

Local Government Fees and Charges - - Do You Have to Pay?

CASH Workshops
Case Studies Re: Impact Fees
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When They Come a-Knock'n... Public Utility Fees

- What Fees Are At Issue
- Governing Law
- Negotiations
- Documentation
- When both sides leave the table...



Government Code §54999.1(g)

“Public utility facility” means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal.



Government Code §54999.1(c)

(1) "Capital facilities fee" means a nondiscriminatory connection fee, a nondiscriminatory capacity charge, or both. "Capital facilities fee" does not include any other rate, charge, or surcharge, or any capital component thereof.



Government Code §54999.3

(b) On and after July 21, 1986, any public agency proposing to initially impose a capital facilities fee or to increase an existing capital facilities fee in excess of the amount set forth in subdivision (a), may do so after agreement has been reached between the two agencies through negotiations entered into by both parties.



Government Code §54999.3(c)

Upon request of the affected public agency . . . , the public agency imposing . . . the fee shall identify the amount of the capital facilities fee.

The public agency imposing . . . the capital facilities fee has the burden of producing evidence to establish that the capital facilities fee is nondiscriminatory and that the amount of the capital facilities fee does not exceed the amount necessary to provide capital facilities for which the fee is charged.



Nondiscriminatory:

Government Code §54999.1(c)

(2) For purposes of this subdivision, "nondiscriminatory" means that the fee does not exceed an amount determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, and is not in excess of the proportionate share of the cost of the public utility facilities of benefit to the person or property being charged, based upon the proportionate share of use of those facilities.



What does "Negotiations" Mean?

- How Do You Engage the Utility Authority?
 - Telephone Communications?
 - Correspondence?
 - Meetings?
 - Formal Administrative Procedures?
 - Formal Offers of Agreement?
- What Happens if the Utility Authority is not Negotiating in Good Faith?



Meaningful Negotiations: Obtain Underlying Documentation:

- Engineering Studies
- Utility Master Plans
- Staff Reports
- Agency Evaluations
- Relevant Calculations
- Public Authority ordinances, rules regulations.



Public Records Act

If you are unable to obtain the necessary documents from a Public Agency, serve a request for documents under the PUBLIC RECORDS ACT.

Government Code " 6250 et seq.



When both sides leave the table...

The statute is silent concerning what happens if an agreement cannot be reached.

- Utility Authority
Administrative Procedures
- Judicial Review
(Mandamus)



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