



City of East Palo Alto



Water Capacity Charge Update

July 2018



BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

DRAFT 07/03/18



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July 3, 2018

City of East Palo Alto
2415 University Ave
East Palo Alto, CA 94303

Re: Water Capacity Charge Update

Bartle Wells Associates is pleased to submit the attached *Water Capacity Charge Update*. The study develops updated water capacity charges that include two components designed to equitably recover costs for:

- A proportionate share of water system infrastructure benefiting new development; and
- Wholesale water supply assurance from the San Francisco Public Utilities Commission recently purchased to meet the water demands of growth.

The proposed water capacity charges are designed to be adequate, fair, and comply with all legal requirements governing capacity charges.

The proposed water capacity charge for a single family home or townhouse is \$8,147, with a lower charge of \$5,014 per multi-family dwelling unit or apartment. Updated water capacity charges for non-residential connections with meters up to 2-inches are based on meter size. Capacity charges for non-residential connections with meters larger than 2-inches are proposed to be calculated on a case-by-case basis based on estimated water demand for each new connection.

I enjoyed working with the City on this assignment and appreciate the input and assistance received throughout the project. Please contact me anytime if you have questions about the recommendations presented in the report or other related issues.

Sincerely,

BARTLE WELLS ASSOCIATES

Alex Handlers, CIPMA
Principal/Vice-President

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1. Background, Objectives, & Government Code

Background

The City of East Palo Alto provides water a service to residents and businesses within the City. The City is located about 30 miles south of San Francisco in San Mateo County, California. The City was incorporated in 1983 and is a General Law City. The City encompasses a little over 2.5 square miles and has a population of approximately 31,000.

The City currently levies Facility Buy In Fees on new connections to the water system. These fees are levied to recover the cost of water system infrastructure and assets benefitting new development. These fees are a type of development impact fee referred to as “capacity charges” in California Government Code and are one-time fees paid as a condition of permit issuance for new development. The City’s current water capacity charges (Facility Buy In Fees) have not been updated or independently reviewed in many years.

Objectives

The City retained Bartle Wells Associates to update its water capacity charges with the goals of developing new charges that:

- Recover the full costs of water system infrastructure and water supply to help ensure that growth pays its own way and does not place a financial burden on existing customers;
- Equitably recover costs based on the new or increased capacity needs of new development or redevelopment;
- Are consistent with industry-standard practices and methodologies;
- Comply with government code.

Government Code

Development impact fees are governed by California Government Code Section 66000 et. seq. This section of the Code was initially established by Assembly Bill 1600 (AB 1600) and is commonly referred to as the Mitigation Fee Act. Pursuant to the Code, a development impact fee is a charge levied to defray the cost of public facilities needed to serve a new development.

Section 66013 of the Code specifically governs water and wastewater capacity charges. This section of the Code defines a “capacity charge” to mean *“a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense related to its use of existing or new public facilities.”*

The Code distinguishes “capacity charges” from “connection fees” which are defined as fees for the physical facilities necessary to make a water or sewer connection, such as costs related to installation of meters and pipelines from a new building to a water or sewer main.

According to the Section 66013, a water or wastewater capacity charge *“shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed”* unless approved by a two-thirds vote. As such, the water capacity charges calculated in this report represent the maximum charges that the City can levy. Section 66013 does not detail any specific methodology for calculating capacity charges.

Other sections of Government Code that apply to water and wastewater capacity charges includes Section 66016, 66022 and 660123. Section 66016 of the Code identifies the procedural requirements for adopting or increasing water and wastewater capacity charges. Section 66022 summarizes the general process by which the charges can be legally challenged. And Section 66023 provides individuals with a process for requesting an audit to determine if a fee or charge is reasonable. The full texts of Sections 66013, 66016 and 66022 are attached in Appendix A.

2. Capacity Charge Components

Fee Methodology

The updated water capacity charges proposed in this report include two components designed to equitably recover costs for a) water distribution system infrastructure, and b) wholesale water supply rights needed to meet the water demands of new development. A summary of the two components is listed below.

- **Water Distribution System** - This fee component recovers a proportionate share of costs in existing and planned water system facilities and assets. This fee component is calculated based on an *average cost approach*. Under this approach, the total cost of facilities, including existing infrastructure and planned water system upgrades and expansions, is divided by the total projected future capacity the City is projected to serve through buildout resulting in an average cost per unit. This fee component excludes the costs of capital improvements allocated to replacement to ensure no double counting of existing infrastructure and its replacement.
- **Wholesale Water Supply Rights** - This fee component recovers the cost of Water Supply Assurance from the San Francisco Public Utilities Commission (SFPUC) that was recently purchased by the City for the purpose of serving new development. The City relies on wholesale water supply from the SFPUC for 100% of community's water supply during normal operating conditions. Each new or expanded connection is responsible for funding the amount of Supply Assurance needed to meet their water demand needs.

Water System Infrastructure Cost Recovery

Table 1 calculates the cost of the City's distribution system infrastructure including pipelines and other facilities. Pipeline costs are calculated in current dollars based on the linear feet of pipeline per diameter, and a conservative estimate of the cost per linear foot for pipeline construction. The cost of other distribution system infrastructure is estimated at an additional 20% of the costs of water distribution pipelines.

Table 1 – Water Distribution System Costs

	Age of Facilities (Years)						Total LF	Cost per LF	Total Cost
	> 50	40	30	20	< 10	Unknown			
Water Mains	Linear Feet (LF)								
< 4-inch	2,220	0	0	0	0	640	2,860	\$210	\$600,600
4-inch	15,920	2,500	4,050	0	0	3,580	26,050	210	5,470,500
6-inch	39,680	3,090	13,410	1,260	420	2,400	60,260	220	13,257,200
8-inch	3,475	6,700	23,175	430	3,390	590	37,760	275	10,384,000
10-inch	2,490	645	1,535	1,250	1,015	0	6,935	300	2,080,500
12-inch	2,760	0	1,300	0	2,555	970	7,585	330	2,503,050
Total	66,545	12,935	43,470	2,940	7,380	8,180	141,450		34,295,850
% of Total	47.0%	9.1%	30.7%	2.1%	5.2%	5.8%	100.0%		
Hydrants/Valves/Other System Costs									
Estimated at 20% of Pipeline Cost									6,859,170
Total Water Distribution System Cost									41,155,020

Source: Based on City of East Palo Alto engineering cost estimates.

Table 2 on the following page shows a summary the City’s water system capital improvement program. Costs for each improvement are based on cost estimates from the City’s water system capital improvement program (CIP) adopted in June 2016 escalated into current dollars based on the change in the Engineering News-Record (ENR) Construction Cost Index (20-Cities Average) from June 2016 to June 2018.

The table also allocates costs to replacement vs. upgrade/expansion. Costs for new facilities are allocated 100% to upgrade/expansion. Costs for facilities that simply replace existing infrastructure – including the Fire Hydrant Replacement Program and Water Valve Replacement Program – are allocated 100% to replacement. Cost for the Water Main Program are allocated both to a) replacement (to account for the share of project costs replacing existing facilities) and to b) upgrade/expansion (to account for the upsizing component of the new pipelines) based on City engineering cost estimates. The updated capacity charge calculation includes cost recovery for capital upgrades/expansions, but excludes costs allocated to replacement to ensure no double counting of an existing asset and its replacement.

Table 2 – Water System Capital Improvement Program

	Base Year	ENR-Adjusted	Cost Allocation to		Cost Allocation to	
	Cost Estimate	Cost Estimate	Replacement		Upgrade/Expansion	
	June 2016	June 2018	%	\$	%	\$
Water Supply Reliability & Storage Improvements						
WS-03A New Storage Tank - East of HWY 101	\$5,150,000	\$5,514,400	0%	\$0	100%	\$5,514,400
WS-03B New Storage Tank - West of HWY 101	5,150,000	5,514,400	0%	0	100%	5,514,400
WS-01A Emergency Water Connections - City of Palo Alto	179,000	191,700	0%	0	100%	191,700
WS-01B Emergency Water Connections - PA Park Mutual	595,000	637,100	0%	0	100%	637,100
WS-01C Emergency Water Connections - O'Connor Tract	390,000	417,600	0%	0	100%	417,600
WS-02 Gloria Well Retrofit (being grant funded)	excluded	excluded	-	-	-	-
WS-04 Pad-D Groundwater Well	3,863,000	4,136,400	0%	0	100%	4,136,400
Less IRWM Grant Funding	(555,000)	(555,000)	0%	0	100%	(555,000)
WS-05 Groundwater Management & Monitoring Plan	113,000	121,000	0%	0	100%	121,000
WS-06 Groundwater Monitoring Network	330,000	353,400	0%	0	100%	353,400
WS-07 Annual Groundwater Monitoring Program	650,000	696,000	0%	0	100%	696,000
WS-08 MLK Park Storm Water Capture & Reuse Facility	630,000	674,600	0%	0	100%	674,600
New SFPUC Intertie & Related Improvements	500,000	535,400	0%	0	100%	535,400
Subtotal Water Supply Reliability & Storage	16,995,000	18,237,000	0%	0	100%	18,237,000
Water Distribution System Improvements						
WD-01 Water System Master Plan	100,000	107,100	0%	0	100%	107,100
WD-02 Urban Water Management Plan	184,000	197,000	0%	0	100%	197,000
WD-03 Water Rate Study	Excluded	Excluded	0%	0	0%	0
WD-04 Water Main Program	31,000,000	33,193,800	65%	21,575,970	35%	11,617,830
WD-05 Water Meter Replacement Program	Excluded	Excluded	-	-	-	-
WD-06 Fire Hydrant Replacement Program	2,200,000	2,355,700	100%	2,355,700	0%	0
WD-07 Water Valve Replacement Program	1,256,000	1,344,900	100%	1,344,900	0%	0
Second Water Main Crossing of Hwy 101	600,000	642,500	0%	0	100%	642,500
Subtotal Water Distribution	35,340,000	37,841,000	67%	25,276,570	33.2%	12,564,430
Total Improvements Providing Systemwide Benefit	52,335,000	56,078,000	45.1%	25,276,570	54.9%	30,801,430

Source: Cost estimates based on CIP Adopted 06/21/16 and other City cost estimates, adjusted by the change in the Engineering News-Record Construction Cost Index (20-Cities Avg) from the June 2016 Index of 10337.05 to the June 2018 Index of 11068.57.

Water Distribution System Buy-In Cost

Table 3 calculates the water distribution system buy-in fee component of the updated water capacity charges. This fee component is calculated to include cost recovery for a) existing water system infrastructure (from Table 1), and b) capital improvement projects allocated to upgrade/expansion (from Table 2). These costs are divided by projected total future water demand through buildout in 2040 -- which includes water demand from both existing and future customers -- resulting in an average cost of \$25.90 per gallon per day (gpd) of water demand. Future water demand is based on data provided in the City's 2015 Urban Water Management Plan which is consistent with the City's 2015 General Plan Update Water Supply Assessment. Under the proposed capacity charges, new and expanded water system connections would buy-in for their proportionate share of water distribution system infrastructure with this fee component.

Table 3 – Water System Buy-In Cost per GPD

WATER SYSTEM COSTS		
<u>Existing Water System Facilities (Table 1)</u>		
Water Distribution System Infrastructure		\$41,155,020
<u>Capital Improvements Providing Systemwide Benefit (Table 2)</u>		
<i>Excludes share of improvements identified as replacements</i>		
Upgrade/Expansion Component of Capital Improvements:		
Water Supply Reliability & Storage Improvements	100.0%	18,237,000
Water Distribution System Improvements	33.2%	<u>12,564,430</u>
Subtotal		30,801,430
Total Water System Costs for Fee Recovery		\$71,956,450
WATER SYSTEM CAPACITY THROUGH BUILDOUT		
Projected Annual Water Use through Buildout (from UWMP)		
Acre-Feet (AF) ¹		3,112
Conversion to Million Gallons per Day (mgd)		2.778
Conversion Gallons per Day (gpd)		2,778,211
AVERAGE BUY-IN COST PER GPD		\$25.90

1 Source: 2015 Urban Water Management Plan, Public Review Draft June 2016,
Table 3-3: Net water supply after accounting for system loss/unaccounted water.

Wholesale Water Supply Cost Recovery

The City relies on wholesale water supplied by the SFPUC for 100% of the community's water supply needs under normal operating conditions. Table 4 calculates the cost per gpd of SFPUC Water Supply Assurance purchased to meet the water demands of new development. The City recent acquired an additional 1 million gallons per day (mgd) of SFPUC Water Supply Assurance for a cost of \$5 million.

Based on data from the past three years, approximately 8% of the volume of wholesale water purchased from the SFPUC is not available to serve customers due to system loss and other factors. As such, the City's recent acquisition of 1 mgd of Water Supply Assurance is only projected to generate a net total of 920,000 gpd of new water supply available for growth. Dividing the \$5 million cost by the net 920,000 gpd of new water supply available to serve growth results in a unit cost of \$5.43 per gallon per day (gpd) for Water Supply Assurance available to meet the water demands of new development.

Table 4 – Water Supply Cost per GPD

NEW WATER SUPPLY COST	
Acquisition Cost of 1 mgd SFPUC Water Supply Assurance	\$5,000,000
WATER SUPPLY CAPACITY PROVIDED (GPD)	
SFPUC Water Supply Assurance Acquired	1,000,000
% Available for Customer Supply (Net of System Loss)*	<u>92%</u>
Net Water Supply Available for New Demand	920,000
AVERAGE COST OF NEW WATER SUPPLY PER GPD	
<i>Cost of New Supply / Net Supply Provided</i>	\$5.43

* Assumes 8% reduction in water supply due to system loss and unaccounted for water based on results from past 3 years.

3. Proposed Capacity Charges

Proposed Water Capacity Charges

Table 5 on the following page shows a schedule of proposed water capacity charges. The charges are based on the capacity charge components developed in Tables 3 and 4 applied to the estimated water demands of new residential and non-residential connections.

Water capacity charges for residential connections are applied per type of dwelling unit based on estimated average water demand for each type of dwelling unit. Capacity charges for non-residential connections with meters up to 2-inches are standardized based on water meter size. Capacity charges for larger non-residential connections with meters greater than 2-inches would be calculated individually on a case-by-case basis based on the estimated water demand for each new or expanded connection.

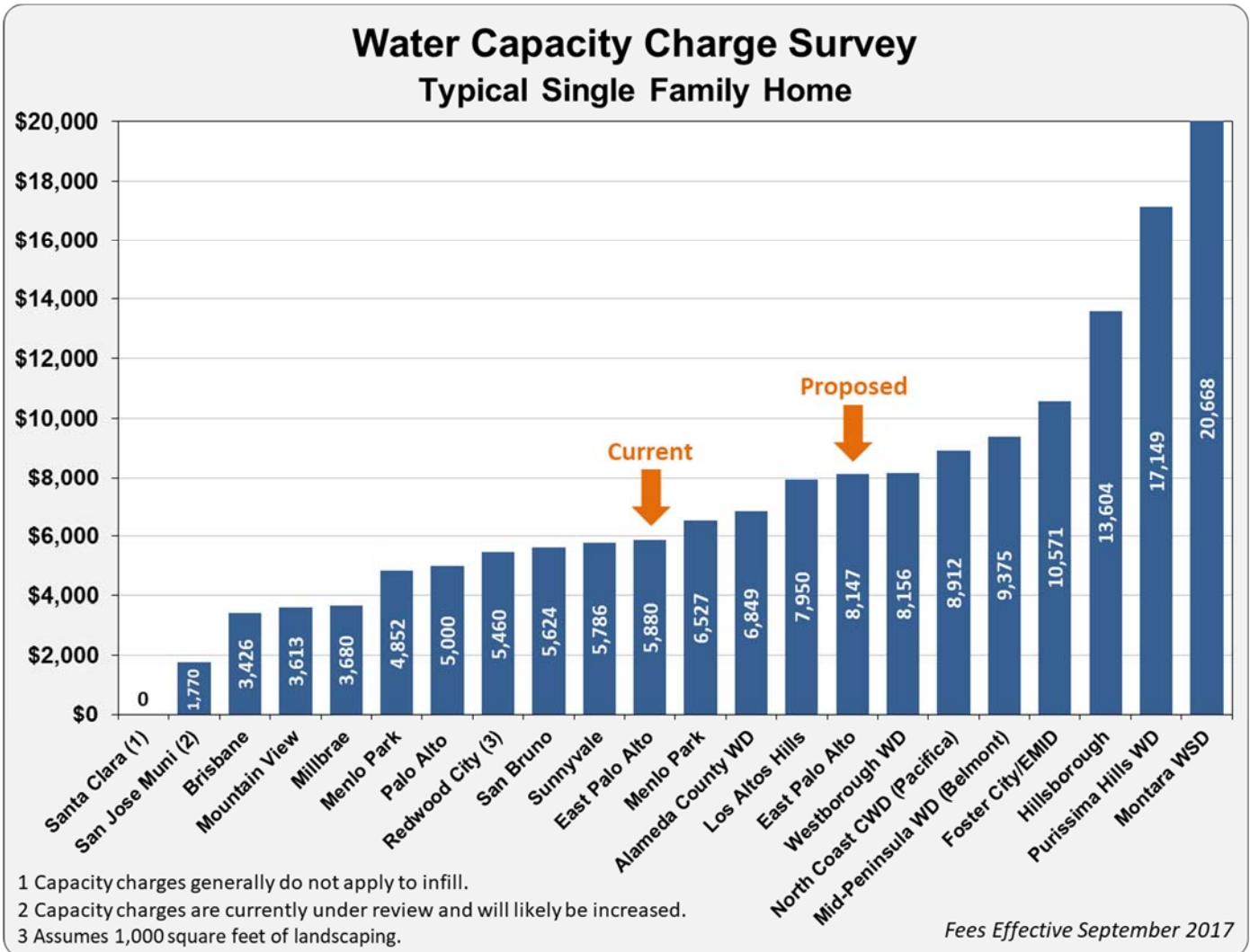
In some cases, water demands from some new connections may substantially exceed the estimates included in the standard fee calculations. To ensure the charge reasonably reflects water demands of all future connections, the City retains the authority to separately calculate the appropriate charge for all future water connections based on the underlying water capacity charge per gpd, in instances where the estimated demand from a new connection is significantly different than the demand estimates used for the standard fee calculations. This may require a developer for an individual project to either pay for an independent analysis of the project's water demand or fund the City's costs for the water demand analysis.

Table 5 – Proposed Water Capacity Charges

		Water Demand (gpd)	Water Capacity Charge Components		
			Water System Average Buy-In	Water Supply for Growth	Total Water Capacity Charge
Unit Cost per GPD¹			\$25.90	\$5.43	\$31.33
Residential Water Capacity Charges					
<i>Water Capacity Charge applied per residential dwelling unit</i>					
Single Family/Townhouse ^{2,3}		260	\$6,734	\$1,413	\$8,147
Multi-Family/Apartment ²		160	4,144	870	5,014
Non-Residential Water Capacity Charges for Meters up to 2-Inches					
<i>Water Capacity Charge applied based on meter size</i>					
<u>Meter Size</u>	<u>Capacity Ratio⁶</u>				
3/4-inch ⁴	1.00	380	\$9,842	\$2,065	\$11,907
1-inch ⁵	1.67	633	16,403	3,442	19,845
1.5-inches ⁵	3.33	1,267	32,807	6,884	39,691
2-inches ⁵	5.33	2,027	52,491	11,014	63,505
Non-Residential Water Capacity Charges for Connections with Larger Meters					
<i>Water Capacity Charge applied based on estimated water demand (\$ per gpd)</i>					
Capacity Charge per GPD¹			\$25.90	\$5.43	\$31.33
<p>1 Based on costs per gpd developed in Tables 3 and 4.</p> <p>2 Source: Based on data provided by AECOM, Raimi + Associates, and the City.</p> <p>3 Single Family/Townhouse demand is roughly equal to 2013 average residential demand (pre-drought) reduced by 10% to account for permanent conservation.</p> <p>4 Based on 2013 use per non-residential 3/4-meter equivalent (pre-drought) reduced by 10% to account for permanent conservation.</p> <p>5 Based on water demand per 3/4-inch meter multiplied by the Capacity Ratio for each meter size.</p> <p>6 Based on American Water Works Association standard meter capacities for each meter size divided by the meter capacity for a 3/4-inch meter.</p> <p><i>Note: Standard Capacity Charges are shown. The City reserves the right to calculate alternative charges on a case-by-case basis to ensure charges reflect estimated water demand and/or recover the full costs of facilities benefiting new or expanded water service connections.</i></p>					

Survey of Regional Water Capacity Charges

The following chart shows a comparison of regional water capacity charges for a typical new single family home. The chart is shown for informational purposes only as capacity charges can vary based on a wide range of factors. With the proposed update, the City of East Palo Alto's water capacity charges will increase from the middle range toward the upper-middle range compared to other regional agencies.



4. Capacity Charge Application

This section highlights some key issues regarding the application and implementation of the updated capacity charges.

Capacity Charge Ordinance: Purpose of Charge

Pursuant to Government Code, revenues derived the City's capacity charges can only be used for the purpose for which the charges are collected. In order to maximize the City's flexibility for use of capacity charge revenues, BWA recommends that the resolution adopting new charges broadly define the purpose of water capacity charges, such as to recover costs for existing and future water system infrastructure, wholesale water supply assurance, and any other water utility assets benefitting new or expanded connections to the water system.

Capacity Charge Credits for Redevelopment

Capacity charges for redevelopment projects and/or expansions should be based on the incremental increase in water demand generated from each project. Under this approach, the fees for future redevelopment projects would be based on the incremental difference between the water capacity charges that would apply to the current connection and the capacity charges applicable to the expanded connection.

Future Fee Adjustments

In future years, BWA recommends that the City update its capacity charges annually by adjusting the charges by the change in the Engineering News-Record Construction Cost Index (20-Cities Average) to account for future construction cost inflation. The fee adjustment should allow for a multi-year adjustment if the City ever opted to temporarily defer any fee adjustments. The City's capacity charge resolution can allow for automatic annual adjustments.

Additionally, the City should review and consider updating its water capacity charges when substantial revisions are made to anticipated water system capital improvement costs or funding, or to substantial changes in projected water demand. In general, BWA recommends that capacity charges be independently reviewed and/or updated approximately once every five years.

APPENDIX A

**California Government Code:
Key Sections Pertaining to Water Capacity Charges**

California Government Code
Key Sections Pertaining to Water & Wastewater Capacity Charges
Sections 66013, 66016, & 66022

66013

(a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) As used in this section:

(1) "Sewer connection" means the connection of a structure or project to a public sewer system.

(2) "Water connection" means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

(3) "Capacity charge" means a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense relating to its use of existing or new public facilities. A "capacity charge" does not include a commodity charge.

(4) "Local agency" means a local agency as defined in Section 66000.

(5) "Fee" means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

(6) "Public facilities" means public facilities as defined in Section 66000.

(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

(1) A description of the charges deposited in the fund.

(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

(3) The amount of charges collected in that fiscal year.

(4) An identification of all of the following:

(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

(B) Each public improvement on which charges were expended that was completed during that fiscal year.

(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

(3) Charges collected on or before December 31, 1998.

(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section.

(Amended by Stats. 2007, Ch. 94, Sec. 1. Effective January 1, 2008.)

66016

(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service

for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 65104, 65456, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

(Amended by Stats. 2006, Ch. 643, Sec. 19. Effective January 1, 2007.)

66022

(a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or

annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013, 66014, and 66016.

(Amended by Stats. 2006, Ch. 643, Sec. 20. Effective January 1, 2007.)

66023

(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product, public facility, as defined in Section 66000, or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable, but is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.

(b) To the extent that the audit determines that the amount of any fee or charge does not meet the requirements of this section, the local agency shall adjust the fee accordingly. This subdivision does not apply to a fee authorized pursuant to Section 17620 of the Education Code, or Sections 65995.5 and 65995.7.

(c) The local agency shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the local agency the amount of the local agency's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the local agency shall reimburse unused sums, if any, or the requesting person shall pay the local agency the excess of the actual cost of the audit over the sum which was deposited.

(d) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(e) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(f) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(g) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(Amended by Stats. 2009, Ch. 507, Sec. 3. (AB 1084) Effective January 1, 2010.)