



BOARD/COMMISSION RECOMMENDATION

Water and Wastewater Commission

Recommendation Number: (20160511-E1) Water and Wastewater Capital Recovery Fee Waivers
Related to Affordable Housing

WHEREAS, Austin Water Utility (AWU) underrecovered its costs by at least \$100M over the period of 2010-2015, despite Council's support of AWU's requests for significant rate increases; and

WHEREAS, AWU's customers have made great sacrifices both in terms of water conservation and in terms of rising bills related to the drought and cost increases, with average residential bills almost tripling between 2006 and 2015; and

WHEREAS, AWU Staff cut their budget by approximately \$30M to avoid even higher bills for their customers, resulting in more work for AWU Staff with lesser resources; and

WHEREAS, examination of AWU fee structures revealed that approximately 80% of the costs of growth were being included in customer monthly user charges rather than in development fees to be paid by new growth; and

WHEREAS, despite all the efforts by AWU Staff and the sacrifices by AWU customers, rating agencies have expressed considerable concern about the soundness of AWU finances to the extent that there may be a downgrade if AWU again does not achieve its benchmarks; and

WHEREAS, rating agencies may view the City's apparent willingness to divert funds that would have gone to pay utility capital costs to other purposes as a lack of City commitment to sound financial practices for AWU; and

WHEREAS, the Water and Wastewater Commission has supported the various recommendations of the Joint Committee on AWU Financial Plan (2011-2014), including increasing all growth-related fees to recover the full costs of growth; and

WHEREAS, the Capital Recovery Fee Advisory Committee has previously also recommended full-cost capital recovery fees (also known as "impact fees"); and

WHEREAS, the City Council has previously adopted full-cost capital recovery fees in order to reduce the customer monthly cost burden, reduce utility indebtedness, and improve financial metrics; and

WHEREAS, the recently-adopted impact fee program, when phased in, is expected to recover \$30M more per year than the earlier program (\$10M/year), thus relieving AWU customers from much of the financial burden of growth and providing additional bonding capacity for critical water-supply and other needs for the future; and

WHEREAS, losses from the affordable housing waivers, at 1500 LUEs per year, will reduce that cost recovery by approximately \$11.4M/year (up from approximately \$2.25 million per year with earlier low fees); and

WHEREAS, fee waivers will result in the loss of the ability of AWU to defease \$11.4M in debt annually, which would have otherwise eliminated not only debt principal but also the associated interest on debt; and

WHEREAS, AWU is approaching the 1500 LUEs/year cap for fee waivers; and

WHEREAS, Staff has not developed a process for fee waivers once the 1500 LUE cap has been reached (see Staff answers to Tovo and Pool questions for March 3, 2016 Council meeting, attached); and

WHEREAS, there is a history of increasing the cap on fee waivers whenever the cap is reached (the 500 LUE cap was increased to 1,000 LUEs in 2000, and then increased to 1,500 LUEs in 2007); and

WHEREAS, affordability applies to monthly utility bills, as well as to home purchases; and

WHEREAS, among the customers who will see bill increases as a result of diverting AWU funds to both affordable and market-rate housing will be renters who cannot themselves qualify for even affordable housing; and

WHEREAS, Chapter 395.016(g) of the Texas Local Government Code states that: "Notwithstanding Subsections (a)-(e) and Section 395.017, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed"; and

WHEREAS, City Code § 25-9-347 - EXEMPTION FOR CERTAIN AFFORDABLE HOUSING, (C)(3) states that "To be eligible for an exemption under this section, affordable housing must ... be a newly constructed single family home or multifamily housing unit located within the corporate limits of the City [emphasis added]"; and

WHEREAS, City Code § 25-1-704 - FEE WAIVERS, (A) (contained in ARTICLE 15. - S.M.A.R.T. HOUSING) does not list capital recovery fees among those fees which may be waived for a SMART housing development; and

WHEREAS, current and proposed programs for affordable and SMART housing impact fee waivers and various development agreements are inconsistent; result in AWU customers subsidizing outside-City housing that will not, by the nature of its location, reduce in-City gentrification; and result in AWU

customers subsidizing market-rate housing amounting to as much as 90-95% of housing in a SMART Housing development; and

WHEREAS, most capital recovery fee waivers related to affordable housing are approved administratively (by the City's Neighborhood Housing and Community Development Director, § 25-1-704, or by the City's Community Development Officer, § 25-9-347(A)) with no public process;

NOW, THEREFORE, BE IT RESOLVED that the Water and Wastewater Commission respectfully encourages the Austin City Council to:

- Continue to support necessary improvements in AWU financial metrics to secure financial integrity within the Austin Water Utility, as set forth in recommendations to the City Council by this Commission, the Joint Committee on AWU Financial Plan, the Capital Recovery Fee Advisory Committee, and as embodied by adoption of a full cost recovery program for capital recovery [impact] fees and other AWU fees and rates;
- Direct the Law Department to ensure consistency regarding capital recovery fee waivers related to affordable and SMART housing within City ordinances and policies;
- Provide for fee waivers only for affordable housing units (and not for market-rate housing);
- Provide for fee waivers for affordable housing units only within the corporate limits;
- Keep the current cap of 1500 LUEs of fee waivers per year without increase in the cap;
- Provide for a public, rather than administrative process, for capital recovery fee waivers related to affordable and SMART housing; and
- Instruct the City Manager to provide a Fiscal Note on each Request for Council Action (RCA) which results in a waiver of water and wastewater capital recovery fees or other development fees.

Date of Approval: May 11, 2016

Record of the vote: Approved by the Water and Wastewater Commission on a 7-2-0-2 vote with Commissioner's Moriarty & Ho voting against and Commissioner's Kellough & Parker absent

Attest: 
(Felicia Cancino, Staff Liaison)



Council Question and Answer

Related To	Item #18	Meeting Date	March 3, 2016
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Additional Answer Information

QUESTION'S FROM: MAYOR PRO TEM TOVO'S OFFICE

ANSWER:

- 1) **Please describe the items that will be contained within the Development Agreement and the estimated timetable for completion, and indicate whether that agreement will be approved by Council.**

A team of staff members plans to meet with the developer to propose all the required components of the development agreement. The agreement will have several components to include identifying: how real property will be acquired and/or transferred; how income eligibility will be ensured; Capital Recovery Fee waiver caps; and how the funds will be managed. Staff is not opposed to bringing the item forward for City Council action.

- 2) **Please describe what will be contained in a restrictive covenant and the estimated timetable for completion, and explain why that wasn't executed prior to a final decision on the zoning and whether the restrictive covenant will come to Council for approval.**

The restrictive covenant cited in the Pilot Knob PUD ordinance falls in Part 8.B outlining the affordability requirements for rental. Not all of the multi-family sites will include affordable units. Until the sites are identified a restrictive covenant will not be recorded. Sites identified to include affordability will have a restrictive covenant outlining the rental housing requirements for the development. An example restrictive covenant was attached to the ordinance and will be tailored to the Pilot Knob affordable rental developments. The PUD ordinance places the affordability requirements on the entire site. There is no time table at this time as the site plan and subdivision process is in the early stages.

- 3) **The original MUD agreement required the developer to sell 10%/650 units at a price affordable to individuals at 80% MFI. During the work session it was noted that the city has the option but not the obligation to purchase the land and/or units. If the city declined to purchase any lots or units in the development, would the developer revert back to the original commitment to build and sell 650 units at affordable prices at the first sale? If so, where in the documents is that mechanism described?**

A response to this question was provided in a memo from the Law Department.

- 4) **At what point during the development process will the Austin Water Utility and Development Services waived fees be deposited into the Affordable Housing Trust Fund? (Please provide this information for a phased project with a buildout of 20 to 30 years.)**

This item would be formalized in the Development Agreement.

- 5) **How will the price for the affordable lots purchased by the City be determined?**

This item would be formalized in the Development Agreement.

6) If the fees are paid over time rather than at the outset of the development, how will the City purchase lots and/or units if the Affordable Housing Trust Fund doesn't yet have sufficient money to cover the lot/unit costs?

This is yet to be determined.

7) Mueller has been offered as a model for the affordable housing program at Pilot Knob. Please describe (a) the total amount of public money committed to the project and an estimate of the amount allocated toward housing versus parks and other amenities (b) the number, percentage, and level of affordable units and (c) the total amount and % of fees waived for SMART housing and any other relevant similarities/differences.

a) Mueller Affordable Housing Summary

Per the 2004 Master Development Agreement between the City of Austin and Catellus Development, 25% of all for-sale and for-rent units at Mueller are affordable. This translates to over 1,475 units of the 5,900 total units included in the current development program at completion. Affordable Units at Mueller are priced to serve 30% - 80% Area MFI.

- For sale units serve 80% MFI and are administered by the Mueller Foundation (see below).
- Market rate multifamily projects have at least 10% affordable units (some projects include 15%) and serve 60% MFI with requirements for 50 years of affordability.
- Three predominantly affordable, mixed-income tax credit projects reach deeper levels of affordability, with a majority of units at 60% MFI or below (described more below under "Deeper Affordability").

Below is a table summarizing the latest data from the Mueller Semi-Annual Report / Affordable Housing report (through November 2015):

Type	Mueller To-Date Total No. of Units Contracted ¹	Mueller To-Date No. of Affordable Units Contracted ¹	Current Percentage of Affordable Homes ²
For-sale	1,732	485	28.0%
For rent	1,981	569	28.7%
Total	3,713	1054	28.4%

1. Includes units completed, under construction, or under contract and not under construction yet

2. At any point in time during development, the actual percentage of affordable homes may be above or under the required 25%

b) MDA and Public Funds

Through the 2004 Master Development Agreement, the City established a TIF and has issued bonds to support the financing of the public infrastructure at Mueller. To date, the City has issued \$62M in bonds. Debt service on the bonds is paid by property and sales taxes generated by the project.

Eligible infrastructure consists of streets, bicycle and pedestrian infrastructure, utilities, parks, and drainage/water quality. These funds are not used for affordable housing.

c) S.M.A.R.T. Housing Program and Waivers

The Master Development Agreement requires Catellus to implement the City's S.M.A.R.T. Housing criteria. Catellus is also required to develop 25% of the total residential units at Mueller as affordable housing. Catellus is responsible for building the infrastructure and for the sale of lots to third party builders or developers. The third-party residential at Mueller qualifies for and has received partial fee waivers of 62.5% per the S.M.A.R.T. Housing ordinance.

- Austin Water Utility fee waivers for Mueller are \$1.1 million.
- Through Catellus' contract with the homebuilders, the portion of fees that is waived by the City is collected at lot closing and transferred to the Mueller Foundation, further allowing the Foundation to retain homes in the affordable homes program (described more below).

d) Achieving Deeper Levels of Affordability

Separate from the MDA, two projects at Mueller have received financing from AHFC. DMA applied for and received funds to help finance two tax credit mixed-income communities at Mueller, in order to achieve greater levels of affordability:

- **Wildflower Terrace by Diana McIver & Associates:** Senior Affordable Multi-Family Housing (completed 2011)
 - 201 units total
 - 171 units (85 %) at or below 60% MFI for 99 years and 30 units market rate
 - 85 units or 50% for households at or below 60% MFI
 - 60 units or 35% for households at or below 50% MFI
 - 26 units or 15% for households at or below 30% MFI
 - Received \$2M AHFC funds
- **Aldrich 51 by Diana McIver & Associates:** Affordable Multi-Family Workforce Housing (under construction)
 - 240 units total
 - 204 units (85 %) at or below 60% MFI for 99 years and 36 units market rate
 - 139 units or 68% for households at or below 60% MFI
 - 47 units or 23% for households at or below 50% MFI
 - 18 units or 9% for households at or below 30% MFI
 - Received \$4M AHFC funds
- **3rd Predominantly Affordable Multi-Family Project:** Planned for future development

8) It's my understanding that (generally speaking) the Mueller Foundation purchases affordable homes with

proceeds it receives from previous sales of homes in the affordable program. Was a similar mechanism contemplated for Pilot Knob, using the \$8 million (now \$6 million) as starter funds to repurchase the 650 houses that the developer had committed to offer at affordable prices?

The Mueller Foundation is a 501c3 non-profit organization, with Austin community board members, that provides oversight for the Mueller Affordable Homes Program to ensure its long-term sustainability. Its funds are held by the Austin Community Foundation. Homes in the Mueller Affordable Homes Program are sold for less than the homes' actual value. The Mueller Foundation holds a soft second lien and has a "purchase option" so that the homes can be re-sold to future income-qualified homebuyers to maintain the inventory and further support future affordability efforts. Currently the Mueller Foundation has soft second liens on 300 homes and has repurchased 41 homes.

The funding for the Mueller Foundation comes from three revenue sources:

1. A 0.25% fee on all commercial and residential property sales in perpetuity.
2. A fee of approximately \$1000 per unit collected from residential builders/developers. This fee was an approximation of the amount of S.M.A.R.T. Housing fee waivers granted by the City. The early estimate was based on water meter and tap fees at the time, but has since increased in line with Austin Water Utility's revised fee structure.
3. Shared-equity reimbursements to the Mueller Foundation received upon the resale of an affordable home.

Due to the nature of the timing of the bond issuances, these funds are not being contemplated as starter funds for the Housing Trust Fund.

9) As mentioned above, during the work session it was said that the city has the option but not the requirement to purchase land or units at Pilot Knob. If the city chooses not to exercise this option, would the waived fees be returned to the Water Utility? Does the ordinance describe a particular process (outside of the annual City budget adoption) and proposed timetable for that ongoing evaluation and decision-making?

A response to this question was provided in a memo from the Law Department.

10) What are the allowable uses for Capital Recovery Fees? Have they been used to support other affordable housing efforts in Austin?

As required by Local Government Code Chapter 395, Section 395.012, capital recovery fees can only be used to pay the direct costs or to pay the principal and interest on bonds issued for constructing capital improvements or facility expansions identified in the growth-related capital improvement plan.

Collected capital recovery fees have only been used as prescribed by the law mentioned above. S.M.A.R.T. Housing waives capital recovery fees and development review fees as an incentive to developers to produce a percentage of affordable units. Waived capital recovery fees are not collected and therefore would not be used for any purpose. In the Mueller Development, the developer requires the non-affordable builders to pay a separate fee in the amount of the repay the capital recovery or development review fee waiver to the Mueller Foundation to support the affordable housing program.

11) Do all departments budget for up to 1,500 SMART Living Unit Equivalent fee waivers per year? If so, please explain why AWU is projecting a rate increase in response to the fees waived in the Pilot Knob PUD

agreement. What would be the estimated property tax impact for the owner of a median-valued home for a \$100 million general obligation housing bond? Would that amount change over time?

Austin Water does not directly budget for up to 1,500 SMART fee waivers as an annual reduction in revenue from capital recovery fees. Austin Water budgets for the forecasted levels of actual collections of capital recovery fees each year based on historical trends of collections. The current level of SMART fee waivers impacts the amount of forecasted collections and therefore is indirectly budgeted. As SMART fee waivers trend upward and are closer to the 1,500 limit due to development agreements such as Pilot Knob, then Austin Water's forecasted levels of collections of capital recovery fees would not grow as quickly or be reduced.

About 1 cent of the property tax rate can be attributed to \$100 million general obligation housing bonds. The impact of 1 cent of property tax rate for the owner of a **median-valued home** of \$236,874 (non-senior residential homestead with 6% general homestead exemption) is \$23.69 on an annual basis.

The City's current property tax rate for FY 2015-2016 is \$0.4589 per \$100 assessed valuation. The debt portion is \$0.1062 of that total property tax rate.

Whether or not this amount would change over time is complicated. It would tend to decrease over time as more new construction is added to the roll. It would only increase over time if the rate of growth of the median-valued home were to outpace the growth of other property classes and new construction.

12) Would the estimated monthly utility bill impact for a 20- or 30-year buildout at Pilot Knob remain constant over the term of the buildout? If such a generalization can be made, do dollars received through general obligation bonds have a higher or lower return on investment compared to dollars received through fees?

Austin Water identified the monthly utility bill impact of Pilot Knob as \$0.64 per month for a 30-year buildout and \$0.96 per month for a 20-year buildout. This monthly bill impact would likely be realized over 5-7 years as Pilot Knob began building homes and the impact of the waivers increased. Once the full monthly rate impact was realized over several years, the monthly bill impact would remain constant for the remainder of the project.

All funds (including fees and bond proceeds) are invested in accordance with the City's Investment Pool objectives, which are the protection of principal, liquidity and yield in that order. Bond proceeds from a tax-exempt bond issuance are yield restricted per Internal Revenue Service (IRS) regulations. The City does not take into account these restrictions on bond proceeds when investing the funds. However, if the City's Investment Pool yield exceeds the bond borrowing rate, the City rebates the difference to the IRS. The City hires an Arbitrage firm to perform rebate calculations on all of the City's bond transactions in order to adhere to federal yield restrictions. Overall, there is not enough information to make general statement on return on investment based on different funding sources.

13) Of the 2,593 affordable units created with the \$55 million in 2006 bonds, how many were home ownership opportunities? Of those 6 projects that provided homeownership opportunities, what were the levels of affordability, and what was the per unit subsidy?

There were 242 home ownership opportunities funded with 2006 G.O. Bond Funds. The average Median Family Income has been 53% of Median Family Income. The average per unit subsidy is approximately \$57,000. (The Median Family Income skews low because the majority of the homes were built by Austin Habitat for Humanity whose program serves buyers at or below 50% MFI.

14) What is the estimated number of affordable units to be created with the 2013 \$65 million in bond funds?

NHCD anticipates the same number or slightly less than the 2006 bonds due to the increase in land costs and construction costs. The 2013 bonds have not funded any single-family as of this date.

QUESTION'S FROM: COUNCIL MEMBER POOL'S OFFICE

ANSWER:

- 1) **In the Pilot Knob/Easton Park development, Brookfield Residential is to receive Austin Water Utility (AWU) Capital Recovery Fee waivers not just for the affordable housing units, but for 100% of the residential units across the project. How many other projects have received 100% waivers like this one? Are there upcoming residential projects that will also receive fee waivers for 100% of their residential units?**

City Council has not approved any other projects in the City's limited purpose annexation area for S.M.A.R.T. Housing certification and fee waivers. However, additional projects within the City's full purpose jurisdiction have received 100% fee waivers. Additional time will be needed to provide an accurate response to the number of projects due to the longevity of the program.

Yes, any projects that have been certified and comply with the S.M.A.R.T. Housing ordinance requirement to include the inclusion of affordable units in a community land trust.

- 2) **What is the consequence of reaching the annual 1,500 cap on SMART Housing fee waivers? Would the fees simply go to AWU and Development Services?**

Currently, there is an annual 1,500 living unit equivalent cap on the capital recovery fee waivers (this cap does not apply to the Mueller development). At this time, a process has not been created to manage the situation when we reach the 1,500 cap during the year.

- 3) **Is there any situation that would prevent waived fees from being deposited into the Housing Fund, such as if the SMART Housing cap is reached?**

If fees are not waived then there is no fee equivalent to be deposited in the Housing Fund. The development agreement could address other alternatives.

- 4) **If the 1,500 SMART Housing cap is ever reached, would NHCD then be unable to grant fee waivers, or would the department forgo an offer from a developer to provide SMART housing?**

This situation has not been addressed at this time and a process would need to be created to properly manage it.

- 5) **It has been suggested that any AWU Capital Recover Fee (impact fee) monies deposited into the Housing Fund can simply be transferred back out and returned to AWU if the utility has a greater financial need that must be addressed. Has NHCD had other instances in which Housing Fund monies were transferred out for reasons unrelated to affordable housing?**

No, NHCD has not created a fund like this in the past.

- 6) **The Capital Recovery Fee Advisory Committee received a report showing 450 fee waivers over a six-month period, indicating about 900 fee waivers per year. What was the trigger for those waivers? Is NHCD anticipating that the number of fee waivers will increase or remain steady (excluding the Pilot Knob/Easton Park project)?**

The S.M.A.R.T. Housing certification letter is designed to be the trigger. NHCD would anticipate this number increasing as long as the residential construction industry remains strong.

7) City code says that fee waivers can only be given for affordable housing within the city limits. Why were waivers allowed for Pilot Knob/Easton Park, which will not be fully annexed until 2047? What was the source of NHCD's legal authority to do so?

NHCD does not certify projects for S.M.A.R.T. Housing in limited purpose annexed areas without Council approval. Council action on the Pilot Knob PUD approved S.M.A.R.T. Housing certification.

8) Does NCCD have other affordable housing projects outside the city limits? What portion?

There are affordable housing requirements in several MUDs but they are not S.M.A.R.T. Housing certified.

9) There is some contradiction in the city regulations regarding whether or not Capital Recovery Fees can be waived. How did NHCD determine which section of the code to follow in order to allow the fee waivers?

A response to this question was provided in a memo from the Law Department.

Updated Staff Estimates per March 1 Work Session Discussion:

**Development Services Department
Pilot Knob – Revised (March 1, 2016)**

Subdivision Application	Subdivision Inspection	Site Plan Application	Commercial Building Permits	Commercial Plan Review	Residential Building Permits	Residential Plan Review	Estimated Total
2,216 acres	2216 acres	4,500 units	4,500 units	4,500 units	5,000 units	5,000 units	
\$410 per acre	\$1173.28 per acre	\$120 per unit	\$654.58 per unit	\$1,235 per unit	\$705.12 per unit	\$355.68 per unit	
\$910,000	\$2.6 million	\$542,000	\$2.9 million	\$5.6 million	\$3.5 million	\$1.7 million	\$17.8 million*

*Based on the following assumptions:

1. There is only 1-review cycle for the residential and commercial applications.
2. The average size unit is 2500 square feet
3. Documents do not take into account future development fee increases.
4. Commercial is based on 1,500 Condo/Townhome Units, and 3,000 multi-family units
5. Residential is based on 5,000 single-family units