

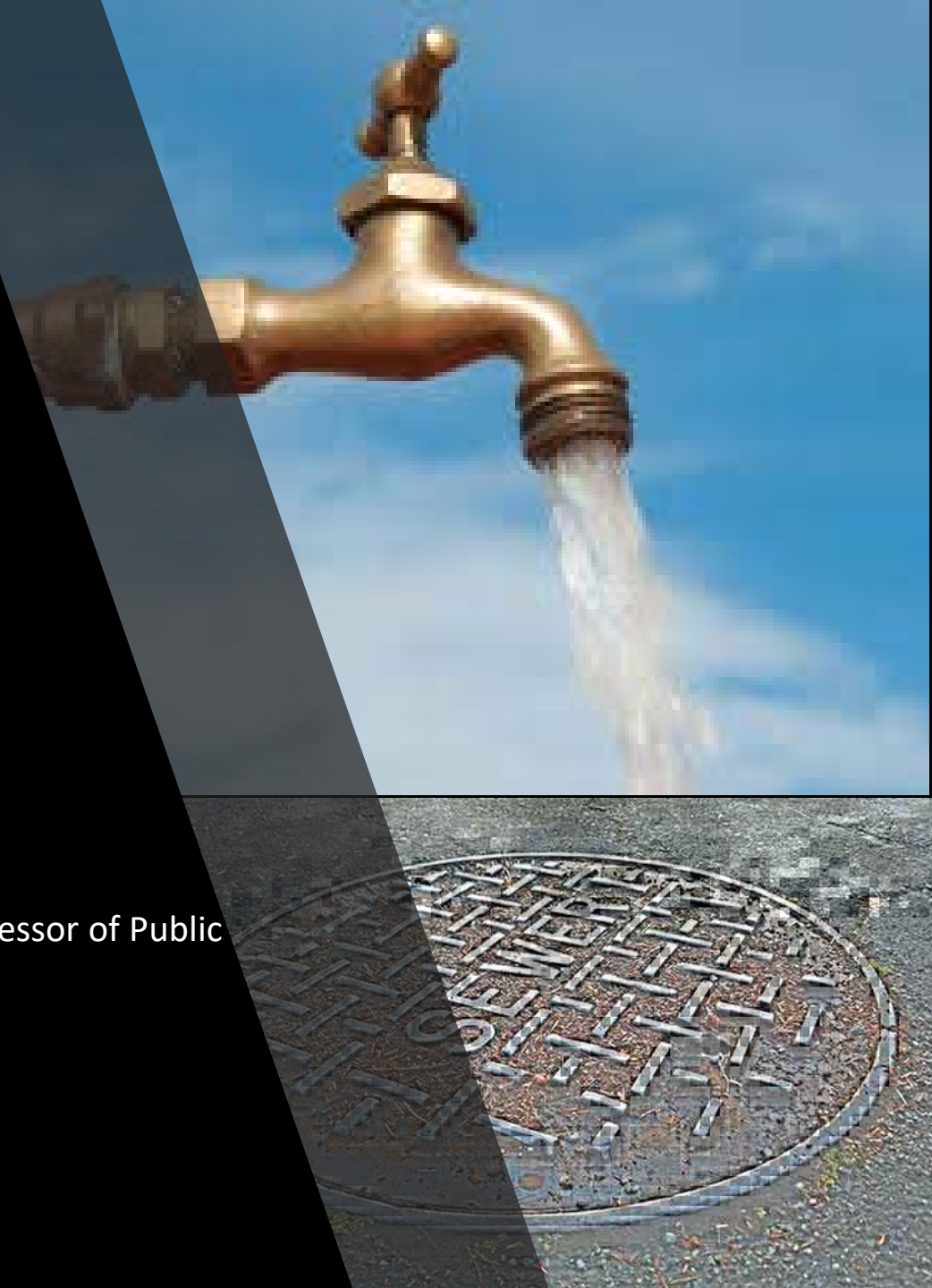
Water & Wastewater Finance Legal Issues

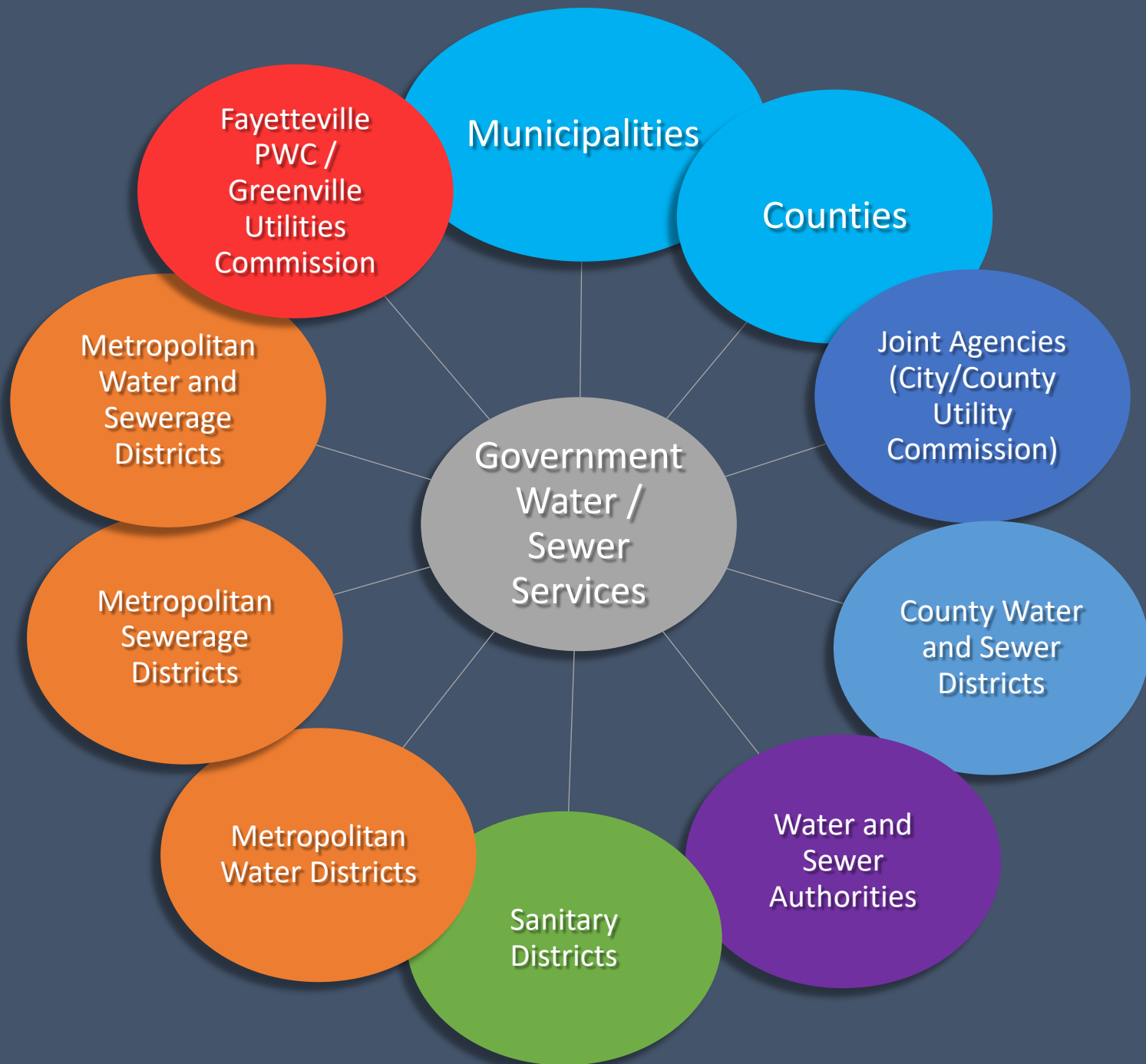
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March 2020





Agenda



Overview of fees



System Development Fees



Contract Fees



Availability Fees / Mandated
Connections



User Fees

Payment assistant programs
Meter Tampering



Fee Authority

Local Government Utilities

“may establish, revise and collect rates, fees or other charges and penalties **for the use of or the services furnished or to be furnished by....** [the water and/or sewer utility system]”

System
Development
Fees

Assessed on
new
development

Contractual
Charges

Assessed pursuant
to contract to
extend
water/sewer lines
to property or do
system changes/
expansions to
serve property

Regulatory
Fees

Assessed to cover
costs of
inspections, plan
reviews, etc.

Availability
Fees

Assessed on
certain properties
when water/sewer
available but
property owners
choose not to
connect

Connection
/ Tap Fees

Assessed on
property owner
at time of
connection

User Fees

Assessed on
water/sewer utility
customers—
typically has fixed
and variable
component

System Development Fees



Local government utility may assess a *system development fee* on “new development” within its territorial boundaries to fund certain capital costs attributable to that new development.

What is “New Development”?



Subdivision of Land



Construction, or any change to existing structure, that causes increase in need for service



Any use or extension of use of land that increases need for service

Process to Adopt Fee Schedule

1

- Professional Analysis

2

- Public Input

3

- Professional Analysis Reconsidered

4

- Public Hearing

5

- Adopt Resolution or Ordinance

6

- Notice of System Development Fee Schedule

7

- Periodic Updates

How to Calculate Fee Schedule

- Done by engineering or finance professional with sufficient training/experience
- Detailed Analysis
- Select 1 of 3 Methodologies
- **Service Unit Rate**
- Revenue or Valuation Credits
- Equivalency or Conversion Table
- Planning Horizon of 10-20 years



Methodologies



Buy-in: based on value of existing capacity



Incremental cost: based on the value or cost to expand the existing system's capacity



Combined cost: mix of both



When is Fee Collected?

Subdivision of Land

- When plat recorded; OR
- When local unit commits to provide water/wastewater service to the development

Whichever is LATER

Changes to structures or land that increase number of service units

- When property owner applies for connection of individual unit of development; OR
- When increased capacity triggered

Whichever is EARLIER

When is Service Committed?

Negotiations about water / wastewater



Plat recorded



Building Permit Pulled



Individual development units connected



Water / sewer account established

Spending Proceeds



Incremental / Combined Cost Methods

- Costs of construction or expansion that were “necessitated by and attributable to” new development (construction; surveying/engineering; land acquisition; debt service; fee analysis costs)
- If no capital improvements planned for 5 years, debt service on existing “capital improvements”

Buy—in Method

- Specific future capital projects; must be identified in CIP
- Debt service on existing utility infrastructure

Capital Reserve Fund (CRF)

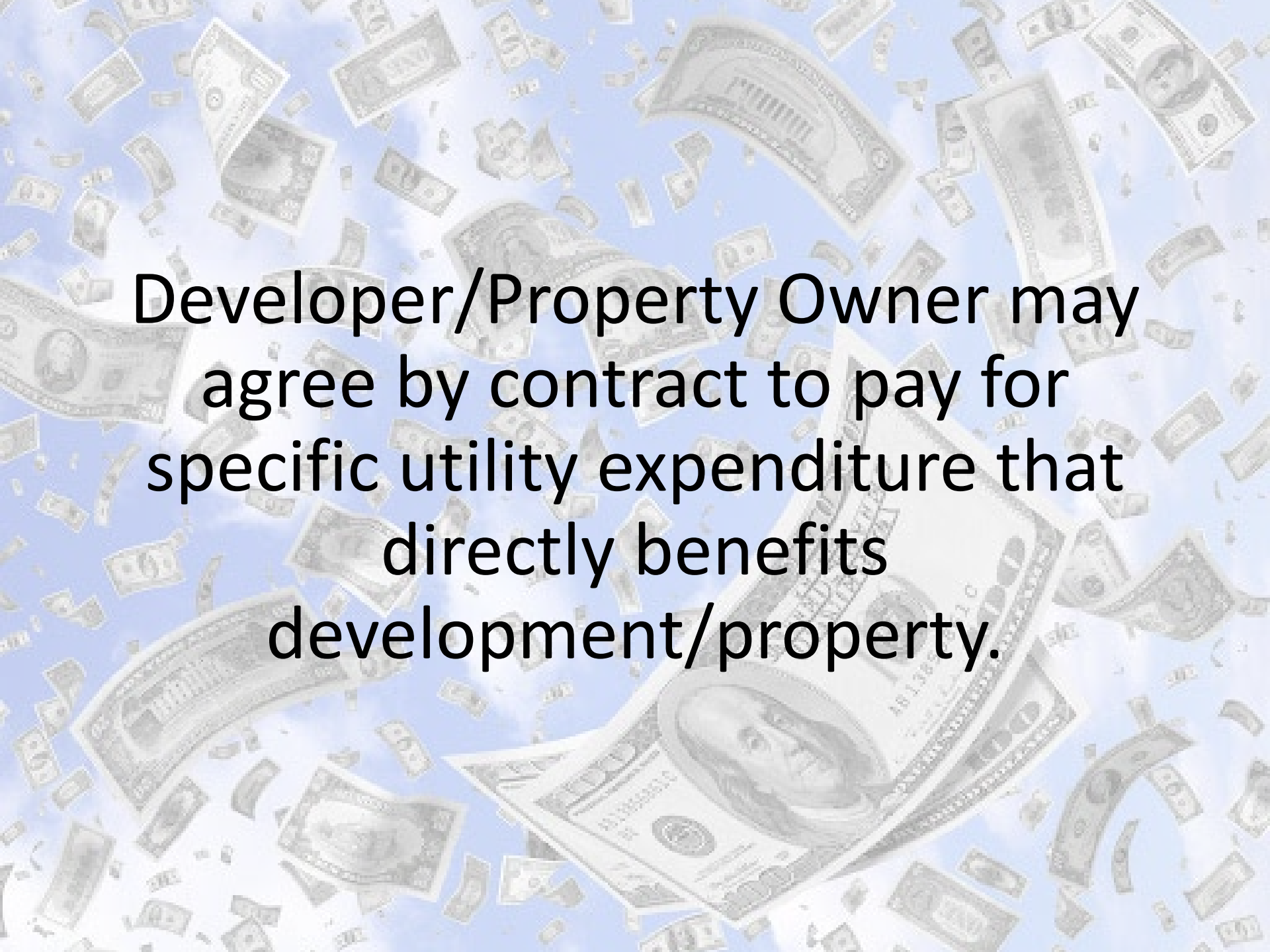


- Adopt Ordinance or Resolution
- Specify projects to be funded with proceeds
- Amend CRF each year to appropriate new proceeds
- Must move \$ to budget or project ordinance before spending

EXCEPTION: If and to the extent that revenues derived from system development fees are pledged to secure revenue bonds or notes issued by a local government unit under the provisions of Article 5 of Chapter 159 of the General Statutes, such revenues may be deposited in such funds, accounts or subaccounts, and applied in such manner, as set forth in the bond order, resolution, trust agreement or similar instrument authorizing and securing such bonds or notes until all such revenue bonds or notes are no longer outstanding.



Contract Fees

The background of the slide is a light blue gradient with numerous US dollar bills of various denominations (including \$100, \$50, and \$20) falling from the top, creating a sense of money being spent or distributed.

Developer/Property Owner may
agree by contract to pay for
specific utility expenditure that
directly benefits
development/property.

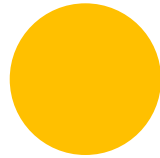
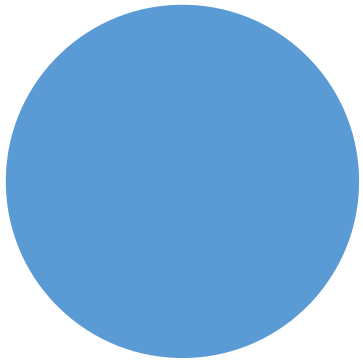


Subdivision Development Exactions

- Infrastructure improvements, land dedications, or funds a local government requires a developer to provide as a condition of development approvals.
- Exactions must be rationally related and roughly proportional to the impacts created by the development.
- G.S. 160A-372; G.S. 153A-331

Or Developer Can Do Work Directly

	Public Enterprise Contract	Reimbursement Agreements
Statute	153A-280; 160A-320	153A-451; 160A-499
Projects	Public enterprises	"municipal infrastructure" (e.g. water, sewer, stormwater, streets, curbs, sidewalks, traffic control)
Scope	Cost of design and construction improvements; must be adjacent or ancillary to private land development; cannot pay for improvement required by development ordinances	Improvement must be included in the local government's capital improvement plan and must serve the developer or property owner



May you require
connection? |



Mandating Connections

“The owner of developed property on which there are situated one or more residential dwelling units or commercial establishments” located within the territorial jurisdiction of the government utility and within a reasonable distance of the water line . . . owned, leased as lessee, or operated by, or on behalf of, the government utility “to connect the owner’s premises with the water [] line and may fix charges for these connections.”

G.S. 153A-284 (counties)

G.S. 160A-317 (municipalities)

G.S. 162A-6a(14d) (water & sewer authorities)

G.S. 130A-55(16) (sanitary districts)

EXCEPT...

A wooden well with a thatched roof and a bucket hanging from a rope.

Drinking Well Permits

If the property is undeveloped or unimproved, the local government must issue the permit even if the property could be served by a government utility.

If the property is developed or improved, the local government must issue the permit, only if the government utility has not yet installed water lines directly available to the property *or* if the government utility cannot provide water service to the property at the time the property owner desires service.

**IF PERMITTED WELL, NO
MANDATING CONNECTION**

Availability Fees

Counties
Water & Sewer Authorities
Sanitary Districts

In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

Municipalities

In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

User Fees





Customer Contract



- Should be in writing
- Should be signed by customer
- Can incorporate by reference utility's ordinance (rates, regulations, penalties)
- Should be as detailed as possible!

Utility Assistance Programs



No authority to directly reduce utility fees

Can set up program in general fund to aid citizens with low and moderate income

Can collect voluntary donations

Meter Tampering

G.S. 14-151: Criminal
prosecution or civil
lawsuit

NO automatic fines /
penalties

