

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2018-027

**TO:** John Engen, Dale Bickell, John Wilson, Dennis Bowman, Ross Mollenhauer, Logan McInnis, Pat Brook, Leigh Griffing, Marty Rehbein, Kirsten Hands, Ginny Merriam, Steve Johnson, Mike Haynes, Mary McCrea, Denise Alexander, Jenny Baker, Andrew Boughan, Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** November 28, 2018

**RE:** Montana Municipal utility rates, charges and classifications for customers as well as for development capital infrastructure expansions must be equitable, reasonable and just in proportion to services and benefits provided. Municipal utility system development fees may be utilized to fund a portion of the expense of future expansion of a municipal water or sanitary sewer system.

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### FACTS:

A residential development developer is proposing to develop approximately two hundred, 200, residential dwelling units to be located on Missoula's north side. According to city staff, the proposed residential development has the potential to overwhelm the existing Dickens St lift station. While city staff is not yet convinced that upgrades to the Dickens St. lift station will actually be needed; City staff concern and discussion is occurring to attempt to identify potential alternative courses of action.

### ISSUE:

What do Montana municipal utility laws provide with respect to municipal utility rates and charges to be assessed to customers and developers for municipal utility services and benefits?

### CONCLUSION:

Montana municipal utility laws, pursuant to sections 7-13-4304 and 69-7-101 MCA require that municipal utility rates and charges shall be reasonable, just and equitable in proportion to the services and benefits rendered.

## **LEGAL DISCUSSION:**

Montana municipal utilities have the power and authority to regulate, establish, and change, as it considers proper, municipal utility rates, charges and classifications imposed for utility services to inhabitants and others served by municipal utility systems. See section 69-7-101 MCA as well as *Lechner v. City of Billings*, 244 Mont. 195, 201; 797 P. 2d 191, 1990 Mont. LEXIS 252(1990).

Title 7, chapter 13, part 43 of Montana state municipal law is entitled “MUNICIPAL SEWAGE AND/OR WATER SYSTEMS”. Section 7-13-4304 MCA is entitled “AUTHORITY TO CHARGE FOR SERVICES”. Subsection 7-13-4304(4) MCA provides:

“(4) The water and sewer rates, charges, or rentals SHALL BE AS NEARLY AS POSSIBLE EQUITABLE IN PROPORTION TO THE SERVICES AND BENEFITS RENDERED.” (emphasis added)

Also, title 69, chapter 7 MCA is entitled “MUNICIPAL UTILITIES”. Title 69, chapter 7, part 1 MCA is entitled “REGULATION OF RATES BY MUNICIPALITY”. Section 69-7-101 MCA provides:

“69-7-101. MUNICIPAL UTILITIES-REGULATION BY MUNICIPALITY. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons, served by municipal utility systems. RATES, CHARGES, AND CLASSIFICATIONS MUST BE REASONABLE AND JUST.” (emphasis added)

Pursuant to sections 7-13-4304 and 69-7-101 MCA of Montana municipal law, the Montana State Legislature requires that municipal utility rates be equitable, just and fair in proportion to the services and benefits rendered.

It is worth noting and emphasizing that “benefit” is also the primary legal focal point of Montana special improvement district statutes for establishing municipal special improvement district monetary assessments against the benefited lots, parcels or tracts of land included within the boundaries of a municipal special improvement district. See for examples sections 7-12-4104, 7-12-4162, 7-12-4163 and 7-12-4165 MCA. Also, see Montana Supreme Court decisions in *Enger v. City of Missoula* 2001 MT 142, 306 M 28, 29 P 3d 514(2001) and *Stevens v. City of Missoula* 205 M 274, 667 P 2d 440(1983) for the same purpose as well as for the municipal governing body having reasonable discretion to determine benefit as long as there is no evidence of mistake or fraud..

The 1990 Montana Supreme Court in *Lechner v. City of Billings*, supra, upheld the legality of a municipal utility system development fee. In the City of Billings litigation, the City of Billings was utilizing utility system development fees to fund a portion of the cost of future expansion of the City of Billings water and sewer systems. The Montana Supreme Court held that municipal utility system development fees were a reasonable extension of the City’s express authority to

operate municipal water and sewer systems. The Montana Supreme Court identified the municipal utility system development fees as being service charges.

**CONCLUSION:**

Montana municipal utility laws, pursuant to sections 7-13-4304 and 69-7-101 MCA require that municipal utility rates and charges shall be reasonable, just and equitable in proportion to the services and benefits rendered.

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/s/ Jim Nugent

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