

ORDINANCE NO. 14-7 (4-29-14)

ORDINANCE AND IMPACT FEE ENACTMENT ADOPTING A SECONDARY WATER IMPACT FEE FACILITIES PLAN, SECONDARY WATER IMPACT FEE ANALYSIS, AND SECONDARY WATER SERVICE AREAS, AND ENACTING SECONDARY WATER IMPACT FEES IN THE CITY OF SARATOGA SPRINGS; PROVIDING FOR THE CALCULATION AND COLLECTION OF SUCH FEES; PROVIDING FOR APPEAL, MEDIATION, ARBITRATION, ACCOUNTING, AND SEVERABILITY OF THE SAME; AND OTHER RELATED MATTERS

WHEREAS, on February 15, 2011 the City mailed notice to affected entities and to the development community of its intent to update its Capital Facilities Plan for Secondary water facilities and to amend its secondary water facilities impact fees

WHEREAS, on August 1, 2011 the City properly noticed its intent to update its Capital Facilities Plan and to create an Impact Fee Facilities Plan for Secondary water facilities and to amend its secondary water facilities impact fees;

WHEREAS, on July 28, 2011 Saratoga Springs, Utah mailed the same notice to all affected entities;

WHEREAS, the City properly noticed a January 2012 kickoff meeting to begin the process to analyze secondary water impact fees;

WHEREAS, the City mailed individual notice of the kickoff meeting to 36 state and local governments, private development entities, and private home owners' associations;

WHEREAS, City consultants, City officials, representatives of other government entities, and interested private citizens attended the kickoff meeting;

WHEREAS, on February 8, 2012 City staff met with interested members of the development community to address growth assumptions that would form the foundation for the Impact Fee Facilities Plan and Analysis;

WHEREAS, on April 3, 2012, City staff convened a follow up meeting with the development community to address proposed growth assumptions;

WHEREAS, on June 4, 2013 the City properly noticed a public meeting to discuss the current and proposed levels of service for Secondary water facilities, the extent of excess secondary water facilities capacity to serve new growth, and the capital facilities that would be required to serve new growth in the impact fee expenditure period;

WHEREAS, on June 11, 2013, the City of Saratoga Springs, Utah held a public meeting to discuss the current and proposed levels of service for Secondary water facilities, the extent of

excess Secondary water facilities capacity to serve new growth, and the capital facilities that would be required to serve new growth in the impact fee expenditure period;

WHEREAS, on June 12, 2013, the City emailed copies of a DRAFT Secondary Water Impact Fee Facilities Plan and Analysis to affected entities and to the development community representatives and posted the same to the Public Notice Website;

WHEREAS, on July 11, 2013 the City properly noticed its intention to prepare a Secondary water impact fee facilities plan;

WHEREAS, on August 7, 2013 the City properly noticed its intention to prepare a Secondary water impact fee analysis;

WHEREAS, on April 18, 2014 the City properly posted a copy of the executive summary of and the certified Secondary Water Impact Fee Facilities Plan and Analysis;

WHEREAS, on April 18, the City properly noticed its intent to adopt the certified Secondary Water Impact Fee Facilities Plan and Analysis as well as its intent to hold a public hearing and possibly adopt this Ordinance;

WHEREAS, Saratoga Springs is a fourth class city of the State of Utah, authorized and organized under the provisions of Utah law and is authorized pursuant to the Impact Fee Act, Utah Code § 11-36a-101 *et seq.* to adopt Secondary water facilities impact fees; and

WHEREAS, the City has caused a Secondary Water Impact Fee Facilities Plan and Impact Fee Analysis to be prepared by Hansen, Allen and Luce to assess the level of Secondary water facility service that is currently provided to existing residents, the excess capacity in the existing Secondary water facilities infrastructure that is available to accommodate new growth without diminishing the current level of service and the elements and cost of additional Secondary water facilities that will be required to maintain the current level of service as projected growth occurs in the impact fee expenditure period and to recommend a valid Secondary water facilities impact fee based on the Impact Fee Facilities Plan; a copy of the Impact Fee Facilities Plan prepared by Hansen, Allen and Luce Secondary Water is attached hereto as exhibit "A"; and

WHEREAS, Hansen, Allen and Luce certified its work as compliant with Utah Code § 11-36a-306 on April 2, 2014; and

WHEREAS, on April 18, 2014, a full copy of the Secondary Water Impact Fee Facilities Plan, Secondary Water Impact Fee Analysis and impact fee enactment or ordinance, along with an executive summary of the Secondary Water Impact Fee Facilities Plan and Secondary Water Impact Fee Analysis that was designed to be understood by a lay person, were made available to the public at the Saratoga Springs public library, posted on the City's website, and the Public Notice Website; and

WHEREAS, on April 16, 2014, the Provo Daily Herald published notice of the date, time, and place of the first public hearing to consider the Impact Fee Facilities Plan, Impact Fee Analysis, and this Impact Fee Enactment or Ordinance; and

WHEREAS, on April 29, 2014, the City Council held a public hearing regarding the proposed and certified Secondary Water Impact Fee Facilities Plan, Secondary Water Impact Fee Analysis, and this Secondary Water Impact Fee Ordinance; and

WHEREAS, after careful consideration and review of the comments at the public hearing and the comments of the Participants, the Council has determined that it is in the best interest of the health, safety, and welfare of the inhabitants of Saratoga Springs to:

1. adopt the Impact Fee Facilities Plan for Secondary water Facilities as proposed;
2. adopt the Secondary Water Impact Fee Analysis as proposed;; and
3. enact this Ordinance to:
 - a. amend its current Secondary Water impact fees;
 - b. provide for the calculation and collection of such fees;
 - c. authorize a means to consider and accept an independent fee calculation for atypical development requests;
 - d. provide for an appeal process consistent with the Impact Fees Act;
 - e. update its accounting and reporting method;
 - f. all in a manner that is consistent with the Impact Fees Act.

NOW, THEREFORE, BE IT ORDAINED by the Saratoga Springs City Council as follows:

SECTION I – IMPACT FEE FACILITIES PLAN AND ANALYSIS: SECONDARY WATER

The Secondary Water Impact Fee Facilities Plan and Analysis attached hereto as Exhibit A is hereby adopted.

SECTION II – ENACTMENT

The following amendments, which are shown as underlines and strikethroughs, to Chapter 7.03 of the City Code are hereby made:

Chapter 7.03. Secondary Water Impact Fee.

7.03.01. Definitions.

7.03.02. Findings and Purpose.

7.03.03. ~~Adoption of Capital Facilities Plan~~Establishment of Secondary Water Service Area.

7.03.04. Adoption and Imposition of Secondary Water Impact Fee.

~~**7.03.05. Service Area Established.**~~

~~**7.03.06. Other Impact Fees Remain Unaffected.**~~

- ~~7.03.07.~~ ~~Time of Collection.~~
- ~~7.03.0805.~~ Use of Secondary Water Impact Fees.
- ~~7.03.0906.~~ Adjustments
- ~~7.03.1007.~~ Accounting, Expenditure, and Refunds.
- ~~7.03.1108.~~ Impact Fee Challenges and Appeals.
- ~~7.03.1209.~~ Severability.

7.03.01. Definitions.

As used in this Chapter the following terms shall have the meanings herein set out:

1. **“City”** means the City of Saratoga Springs and its incorporated boundaries.
2. **“Development Activity”** or **“new development”** means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for Public Facilities.
3. **“Equivalent Residential Connection Unit” or **“ERC”** means that measure of impact on ~~certain~~ public facilities equal to the impacts of one typical single ~~-~~family detached dwelling unit. For Secondary Water, an ERC equals .24 irrigated acres.**
4. **“Secondary Water Impact Fees”** means the Secondary Water Impact Fees adopted and imposed by this Chapter on Development Activity within the City.
5. **“Secondary Water Public Facilities”** means the following capital facilities that have a life expectancy of ten or more years and are owned or operated by or on behalf of the City as well as water rights for Secondary water owned by or on behalf of the City.
- ~~5.6. **Utah Impact Fees Act”** means Utah Code Chapter 11-36a~~
- ~~6. **“Impact Fees”** means the Impact Fees adopted and imposed by this Chapter on Development Activity within the City and as allowed by Utah Code Chapter 11-36a.~~
- ~~7. **“New Capital Facilities Plan”** means the capital facilities plan prepared by City Staff and Gilson Engineering for secondary water facilities and adopted by the City council in this Chapter.~~
- ~~8. **“Public Facilities”** covered by this Chapter means the following capital facilities that have a life expectancy of ten or more years and are owned or operated by or on behalf of the City: secondary water facilities.~~
- ~~9.7. **“Service Area”** means the service area formally adopted by the City Council in this Chapter.~~

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.02. Findings and Purpose.

The City Council hereby finds and determines:

1. There is a need to establish a secondary water facilities impact fee for a single service area to maintain the level of service for secondary water proposed in the Secondary Water Impact Fee Facilities Plan and Analysis.
2. The 2014 Secondary Water Facilities Impact Fee Plan and Analysis identify the:
 - a. projected development activity in the City through 2020,
 - b. level of service for secondary water facilities that serve existing residents;
 - c. excess secondary water facilities capacity that is available to serve new growth in the existing infrastructure;
 - d. proposed level of service for the City, which does not raise the existing level of service for current residents;
 - e. additional capital facilities that are required to maintain the proposed secondary water level of service without burdening existing residents with costs of new development activity; and
 - f. maximum fee justified by the study.
- ~~1. As the result of the City being a relatively new and rapidly growing city, there are very limited existing public facilities and new development will create the need for the Public Facilities as set out in the New Capital Facilities Plan~~
- ~~2. There is a need for Public Facilities for new development which have not been constructed and are required to be consistent with the City's General Plan and to protect the public's health, safety, and welfare~~
- ~~3. The rapid and continuing growth of the City necessitates the imposition and collection of the Impact Fees that require new development to pay its fair share of the costs of providing the Public Facilities occasioned by the demands and needs of the Development Activity at service levels necessary to promote and preserve the public health, safety, and welfare.~~
- ~~4. The New Capital Facilities Plan establishes the estimated costs for providing the Public Facilities covered by this Chapter, identifies the impact on the needs for those Public Facilities by Development Activity, demonstrates how the impacts on the need for the applicable Public Facilities are reasonably related to the Development Activity, estimates the proportionate share of the costs of the needed Public Facilities related to new development, and identifies how the Impact Fees set out in the New Capital Facilities Plan and adopted by this Chapter were determined.~~
- ~~5. The Impact Fees established by this Chapter are reasonably related to the costs of providing such Public Facilities necessitated by anticipated future growth within the City and are consistent with requirements of the Utah Impact Fees Act.~~

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.03. Establishment of Secondary Water Service Area~~Adoption of Capital Facilities Plan.~~

~~The City Council hereby approves and adopts the new Capital Facilities Plan and the analysis reflected therein and the methodology used for calculation of the Impact Fees imposed by this Chapter for the Public Facilities covered by this Chapter.~~

The City Council hereby approves and establishes the City Wide Secondary Water Service Area for which the Secondary Water Impact Fee herein provided will be imposed.

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.04. Adoption and Imposition of Secondary Water Impact Fees.

The City Council hereby approves and imposes and levies on all Development Activity the Impact Fee for secondary water as follows: \$1,800 per ERU.

1. A Secondary Water Impact Fee for all new development activity shall be calculated as the sum of three components, as follows:

Type	Per ERC
Source	\$2017
Storage	\$1478
Water Rights	\$2263
Planning	\$24
Total	\$5782

2. The City shall accept payment for the Water Rights component of the secondary water impact fee as follows:
 - a. \$2263 per ERC;
 - b. surrender of an equivalent pre-paid water right credit; or
 - c. dedication of an equivalent City-approved leased or deeded water right

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.05. ~~Service Area Established.~~

~~The entire area of the City and any area outside of the City covered by the new Capital Facilities Plan which may hereafter be annexed into the City or serviced by any Public Facility are hereby designated as one service area with respect to secondary water facilities.~~

~~(Ord. 11-9; Ord. 05-22)~~

7.03.06. ~~Other Impact Fees Remain Unaffected.~~

~~The previously adopted impact fees established for storm drainage and wastewater collection shall remain unaffected by this Chapter and shall remain subject to the impact fee ordinances by which they were adopted.~~

~~(Ord. 11-9; Ord. 05-22)~~

7.03.07. ~~Time of Collection.~~

The Impact Fees imposed by this Chapter shall be paid prior to and as a condition of the issuance of a building permit for any Development Activity.

(Ord. 11-9; Ord. 05-22)

7.03.0805. Use of Secondary Water Impact Fees.

The Impact Fees collected by the City shall be used solely to:

- ~~1. pay for the Public Facilities provided for by this Chapter and the new Capital Facilities Plan by the City;~~
- ~~2. reimburse the City for a Development Activity's share of Public Facilities already constructed by the City; and~~
- ~~3.1. reimburse developers who have constructed Public Facilities where those Public Facilities are beyond that needed to meet the demands of the developers Development Activities.~~

The Secondary Water Impact Fees collected by the City shall be used as provided in the Secondary Water Impact Fee Facilities Plan and Analysis.

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.0906. Adjustments.

The City may adjust the Impact Fees imposed by this Chapter as necessary in order to:

- ~~1. respond to unusual circumstances in specific cases;~~
- ~~2. ensure that the Impact Fees are imposed fairly;~~
- ~~3. adjust the amount of the Impact Fees to be imposed on a particular development based upon studies and data submitted by the developer that are approved by the City Council; and~~
- ~~4. allow credits as approved by the City Council for dedication of land for, improvements to, or construction of Public Facilities providing services to the City at large, provided such facilities are identified in the New Capital Facilities Plan and are required by the City as a condition of approving the development or Development Activity.~~

1. The City shall adjust the calculation of all, or any component, of the Secondary Water impact fees imposed by this Chapter as necessary to:

- a. respond to unusual circumstances in specific cases;
- b. ensure that the impact fees are imposed fairly; and
- c. adjust the amount of the Impact Fees to be imposed on a particular development based upon studies and data submitted by the developer that are approved by the City Council.

2. The City Council shall allow credit against, or proportionate reimbursement from, impact fees for the:

- a. dedication of land for a System Improvement; and

b. full or partial construction of a:

- i. System Improvement identified in the Secondary Water Impact Fee Facilities Plan; or
- ii. publicly accepted and dedicated capital improvement that will offset the need for a System Improvement.

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.1007. Accounting, Expenditures, and Refunds.

The City shall account for, expend, and refund Secondary Water Impact Fees ~~collected pursuant to~~ in accordance with this Chapter ~~in accordance with~~ and the Utah Impact Fees Act.

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.1108. Impact Fee Challenges and Appeals.

- ~~1. Any person or entity residing in or owning property within a service area and any organization, association, or corporation representing the interests of persons or entities owning property within a service area, may file a declaratory judgment action challenging the validity of the Impact Fees after filing an appeal with the City Council as provided in Subsection (4) of this Section.~~
- ~~2. Any person or entity required to pay an Impact Fee who believes the fee does not meet the requirements of law may file a written request for information with the City.~~
- ~~3. Within two weeks of the receipt of the request for information, the City shall provide the person or entity with the written analysis required by the Utah Impact Fee Act and with any other relevant information relating to the Impact Fees. The City may charge for all copies provided for in response to such a request in an amount set out in the City's Consolidated Fee Schedule.~~
- ~~4. Within thirty days after paying an Impact Fee, any person or entity who has paid the fee and wishes to challenge the fee shall file a written appeal with the City Council by delivering a copy of such appeal with the City Manager setting forth in detail all grounds for the appeal and all facts relied upon by the appealing party with respect to the fee being appealed.
 - ~~a. Upon receipt of an appeal, the City Council shall thereafter schedule a hearing on the appeal at which time all interested persons will be given an opportunity to be heard. The City Council shall schedule the appeal hearing and thereafter render its decision on the appeal no later than thirty days after the challenge to the impact fee is filed.~~
 - ~~b. Any person or entity who has failed to comply with the administrative appeal remedies established by this Section may not file or join an action challenging the validity of any Impact Fee.~~
 - ~~c. Within ninety days of a decision upholding an Impact Fee by the City Council or within 120 days after the date the challenge to the impact fee was filed, whichever is earlier, any party to the appeal who is adversely affected by the City Council's decision may petition the Fourth Judicial District Court for Utah County for~~~~

~~review of the decision. In the event of a petition to the Fourth Judicial District Court, the City shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.~~

~~i. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Subsection.~~

~~ii. If there is a record:~~

~~1. the court's review is limited to the record provided by the City; and~~

~~2. the court may not accept or consider any evidence outside the City's record unless that evidence was offered to the City Council and the court determines that it was improperly excluded by the City Council.~~

~~iii. If there is an inadequate record, the court may call witnesses and take evidence.~~

~~iv. The court shall affirm the decision of the City Council if the decision is supported by substantial evidence in the record.~~

~~v.i. The court may award reasonable attorneys' fees and costs to the prevailing party in any action brought under this Section.~~

1. Any person required to pay an Impact Fee who believes the fee does not meet the requirements of the Impact Fees Act or this Chapter may file a written request for information with the City.
2. The City shall provide the person with a copy of the Impact Fee Facilities Plan and Analysis for Secondary water, the specific calculation staff used to calculate the Secondary water Impact Fee for the person, if applicable, and any other relevant information relating to the Impact Fees. The City may charge for all copies provided for in response to such a request in an amount set out in the City's Consolidated Fee Schedule.
3. At any time prior to thirty days after paying an Impact Fee, the person required to pay an Impact Fee and wishes to challenge the fee may request a third party advisory opinion in accordance with UCA §13-43-205.
4. Within thirty days after paying an Impact Fee, any person who has paid the fee and wishes to challenge the fee shall file:
 - a. a written appeal with the City Hearing Examiner;
 - b. a request for arbitration; or
 - c. an action in district court.
5. The written appeal shall be delivered to the City Manager and shall set forth in detail all grounds for the appeal and all facts relied upon by the appealing party with respect to the fee being appealed.
 - a. Upon receipt of an appeal, the City Hearing Examiner shall schedule a hearing and shall consider all evidence presented by the appellant, as well as all evidence presented by staff. The City Hearing Examiner shall schedule the appeal hearing

and thereafter render its written findings of fact, conclusions of law and decision no later than thirty days after the challenge to the impact fee is filed.

- b. Within ninety days of a decision upholding an Impact Fee by the City Hearing Examiner or within 120 days after the date the challenge to the impact fee was filed, whichever is earlier, the person who filed the appeal may petition the Fourth Judicial District Court for Utah County for review of the Hearing Examiner's decision. In the event of a petition to the Fourth Judicial District Court, the City shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
 - i. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Subsection.
 - ii. If there is an adequate record, the:
 - A. court's review is limited to the record provided by the City; and
 - B. court may not accept or consider any evidence outside the City's record unless that evidence was offered to the City Hearing Examiner and the court determines that it was improperly excluded by the City Hearing Examiner.
 - iii. If there is an inadequate record, the court may call witnesses and take evidence.
 - iv. The court shall affirm the decision of the City Council if the decision is supported by substantial evidence.

6. If the request is for arbitration, both the City and the person requesting arbitration shall comply with UCA § 11-36a-705.

~~2.7.~~ Within thirty days after paying an Impact Fee, the state, a school district or a charter school may alternatively submit a written request for mediation to the City Manager.

- a. Both the City and the specified public agency shall comply with UCA § 11-36a-704.

(Ord. 14-7; Ord. 11-9; Ord. 05-22)

7.03.1209. Severability.

If any section, subsection, sentence, clause, or portion of this Chapter is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby and shall remain in effect and be enforced to the extent permitted by law.

(Ord. 11-9; Ord. 05-22)

SECTION III – AMENDMENT OF CONFLICTING ORDINANCES

If any ordinance, resolution, policy or map of the City heretofore adopted is inconsistent herewith it is hereby amended to comply with the provisions hereof. If it cannot be amended to comply with the provisions hereof, the inconsistent provision is hereby repealed.

SECTION IV – EFFECTIVE DATE

This ordinance shall take effect upon publication and 90 days after its passage by a majority vote of the Saratoga Springs City Council.

SECTION V – SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION VI – PUBLIC NOTICE

The Saratoga Springs City Recorder is hereby ordered, in accordance with the requirements of Utah Code §§ 10-3-710—711, to:

- a. deposit a copy of this ordinance in the office of the City Recorder; and
- b. publish notice as follows:
 - i. publish a short summary of this ordinance for at least one publication in a newspaper of general circulation in the City; or
 - ii. post a complete copy of this ordinance in three public places within the City.

ADOPTED AND PASSED by the City Council of the City of Saratoga Springs, Utah, this ___ day of _____, 2014.

Signed: _____
Jim Miller, Mayor

Attest: _____
Lori Yates, City Recorder

Date

VOTE

- Shellie Baertsch _____
- Rebecca Call _____
- Michael McOmber _____
- Bud Poduska _____
- Stephen Willden _____