

**ORDINANCE NO. 14-6 (4-29-14)**

**ORDINANCE AND IMPACT FEE ENACTMENT ADOPTING A CULINARY WATER IMPACT FEE FACILITIES PLAN, CULINARY WATER IMPACT FEE ANALYSIS, AND CULINARY WATER SERVICE AREAS, AND ENACTING CULINARY 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 culinary water facilities and to amend its culinary 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 Plans for culinary water facilities and to amend its culinary 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 culinary 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 culinary water facilities, the extent of excess culinary 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 culinary water facilities, the extent of

excess culinary 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 Culinary Water Impact Fee Facilities Plan and Analysis to affected entities and to the development community representatives and posted the same to the Utah Public Notice Website;

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

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

**WHEREAS**, on April 16, 2014, the City properly noticed its intent to adopt the certified Culinary Water Impact Fee Facilities Plan as well as its intent to hold a public hearing and possibly adopt this Ordinance;

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

**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 Fees Act, Utah Code § 11-36a-101 *et seq.* to adopt culinary water facilities impact fees; and

**WHEREAS**, the City has caused a Culinary Water Impact Fee Facilities Plan and Impact Fee Analysis to be prepared by Hansen, Allen and Luce to assess the level of culinary water facility service that is currently provided to existing residents, the excess capacity in the existing culinary water facilities infrastructure that is available to accommodate new growth without diminishing the current level of service, and the elements and cost of additional culinary 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 culinary water facilities impact fee based on the Impact Fee Facilities Plan; a copy of the Culinary Water Impact Fee Facilities Plan and Analysis prepared by Hansen, Allen and Luce 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 17, 2014; and

**WHEREAS**, on April 18, 2014, a full copy of the Culinary Water Impact Fee Facilities Plan, Culinary Water Impact Fee Analysis and this Impact Fee Enactment, along with an executive summary of the Culinary Water Impact Fee Facilities Plan and Culinary 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; and

**WHEREAS**, on April 29, 2014, the City Council held a public hearing regarding the proposed and certified Culinary Water Impact Fee Facilities Plan, Culinary Water Impact Fee Analysis, and this Culinary 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 Culinary water Facilities as proposed;
2. adopt the Culinary Water Impact Fee Analysis as proposed; and
3. enact this Ordinance to:
  - a. amend its current Culinary 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 Council as follows:

## **SECTION I – IMPACT FEE FACILITIES PLAN AND ANALYSIS: CULINARY WATER**

The Culinary 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 7.01 of the City Code are hereby made:

### **Chapter 7.01. Culinary Water Impact Fee.**

#### **Sections:**

- |                 |  |
|-----------------|--|
| <b>7.01.01.</b> | <b>Definitions.</b>  |
| <b>7.01.02.</b> | <b>Findings and Purpose.</b>   |
| <b>7.01.03.</b> | <b><u>Establishment of Culinary Water Service Area.</u><del>Adoption of Capital Facilities Plan.</del></b> |
| <b>7.01.04.</b> | <b>Adoption and Imposition of <u>Culinary Water</u> Impact Fees.</b>                                       |
| <b>7.01.05.</b> | <b><u>Use of Culinary Water Impact Fees.</u><del>Service Area Established.</del></b>                       |
| <b>7.01.06.</b> | <b><u>Adjustments.</u></b>   |

- ~~7.01.07. Other Impact Fees Remain Unaffected.~~  
~~7.01.08. Accounting, Expenditure, and Refunds.~~  
~~7.01.09. Time of Collection.~~  
~~7.01.10. Impact Fee Challenges and Appeals.~~  
~~7.01.11. Use of Impact Fees.~~  
~~7.01.12. Severability.~~  
~~7.01.13. Adjustment.~~  
~~7.01.14. Accounting, Expenditure, and Refunds.~~  
~~7.01.15. Impact Fee Challenges and Appeals.~~  
~~7.01.16. Severability.~~  
~~7.01.17. Effective Date.~~

**7.01.01. 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. **“Culinary Water Impact Fees”** means the Culinary Water Impact Fees adopted and imposed by this Chapter on Development Activity within the City.
3. **“Culinary 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 culinary water owned by or on behalf of the City.
4. **“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.
5. **“Equivalent Residential Unit Connection”** or **“ERC”** means that measure of impact on ~~certain~~ public facilities equal to the impacts of one typical single-family ~~detached~~ dwelling unit in full time occupancy. One ERC is equivalent to 40 WSFUs (as defined below
6. **“Impact Fees”** means the ~~amended Impact Fees adopted and imposed by this Ordinance on Development Activity within the City and as allowed by Utah Code § 11-36.~~
7. **“New Capital Facilities Plan”** means the capital facilities plan prepared by City Staff and Gilson Engineering for culinary water facilities and adopted by the City council in this Ordinance
8. **“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: culinary water facilities
9. **“Utah Impact Fees Act”** means Utah Code ~~Title 11, Chapter 36a.~~
- 9.10. **“Water Supply Fixture Unit”** or **“WSFU”** means the International Plumbing Code (“IPC”) fixture count method developed to predict water use for various fixture types. Each fixture type is assigned a load value in water supply fixture units (WSFU).

(Ord. 14-6; Ord. 11-9; Ord. 05-21)

**7.01.02. Findings and Purpose.**

The City Council hereby finds and determines:

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.~~

1. ~~There is a need to establish a culinary water facilities impact fee for a single service area to maintain the level of service for culinary water proposed in the Culinary Water Impact Fee Facilities Plan and Analysis 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.~~
  2. ~~The 2014 Culinary Water Facilities Impact Fee Plan and Analysis identify the:~~
    - a. ~~projected development activity in the City through 2020;~~
    - b. ~~level of service for culinary water facilities that serve existing residents;~~
    - c. ~~excess culinary 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 culinary water level of service without burdening existing residents with costs of new development activity; and~~
    - a.f. ~~the maximum fee justified by the study.~~
  2. ~~The rapid and continuing growth of the City necessitates the imposition and collection of the amended 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.~~
  3. ~~The New Capital Facilities Plan establishes the estimated costs for providing the Public Facilities covered by this Ordinance, 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 amended Impact Fees set out in the New Capital Facilities Plan and adopted by this Ordinance were determined.~~
  4. ~~The amended Impact Fees established by this Ordinance 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. 14-6; Ord. 11-9; Ord. 05-21)

**7.01.03. Establishment of Culinary Water Service Area. ~~Adoption of Capital Facilities Plan.~~**

The City Council hereby approves and ~~establishes the City Wide Culinary Water Service Area for which the Culinary Water Impact Fee herein provided will be imposed.~~ adopts the new Capital Facilities Plan and the analysis reflected therein and the methodology used for calculation of the amended Impact Fees imposed by this Ordinance for the Public Facilities covered by this Ordinance.

(Ord. 14-6; Ord. 11-9; Ord. 05-21)

**7.01.04. Adoption and Imposition of Culinary Water Impact Fees.**

1. A Culinary Water Impact Fee for all new development activity shall be calculated in three separate components, as follows:

a. Indoor Water Use:

i.

Type	Per WSFU	w/Offset <sup>1</sup>
Source	\$35.56	-\$35.56
Storage	\$13.70	0
Pipe	\$4.90	0
Planning	\$0.60	0
<b>Total</b>	<b>\$54.76</b>	<b>\$19.20</b>

ii. The minimum multiple for a primary home, single family detached structure is 40 WSFU (1 ERC);

a.b. Fire Flow Capacity:

Fire Flow Requirement	Duration Requirement	Volume (MG) Requirement	Unit Cost Distribution	Fee per Connection
1,500	2	0.18	1	\$207
1,750	2	0.21	2	\$516
2,000	2	0.24	5	\$953
2,250	2	0.27	8	\$1,603
2,500	2	0.30	13	\$2,649
2,750	2	0.33	22	\$4,531
3,000	3	0.54	128	\$26,497
3,250	3	0.59	162	\$33,557
3,500	3	0.63	208	\$42,971
3,750	3	0.68	276	\$57,091
4,000	4	0.96	1,140	\$235,952

c. Water Rights<sup>2</sup>:

i. \$33.88 per WSFU;

ii. Equivalent pre-paid water right credit; or

iii. Equivalent City-approved leased or deeded water right.

<sup>1</sup> Properties designated on Appendix C of the Culinary Water Impact Fee and Analysis have incurred separate financial responsibility for a separately-supplied culinary water source and are entitled to an offset for WSFU costs associated with the Citywide source cost component for Indoor Water Use

<sup>2</sup> Properties designated on Appendix C of the Culinary Water Impact Fee and Analysis have incurred separate financial responsibility for dedicated water rights and are entitled to an offset of citywide costs associated with acquiring culinary water rights.

- ~~2. The City Council hereby approves and imposes and levies on all Development Activity the Impact Fee for culinary water as follows: \$3,000 per ERU.~~
- ~~3. The culinary water impact fee is set at \$3,000 per ERU. This fee is determined by the settlement agreement with Lake Mountain Mutual Water Company. This agreement requires the City to charge a minimum impact fee of \$3,000 per ERU.~~

~~(Ord. 14-6; Ord. 11-9; Ord. 05-21)~~

~~**7.01.05. Use of Culinary Water Impact Fees. Service Area Established.**~~

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

~~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 culinary water facilities.~~

~~(Ord. 14-6; Ord. 11-9; Ord. 05-21)~~

~~**7.01.06. ——— Other Impact Fees Remain Unaffected.**~~

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

~~(Ord. 11-9; Ord. 05-21)~~

~~**7.01.07. ——— Time of Collection.**~~

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

~~(Ord. 11-9; Ord. 05-21)~~

~~**7.01.08. ——— Use of 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. reimburse developers who have constructed Public Facilities where those Public Facilities are beyond that needed to meet the demands of the developers' Development Activities.~~

~~(Ord. 11-9; Ord. 05-21)~~

**7.01.0906. Adjustments.**

1. The City ~~may~~shall adjust the calculation of all, or any component, of the Culinary Water impact fees imposed by this Chapter as necessary ~~in order~~ 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. as approved by the City Council for~~ dedication of land for; or
  - b. full or partial construction of a:
    - i. System Improvement identified in the Impact Fee Facilities Plan; or
    - ii. Publicly accepted and dedicated capital improvement that will offset the need for a System Improvement, 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.

~~(Ord. 14-6; Ord. 11-9; Ord. 05-21)~~

**7.01.1007. Accounting, Expenditure, and Refunds.**

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

~~(Ord. 14-6; Ord. 11-9; Ord. 05-21)~~

**7.01.1108. 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.~~



~~2.1.~~ Any person ~~or entity~~ required to pay an Impact Fee who believes the fee does not meet the requirements of ~~the Impact Fees Act or this Chapter~~ law may file a written request for information with the City.

~~3.2.~~ ~~Within two weeks of the receipt of the request for information,~~ ~~†~~ The City shall provide the person ~~or entity~~ with a copy of the Impact Fee Facilities Plan and Analysis for Culinary Water, the specific calculation staff used to calculate the Culinary Water Impact Fee for the person, if applicable, and 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.

~~3.~~ ~~Within~~ At any time prior to thirty days after paying an Impact Fee, ~~any the~~ person ~~or entity who has paid the~~ required to pay an Impact fFee 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.

~~4.5.~~ The written appeal shall be delivered ~~Council by delivering a copy of such appeal with the to the~~ City Manager and shall set ~~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~~ Hearing Examiner shall ~~thereafter~~ schedule a hearing and shall consider all evidence presented by the appellant, as well as all evidence presented by staff. on the appeal at which time all interested persons will be given an opportunity to be heard. The City ~~Council~~ Hearing Examiner shall schedule the appeal hearing and thereafter render its written findings of fact, conclusions of law, and 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.~~

~~e.b.~~ Within ninety days of a decision upholding an ~~amended~~ Impact Fee by the City ~~Hearing Examiner~~ Council or within 120 days after the date the challenge to the impact fee was filed, whichever is earlier, ~~any party to the~~ person who filed 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 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~~:
  - 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 Hearing Examiner Council and the court determines that it was improperly excluded by the City Hearing Examiner 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~~Hearing Examiner if the decision is supported by substantial evidence, ~~in the record.~~

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

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.~~

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

(Ord. 14-6; Ord. 11-9; Ord. 05-21)

#### **7.01.1209. Severability.**

If any section, subsection, sentence, clause, or portion of this Chapter is, for any reason, held to be 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. 14-16; Ord. 11-9; Ord. 05-21)

#### **7.01.13. ~~Effective Date.~~**

~~The City 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 City that this Ordinance take effect upon passage and subsequent publication as required by law.~~

~~(Ord. 11-9; Ord. 05-21)~~

### **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	_____