

**CHAPTER 24. IMPACT FEES****Article 24-1. Water Impact Fees****Article 24-2. Water Facilities Impact Fees and Wastewater Impact Fees****Article 24-1. Water Impact Fees**

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**24-1-1. Title.**

A. This Chapter shall be known as the "City of Orem Impact Fee Ordinance."

B. The City Council of the City of Orem, Utah, has the authority to adopt this Ordinance pursuant to State of Utah police powers granted to municipalities.

C. This Ordinance shall apply in the incorporated area of the City of Orem, Utah.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-2. Purpose and Intent.**

The purpose of this Article is to assist in the implementation of the City of Orem Water Rights Capital Facilities Plan and to regulate the use and development of land through impact fees so as to assure that new development bears an appropriate and proportionate share of the cost of increasing the water supply necessitated and generated by such development. The intent of this Article is to comply with the "Impact Fees Act" Section 11-36-101 Utah Code Annotated (1953 as amended), the Utah Constitution, and the United States Constitution (Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-3. Legislative Findings.**

The City Council of the City of Orem, Utah finds, determines and declares that:

A. Water demand in the City of Orem is projected to grow from approximately 26,000 acre feet per year to over 30,000 acre feet by the year 2005 as a result of new growth.

B. There is a drought cycle every six to eight years in the City of Orem.

C. During drought years the City only receives a certain percentage of its water rights depending upon the level of drought.

D. During drought years the City generally needs 150 percent of normal water rights to maintain non-drought levels of service.

E. The City of Orem must increase its water rights in order to maintain current levels of service if new development is to be accommodated. This must be done in order to promote and protect the public health, safety and welfare.

F. The Legislature of the State of Utah, through the enablement of land development statutes and police power regulations, and the Utah Supreme Court, in a series of judicial decisions, have set forth criteria for the development of impact fees.

G. The imposition of water rights impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of water rights necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare.

H. Each of the types of land development described in the General Plan and Zoning Ordinance of the City will generate increased demand and use of water necessitating the acquisition of water rights to meet the demand.

I. The fees established by this ordinance are derived from, are based upon, and do not exceed, the costs of providing water necessitated by the new land developments for which the fees are levied.

J. The capital facilities plan adopted by the City Council on August 22, 1995, is the capital facilities plan required by Section 11-36-201 Utah Code Annotated that identifies demands placed upon existing public facilities by new development activity and the proposed means by which the City will meet the demands.

K. The Analysis calculates the average amount of water used during a normal water year by new development to insure that the cost paid by new customers to purchase water is not subsidized by existing customers or that new customers are not required to pay more for the purchase of water than what they use. The Analysis does not calculate what

water rights are needed by new development during drought years.

L. The Analysis follows the provisions of Utah's Impact Fee legislation and the Banberry decision by the Utah Supreme Court which give municipalities authority to impose impact fees for the cost of new development.

M. The Metropolitan Water District of Orem has been established by the City of Orem to purchase and provide the necessary water rights for the residents of the City of Orem.

N. An interlocal agreement between the City and the Metropolitan Water District of Orem is the best instrument to define the relationship and duties between the two entities in fulfilling the intent of this Article.

O. The City and the Metropolitan Water District have entered into an interlocal agreement pursuant to the purpose and intent of this Article.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-4. Definitions.**

As used in this Chapter:

**Building permit** means a permit from the City for the construction of any structure or building.

**Capital facilities plan** means a plan required by Section 11-36-201 Utah Code Ann.

**City** means the City of Orem.

**City Manager** means the City Manager of the City of Orem or designee.

**Development activity** means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land that creates additional demand and need for water.

**District** means the Metropolitan Water District of the City of Orem

**Feepayer** is a person who seeks to develop land which uses water and requires the issuance of a building permit.

**Person** means an individual, a corporation, a partnership, an incorporated association, a limited liability company, or any other similar entity.

**Proportionate share** means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

**Public Works Director** means the Public Works Director of the City of Orem or designee.

**Wastewater Facilities** means the City's wastewater infrastructure systems including but not limited to water treatment facilities, sewer lines and pipes, storage facilities, ditches, easements and rights of way, and all associated real property, structures and equipment used in connection with the City's

wastewater systems. Wastewater Facilities does not mean water rights.

**Wastewater Impact Fee** means a payment of money imposed upon development activity as a condition of development approval to be used for the purpose of constructing and upgrading wastewater facilities necessitated by development activity. Wastewater Impact Fee does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other permit or application fee.

**Water Facilities** means the City's culinary water infrastructure systems including but not limited to water treatment facilities, water lines and pipes, storage facilities, wells, ditches, easements and rights of way, and all associated real property, structures and equipment used in connection with the City's culinary water systems. Water Facilities does not mean water rights.

**Water Facilities Impact Fee** means a payment of money imposed upon development activity as a condition of development approval to be used for the purpose of constructing and upgrading water facilities necessitated by development activity. Water Facilities Impact Fee does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other permit or application fee.

**Water Rights Impact Fee** means a payment of money imposed upon development activity as a condition of development approval to be used for the purpose of purchasing water rights. Water Rights Impact Fee also means an equivalent amount of water rights contributed in lieu of a payment of money. Water Rights Impact Fee does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other permit or application fee.

**Water Meter** means a device that measures the flow of water to a specific lot, parcel, structure, business or dwelling. Water Meter does not mean a fire meter where the water passes through the meter only when there is a fire or immediate threat of fire to the structure or property serviced by the meter.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-5. Rules of Construction.**

A. The provisions of this ordinance shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety, and welfare.

B. For the purposes of administration and enforcement, unless otherwise stated in this ordinance, the following rules of construction shall apply to the text of this ordinance;

1. In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.

2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

3. Words used in the present tense shall include the future, and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicate the contrary.

4. The phrase "used for" includes arranged for, designed for, maintained for, or occupied for.

5. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction and, or, or either ... or, the conjunction shall be interpreted as follows:

a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.

b. "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.

c. "Either ... or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.

6. The word includes shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-6. Imposition of Water Rights Impact Fee.**

A. Any person who, after the effective date of this ordinance, seeks to develop land in the City by making improvements to the land which will generate additional water use is hereby required to pay a water rights impact fee in the manner and amount set forth in this Article. The fee shall be paid at the time of the building permit application. The fee shall be determined by the City Council pursuant to this Article. A fee shall be imposed for each equivalent unit. Equivalent units are determined by the water use of a 3/4 inch water meter that serves a unit such as a single family dwelling, business, apartment, condominium, duplex etc. as determined by the Analysis. Fee assessments for any given meter size shall be determined by multiplying the water capacity of the equivalent unit meter by the water capacity of the particular meter to be assessed (i.e. equivalent meter factor). The amount of the water rights impact fee shall be no more than that justified by the Analysis. In lieu

of paying the water rights impact fee, the fee payer has the option to provide to the Metropolitan Water District of Orem, an equivalent and reliable amount of acceptable water rights as determined by the Public Works Director.

B. No building permit shall be issued by the City unless or until the water rights impact fee hereby required has been paid.

C. No building permit shall be issued by the City if such a building permit requires a larger water meter than was approved at the time the original building permit was issued until the appropriate water rights impact fee associated with the new water meter has been paid.

D. The following shall be exempted from payment of the water rights impact fee:

1. Alterations or expansion of an existing residential building where no additional residential units are created and where the water meter size is not changed.

2. The construction of accessory buildings or structures where no meter is added or enlarged.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure where the water meter is the same size.

4. The installation of a replacement mobile home on a lot or other such site when a water impact fee for such mobile home site has previously been paid pursuant to this ordinance or where a mobile home legally existed on such site on or prior to the effective date of this ordinance.

5. Alterations or expansion of an existing commercial or manufacturing building where the water meter size stays the same.

6. Current or previous property owner has already deeded water rights appurtenant to the property to the City or Metropolitan Water District without a charge and water rights deeded are sufficient to supply the development.

E. Any claim of exemption must be made no later than the time of application for a building permit or permit for mobile home installation. Any claim not so made shall be deemed waived.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-7. Computation of the Amount of Water Rights Impact Fee.**

A. At the option of the Fee payer, the amount of the water rights impact fee shall be determined by the fee schedule set by the City Council or as set forth in subsection B below. The fee schedule set by the City Council shall include a credit for past and future taxes and charges. A discount of 5 % from the fee schedule

may be granted by the Public Works Director to encourage use of this schedule in order to avoid the expenditure of administrative time on the processing of independent fee calculation studies. An application for impact assessment shall be filed on forms provided by the City. Each application shall specify the different uses associated with the development of the property and the accompanying water meter size.

B. If a Feepayer opts not to pay the water rights impact fee as determined according to paragraph (A) of this section, the Feepayer shall pay the water rights impact fee as determined under this paragraph (B). The Feepayer shall prepare and submit to the Public Works Director an independent fee calculation study for the land development activity for which the building permit is sought. The cost of the independent fee calculation shall be borne by the Feepayer. The independent fee calculation study shall follow accepted professional hydro-engineering methodologies as approved by the Public Works Director. The independent study submitted shall show the basis upon which the independent fee calculation was made, including but not limited to the following:

1. Documentation of water usage appropriate for the proposed land development activity.
2. Economic documentation studies that include the following:
  - a. Documentation of the cost per share of water appropriate for the proposed land development activity.
  - b. Documentation of credits attributable to the proposed land development activity which can show the amount of water already given to the City of Orem.

If the Feepayer opts to have the water rights impact fee determined according to paragraph (B), and the Public Works Director has approved the fee as determined by the independent analysis, the Feepayer may not then choose to pay the fee under paragraph (A).

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-8. Payment of Fee.**

The fees established pursuant to this Article for the purchase of water rights shall be collected by the City and then transferred to the Metropolitan Water District of Orem pursuant to an interlocal agreement between the City and the Metropolitan Water District of Orem. All funds collected pursuant to this Article shall be properly identified as water rights impact fees and shall be deposited into and kept in a separate interest bearing ledger account as determined in Section 24-1-9 of this

Article and used solely for the purposes specified in this Article.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-9. Use of Funds.**

A. There is hereby established a separate interest bearing ledger account for the deposit of fees collected pursuant to this Article.

B. Funds collected pursuant to this Article shall only be used by the Metropolitan Water District for purchasing water rights and paying administrative costs associated with purchasing water rights.

C. At least once each fiscal year, the Public Works Director shall present to the City Council a proposed program for the acquisition of water rights and related expenses and problems in obtaining such rights by the Metropolitan Water District. The Public Works Director shall report on the condition of the City water supply and any concerns the Public Works Director may have in meeting the current and future water needs of the community. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same account until the next fiscal period except as provided by the refund provisions of this Article.

D. Funds may be used to provide refunds as described in Section 24-1-17.

E. A separate administrative charge may be established for impact assessment reviews for the purpose of recovering the governmental costs associated with preparing, reviewing, assessing, collecting and administering this ordinance.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-10. Review.**

The fee schedule specified in this Article shall be reviewed and if necessary, revised by the City Council at least once each fiscal year.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-11. Water Rights Impact Fee Limitations.**

The water rights impact fee imposed by this Article shall not exceed the highest fee justified by the Analysis.

**24-1-12. Water Rights Impact Fee Calculation.**

In calculating the water rights impact fee, the City may include:

- A. The purchase price of water shares;
- B. The administration cost of purchasing the required water rights; and

C. Debt service charges, if the City might use impact fees as a revenue stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the purchase of water rights.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-13. Service Area.**

Based upon the geographic size and the interconnection of the water supply of the City, there is hereby established a single Water Rights Impact Fee Service Area comprising the corporate limits of the City of Orem.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-14. Adjustment of Fees.**

The Director of Public Works may adjust either up or down the standard water rights impact fee at the time the fee is charged to respond to unusual circumstances in specific cases and to ensure that the water rights impact fee is imposed fairly. The Director of Public Works may also adjust the amount of the water rights impact fee to be imposed upon a developer if the developer submits studies and data clearly showing that the payment of an adjusted water rights impact fee is more consistent with the intent and purposes of this Article. If the Director of Public Works makes an adjustment in the water rights impact fee imposed, the Director shall make written findings that support the adjustment.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-15. Accounting.**

The Metropolitan Water District of Orem, per interlocal agreement with the City, shall establish a separate interest bearing ledger account for water rights impact fees collected, deposit water rights impact fee receipts in the appropriate ledger account, retain the interest earned on each fund or account in the fund or account, and at the end of each fiscal year, prepare a report on each fund or account showing:

A. The source and amount of all monies collected, earned, and received by the fund or account; and

B. Each expenditure from the fund or account.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-16. Expenditure of Funds.**

The Metropolitan Water District of Orem, per interlocal agreement with the City, shall expend or encumber the water rights impact fees for the purchase of water within six years of their receipt, except as

provided below. The District may hold the fees for longer than six years if it identifies in writing;

A. An extraordinary and compelling reason why the fees should be held longer than six years; and

B. An absolute date by which the fees will be expended.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-17. Refunds.**

The Metropolitan Water District of Orem per interlocal agreement with the City shall refund any water rights impact fees paid by a Feepayer when;

A. The Feepayer has not proceeded with the development activity;

B. The Feepayer has filed a written request with the Public Works Director for a refund within two years after the impact fee was paid;

C. The fees have not been spent or encumbered; and

D. No impact has resulted.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

#### **24-1-18. Appeals.**

A. Any person residing in or owning property within the City and any organization, association, or corporation representing the interests of persons owning property within the City, may file a declaratory judgment action challenging the validity of the water rights impact fee.

B. Any person required to pay a water rights impact fee who believes the fee does not meet the requirements of law may file a written request for information with the City Recorder.

Within two weeks of the receipt of the request for information, the City shall provide the person or entity with the Analysis required by Section 24-1-3 Orem City Code and with any other relevant information relating to the impact fee.

Any person or entity required to pay a water rights impact fee who believes the fee does not meet the requirements of law may request and be granted a full administrative appeal of that grievance. An appeal shall be made to the City Manager within thirty (30) calendar days of the date of the action complained of, or of the date when the person complaining reasonably should have become aware of the action.

The notice of the administrative appeal to the City Manager shall be filed with the City Recorder Office and shall contain the following information:

1. The person's name, mailing address, and daytime telephone number;

2. A copy of the written request for information and a brief summary of the grounds for appeal.

3. The relief sought.

The City Recorder shall schedule the appeal before the City Manager no sooner than five (5) and no later than fifteen (15) days from the date of the filing of the appeal. The written decision of the City Manager shall be made no later than 30 days after the date the challenge to the impact fee is filed with the City and shall, when necessary, be forwarded to the appropriate City officials for corrective action.

Any person who is adversely affected by the City Manager's decision may appeal to the District Court in accordance with Section 11-36-401 Utah Code.

The provisions of this section notwithstanding, the City and persons participating in the proceeding may, by written stipulation, extend the time periods specified in this section.

A person 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.

The City shall transmit to the reviewing court the record of its proceedings including its minutes, findings, order and, if available, a true and correct transcript of its proceedings.

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**24-1-19. Severability.**

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

(Ord. No. O-96-0013, Enacted, 08/06/96; Ord. No. O-97-0030, Amended, 06/24/97)

**Article 24-2. Water Facilities Impact Fees and Wastewater Impact Fees**

**24-2-1. Purpose and Intent.**

**24-2-2. Imposition of Water Facilities Impact Fee and Wastewater Impact Fee.**

**24-2-3. Computation of the Amount of Water Facilities Impact Fee and Wastewater Impact Fee.**

**24-2-4. Use of Funds.**

**24-2-5. Service Area.**

**24-2-6. Adjustment of Fees.**

**24-2-7. Refunds.**

**24-2-8. Appeals.**

**24-2-9. Severability.**

**24-2-1. Purpose and Intent.**

The purpose of this Article is to assist in the implementation of the City of Orem Impact Fee Analysis and Capital Facility Plan for Water and Wastewater and to regulate the use and development of land through impact fees in order to ensure that new development bears an appropriate and proportionate share of the cost of constructing new facilities in the City's water and wastewater infrastructure systems which are needed to meet the projected growth in service demands. The intent of this Article is to comply with the "Impact Fees Act" Section 11-36-101 Utah Code Annotated (1953 as amended), the Utah Constitution, and the United States Constitution.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-2. Imposition of Water Facilities Impact Fee and Wastewater Impact Fee.**

A. Any person who, after the effective date of this ordinance, seeks to develop land in the City by making improvements to the land which will generate additional water use is hereby required to pay a water facilities impact fee and a wastewater impact fee in the manner and amounts set forth in this Article. The fees shall be paid at the time of the building permit application. The amount of the water facilities impact fee and the amount of the wastewater impact fee shall initially be as set forth in the City of Orem schedule of fees and charges. The amount of the water facilities impact fee and/or the wastewater impact fee may be modified at any time by resolution of the City Council. The amount of the water facilities impact fee and the wastewater impact fee shall be no more than that justified by the City of Orem Impact Fee Analysis and Capital Facility Plan for Water and Wastewater.

B. No building permit shall be issued by the City unless or until the water facilities impact fee and the wastewater impact fee required by this Article have been paid.

C. The following shall be exempted from payment of the water facilities impact fee and the wastewater impact fee:

1. Alterations or expansion of an existing residential building where no additional residential units are created and where no additional water meter is added.

2. The construction of accessory buildings or structures where no additional water meter is added.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure where no additional water meter is added.

4. The installation of a replacement mobile home on a lot or other such site when a water

facilities impact fee and a wastewater impact fee for such mobile home site has previously been paid pursuant to this ordinance or where a mobile home legally existed on such site on or prior to the effective date of this ordinance.

5. Alterations or expansion of an existing commercial or manufacturing building where no additional water meter is added.

D. Any claim of exemption must be made no later than the time of application for a building permit or permit for mobile home installation. Any claim not so made shall be deemed waived.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-3. Computation of the Amount of Water Facilities Impact Fee and Wastewater Impact Fee.**

A. At the option of the Feepayer, the amount of the water facilities impact fee and the wastewater impact fee shall be determined as established in section 24-2-2 or as set forth in subsection (B) below.

B. If a Feepayer opts not to pay the water facilities impact fee and/or the wastewater impact fee as established in section 24-2-2, the Feepayer shall pay the water facilities impact fee and the wastewater impact fee as determined under this subparagraph (B). The Feepayer shall prepare and submit to the Director of Public Works an independent fee calculation study for the land development activity for which the building permit is sought. The cost of the independent fee calculation shall be borne by the Feepayer. The independent fee calculation study shall follow accepted professional hydro-engineering methodologies as approved by the Director of Public Works. The independent study submitted shall show the basis upon which the independent fee calculation was made. If the Director of Public Works determines that the independent fee calculation study provides a more accurate and equitable basis upon which to calculate the water facilities impact fee and/or the wastewater impact fee, then the amount of the fee set forth in the independent fee calculation study shall be the fee that the Feepayer is required to pay under this Article. Any fees imposed under this Article which are modified pursuant to an independent fee calculation as provided herein shall apply only to the Feepayer who prepared and submitted the independent fee calculation.

C. If the Feepayer opts to have the water facilities impact fee and/or the wastewater impact fee determined according to subparagraph (B), and the Director of Public Works has approved the fee as determined in the independent fee calculation, the Feepayer may not then choose to pay the fee under subparagraph (A).

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-4. Use of Funds.**

A. There is hereby established a separate interest bearing ledger account for the deposit of water facilities impact fees collected pursuant to this Article.

B. There is hereby established a separate interest bearing ledger account for the deposit of wastewater impact fees collected pursuant to this Article.

C. Funds collected pursuant to the water facilities impact fee shall only be used by the City to construct and upgrade water facilities.

D. Funds collected pursuant to the wastewater impact fee shall only be used by the City to construct and upgrade wastewater facilities.

E. Funds may be used to provide refunds as described in Section 24-2-7.

F. A separate administrative charge may be established for impact assessment reviews for the purpose of recovering the governmental costs associated with preparing, reviewing, assessing, collecting, and administering this ordinance.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-5. Service Area.**

Based upon the geographic size and the interconnection of the water supply of the City, there is hereby established a single water facilities impact fee and wastewater impact fee service area comprising the corporate limits of the City of Orem.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-6. Adjustment of Fees.**

The Director of Public Works may adjust either up or down the standard water facilities impact fee and/or wastewater impact fee at the time the fee is charged in order to respond to unusual circumstances in specific cases and to ensure that the fees are imposed fairly. The Director of Public Works may also adjust the amount of the fees to be imposed upon a developer if the developer submits studies and data clearly showing that the payment of an adjusted water facilities or wastewater impact fee is more consistent with the intent and purposes of this Article as provided in section 24-2-3(B). If the Director of Public Works makes an adjustment in the water facilities and/or wastewater impact fee imposed, the Director shall make written findings that support the adjustment.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-7. Refunds.**

The City shall refund any water facilities impact fees and/or wastewater impact fees paid by a Feepayer when:

A. The Feepayer has not proceeded with the development activity;

B. The Feepayer has filed a written request with the Director of Public Works for a refund within two years after the water facilities impact fee and/or wastewater impact fee was paid;

C. The fees have not been spent or encumbered; and

D. No impact has resulted.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-8. Appeals.**

A. Any person required to pay a water facilities impact fee or wastewater impact fee who believes the fee does not meet the requirements of law may file a written request for information with the City Recorder.

B. Within two weeks of the receipt of the request for information, the City shall provide the person or entity with a copy of the City of Orem Impact Fee Analysis and Capital Facility Plan for Water and Wastewater and with any other relevant information relating to the water facilities impact fee or the wastewater impact fee.

C. Any person or entity required to pay an impact fee imposed under this Article who believes the fee does not meet the requirements of law may request and be granted a full administrative appeal of that grievance. An appeal shall be made to the City Manager within thirty (30) calendar days of the date of the action complained of, or of the date when the complaining person reasonably should have become aware of the action.

D. The notice of the administrative appeal to the City Manager shall be filed with the Office of the City Recorder and shall contain the following information:

1. The person's name, mailing address, and daytime telephone number;

2. A copy of the written request for information and a brief summary of the grounds for appeal;

3. The relief sought.

E. The City Recorder shall schedule the appeal before the City Manager no sooner than five (5) and no later than fifteen (15) days from the date of the filing of the appeal. The written decision of the City Manager shall be made no later than thirty (30) days after the date the challenge to the fee is filed with the City and shall, when necessary, be forwarded to the appropriate City officials for corrective action.

F. Any person who is adversely affected by the City Manager's decision may appeal to the District Court in accordance with Section 11-36-401 of the Utah Code.

G. The provisions of this section notwithstanding, the City and persons participating in the proceeding may, by written stipulation, extend the time periods specified in this section.

H. A person 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.

I. The City shall transmit to the reviewing court the record of its proceedings including its minutes, findings, order, and, if available, a true and correct transcript of its proceedings.

(Ord. No. O-97-0030, Enacted, 06/24/97)

**24-2-9. Severability.**

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

(Ord. No. O-97-0030, Enacted, 06/24/97)