

**CHAPTER 15**  
**MUNICIPAL IMPACT FEES**

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## CHAPTER 15

### MUNICIPAL IMPACT FEES

#### **Section 15-1. Impact Fees Imposed.**

Impact fees are hereby imposed as a condition of the issuance of a water connection by the Town of any <sup>1</sup>Development Activity which creates additional demand and need for public facilities for the culinary water system as set forth in Exhibit A which is incorporated herein by this reference.

#### **Section 15-2. Service Areas**

The entire area of the Town and any areas outside the Town serviced by such systems are hereby designated and established as one service area with respect to the culinary water system.

#### **Section 15-3. Time of Collection**

Unless otherwise provided by the Town Council, impact fees shall be paid to the Town prior to the issuance of a building permit by the Town.

#### **Section 15-4. Adjustment of Impact Fees.**

- A. The Town may adjust the impact fees imposed pursuant to this ordinance in order to:
1. Respond to unusual circumstances in specific cases;
  2. Ensure that the impact fees are imposed fairly;
  3. Permit the adjustment of the amount of the fee based upon studies and data submitted by an applicant or developer, as approved by the Town Council; and
  4. Allow a credit against impact fees, as approved by the Town Council, for dedication of land for, improvement to, or new construction of, any system improvements by the applicant or developer if the facilities are identified in the Town's Facilities, Capital Improvement Plan or other reasonable Plans and are required by the Town as a condition of approving the development activity. No credits shall be given for project improvements not defined by the Utah Impact Fees Act.
  5. Allow for the annual review of impact fees and any reduction or increase in fees based on annual inflation calculations. The Town on an annual basis shall make a determination of whether impact fees should be adjusted based on the impact fee index published by the Engineering News Record.

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<sup>1</sup> "Development Activity" 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 enters additional demand or need for public facilities. See Utah Code §36-36-102

- B. The Town Planning Commission shall have the authority to make recommendation on such adjustments based upon information submitted by an applicant or developer and any recommendations from other appropriate Town officials or employees, including the Town Engineer.
- C. The Town may adopt policies consistent with this ordinance and any resolutions passed by the Town Council to assist in the implementation, administration and interpretation of this ordinance related to Municipal Impact Fees.
- D. If the applicant, developer, person or entity is not satisfied with the Town Planning Commission’s recommendation, an appeal may be made to the Town Council under the procedures set forth in Section 15-6, below.

**Section 15-5. Accounting, Expenditure and Refund of Impact Fees.**

The Town shall account for, expend and refund impact fees collected pursuant to this Chapter in accordance with the provisions of the Utah Impact Fees Act.

**Section 15-6. Administrative Challenges and Appeals Procedure.**

- A. Any person or entity required to pay an impact fee imposed by the Town who believes the fee does not meet the requirements of law may file a written request for information with the Town as provided by law.
- B. Within two weeks of the receipt of the request for information, the Town shall provide the person or entity with the written analysis required by the Act and with any other relevant information relating to the impact fee.
- C. Within 30 days after paying an impact fee or as otherwise provided for under Utah Code §11-36-401(4)(b), any person or entity who has paid the fee and wishes to challenge the fee shall:
  - 1. Notwithstanding Section 15-7, file a written appeal with the Howell Town Recorder setting forth in detail all factual and legal grounds in support of the appeal and challenge to the impact fee, and which is relied upon by the appealing party with respect to the fees challenged. Upon receipt of the written appeal, the Town Recorder shall forward the appeal, together with any recommendations for the Town Engineer, to the Town Council and shall schedule a public hearing before the Town Council on the appeal for the purpose of receiving input from all interested persons. The Town Council shall thereafter render its decision on the appeal no later than 30 days after the date of the appeal was filed with the Town Recorder. Any person or entity, who has failed to comply with the administrative remedies established by this section, may not file or join an action challenging the validity of any impact fee.

- D. Any person or entity who was a party to an appeal under this section who is adversely affected by the decision of the Town Council may petition the District Court for a review of the decision within 90 days of a decision upholding an impact fee by the Town Council or with 120 days after the date the challenge to the impact fee was filed, whichever is earlier. The petition for the review of the decision shall be filed in the First District Court for Box Elder County.
- E. In the event a petition is filed with the District Court, the Town 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.
- F. If the proceeding was tape recorded a transcript of that tape recording is a true and correct transcript for the purposes of Subsection E above.
- G. If there is a record:
  - 1. The District Court's review is limited to the record provided by the Town; and
  - 2. The District Court may not accept or consider any evidence outside the Town's record unless that evidence was offered to the Town and the Court determines that it was improperly excluded by the Town.
- H. If there is an inadequate record, the Court may call witnesses and take evidence.
- I. The District Court shall affirm the decision of the Town if the decision is supported by substantial evidence in the record.
- J. The Judge may award reasonable attorney's fees and costs to the prevailing party in an action brought under this section.

**Section 15-7. Challenging an Impact Fee by Arbitration-Procedure-Appeal-Costs.**

- A. Each person or entity intending to challenge an impact fee under Section 15-6 shall file a written request for arbitration with Howell Town within 30 days.
- B. If a person or entity files a written request for arbitration under Subsection (A), an arbitrator or arbitration panel shall be selected as follows:
  - 1. The Town and the person or entity filing the request may agree on a single arbitrator within ten days after the day the request for arbitration is filed; or
  - 2. If a single arbitrator is not agreed to in accordance with Subsection (B) (1), an arbitration panel shall be created with the following members:
    - i. Each party shall select an arbitrator with 20 days after the day request is filed; and
    - ii. The arbitrators selected under Subsection (B) (2) (i) shall select a

third arbitrator.

- C. The arbitration panel shall hold a hearing on the challenge within 30 days after the date:
  - 1. The single arbitrator is agreed on under Subsection (B) (1); or
  - 2. The two arbitrators are agreed on under Subsection (B) (2) (i).
- D. The arbitrator or arbitration panel shall issue a decision in writing within ten days from the date the hearing under Subsection (C) is completed.
- E. Except as provided in this section, each arbitration shall be governed by Title 78, Chapter 31 a, Utah Arbitration Act.
- F. The parties may agree to:
  - 1. Binding arbitration;
  - 2. Formal, nonbinding arbitration; or
  - 3. Informal, nonbinding arbitration.
- G. If the parties agree in writing to binding arbitration:
  - 1. The arbitration shall be binding;
  - 2. The decision of the arbitration panel shall be final;
  - 3. Neither party may appeal the decision of the arbitration panel; and
  - 4. Notwithstanding Subsection (J), the person or entity challenging the Impact fee may not also challenge the impact fee under any subsection of 15-6 nor under Subsection 11-36-401(1), (4) (c) (i), or (4) (c) (iii) of the Utah State Code.
- H.
  - 1. Except as provided in Subsection (H) (2), if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63, Chapter 46b, Administrative Procedures Act.
  - 2. For the purposes of applying Title 63, Chapter 46b, Administrative Procedures Act, to formal, nonbinding arbitration under this section, notwithstanding Section 63-46b-20, “agency” means Howell Town.
- I.
  - 1. An appeal from a decision in an informal, nonbinding arbitration may be filed with the 1st District Court.
  - 2. Each appeal under Subsection (I) (1) shall be filed within 30 days after the date the arbitration panel issues a decision under Subsection (D).
  - 3. The district court shall consider de novo each appeal filed under this Subsection (I).
  - 4. Notwithstanding Subsection (J), a person or entity that files an appeal under this Subsection (I) may not also challenge the impact fee under any subsection of 15-6 nor under Subsection 11-36-401(1) of the Utah State Code

- J. 1. Except as provided in Subsection (G)(4) and (I)(4), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Subsections 15-6(A) and (D) or Subsection 11-36-401(1), (3), (4)(c)(iii) of the Utah State Code.
- 2. The filing of a written request for arbitration with 30 days tolls all time limitations under Section 15-6 until the date the arbitration panel issues a decision.
- K. The person or entity filing a request for arbitration and Howell Town shall equally share all costs of an arbitration proceeding under this section.
- L. Remedies from actions brought under 15-6 or 15-7 above, shall be in accordance with Subsection 11-36-401(4) (d) of Utah State Code.

#### **Section 15-8 Severability**

If any section, paragraph, sentence, clause or phrase of this ordinance is declared invalid by court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

#### **Section 15-9 Effective Date**

The Howell Town Council specifically finds that it is necessary for the immediate preservation of the health, safety and welfare of the present and future inhabitants of the Town, that this ordinance take effect immediately, and therefore this ordinance shall take effect immediately after passage by the Town Council and subsequent posting as required by law.