

An update from our Texas Municipal League (TML) Rep, Joshua Mair (City of Converse, TX) on House Bill 3492

Initially, H.B. 3492 only applies to application, review, engineering, and inspection fees for projects involving "constructing or improving the public infrastructure for a subdivision, lot, or related property development." If a project does not involve the construction or improvement of public infrastructure for a subdivision, lot, or related property development, the fee restrictions in H.B. 3492 will not apply. The bill will have a limited reach.

In 2019, the Legislature passed H.B. 852, which, similar to H.B. 3492, prohibited cities from using the cost or value of a residential building or improvement, subject to FEMA National Flood Insurance Program purposes. In response, some cities revised their residential building and

permit fee schedules based on a square footage analysis or flat review, permit, and inspection fees.

H.B. 3492 is slightly more limited than H.B. 852 in that it limits a city's fee amount determination to:

1. The fee that a qualified independent third-party entity would charge for those services;
2. The hourly rate for the estimated actual direct time of the municipality's employees performing those services; or
3. The actual costs assessed to the municipality by a third-party entity that provides those services to the municipality.

Because the bill uses the term "consider" rather than "calculate," fees based on a good faith estimate of third-party fees and costs and/or typical employee time for routine review and inspection tasks multiplied by the typical hourly rate for a city employee who performs these services will likely comply with the statute. H.B. 3492 also requires cities to publish annually their estimated time and employee hour rates used to determine fee amounts.

Also, the Texas Supreme Court has held that city permit and inspection fee amounts must be based on recovering the city's costs to perform the service. And while the city's fee determination does not have to be mathematically precise, the primary purpose of the fee amount must

be to recoup the city's costs. Fees over the city's costs may be subject to challenge as an unconstitutional tax.

The Government Finance Officer Association provides good practical guidance on establishing city fees, but cities should consult with our city attorneys before deciding or adopting any new fee amounts.

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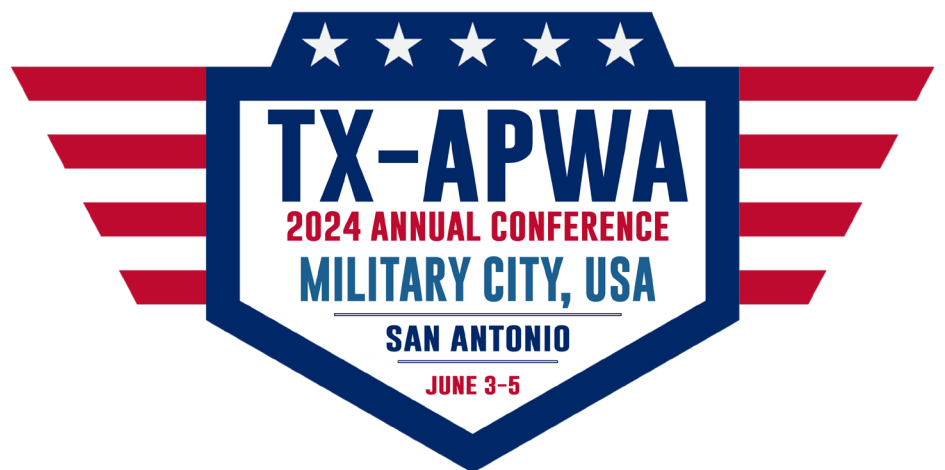
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