
Sec. 32-107. Water tap fees.

A. ~~Findings.~~ The Council of the City of Lee's Summit, Missouri (hereinafter "Council") hereby finds and declares that:

1. ~~The City of Lee's Summit, Missouri (hereinafter "City") experienced rapid population growth during the 1980's and 1990's and a corresponding increase in the demand for water service.~~
2. ~~The Lee's Summit Comprehensive Plan, adopted by the City's Planning Commission, November 8, 1993, and the current experience of the City, indicates that growth will continue throughout the 1990's and into the twenty-first (21st) century.~~
3. ~~New growth results in new connections to the City's water system, placing an increased demand upon water service facilities, in excess of the water system's current capabilities.~~
4. ~~The City must expand its water system if new connections are to be accommodated without decreasing the level of service to existing connections.~~
5. ~~The High Service Pump Station Study and Water Distribution System Master Plan, commissioned by the City, prepared by Burns and McDonnell and completed in December 1994, identifies additional water service facilities that are needed to serve existing connections and new connections to the water system.~~
6. ~~The City has examined the additional water service facilities needed to serve existing connections and new connections to the water system and has segregated projects and costs attributable to existing connections from projects and costs attributable to new connections.~~
7. ~~The City assumes responsibility for and is committed to providing water service facilities necessary to serve existing connections through finding mechanisms other than water tap fees.~~
8. ~~To the extent that new connections will place additional demand upon water system facilities, that demand should be met by shifting the responsibility for financing such facilities from the general public to the connections creating the demand.~~
9. ~~The imposition of a water tap fee will help ensure that new connections to the water system bear a proportionate share of the cost of water facilities necessary to accommodate new connections.~~
10. ~~The water service facilities necessary to accommodate new connections have a "rational nexus" to and provide benefit to new connections when they tap into the water system because the facilities as a whole increase the supply and transmission capacity of the system, making service to new connections possible.~~
11. ~~The Council has considered the matter of financing new water service facilities, the need for which is necessitated by new connections. The Council hereby finds and declares that a water tap fee imposed upon new connections to finance water service facilities, the need for which is reasonable related to new connections, furthers the public health, safety and welfare of Lee's Summit. Therefore, the Council deems it advisable to adopt the section as hereinafter set forth.~~

B. ~~Intent.~~

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1. ~~It is the intent of this section to impose a water tap fee, payable prior to the approval of a new water service connection, in an amount based upon the demand for water attributable to the new connection and the cost of constructing water service facilities needed to serve the new connection.~~
 2. ~~It is the intent of this section that, by establishment of this system of calculating and imposing water tap fees, a new water service connection to the City's water system will pay its pro rata share of reasonably anticipated costs of water service facilities required to serve such new connection and that the fees paid with respect to each new connection are roughly proportionate, both in nature and extent, to the demand that such new connection will place on water service facilities.~~
 3. ~~It is the intent of this section to establish an appeal procedure to allow for an individualized determination that the tap fee imposed on each new connection is roughly proportionate to the demand that the new connection will place on water service facilities.~~
 4. ~~It is the intent of this section that the water service facilities financed through the tap fees established hereby be based, when applicable, upon the City's Comprehensive Plan and Capital Improvements Program and are consistent therewith.~~
 5. ~~This section shall not be construed to authorize imposition of a water tap fee for water service improvements attributable to existing connections.~~
 6. ~~It is the intent of this section to establish a water system user's fee, imposed upon new connections to the City's water system, and not to levy a "tax" or "fee" as such term is used in Article X, Section 22 of the Missouri Constitution.~~
 7. ~~It is the intent of this section to establish a system of user's fees, as "user's fees" are interpreted in recent Missouri case law, that will be used to pay for the cost of providing water service facilities, the demand for which is generated by new connections. The amount of the user's fee to be paid by each new connection is calculated to be directly proportionate to the demand for water service facilities created by each such new connection. This section is specifically designed so as not to establish a "tax" or "fee" as such terms are used in Article X, Section 22 of the Missouri Constitution, but rather as a mechanism to equitably shift the burden of the cost of such facilities from the existing general public (which has already paid its fair share of the cost of the existing water system and which will continue to pay for the cost of improvements to serve existing connections, maintenance, and repair, through funds other than those derived from the system of user's fees) to new connections that will generate the need for water service facilities that will be constructed with monies derived from this system of user's fees. The monies collected from imposition of this system of user's fees are to be used to offset the cost of providing water service to new connection in the form of water service facilities and the system is designed to ensure that such monies collected may only be expended to provide such services. The monies may not be paid into the City's general fund to defray customary governmental expenditures. In addition, the system is designed so that the user's fee:
 - a. ~~Is paid upon the approval of designated development applications, not periodically;~~
 - b. ~~Is required to be expended for the provision of water facilities that directly benefit the connection who has generated the need for such facilities within a reasonable period of time from the date such fee is paid;~~~~
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- c. ~~Is directly proportional in amount to the water facilities provided; and,~~
 - d. ~~Is for a service that has not been historically provided exclusively by monies derived from taxes.~~

~~C. *Reserved.*~~

~~D. *Imposition of Water Tap Fee.*~~

- 1. ~~No application for a water service connection shall be approved, unless the applicant thereof, if so required, has paid the applicable water tap fee imposed by this section. Any application for a water service connection approved by the City without payment by the applicant and collection by the Department of the applicable water tap fee as required by this section shall be null and void.~~
- 2. ~~Water service connections shall otherwise comply with all applicable ordinances of the City.~~
- 3. ~~Approval of an application for a water service connection shall expire by limitation and become null and void if the connection has not been completed within ninety (90) days of the date of such approval. Upon expiration, the applicant may apply for a refund of the water tap fee in accordance with Subsection H.5. of this section.~~

~~E. *Applicability.*~~

- 1. ~~This section shall not be applicable to applications for water service connections otherwise necessary for:
 - a. ~~Room additions, remodeling, rehabilitation or other improvements to an existing structure, provided there is no increase in demand for water facilities;~~
 - b. ~~Rebuilding of a damaged or destroyed structure, whether voluntary or involuntary, provided there is no increase in demand for water facilities; or,~~
 - c. ~~A change in occupancy without any increase in the demand for water facilities.~~~~
- 2. ~~This section shall be applicable to applications for water service connection due to an increase in demand for water facilities. An increase in demand for water facilities shall mean the replacement of an existing water meter with a meter having a larger capacity, capable of delivering more gallons per minute than the existing meter and therefore creating a higher demand for water service than the existing meter.~~

~~F. *Calculation of the water tap fee.*~~

- 1. ~~The City shall calculate the water tap fee due for a new application for service by:
 - a. ~~Determining the capacity multiplier of the size and type meter to be used for the new connection pursuant to Exhibit B, "Fee Schedule for All Meter Sizes" of Appendix I of Chapter 32, attached hereto and incorporated herein by reference; and,~~
 - b. ~~Determining the residential impact unit pursuant to Exhibit A, "Water Tap Fee Calculation" of Appendix I of Chapter 32 attached hereto and incorporated herein by reference; and,~~
 - c. ~~Multiplying the capacity multiplier of the size and type of meter to be used for the new connection pursuant to Exhibit B, "Fee Schedule for all Meter Sizes" of Appendix I of Chapter 32 attached hereto and incorporated herein by reference by the residential equivalent unit pursuant to Exhibit A, "Water Tap Fee~~~~

Calculation," of Appendix I of Chapter 32 attached hereto and incorporated herein by reference.

2. ~~Where this section becomes applicable due to an increase in demand for water facilities, the water tap fee due shall be equal to the difference between the current fee for the new connection minus the current fee for the existing connection.~~

~~*Example:* An existing customer applies to increase an existing connection from a one-inch displacement meter to a two-inch displacement meter. The water tap fee due shall be equal to the current water tap fee for the two-inch displacement meter minus the current water tap fee for a one-inch displacement meter.~~

~~G. Administration of water tap fees.~~

1. ~~Collection of water tap fee.~~ Water tap fees calculated and imposed pursuant to this section shall be collected by the City prior to approving any application for service.
2. ~~Transfer of funds to the finance department.~~ Water tap fees shall be transferred from the collecting agency to the finance department for placement in the water tap fee fund account, that has been established pursuant to Subsection G.3. below.
3. ~~Water tap fee fund account established.~~
 - a. ~~There is hereby established a separate water tap fee fund account for the City.~~
 - b. ~~Funds withdrawn from the fund account must be used solely in accordance with the provisions of Subsection G.4. of this section. The disbursement of such funds shall be consistent with Exhibit C, "Water Utility Project List," of Appendix I of Chapter 32 attached hereto and incorporated herein by reference.~~
 - c. ~~Any funds not immediately necessary for expenditure shall be invested in interest-bearing accounts. All interest earned shall be retained in the fund account.~~
4. ~~Use of funds collected.~~ The funds collected by reason of this Section shall be used exclusively for the purpose of undertaking water facilities projects or for financing directly, or as a pledge against bonds, revenue certificates and other obligations of indebtedness, the costs of water facilities projects.

~~H. Refunds.~~

1. ~~Upon application of the current property owner, the City shall refund the portion of any water tap fee that has been on deposit for more than ten (10) years and that remains unexpended.~~
 - a. ~~The current owner of the property must petition the City for the refund within six (6) months following the ten-year period. The time for filing a refund petition shall run from the date on which the water tap fee was paid.~~
 - b. ~~The petition must contain the following information:~~
 - 1) ~~A notarized sworn statement that the petitioner is the current owner of the property; and~~
 - 2) ~~A copy of the dated receipt issued for payment of the water tap fee.~~
 2. ~~A tap fee collected pursuant to this section shall be considered expended if, within ten (10) years from the date of payment, the total expenditures for water facilities~~
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necessary to serve new connections exceeds the total fees collected for such facilities during such period.

- ~~3. If a refund is due pursuant to Subsections H.1. and 2. of this section, the City shall determine the amount of the refund per equivalent impact unit by dividing the difference between the amount of the fees collected and the amount of expenditures by the total number of equivalent impact units provided. The total refund due shall be calculated by multiplying the refund per equivalent impact unit by the capacity multiplier for the size and type meter for which the water tap fee was originally paid.~~
- ~~4. Within one (1) month from the date of receipt of a petition for the refund the City shall advise the petitioner of the status of the refund request. If the petition for refund meets all of the requirements of Subsections H.1., H.2., and H.3. of this section, the City shall issue the refund within two (2) months from the date of receipt of the petition for refund.~~
- ~~5. Refunds requested pursuant to the expiration of a water connection approval must be submitted within six (6) months of the date of expiration. Refund requests under this subsection are not required to submit petitions pursuant to Subsection H.1. of this section; however, adequate proof of entitlement to the refund must be provided to the City.~~

~~I. Interim review.~~

- ~~1. Reserved.~~
- ~~2. Reserved.~~
- ~~3. Nothing herein precludes the Council or limits its discretion to amend this section or Resolution 95-40 at such other times as may be deemed necessary.~~

~~J. Annual review.~~

- ~~1. The City Manager, with the assistance of the Codes Administration Department, the Finance Department, and the Water Utilities Department, shall prepare a report on the subject of water tap fees, which report shall include:
 - ~~a. Recommendations on amendments, if appropriate, to this section;~~
 - ~~b. Proposed changes to the water tap fee calculation methodology;~~
 - ~~c. Proposed changes to the water tap fee calculation variables;~~
 - ~~d. Proposed changes to the water tap fee rates or schedules.~~~~
 - ~~2. The City Manager, in preparing the annual report, shall obtain and review the following information:
 - ~~a. A statement from the Finance Department summarizing water tap fees collected and disbursed during the preceding year for water facility projects;~~
 - ~~b. A statement from the Water Utilities Department summarizing water facility projects initiated and completed during the preceding year;~~
 - ~~c. A statement from the Codes Administration Department summarizing the applications for service approved during the preceding year;~~
 - ~~d. A statement from the Water Utilities Department that the water facility projects undertaken with water tap fee funds are consistent with the adopted project list;~~~~
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- e. ~~A revision of the project list and water tap fee calculation, as appropriate.~~
 3. ~~The report shall be presented to the Water Utilities Advisory Board. The Water Utilities Advisory Board's recommendations shall be forwarded to the Council.~~
 4. ~~Based on the annual report, the recommendations of the Water Utilities Advisory Board, and other factors as the Council deems relevant and appropriate, the Council may amend this section.~~
 5. ~~The annual review shall be a component of the City's annual budget preparation procedure.~~
 6. ~~Nothing herein precludes the Council or limits its discretion to amend this section at such other times as may be deemed necessary.~~

~~K. Appeals.~~

1. ~~The applicant for a new water service connection may appeal the following decisions to the Council:~~
 - a. ~~The applicability of the water tap fee to the connection;~~
 - b. ~~The amount of the water tap fee due;~~
 - c. ~~The amount of a refund due, if any.~~
2. ~~The burden of proof shall be on the appellant to demonstrate that (a) The water tap fee is not applicable; (b) The amount of the fee does not reasonably reflect the applicant's pro rata share of the cost of water service facilities required to serve the applicant's water service connection; and/or (c) The amount of the refund was not calculated in accordance with the provisions of this section.~~
3. ~~The applicant shall file a notice of appeal with the City Clerk within thirty (30) days following the determination of the applicability of the water tap fee, the amount of the water tap fee, or the amount of the refund due. An application for service may continue to be processed while the appeal is pending, provided that the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the tap fee due.~~
4. ~~Within ten (10) days of the notice of appeal, or by such date as shall be agreed upon in writing between the applicant and the City, the applicant shall submit to the Water Utilities Department studies, calculations and other documentation appropriate to the determination of a tap fee for new connection or the determination of a refund.~~

A. Applicability.

1. **This section shall be applicable to applications for water service connections due to an increase in demand for water facilities. An increase in demand for water facilities shall mean the replacement of an existing water meter with a meter having a larger capacity, capable of delivering more gallons per minute than the existing meter and therefore creating a higher demand for water service than the existing meter or a new water meter installed where one did not exist prior.**
2. **The water tap fee imposed by this section shall be imposed on all new permits issued after on or after July 1, 2023.**

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3. The water tap fee imposed by this section shall not be applicable to applications for water service connections otherwise necessary for:
 - a) Alteration or expansion of an existing structure, provided there is no change in the number of water meters or water meter capacity.
 - b) Rebuilding of a damaged or destroyed structure, whether voluntary or involuntary, provided there is no change in the existing water meter capacity.
- B. Imposition of water tap fee.**
1. No connection to the public water system shall be made unless the owner or the owner's agent has made application and paid the applicable water tap fee imposed by this section. The application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Department.
 2. No application for a building permit shall be approved, unless the applicant, if so required, has paid the applicable water tap fee imposed by this section. Any application for a water service connection approved by the City without payment and collection of the applicable water tap fee as required by this section shall be null and void. The City may retroactively revoke approval for a water service connection if it is determined that the appropriate water tap fee was not paid in a correct or timely manner as required by this section.
 3. Water service connections shall otherwise comply with all applicable ordinances, rules, and regulations of the City and applicable state and federal laws, rules, and regulations.
 4. Approval of an application for a water service connection shall expire if the connection has not been completed within twelve (12) months after the date of such approval. Upon expiration, the applicant may apply for a refund of the water tap fee in accordance with this section.
 5. Water tap fees may be amended from time to time, as needed, by the City.
- C. Calculation and imposition of the water tap fee.**
1. The City shall calculate the water tap fee due for an application for water service by the capacity of the water meter utilizing the capacity multiplier to determine the water tap fee for larger meter sizes. The water tap fee shall be as set forth in the City's Schedule of Fees and Charges.
 2. Where this section becomes applicable due to an increase in demand for water facilities, the water tap fee due shall be equal to the difference between the current fee applicable for the new water tap minus the current fee applicable for the existing water tap. (Example only: An existing customer applies to increase an existing water meter from a one-inch displacement meter to a two-inch displacement meter. The water tap fee due shall be equal to the current water tap fee for the two-inch displacement meter minus the current water tap fee for a one-inch displacement meter.)
- D. Administration and accounting.**
1. Collection of water tap fee. Water tap fees calculated and imposed pursuant to this section shall be collected by the City prior to approving any application for service.
 2. Transfer of funds to the Finance Department. Water tap fees shall be transferred from the Development Services department, or any other
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department accepting the water tap fee, to the Finance department for placement in the water tap fee fund.

3. Funds withdrawn from the fund account must be used solely in accordance with the provisions of subsection E, of this section.
 4. Any funds not immediately necessary for expenditure shall be invested in interest-bearing accounts as set forth in City policies. All interest earned shall be retained in the water tap fee account.
- E. Use of funds collected.
1. The funds collected by reason of this section shall be used exclusively for the purpose of acquiring, equipping, and/or making capital improvements to water facilities or for financing directly, or as a pledge against bonds, revenue certificates, and other obligations of indebtedness, the costs of water facilities projects in which the fees are collected. The funds collected shall not be used for maintenance or operations.
 2. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which water tap fees may be expended, the applicable water tap fee funds may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection E of this section.
- F. Intergovernmental agreements. In the event any part of a service area which requires new or an increase in demand for water facilities lies outside the jurisdictional boundaries of the City, the requirements of this section shall be extended to any service areas outside of the jurisdictional boundaries of the City. If determined by the City, an intergovernmental agreement with the applicable county, public water supply district, or any other political subdivision may be executed providing for the imposition of such water tap fees by the applicable county, public water supply district, or any other political subdivision. The intergovernmental agreement shall incorporate the requirements of this section into any such agreement including the payment of any fees due to the City.
- G. The City, in its sole decision to serve outside the jurisdictional boundaries of the City, shall determine what if any additional charges are applicable due to the increase in demand for water facilities.
- H. Refunds.
1. Upon application of the property owner, the City shall refund the portion of any water tap fee that has been on deposit for more than twelve (12) months and that remains unexpended if the provisions of this section are met.
 2. The refund shall travel with the land, and may be claimed by the owner of the property at the time the refund is due. The property owner must petition the City for the refund within thirty (30) days following the 12-month period by filing such petition with the City Clerk. The time for filing a refund petition shall run from the date on which the water tap fee was paid. In the event the owner of property at the time a refund is due does not timely petition the City in accordance with this section, no refund of any portion of any unexpended water tap fee shall be due to the property owner, or any successor in interest of the property owner. The City Clerk shall promptly transmit such petition to the Director of Water Utilities for action in accordance with this section.
 3. The petition must, at minimum, contain the following information:
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- a) A notarized sworn statement that the petitioner is the current owner of the property; and
 - b) A copy of the dated receipt issued for payment of the water tap fee.
4. Water tap fees collected pursuant to this section shall be considered expended if, within twelve (12) months from the date of payment, the total expenditures for water facilities necessary to serve new water connections exceeds the total fees collected for such facilities during such period.
 5. Within thirty (30) days from the date of receipt of a petition for the refund, the Director of Water Utilities, or designee, shall advise the petitioner of the status of the refund request. If the petition for refund meets all of the requirements of this section, the City shall issue the refund within two months from the date of receipt of the petition for refund.
 6. The petitioner may appeal the determination of the Director of Water Utilities, or designee, regarding a refund as provided in this section.
- I. **Effect of fees on zoning and subdivision regulations.** This section shall not affect, in any manner, the permissible use of property, density of development, design, or any other aspect of the development of land or the provision of public improvements subject to the zoning and subdivision regulations in the UDO. All provisions of the UDO shall remain in full force and effect without limitation with respect to all such development that is required to pay a fee pursuant to this section.
 - J. **Fee as additional and supplemental requirement.** Water tap fees imposed pursuant to this section are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land. A property owner may be required to pay, pursuant to City ordinances, for other public facilities in addition to the fees for public water facilities as specified in this section.
 - K. **Administrative guidelines.** The City Manager may adopt written administrative guidelines to clarify and provide notice of internal procedures used to administer this section.
 - L. **Appeals.**
 1. The applicant shall file a notice of appeal with the City Clerk within thirty (30) days following the determination of the applicability of the water tap fee or refund rights under this section. If an appellant fails to appeal the water tap fees within thirty (30) days as set forth in this subsection, the water tap fees shall be final and no appeal shall be heard. If the appellant pays the water tap fees without protest, the appellant waives the right to appeal the water tap fee. An application for service may continue to be processed while the appeal is pending, provided that the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the water tap fee due.
 2. **Subjects for appeal.** An applicant may appeal the following decisions:
 - a) The applicability of the water tap fee to the connection;
 - b) The amount of the water tap fee due;
 - c) The applicability of any credits or exemptions; or
 - d) The amount of a refund due, if any.
 3. **Burden of proof.** The burden of proof shall be on the appellant to demonstrate by clear and convincing evidence that:
 - a) The water tap fee is not applicable;
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- b) **The amount of the water tap fee does not reasonably reflect the applicant's pro rata share of the cost of water service facilities required to serve the applicant's development;**
 - c) **Credits or exemptions should be provided; and/or**
 - d) **The amount of the refund was not calculated in accordance with the provisions of this section.**
- 4. **Documentation for appeal. Within ten (10) days of the notice of appeal, or by such date as shall be agreed upon in writing between the applicant and the City, the applicant shall submit to the Director of Finance studies, calculations, and other documentation appropriate to the determination of the applicable water tap fees or the determination of a refund.**
 - 5. **Hearing. The City Manager shall appoint a hearing examiner who shall schedule a formal hearing on the record with evidence and testimony as a contested hearing pursuant to Chapter 536, RSMo.**
 - 6. **Written decision. The hearing officer shall issue written findings of fact and conclusions of law and shall preserve a transcript of the written record and exhibits. The decision of the hearing officer shall be final for purposes of appeal pursuant to Chapter 536, RSMo.**
- M. Calculation of days. The number of days specified in this section shall include weekend days and holidays. The last day of the period shall be included in the computation, unless it is a Saturday, Sunday or a legal holiday, and if it is, the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. "Legal holiday" includes any day designated as a holiday by the Congress of the United States, Missouri legislature or the City Council.**

EXPLANATION —Matter in **bold** type in the above is added language. Matter in strikethrough in the above is deleted.