

Impact Fee Summary

Including Amendments made effective May 12, 2009

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Definitions:

Impact Fee – a one-time charge imposed on development to build facilities that are designed to offset the burdens created by that development. An impact fee is an impact fee whether we call it an impact fee or not.

Exaction – a requirement imposed on development to provide money, land, or public improvements in order to gain approval. An exaction may be legal or illegal.

Level of Service – a quantifiable measure of the current quality of the service that infrastructure provides to current residents before new growth occurs.

Capital Facilities Plan – a list of projects that can be built to offset the burdens created by development.

Impact Fee Analysis – a detailed financial calculation of the cost of projects in the capital facilities plan, the amount of expected growth, and the resulting impact fees that may be charged.

Summary:

1. There are relatively complicated new requirements to provide notice to individual trade associations, other public entities, and the general public before an impact fee is enacted or amended.
2. Some of the notices must be sent before you hire someone to assist you in preparing to charge or amend an impact fee.
3. You can maintain your level of service, but you may not improve it with impact fees alone. You also may not cure existing deficiencies with impact fees from new development.
4. You do not need to impose impact fees. You may decide to provide for improvements with utility service charges or other revenue sources such as special improvement districts, special service districts, general fund revenues.
5. Although small communities of 5000 residents or fewer do not need to adopt a formal capital facilities plan, all of the other technicalities are imposed on those municipalities and a list of projects and costs must still be compiled. The exception for not having to do a formal capital facilities plan is of very modest significance in the scheme of things.
6. A person preparing an impact fee analysis must certify that it complies with the law.
7. You can spend impact fees on the projects in your capital facilities plan, but not on others.
8. You cannot spend impact fees on operations and maintenance.
9. You must go through the entire process of enacting an impact fee in order to amend one.
10. All amendments and enactments take effect 90 days or later after the date of passage.
11. You may charge an impact fee that is less than your impact fee analysis justifies, but you may not charge more.
12. Anyone who is to pay an impact fee is entitled to a credit for projects he or she is paying for that is part of the capital facilities plan. If requested, the municipality must do an individualized analysis of whether the imposition of the impact fees on a given project is legal and fair (rough equivalence between the burdens created by the development and those imposed on the development).

13. A development that is having no impact on a public facility cannot be charged an impact fee for that facility.
14. Impact fees cannot be used for schools, incarceration facilities, or projects with less than ten years of use.
15. An impact fee can be charged for a general system of public facilities, such as streets, even though the project paying the fee does not border a street that is planned to be improved.
16. An impact fee cannot be charged to improve public facilities that do not serve the development.
17. Impact fees can be used to repay the cost of facilities that have already been built if those facilities have excess capacity to handle growth.
18. Impact fees must be based on the actual cost of existing facilities that have excess capacity, not the current replacement cost.
19. When considered together, the requirements imposed on development in land dedications, public improvements, and impact fees cannot exceed the burden created by that development.
20. The arithmetic done to calculate impact fees must produce “rough equivalence” between the burdens created by development and the burdens imposed on development. “Precise mathematical equality is neither feasible nor constitutionally vital.”
21. Impact fee funds are accounted for separately by type of fee, accrue interest to be used for the same purpose as the fee was collected, and are accounted for annually to the state auditor.
22. A record must be kept of who paid any impact fee collected and of all expenditures from impact fee funds.
23. An impact fee must be spent or encumbered for qualified projects within 6 years of being collected, with rare exceptions for extraordinary circumstances.
24. An encumbered impact fee is one that is used to pay for improvements that are already contracted for or to retire debt used to construct the improvements before the impact fee is collected.
25. If an impact fee is not spent or encumbered within 6 years, it must be refunded.
26. There are special rules related to public and charter schools and the impact fees that may be imposed on them.
27. A person may still bring a challenge to an impact fee a year after the impact fee is paid.
28. Whether notice was given, proper formalities were respected, and other technicalities can be challenged by someone paying a fee at any time in the future when the fees created by an enactment are still being collected.
29. Local governments may create a local appeals process to review impact fee challenges.
30. The Office of the Property Rights Ombudsman will issue advisory opinions on impact fee questions. If a judge later agrees with the opinion, the person challenging the opinion must pay attorneys fees.
31. The courts will generally try to uphold an impact fee as a legislative enactment which is afforded a great deal of deference, but cannot validate a fee that was enacted without proper formalities or which is imposed unreasonably.

For More Information:

Utah Impact Fee Handbook and Checklists – available online at www.utahlanduse.org

Annual impact fee seminar cosponsored by the Utah Land Use Institute, ULCT, Utah Bar and others. Next one is April 14, 2010.