



Impact Fees Summary

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Background

An impact fee is a payment of money imposed upon a new land development activity as a condition for approval to develop the land. Impact fees are used to mitigate the impact of the new development on existing public infrastructure (see Utah Code Section 11-36a-102). Impact fees are imposed by municipalities and are paid by the developer.

Impact fees do not include taxes, special assessments, building permit fees, hookup fees, project improvement fees, or other reasonable permit or application fees.

Key Court Rulings

The Legislature created the Impact Fees Act in 1995 to establish a unified system defining the process to impose impact fees, allowable uses, and the requirements for a local government to demonstrate the reasonableness of any proposed impact fees.

Prior to enacting the Impact Fees Act, land developers questioned whether impact fees were legal and, if so, what costs could be included in an impact fee, what was the process for imposing an impact fee, or what was the basis on which an impact fee could be challenged. These questions were raised in various court cases. The two most impactful court rulings related to impact fees are the Call and Banberry cases.

Pre-1995 Governance

Impact fees were governed by court decisions. There were no statutory guidelines and each city had their own process, unless overruled by a court decision.

Call vs. City of West Jordan City (1979)

In the case of Call vs. West Jordan City, the plaintiffs argued that the city had no authority to impose impact fees, the fee imposed was intended to benefit the whole city and was not strictly limited to the benefit of the newly developed properties, the fee amounted to an unlawful exercise of eminent domain without just compensation, and the fee amounted to an unlawful tax.

The Utah Supreme Court upheld the Third District Court ruling that local governments have the right to impose impact fees and agreed with the city regarding the appropriateness of the imposed fees.

Banberry Development Corp. vs. West Jordan City (1981)

In the Banberry case, the plaintiffs argued that the city had no authority to impose water connection and park improvement fees as a condition of developing land and, that if such fees were authorized, the fees were unreasonable.

Ultimately, the Utah Supreme Court upheld the authority to impose impact fees as a precondition to development. Equally important in this case, the court established “guardrails” for local governments desiring to impose impact fees.



The court ruled that an impact fee must be reasonable and equitable considering the relative burden a development has on the existing infrastructure. Additionally, the court articulated seven factors to determine the reasonableness of an impact fee.

Impact Fees Act

Impact fees may be imposed for the impact that a new development has on the infrastructure that is owned or operated by, or on behalf of, local government and that has an anticipated lifespan of 10 years or more. Impact fees collected must be spent within six years of collection of the fee.

Post-1995 Governance

- Public Notices and Hearings
- Impact Fees Plan
- Written Analysis
- Proportional Share Analysis

Allowable Uses

- Water rights and water supply, treatment, and distribution facilities
- Waste water collection and treatment
- Storm water, drainage, and flood control
- Municipal power facilities
- Roadway facilities
- Parks, recreation, open space, and trails
- Public safety facilities
- May also be imposed in limited cases for environmental mitigation (11-36a-202)

Prohibited Uses

- Constructing jails or prisons
- Acquiring fire suppression vehicles costing less than \$500,000
- Addressing existing infrastructure deficiencies
- Increasing the level of service of existing infrastructure
- Funding the operation and maintenance of public facilities
- Serving as a general revenue measure

Additional Restrictions

- Impact fees on residential properties may not be used for any fire suppression vehicles.
- School district or charter school impact fees may not be used for parks.
- Impact fees may not be used to fund public safety or law enforcement for institutions that have their own police force (i.e. Utah National Guard, Utah Highway Patrol, or institutions of higher education).
- Replacement school facilities within the same jurisdiction may only be charged an impact fee relative to an increase in the demand for service.



Impact Fees Plan

An impact fee plan is required for any local government, seeking to impose an impact fee, that serves a population of 5,000 or more or charges \$250,000 or more in impact fees per year. Local governments that do not meet this standard must still ensure that any proposed impact fees are reasonable.

A local government is required to provide public notification of an intent to prepare an impact fee plan. The plan must identify the existing levels of service of the existing infrastructure, establish a proposed level of service, identify excess capacity to meet future growth, identify the demands of proposed new development on existing infrastructure, identify how the local government will address the increase in demand for services, and consider all possible funding sources to finance the anticipated increase in demand for services. An impact fee plan must be certified by the preparer of the plan.

Public Notices are required prior to:

- Preparing a plan
- Adopting a plan
- Preparing an analysis
- Adopting an impact fee

Impact Fee and Proportional Share Analysis

Once a local government has certified a prepared impact fee plan, the local government is required to provide public notification of an intent to prepare an impact fee analysis.

An impact fee analysis must include the anticipated impact that a new development will have on existing services, the anticipated system improvements that would be needed to maintain the existing level of service, an analysis of how the anticipated impacts to existing services are related to the new development, an estimate of the proportional share of costs, and an explanation as to how the impact fee was calculated. The local government is required to certify the impact fee analysis.

Adoption of an Impact Fee

Once a local government has created and certified an impact fee plan and an impact fee analysis, the local government is required to provide public notification of an intent to adopt an impact fee.

A public hearing is required, and the local government is required to make copies of all relevant documents available to the public (impact fee plan, impact fee analysis, and plain summaries of each). The local government is required to adopt an impact fee in a public meeting