptions and capital improvements plans at any time prior to the update provided for in subsection (a), provided that the impact fees to be collected under Schedule 2 do not exceed the impact fees assessed under Schedule 1.

- C. If, at the time an update is required pursuant to subsection (a), the City Council determines that no change to the land use assumptions, capital improvements plan or impact fee is needed, it may dispense with such update by following the procedures in Texas Local Gov't Code, section 395.0575.

- D. The City may amend by resolution the land use equivalency table (Exhibit 1) at any time prior to the update provided for in subsection A; provided that the number of service units associated with a particular land use shall not be increased.

SECTION 26-16. Functions of Capital Improvements Advisory Committee

- A. The Capital Improvements Advisory Committee shall perform the following functions:
 - (1) advise and assist the City in adopting land use assumptions;

- (2) review the capital improvements plans and file written comments on impact fees;
 - (3) monitor and evaluate implementation of the capital improvements plans;
 - (4) advise the City of the need to update or revise the land use assumptions, capital improvements plans and impact fees; and
 - (5) file a semiannual report evaluating the progress of the capital improvements plans and identifying perceived inequities in implementing the plans or administering the impact fees.
- B. The City shall make available to the Capital Improvements Advisory Committee any professional reports prepared in the development or implementation of the capital improvements plans.
- C. The City Council shall adopt procedural rules for the Capital Improvements Advisory Committee to follow in carrying out its duties.

SECTION 26-17. Agreement for Capital Improvements

- A. An owner of a new development may construct or finance a capital improvement or facility expansion designated in the impact fee capital improvements plan, if required or authorized by the City, by entering into an agreement with the City prior to the issuance of any building permit for the development. The agreement shall identify

the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to City standards and such other terms and conditions as deemed necessary by the City. The agreement shall provide for the method to be used to determine the amount of the offset or credit to be given against impact fees due for the development.

- B. The City and such owner either may agree that the costs incurred or funds advanced will be offset or credited against the impact fees otherwise due from the new development, or they may agree that the City shall reimburse the owner for such costs from impact fees paid from other new developments which will use such capital improvements or facility expansions, or from other funding sources. In the event that the City elects to reimburse an owner for the dedication, construction or financing of a capital improvement or facility expansion designated in the capital improvements plan, the terms of reimbursement shall be incorporated in the agreement required by subsection (A). Reimbursement agreements shall further be based on the availability of City funds from all sources including current and projected impact fee fund accounts.

SECTION 26-18. Waivers and Exemptions

- A. An impact fee that is imposed pursuant to Schedule 2 of this ordinance and which otherwise may be collected from a new development pursuant to Section 26-8, hereby is waived for a period of one year from the effective date of these regulations; provided that a building permit for such new development is issued within such

period and the building permit remains in effect throughout the period. The waiver contained in this section is for collection of fees only, and shall not be interpreted to waive assessment of impact fees pursuant to section 26-7 of this chapter or collection of impact fees for any new development for which building permits are issued after one year from the effective date of these regulations.

B. Any new development that is funded in whole or in part by the Office of Rural Community Affairs Housing Infrastructure Fund hereby is exempted from payment of impact fees.

C. Exemptions for tear-down and rebuild of buildings.

1. Business.

a. An owner of land upon which is located a building housing a business: (i) if he tears down the building and constructs a new building in its place on the same or on other land owned by him, or (ii) if he partially demolishes his building and rebuilds it on the same land, or (iii) if he closes his business in the old building and moves the business to another building located on land owned by him upon which other building he performs construction work for which impact fees may be assessed; will be exempt from impact fees on the new construction if:

(1) he files written notice with and on a form approved by the City of his election to exempt the new construction before a building permit is

issued for the new construction.

(2) the same use is continued in the new building as in the old building;
and

(3) the square footage of the new building is no greater than the square
footage of the old building.

b. If the square footage of the new building is greater than that of the old
building the owner will be liable for impact fees on the basis of the excess
square footage only.

c. If the new construction takes place on land other than the land on which the
old building and business existed, the old land and building shall be treated as
new construction for purposes of impact fees, and said fees shall be due and
payable prior to the commencement of any business on or out of the property
and prior to issuance of any certificates of occupancy.

2. Residential.

a. An owner of land upon which is located a residential use building: (i) if he
tears down the building and constructs a new building in its place on the
same or on other land owned by him, or (ii) if he partially demolishes his
building and rebuilds it on the same land, or (iii) if he vacates the old
building and moves to another building located on land owned by him upon
which other building he performs construction work for which impact fees

may be assessed; will be exempt from impact fees on the new construction if:

- (1) he files written notice with and on a form approved by the City of his election to exempt the new construction before a building permit is issued for the new construction;
 - (2) the same use is continued in the new building as in the old building;
and
 - (3) the square footage of the new building is no greater than the square footage of the old building.
- b. If the square footage of the new building is greater than that of the old building the owner will be liable for impact fees on the basis of the excess square footage only.
- c. If the new construction takes place on land other than the land on which the old building exists, the old land and building shall be treated as new construction for purposes of impact fees, and said fees shall be due and payable prior to the commencement of any occupancy on or out of the property and prior to issuance of any certificates of occupancy.

- D. The exemption specified in subsection B is for collection of fees only, and shall not be interpreted to exempt assessment of impact fees pursuant to Section 26-7 and Schedule 1 of this chapter.

SECTION 26-19. Use of Other Financing Mechanisms

- A. The City may finance capital improvements or facility expansions designated in the capital improvements plan through the issuance of bonds, through the formation of public utility districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of impact fees.
- B. Except as herein otherwise provided, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.
- C. The City Council may decide that the City shall pay all or a part of impact fees due for a new development pursuant to duly adopted criteria.

SECTION 26-20. Impact Fee as Additional and Supplemental Regulation

- A. Impact fees established by these regulations are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land or the issuance of building permits, or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of City's

comprehensive land use plan, the capital improvements plan, the zoning ordinance, subdivision regulations and other City policies, ordinances and resolutions by which the City seeks to ensure the provision of adequate public facilities in conjunction with the development of land.

- B. This ordinance shall not affect, in any manner, the permissible use of property, density of development, design, and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

SECTION 26-21. Relief procedures

- A. Any person who has paid an impact fee or an owner of land upon which an impact fee has been paid may petition the City Council to determine whether any duty required by this ordinance 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 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 is not applicable to matters which may be appealed pursuant to section 26-12.

- B. The City Council may grant a variance from any requirement of this ordinance, upon written request by a developer or owner of property subject to the ordinance, 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 may cause to be appropriated from other City funds the amount of the reduction in the impact fee to the account for the service area in which the property is located.

Article II. Reserved

Article III. Reserved

Article IV. Roadway Impact Fees

SECTION 26-28. Roadway Service Areas

- A. There are hereby established three (3) roadway service areas, constituting land within City boundaries, as depicted on Exhibit 2 attached hereto and incorporated by reference herein.

- B. The boundaries of the roadway service areas may be amended from time to time, or new roadway service areas may be delineated, pursuant to the procedures in Section 26-15.

SECTION 26-29. Roadway Improvements Plan

- A. The Roadway Impact Fee Plan for the City of PORT ARANSAS is hereby adopted as Exhibit 3, which is attached hereto and incorporated by reference herein.
- B. The Roadway Impact Fee Plan may be amended from time to time, pursuant to the procedures in Section 26-15.

SECTION 26-30. Roadway Facilities Impact Fees

- A. The maximum impact fees per service unit for roadway facilities are hereby adopted and incorporated in Schedule 1 attached hereto and made a part hereof by reference.
- B. The impact fees per service unit for roadway facilities, which are to be paid by each new development, are hereby adopted and incorporated in Schedule 2 attached hereto and made a part hereof by reference.
- C. The impact fees per service unit for roadway facilities may be amended from time to time, pursuant to the procedures in Section 26-15.

ORDINANCE

PART 2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of PORT ARANSAS, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any in such other ordinance or ordinances are hereby superseded.

ORDINANCE

PART 3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of any other section, sentence, clause or phrase of this ordinance the remaining portions of this ordinance.

ORDINANCE

PART 4.

This ordinance shall become effective immediately upon its passage.

PASSED, APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, TEXAS, this the 17th day of April, 2008.



Hon. Claude Brown, Mayor

ATTEST:



Ester Arzola, City Secretary

APPROVED AS TO FORM

Michael G. Morris, City Attorney

Schedule 1 Impact Fees Per Service Unit
Schedule 2 Impact Fee Collection Rates
Exhibit 1 Land Use Equivalency Table
Exhibit 2 Roadway Services Areas
Exhibit 3 Roadway Impact Fee Plan

SCHEDULE 1

MAXIMUM IMPACT FEES PER SERVICE UNIT

ROADWAY FACILITIES BY SERVICE AREAS

AREA 1	AREA 2	AREA 3
\$ 1,718.00	\$2,510.00	\$ 0.00

SCHEDULE 2

IMPACT FEE COLLECTION RATES TO BE PAID IN FULL PRIOR TO ISSUANCE OF BUILDING PERMIT

COLLECTION RATES BY SERVICE AREA

AREA 1	AREA 2	AREA 3
\$ 859.00	\$ 1,255.00	\$ 0.00

*** Rates above providing 50% credit**

Exhibit 1

Land-Use Vehicle-Mile Equivalency Table

CATEGORY	LAND USE	DEVELOPMENT UNITS (X)	TRIP RATE	LOCAL TRIP LENGTH (mi.)	TOTAL SERVICE UNITS (VEH-MI / DEV UNIT)
RESIDENTIAL					
	SINGLE-FAMILY DETACHED	D.U.	1.01	1.48	1.49
	APARTMENT/TOWNHOUSE	D.U.	0.57	1.48	0.84
	RETIREMENT COMMUNITY	D.U.	0.29	1.07	0.31
	INDEPENDENT SR. LIVING FACILITY	D.U.	0.26	1.07	0.28
OFFICE					
	GENERAL OFFICE BLDG	1000 GFA	1.49	1.60	2.38
	CORPORATE HEADQUARTERS BLDG	1000 GFA	1.40	1.60	2.24
	MEDICAL-DENTAL OFFICE BLDG	1000 GFA	3.55	1.28	4.53
	U.S. POST OFFICE	1000 GFA	3.26	1.06	3.46
	BUSINESS PARK	1000 GFA	1.29	1.60	2.06
COMMERCIAL					
	RETAIL/SHOPPING CENTER	1000 GLA	2.25	0.55	1.23
	QUALITY RESTAURANT	1000 GFA	3.15	0.50	1.56
	FAST FOOD RESTAURANT WITH DRIVE-THROUGH	1000 GFA	10.34	0.47	4.84
	HIGH TURNOVER RESTAURANT	1000 GFA	4.37	0.51	2.25
	GAS STATION w/CONVENIENCE MARKET	1000 GFA	11.85	0.23	2.78
	CONVENIENCE MARKET WITH GASOLINE PUMPS	1000 GFA	7.27	0.23	1.71
	GROCERY/SUPERMARKET	1000 GFA	4.08	0.24	1.00
	DISCOUNT CLUB	1000 GFA	2.02	0.53	1.06
	AUTO SALES	1000 GFA	1.58	0.59	0.94
	VIDEO RENTAL STORE	1000 GFA	3.67	0.38	1.39
	BANK	1000 GFA	12.35	0.35	4.30
	PHARMACY/DRUGSTORE WITH DRIVE-THROUGH	1000 GFA	3.28	0.26	0.84
	APPAREL STORE	1000 GFA	1.38	0.45	0.62
	MOVIE THEATER	SCREENS	11.59	0.44	5.07
	FURNITURE STORE	1000 GFA	0.17	0.62	0.10
	HOME IMPROVEMENT SUPERSTORE	1000 GFA	1.08	0.55	0.59
	HARDWARE/PAINT STORE	1000 GFA	2.13	0.21	0.45
	BUILDING MATERIALS/LUMBER STORE	1000 GFA	1.98	0.21	0.42
	NURSERY (GARDEN CENTER)	1000 GFA	1.67	0.35	0.58
	NURSERY (WHOLESALE)	1000 GFA	1.40	0.35	0.49
	HOTEL	ROOMS	0.59	0.55	0.32
	MOTEL	ROOMS	0.47	0.55	0.26
	ALL SUITES HOTEL	ROOMS	0.55	0.55	0.30
	AUTO CARE CENTER	1000 GFA	2.30	0.38	0.87
	QUICK LUBE SHOP	1000 GFA	2.28	0.38	0.87
	AUTO PARTS SALES	1000 GFA	2.63	0.38	1.00
	TIRE SUPERSTORE	1000 GFA	2.84	0.55	1.55
	WHOLESALE TIRE STORE	1000 GFA	2.16	0.55	1.18
	MINI-WAREHOUSE/SELF STORAGE	1000 GFA	0.26	0.84	0.22
	MARINA / BOAT SLIP	BERTH	0.19	2.00	0.38
INDUSTRIAL					
	GENERAL LIGHT INDUSTRIAL	1000 GFA	0.71	1.32	0.93
	MANUFACTURING	1000 GFA	0.74	1.36	1.01
	INDUSTRIAL PARK	1000 GFA	0.79	1.32	1.05
	WAREHOUSING	1000 GFA	0.47	1.17	0.55
INSTITUTIONAL					
	PRIVATE SCHOOL (K-12)	STUDENTS	0.170	0.55	0.09
	JUNIOR/COMMUNITY COLLEGE	STUDENTS	0.120	0.56	0.07
	DAY CARE CENTER	STUDENTS	0.206	0.22	0.04
	HOSPITAL	BEDS	1.300	0.69	0.89
	NURSING HOME	BEDS	0.220	0.69	0.15
	PLACE OF WORSHIP	1000 GFA	0.660	0.33	0.22
* THIS REPRESENTS TOTAL SERVICE UNIT EQUIVALENCY FOR LAND USES NOT SPECIFIED IN THIS CATEGORY. ACTUAL EQUIVALENCY MAY VARY AND MAY BE DEMONSTRATED BY PROPERTY OWNER TO BE DIFFERENT.				DU = Dwelling Unit GFA = Gross Floor Area GLA = Gross Leasable Area	

