

Water Rates and Fees

There has been an increased concern over water rates and connection fees. This is a short primer on the topic. The general rule of law is that all rates and fees must be reasonable. This is required by the Utah State Constitution.¹ The dispute usually is over what is reasonable and who decides.

Connection fees for water systems have become complicated because of the 1995 Impact Fees Act.² The Act defines a hookup fee as a reasonable charge for connecting to a water system which does not exceed the approximate average cost to the city or town for the actual physical connection to the system.³ In other words a hookup fee should not be a profit center for the city or town.

Any connection charge over and above the hookup fee is by definition an impact fee. All impact fees must be established in strict accordance with the Impact Fees Act. This act requires certain studies, public hearings, and procedures. These include regulations controlling the accounting for and the use of the money collected.

While rates and charges for water service must be reasonable, a city or town will be given very broad discretion by a court in their decisions as to what a reasonable fee is. Courts have held that the rates charged by a city are presumptively valid and that any person who challenges the rates carries a heavy burden to show that the rates are unreasonable or discriminatory.⁴ A court should require a city or town to justify its rates only after the person challenging the rate has presented competent evidence that the rates are inappropriate.

One of the thornier issues is whether a city or town can charge different rates for residents and non-residents. Utah law allows, but does not require, a municipality to sell its surplus water to nonresidents.⁵ Many cities that do this charge a higher rate to the non-resident. The Utah Supreme Court has held that a city or town cannot charge a higher rate to a non-resident based on their status as a non-resident only.⁶ There must be some other legitimate justification for the rate discrimination. The court did suggest some examples of legitimate justifications for differing rates for residents and nonresidents. These include the difference in cost of providing the service, the risks that residents may bear that non-residents don't have, the contributions that residents have made to the system that non-residents have not made, and whether the water system is supported by general revenue funds that the nonresident has not contributed to. These are only examples of the types of justifications that a court would require -- not an exhaustive list.

¹ Utah Constitution Article XI Section 6.

² Utah Code 11-36-101.

³ Utah Code 11-36-102(7).

⁴ For example see *Platt v. Town of Torrey* 939 P.2d 325, Utah 1997.

⁵ Utah Code 10-8-14.

⁶ *Platt v. Town of Torrey* 939 P.2d 325, Utah 1997.

These same types of justifications may be required if a city or town has differing rates for service areas within the municipality. The courts will however defer to the local government if at all possible. Courts have held that rate making does not require mathematical equality and, since the setting of rates is a legislative function, they will exercise caution in setting aside a rate.

The conclusions to be drawn from all this is that you have a great deal of discretion in setting water rates. They can be different for differing areas of a community if there is a rationale basis for having a different rate. You cannot charge nonresidents a difference rate than residents unless you can show that the differing rate is justified by something other than residency. Your connection and hookup fees are subject to more scrutiny than your rates because of the requirements of the Impact Fees Act. You must be prepared to defend any connection fee that exceeds your actual costs in making the physical connection to the system.

As discussed previously in this handbook, if the owner or occupant of any of the premises fails to pay for water or sewer furnished, according to the ordinances, rules, or regulations enacted or adopted, the city or town can shut off the water. It is not required to turn the water on again until all arrears for water furnished shall be paid in full. Since city water systems are not regulated by the Utah Public Service Commission, rules regarding utility shut off that may apply to the private gas and power companies regarding winter shut off or hardships do not apply.

A city must be careful, however, to adopt reasonable procedures for billing and notice of intent to shut off water and follow these procedures in a nondiscriminatory manner. The best practice is to give a good clear notice of the intention to shut off the water and an opportunity for a fair resolution of any dispute about whether or not the payment was made prior to the disconnection of the water.

A city or town cannot condition the connection of water to a house on the payment by a new owner of the previous owner's water bills. Water bills are personal in nature and do not attach to the land as a lien. You have to go after the individual who signed up for the water and not the person who is now buying or renting the house that wants to connect.⁷ In other words when the title company calls you to see what liens or assessments are owed on a piece of property for a closing you are not supposed to say that an old water bill needs to be paid. In addition when a new owners comes into the offices to hook up his or her water you cannot make them pay the previous owner's overdue balance.

⁷ Utah Code 10-7-10.5(2).