

IMPACT FEES - 2013

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IMPACT FEES



What is an Impact Fee?

- Means of an Agency Funding Infrastructure Due to Growth
- Monetary Payment from Developers or Users to Agency

Why Use Impact Fees?

- Transfers Costs of New Infrastructure to New Users
- Provides Capital Funding for Needed Projects Caused by Growth

When not to use Impact Fees:

- Operation & Maintenance
- General Overhead
- Existing System Deficiencies
- General Operation
- Operations or Facilities not Caused by Growth

How to Adopt an Impact Fee

- 10 Steps for any Agency to Follow

Enacting an Impact Fee

- Steps 1 through 10 –

1. **Notice-Plan to Adopt or Amend Impact Fee Facilities Plan (IFFP)**

- That an impact fee facilities plan will be proposed or amended
- Describing or mapping the area of IFFP
- Publish the notices on the Utah State Public Notice Website
- Private entity publishes the same but under the public entity local general purpose government

Enacting an Impact Fee

- Steps 1 through 10 –

2. Impact Fee Facilities Plan (IFFP)

- Identify existing development/facilities
- Identify future growth
 - When
 - Where
 - What type
- Quantify existing facilities
- Determine current level of service

Enacting an Impact Fee

- Steps 1 through 10 –

2. Impact Fee Facilities Plan (IFFP) Continued –

- Determine excess capacity
 - if excess capacity, establish a method or “basis” for which new development purchases this capacity.
- Determine impacts that future growth will cause on existing system
- Calculate costs of future facilities

Enacting an Impact Fee

- Steps 1 through 10 –

2. Impact Fee Facilities Plan (IFFP) Continued -

- Ensure Proposed IFFP identifies
 - Demands upon public facilities by new development
 - Means by which the agency will meet those demands
 - Public facilities required for a planned school district or charter school
- IFFP considers all revenue sources
- Calculate the cost of needed improvements
- Certification of person generating IFFP

Enacting an Impact Fee

- Steps 1 through 10 –

3. **Public Notification and Public Hearing of Impact Fee Facilities Plan (IFFP)**

- Give notice to hold public hearing
 - 10 days before hearing
- Generate summary of written analysis of IFFP
- Place in public library
- Hold public hearing
 - Adopt IFFP

Enacting an Impact Fee

- Steps 1 through 10 –

4. Notice of Preparation of an Impact Fee Analysis (IFA)

- That a impact fee analysis will be proposed or amended
- Describing or mapping the area of IFA
- Publish the notices on the Utah State Public Notice Website
- Private entity publishes the same but under the public entity local general purpose government

Enacting an Impact Fee

- Steps 1 through 10 –

5. Impact Fee Analysis (IFA)

- How impact fee was calculated
- How level of service will be maintained
- How costs are reasonable related to development
- Existing capacity
 - How capacity will be consumed
 - Shows how existing costs will be recouped.
 - Shows costs related to new development
 - Certification of person generating IFA

Enacting an Impact Fee

- Steps 1 through 10 –

6. **Public Notification and Public Hearing of Impact Fee Analysis (IFA)**

- Give notice to hold public hearing
 - 10 days before hearing
- Generate summary of written analysis of IFA
- Place in public library
- Hold public hearing
 - Adopt IFA

Enacting an Impact Fee

- Steps 1 through 10 –

7. **Impact Fee Enactment (IFE) - Ordinance**

- Schedule (takes effect in 90 days)
- Provision authorizing adjustment of fee due to unusual circumstances
- Allows credits
- Calculation, basis and presentation of impact fee

8. **Public Notification and Public Hearing of IFE**

- Copies of:
 - Written impact fee analysis
 - Summary of written analysis – for lay person
 - Impact fee enactment



Enacting an Impact Fee

- Steps 1 through 10 -

9. **Hearing**

10. **Adoption**

Impact Fee Management

- Accounting Required -

- **Keep records of impact fees collected**
 - Who paid fees
 - How much was paid
 - Which fund
 - What development
- **Keep separate ledger account for each account**
 - Interest bearing
- **Keep records and ledger showing when money was spent and what for**

Impact Fee Management

- Accounting Required Continued -

- **Money can only be spent or encumbered on projects listed in the Impact Fee Facilities Plan (IFFP)**
 - Encumbered: “pledge to retire debt”, allocation to a current purchase order or contract
 - Yearly budget review
- **Money can only be held for six years after collection**

Impact Fee Management

- Accounting Required Continued -

- **End of year reports**
 - Beginning and ending fund balances
 - Monies that were spent on which project
 - Schedule of when money was spent
- **Audit reports**
 - In format required by State Auditor
 - Certified by agency's chief financial officer
 - Transmit to State Auditor each year

Enacting an Impact Fee

- Engineering Perspective Issues –

- Agency's wanting to add projects not in the IFFP
- Wanting engineer to make recommendation on the LOS (Level of Service)
- Agency's providing accurate accounting of money spent
- Design life of IFFP
 - 6 years, 10 years, 20 years, or build out
- Identifying existing system deficiencies
 - Agency's want impact fee to pay for deficiencies
 - How often to update (5 to 6 years)

Impact Fees – The Law

Attorney's Prospective



Impact Fees – The Law

The Trigger

- New Development needs to buy into Existing System Capacity and pay its fair share of New Infrastructure
- There was no methodology for setting impact fees
- Numerous impact fee disputes arose and several cases reached the Utah Supreme Court
- *Banberry Development v. South Jordan City* (1981) established standards and relevant factors to be considered



Impact Fees – The Law

The Timeline

- 1995 – Utah Impact Fee Act passed by the Legislature
- 1997 – Deadline for complying with the Act
- 1997 thru 2010 – the Act was amended each and every year
- 2002 – The Act was amended to apply to private culinary water providers in addition to governmental entities
- 2011 – The Act completely reformatted
- 2012 – Amendments filed, but ...
- 2013 – House Bill 224



Impact Fees – The Law

The 2011 Rewrite

- Reorganized Act in a more logical and readable format
- Mostly intended as cosmetic rather than substantive changes
- Some terminology changed, most notably “Capital Facility Plans” became “Impact Fee Facility Plans”
- Some new definitions
- Streamlined notice requirements via the Utah Public Notice Website
- May only use actual costs incurred in valuing existing facilities



Impact Fees – The Law

The 2011 Rewrite – cont'd.

- Certification by person preparing the Impact Fee Facilities Plan expanded
- Certification added for person preparing the Impact Fee Analysis
- Remedies added and clarified the appeals process



Impact Fees – The Law

The 2012 & 2013 Amendments (2013 HB 224)

- Adds new definitions for
 - “Level of Service”
 - “Private Entity”
- (Better) clarifies which sections apply to Private Entities
- Adds required “Level of Service” elements to the IFFP
- Adds an “Advisory Opinion” option prior to enactment of Impact Fees
- Makes technical corrections
- Effect Date – May 14, 2013



Impact Fees – The Law

The 2014 Amendments ???

- After 17 consecutive years of amendments or attempted amendments, what's left to change?
 - Peer Review Requirements?
 - Application to Sale of Water Company Shares?
 - “Safe Harbor” Impact Fees?
 - Statewide Development Standards?
 - Other Substantive Changes?



Impact Fees – The Law

The Court Cases

- The annual amending of the Act is evidence of continued and widespread disagreement over Impact Fees
- Complaints are frequently made to entities imposing Impact Fees
- There are numerous inquiries to the Ombudsman
- This is the perfect recipe for extensive litigation & many court decisions ...

Impact Fees – The Law

The Facts

- $\frac{300-500}{100-150}$ Inquiries to the Ombudsman per year
- $\frac{3 - 5}{}$ Advisory Opinions by the Ombudsman
- $\frac{1}{}$ Audit Report by the State Auditor since 1995
- $\frac{0}{}$ Arbitrations following involvement of the Ombudsman
- $\frac{0 - 1}{}$ Lawsuits following involvement of the Ombudsman
- $\frac{0}{}$ Reported court rulings directly on Impact Fees imposed since the Impact Fees Act was enacted in 1995

Impact Fees – The Law

The Explanation

- If the Act was followed, the matter is resolved at the Ombudsman review level in favor of the entity imposing the fees
- If the Act was not followed, the entity fixes the problem, charges the correct fees, and the parties move forward
- There's no one left with an need to go to court



Impact Fees – The Law

The Most Common Complaints

- Level of Service issues
- Valuation of existing infrastructure
- Infrastructure includable in the Impact Fees Facilities Plan
- How Impact Fees are expended
- Types of Impact Fees most frequently at issue:
 - Parks
 - Open Space
 - Public Safety
 - Environmental Mitigation



Impact Fees – The Law

The Summary

- The goal of impact fees is to fairly and reasonably allocate costs between existing users and future users
- Comply with the requirements of the Act
- Have a reasonable basis for your assumptions and calculations
- If it needs to be changed or corrected, the sooner the better
- Refund overpayments promptly
- No penalties unless Advisory Opinion issued against you and you also lose in court – Attorneys Fees may be assessed

Impact Fees

Developer's Prospective



Impact Fees – Questions ?

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