

**Instrument # 280756**

TETON COUNTY, IDAHO

5-23-2023 02:20:00 PM No. of Pages: 21

Recorded for : TETON COUNTY IDAHO

KIM KEELEY

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: COUNTY ORDINANCE

ORDINANCE NO. *2023-0522A*

AN ORDINANCE AMENDING THE TETON COUNTY CODE BY THE ADDITION OF A NEW TITLE 15, ENTITLED DEVELOPMENT IMPACT FEES; PROVIDING FOR: DEFINITION AND PURPOSE; THE ESTABLISHMENT OF SERVICE AREAS, THE IMPOSITION OF IMPACT FEES, AND EXEMPTIONS; THE METHOD OF THE COLLECTION OF IMPACT FEES AND ENFORCEMENT THEREOF; ESTABLISHING A PROCESS FOR IMPACT FEE CERTIFICATION; ESTABLISHING A PROCESS FOR DEVELOPER CREDITS AND REIMBURSEMENTS; THE METHODOLOGY FOR CALCULATION OF IMPACT FEES; THE ESTABLISHMENT OF A PROCESS FOR EXTRAORDINARY IMPACTS; A PROCESS FOR FEE PAYER REFUNDS; ESTABLISHMENT OF IMPACT FEE FUNDS AND FUND ACCOUNTS; THE USE AND EXPENDITURE OF IMPACT FEES; THE ESTABLISHMENT FOR APPEALS, PROTEST AND MEDIATION; THE PERIODIC REVIEWS OF THE CAPITAL IMPROVEMENTS PLANS; THE FILING OF AN ANNUAL REPORT; THE CREATION OF A DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE; MISCELLANEOUS PROVISIONS; SEVERABILITY.

WHEREAS, after a public hearing by the Board of County Commissioners (Board) to consider the Capital Improvement Plan entitled, "Capital Improvements Plan and Development Impact Fee Study" dated January 20, 2023, the Board has made and does hereby make the following findings, to wit:

- 1) That the County is responsible for and committed to the provision of public facilities and services at levels necessary to cure any existing public service deficiencies in already developed areas;
- 2) That such facilities and service levels shall be provided by the County utilizing funds allocated via the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein;
- 3) That new development, however, will cause and impose increased and unfunded demands on existing County public facilities and services that would not otherwise be necessary;
- 4) That the Board has considered and accepted the findings contained in the "Teton County Capital Improvement Plan and Development Impact Fee Study" dated January 20, 2023 which indicates build out projections, public facilities analysis and the methodology for the determination of impact fees and that these findings are incorporated herein by reference;
- 5) That the build out projections as contained in the "Capital Improvement Plan and Development Impact Fee Study" indicate that such development will continue and will place ever increasing demands on the County to provide necessary public facilities;
- 6) That to the extent that new development places demands on public facility infrastructure, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands;

7) That the amount of the impact fee to be imposed shall be determined by the cost of the additional public facilities needed to support such development;

8) That the Board, after careful consideration of the matter, hereby finds and declares that an impact fee imposed upon future development to finance public facilities, the demand for which is created by such development is in the best interest of the general welfare of the County and its residents, is equitable, does not impose an unfair burden on such development by forcing developers and builders to pay more than their fair share or proportionate share of the cost, and deems it advisable to adopt this ordinance as hereinafter set forth;

9) That there is a reasonable relationship between the amount of the impact fee and the cost of public facilities attributable to the development upon which the fee will be imposed because the fee is based only on the cost of providing the facilities necessary to serve the new development as discussed in the Capital Improvement Plan and Development Impact Fee Study.

NOW, THEREFORE BE IT ORDAINED, by the Teton County Board of County Commissioners as follows: That as a new Title 15 of the Teton County Code shall be, and the same is hereby adopted as follows in order to update the existing impact fees. This new ordinance shall be designated as the "TETON COUNTY DEVELOPMENT IMPACT FEE ORDINANCE."

#### **Chapter 1: Development Impact Fees**

Section 1: Purpose and Definitions

Section 2: Establishment of service areas; Imposition of impact fee; Fee schedule; Exemptions

Section 3: Collection of impact fees; Enforcement

Section 4: Certification

Section 5: Methodology for the calculation of impact fees

Section 6: Developer credits and Reimbursement

Section 7: Extraordinary impact

Section 8: Fee payer refunds

Section 9: Establishment of impact fee funds; Fund accounts

Section 10: Appeals, protest and mediation

Section 11: Periodic reviews; Annual budget

Section 12: Audit

Section 13: Advisory Committee

Section 14: Miscellaneous provisions

Section 15: Severability

### **TITLE 15 DEVELOPMENT IMPACT FEES**

#### **CHAPTER 1 – DEVELOPMENT IMPACT FEES**

##### **SECTION 1: PURPOSE AND DEFINITIONS:**

Purpose: The intent of this chapter is to ensure that new residential and non-residential

development bears a proportionate share of the cost of System Improvements; to ensure that such proportionate share does not exceed the cost of such System Improvements required to accommodate new Development; and to ensure that funds collected from new Development are actually used for System Improvements in accordance with the Act.

As used in this chapter, the following words and terms shall have the following meanings, unless another meaning is plainly intended and words and terms appearing in the singular number includes the plural and the plural the singular:

**ACCOUNT** means the interest-bearing account in which the Impact Fee Fund will be deposited pursuant to this chapter.

**ACT** means the Idaho Development Impact Fee Act set forth in chapter 82, title 67 Idaho Code, as amended.

**ADVISORY COMMITTEE** means the Development Impact Fee Advisory Committee established pursuant to Idaho Code § 67-8205 by this chapter.

**APPROPRIATE** means to legally obligate by contract or otherwise commit to the expenditure of funds by appropriation or other official act of the Board of Commissioners.

**BOARD OF COMMISSIONERS** means the Board of County Commissioners of Teton County.

**BUILDING PERMIT** means the permit required for foundations, new construction and additions pursuant to Title 6 of Teton County Code. Building Permit includes a manufactured home installation permit.

**CAPITAL IMPROVEMENTS** means improvements with a useful life of ten (10) years or more, by new construction or other action, which increases the service capacity of the County's Public Facilities

**CAPITAL IMPROVEMENT PLAN** means the "Teton County Capital Improvement Plan and Development Impact Fee Study" dated January 20, 2023 recommended by the Impact Fee Advisory Committee and adopted by the County attached hereto and incorporated by reference that identifies the Capital Improvements for which the County's Impact Fees may be used as a funding source.

**COUNTY** means Teton County, Idaho.

**DEVELOPER** means any person or legal entity undertaking Development and/or the subdivision of property pursuant to Idaho Code §§ 50-1301 through 50-1334, as may be amended.

**DEVELOPMENT** means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for Public Facilities and/or subdivision of property that would permit any change in the use, character or appearance of land.

**DEVELOPMENT APPROVAL** means any written duly authorized document from the County

which authorizes the commencement of a Development, including any permits or written approvals under the Teton County Land Development Code adopted July 6, 2022 and effective August 3, 2022.

DWELLING UNIT means any structure, or portion thereof, providing permanent living facilities for one or more persons as herein defined, including provisions for living, sleeping, eating, cooking and sanitation.

EXTRAORDINARY COSTS means those costs incurred as result of an Extraordinary Impact.

EXTRAORDINARY IMPACT means an impact which is reasonably determined by the County to: (i) result in the need for System Improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the Project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code § 67-8214(2), as it may be amended; or (ii) result in the need for System Improvements which are not identified in the Capital Improvements Plan.

FEE CATEGORY means the categories of System Improvements for which Impact Fees can be collected established in Section 2-B of this chapter and defined in the Capital Improvement Plan.

FEE PAYER means the person who pays or is required to pay the County's Impact Fee. A fee payer may include a Developer.

IMPACT FEE means a payment of money imposed as condition of Development Approval to pay for a proportionate share of the costs of System Improvements needed to serve the Development. The term does not include the following:

1. A charge or fee to pay the administrative plan review, or inspection cost associated with permits required for Development;
2. Connection or hookup charges;
3. Availability charges for drainage, sewer, water or transportation charges for services provided directly to the development; or
4. Amounts collected from a Developer in a transaction in which the County has incurred expenses in constructing Capital Improvements for the Development if the owner or developer has agreed to be financially responsible for the construction or installation of those Capital Improvements, unless a written agreement is made, pursuant to Idaho Code § 67-8209(3) as it may be amended, for credit or reimbursement.

IMPACT FEE ADVISORY COMMITTEE means the County's Development Impact Fee Advisory Committee ("Advisory Committee") formed and staffed by the County pursuant to Idaho Code § 67-8205 to prepare and recommend the Capital Improvement Plan and Development Impact Fee and any amendments, revisions or updates of the same.

IMPACT FEE FUND means the County's development impact fee fund established in accordance

with Idaho Code § 67-8210(1), in which all Impact Fees collected shall be maintained.

LAND USE ASSUMPTIONS means a description of the service area and projections of land uses, densities, intensities and population in the service area over at least a ten (10) year period.

LEVEL OF SERVICE means a measure of the relationship between service capacity and service demand for Public Facilities.

MANUFACTURED/MOBILE HOME means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in such structure, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. §§ 5401 et seq.

MODULAR BUILDING means any building or building component other than a manufactured/mobile home, which is constructed according to the International Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

PROJECT means a particular Development on an identified parcel of land.

PROJECT IMPROVEMENTS, in contrast to System Improvements, means site improvements and facilities that are planned and designed to provide service for a particular Development Project and that are necessary for the use and convenience of the occupants or users of the Project.

PROPORTIONATE SHARE means that portion of System Improvement Costs determined pursuant to Idaho Code § 67-8207 which reasonably relates to the service demands and needs of the Project.

PUBLIC FACILITIES means land, buildings and equipment used for roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local component of state or federal highways; parks, open space and recreation areas, including all related capital improvements; and public safety facilities, including law enforcement which have a useful life of ten (10) years or more.

RECREATIONAL VEHICLE means a vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

SERVICE AREA means land within the boundaries of the unincorporated County as established

pursuant Chapter 14, Title 31, Idaho Code, in which specific Public Facilities provide service to Development on the basis of sound planning or engineering principles or both as identified in the County's Capital Improvements Plan.

SERVICE UNIT means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of Development calculated in accordance with generally accepted engineering or planning standards for a particular category of Capital Improvements. As specifically used in this Ordinance, Service Units include all dwelling units as defined herein and includes, on the square foot basis, nonresidential Development.

SQUARE FEET in regards to residential dwelling units is tabulated using the outside measurements of the outside walls of habitable space.

SYSTEM IMPROVEMENTS, in contrast to Project Improvements, means Capital Improvements to Public Facilities which are designed to provide service to a Service Area.

SYSTEM IMPROVEMENT COSTS means costs incurred for construction or reconstruction of System Improvements, including design, acquisition, engineering and other costs, and also including, without limitation, the type of costs described in Idaho Code § 50-1702(h), as it may be amended, to provide additional Public Facilities needed to service new growth and Development.

System Improvements do not include:

1. Construction, acquisition or expansion of Public Facilities other than improvements identified in the CIP.
2. Improvements, repair, operation or maintenance of existing or new capital;
3. Upgrading, updating, expanding or replacing existing Capital Improvements to serve existing Development in order to meet stricter safety, efficiency, environmental or regulatory standards;
4. Upgrading, updating, expanding or replacing existing Capital Improvements to provide better service to existing Development;
5. Administrative and operating costs of the County unless such costs are attributable to Development of the Capital Improvements Plan, as provided in Idaho Code § 67-8208, as it may be amended; and
6. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the County to finance Capital Improvements identified in the Capital Improvements Plan.

**SECTION 2: ESTABLISHMENT OF SERVICE AREAS; IMPOSITION OF IMPACT FEE; FEE SCHEDULE; EXEMPTIONS:**

- A. Establishment of Service Areas. There is hereby established a Service Area which includes all land in unincorporated Teton County.
- B. Establishment of Categories of System Improvements. There are hereby established the following categories of System Improvements for which Impact Fees can be collected:
  1. Recreation,

2. Circulation - Pathway,
3. Circulation - Roadway,
4. Sheriff
5. Emergency Management

as such categories are further described in the Capital Improvement Plan.

- C. Imposition of Impact Fees. Impact Fees for the County are hereby imposed on all new Development located within unincorporated Teton County.
- D. Fee Schedule. Impact Fees shall be calculated in accordance with a fee schedule attached hereto as Appendix 1 and incorporated herein that provides for standard fees based on the square feet of residential and nonresidential space in the Development, unless the County finds the Development will have an Extraordinary Impact pursuant to section 7 of this chapter. The methodology for determining the costs per service unit provided for in the fee schedule is set forth in the County's Capital Improvements Plan as adopted by the County pursuant to Idaho Code§ 67-8208, as it may be amended.
- E. Procedures.
  1. When a complete application for a Building Permit has been received by the County, the County shall calculate the Impact Fee for the Development within thirty (30) days, unless the Fee Payer requests an individual assessment pursuant to section 6 of this chapter or the County determines the Development may have an Extraordinary Impact pursuant to section 7 of this chapter.
  2. When a complete application for Development Approval has been received by the County, the County may impose Impact Fees if it determines the Development may have an Extraordinary Impact pursuant to section 7 of this chapter.
- F. Exemptions. The provisions of this chapter shall not apply to the following:
  1. Rebuilding the same amount of floor space of a structure which is destroyed by fire or other catastrophe, provided the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
  2. Remodeling or repairing a structure which does not increase the number of Service Units;
  3. Replacing a residential unit, including a manufactured/mobile home, with another residential unit on the same lot; provided that, the number of Service Units does not increase;
  4. Placing a temporary construction trailer or office on a lot;
  5. Constructing an addition on a residential structure which does not increase the

number of Service Units;

6. Adding uses that are typically accessory to residential uses, such as a tennis court or a clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of System Improvements; or
  7. The installation of a modular building, manufactured/mobile home or recreational vehicle, if the Fee Payer can demonstrate by documentation such as utility bills and tax records that either: (a) a modular building, manufactured/mobile home or recreational vehicle was legally in place on the lot or space prior to the effective date of this chapter; or (b) an Impact Fee has been paid previously for the modular building, manufactured/mobile home or recreational vehicle on that same lot or space.
- G. Exemption Claim Process. A Fee Payer shall claim an exempt development activity upon application of a Building Permit, or if no Building Permit is required, prior to the time construction commences. Any exemption not so claimed shall be deemed waived by the Fee Payer. Claims for exemption shall be determined by the County within thirty (30) days of receipt of the claim for exemption.

### **SECTION 3: PAYMENT OF IMPACT FEES; COLLECTION:**

- A. Payment of Fees. The Impact Fee shall be paid to the County at the following times:
1. If a Building Permit is required, then before or at the time the permit is issued;
  2. If no Building Permit is required, then at the time that construction commences; or
  3. At such other time as the Fee Payer or Developer and the County have agreed upon in writing.
- B. COLLECTION. When any Impact Fee is due pursuant to this chapter, or pursuant to the terms of any written agreement between a Fee Payer and the County, and such Impact Fee has not been paid in a timely manner, the County may exercise any or all of the following powers as applicable to its authority, in any combination, to enforce the collection of the Impact Fee:
1. Withhold Building Permits, or other County Development Approval related to the Development for which the Impact Fee is due until all Impact Fees due have been paid, and issue stop work orders, and revoke or suspend a Building Permit;
  2. Withhold utility services from the Development for which the Impact Fee is due until all Impact Fees due have been paid;
  3. Add interest to the Impact Fee not paid in full at the legal rate provided for in Idaho Code § 28-22-104, as it may be amended, plus five percent (5%) beginning on the date at which the payment of the Impact Fee was due until paid in full;
  4. Impose a late payment fee of five percent (5%) of the total Impact Fee (not merely



the portion dishonored, late or not paid in full) per month beginning on the date at which the payment of the Impact Fee was due until paid in full; and

5. Impose a lien pursuant to the authority of Idaho Code § 67-8213(4) for failure to timely pay an Impact Fee following the procedures contained in Idaho Code Title 45, Chapter 5.

#### **SECTION 4: CERTIFICATION:**

- A. A Fee Payer may request a written certification of the impact fee schedule which shall establish the impact fee for that Development so long as there is no material change to the particular Development as identified in the Building Permit application, or the impact fee schedule. A certification may be applied for in the following manner:
  1. Requests for certification shall be in writing and made to the County. Within thirty (30) days after receiving such request, the County shall issue a written certification of the amount of the Impact Fee due for the proposed Development. The certification shall include an explanation of the calculation of the Impact Fee including an explanation of factors considered under Idaho Code § 67-8207 and shall also specify the Fee Categories for which the Impact Fee is intended to be used. The County shall provide the certification to the Fee Payer.

#### **SECTION 5: METHODOLOGY FOR THE CALCULATION OF IMPACT FEES:**

- A. General Provisions.
  1. ACCOUNTING PRINCIPLES. The calculation of the Impact Fee shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or Developers within the service area other than the Fee Payer.
  2. LEVELS OF SERVICE. The Impact Fee shall be calculated on the basis of levels of service for Public Facilities in the adopted Capital Improvement Plan that are applicable to existing Development as well as new growth and Development. The construction, improvement, expansion or enlargement of new or existing Public Facilities for which the Impact Fee is imposed must be attributable to the capacity demands generated by the new Development.
- B. Methodology; Proportionate Methodology. The Impact Fee shall not exceed a proportionate share of the cost of the System Improvements determined in accordance with Idaho Code § 67-8207, as it may be amended. Impact Fees shall be based on actual System Improvements Costs or reasonable estimates of such costs. The amount of the Impact Fee shall be calculated using the methodology contained in the adopted Capital Improvements Plan.
- C. Proportionate Share Determination.

1. The Impact Fee shall be based on a reasonable and fair formula or method under which the Impact Fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the County in the provision of System Improvements to serve the new Development. The proportionate share is the costs attributable to the new Development after the County considers the following:
  - i. Any appropriate credit, offset or contribution of money, dedication of land or construction of System Improvements;
  - ii. Payments reasonably anticipated to be made by or as a result of a new Development in the form of user fees and debt service payments;
  - iii. That portion of general tax or other revenues allocated by the County to System Improvements; and
  - iv. All other available sources of funding for such System Improvements.
  
2. In determining the proportionate share of the cost of System Improvements to be paid by the Developer, the following factors shall be considered by the County and accounted for in the calculation of the Impact Fee:
  - i. The costs of existing System Improvements within the Service area;
  - ii. The means by which existing System Improvements have been financed;
  - iii. The extent to which the new Development will contribute to System Improvements Costs through taxation, assessments, or developer or landowner contributions, or has previously contributed to System Improvements Costs through Developer or landowner contributions;
  - iv. The extent to which the new Development is required to contribute to the cost of existing System Improvements in the future;
  - v. The extent to which the new Development should be credited for providing System Improvements, without charge to other properties within the Service Area;
  - vi. Extraordinary Costs, if any, incurred in serving the new Development;
  - vii. The time and price differential inherent in a fair comparison of fees paid at different times; and
  - viii. The availability of other sources of funding for System Improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers and special taxation.

D. Individual Assessment. Upon request by the Developer, the County shall provide a written individual assessment of the Proportionate Share of Impact Fees for a Development under

the guidelines established by this Section 6. An individual assessment may be applied for in the following manner:

- i. A request for individual assessment shall be in writing and made to the County. The Developer shall include in its application any studies, data, and any other relevant information it wishes the County to consider in adjusting the amount of the Impact Fee. Within thirty (30) days after receiving such request, the County shall issue an individual assessment of the Proportionate Share of the costs incurred or to be incurred by the County in the provision of System Improvements to serve the new Development. The individual assessment shall include an explanation of the calculation of the Impact Fee, including an explanation of factors considered under section 67-8207, Idaho Code, and shall specify the Fee Categories for which the Impact Fee is intended to be used.

#### **SECTION 6: DEVELOPER CREDITS AND REIMBURSEMENT:**

- A. In the calculation of Impact Fees for a Project, if the Developer is required to or agrees to construct System Improvements of the same category as a Fee Category, or contribute or dedicate land or money towards the completion of System Improvements of the same category as a Fee Category, and the County has accepted such construction, contribution or dedication, the County shall issue a credit against the Impact Fees otherwise due for the same Fee Category in connection with the proposed Development pursuant to this section..
- B. Credits against an Impact Fee shall not be given for: (a) Project Improvements; or (b) any construction, contribution or dedication not agreed to in writing by the County prior to commencement of the construction, contribution, or dedication. Credit issued for one Fee Category may not be used to reduce Impact Fees due for a different Fee Category. No credits shall be issued for System Improvements contributed or dedicated prior to the effective date of this chapter.
- C. Valuation of Credit at Present Value:
  1. LAND. Credit for qualifying land dedications shall, at the Fee Payer's option, be valued at the present value of: (a) one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the county assessor; or (b) that fair market value established by a private appraiser acceptable to the County in an appraisal paid for by the Fee Payer.
  2. IMPROVEMENTS. Credit for qualifying acquisition or construction of System Improvements shall be valued by the County at the present value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the Fee Payer to the County. The County shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the County as a more accurate measure of the value of the offered System Improvements to the County

**D. When Credits Become Effective:**

1. **LAND.** Approved credits for land dedications shall become effective when the land has been conveyed to the County in a form acceptable to the County, at no cost to the County, and has been accepted by the County. Upon request of the Fee Payer, the County shall issue a letter stating the amount of credit approved and the amount of credit that has become effective.
2. **IMPROVEMENTS.** Approved credits for acquisition or construction of System Improvements shall generally become effective when (a) all required construction has been completed and has been accepted by the County, (b) a suitable maintenance and warranty bond has been received and approved by the County, and (c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the County and the State of Idaho. Upon request of the Fee Payer, the County shall issue a letter stating the amount of credit approved and the amount of credits that has become effective

**DI.** Written Agreement Required. If credit or reimbursement is due to the Fee Payer pursuant to this section, the County shall enter into a written agreement with the Fee Payer, negotiated in good faith, prior to the contribution, dedication, or funding of the System Improvements giving rise to the credit. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement. Such agreement may be incorporated in the development agreement for the Project.

**SECTION 7: EXTRAORDINARY IMPACT:**

**A.** The county may make a determination that Development may impose an Extraordinary Impact due to a review of a development application transmitted to the County pursuant to the County's zoning authority under the Local Land Use Planning Act, chapter 65, title 67, Idaho Code or in review of a building permit application.

**B. Process:**

1. Within sixty (60) days after County's receipt of a complete application for an approval under the Land Development Code or a complete Building Permit application, the County will notify the Fee Payer of the County's initial determination that the Development may impose an Extraordinary Impact. Such notice shall stipulate that a supplemental study, at the Fee Payer's expense, will be required.
2. Within thirty (30) days following the designation of a Development with Extraordinary Impact, the County shall meet with the Fee Payer to discuss whether the Fee Payer wants to: (a) pay for the supplemental study necessary to determine the System Improvements Costs related to the proposed Development; (b) modify the proposal to avoid generating Extraordinary Impact; or (c) withdraw the application for certification, or Development Approval.

3. If the Fee Payer agrees to pay for the supplemental study required to document the proposed Development's proportionate share of System Improvements Costs, then the County and the Fee Payer shall jointly select an individual or organization acceptable to both to perform such study. The Fee Payer shall enter into a written agreement with such individual or organization to pay the costs of such study. Such agreement shall require the supplemental study to be completed within thirty (30) days of such written agreement unless the Fee Payer agrees to a longer time.
4. Once the study has been completed, the Fee Payer may choose to: (a) pay the proportionate share of System Improvements Costs documented by the supplemental study; or (b) modify the proposed Development to reduce such costs; or (c) withdraw the application.
5. If the Fee Payer agrees to pay the System Improvements Costs documented in the supplemental study, that agreement shall be reduced to writing between the County and the Fee Payer prior to review and consideration of any application for any Development Approval or Building Permit related to the proposed Development.
6. Notwithstanding any agreement by the Fee Payer to pay the proportionate share of System Improvements Costs documented by the supplemental study, nothing in this ordinance shall obligate the County to approve Development that results in an Extraordinary Impact to the County.

**SECTION 8: FEE PAYER REFUNDS:**

**A. Duty to Refund:**

1. An Impact Fee shall be refunded, upon request of the owner of record of the property upon which an Impact Fee has been paid if:
  - i. Service is available but never provided;
  - ii. The Building Permit for which the Impact Fee was collected is denied or abandoned;
  - iii. The County, after collecting an Impact Fee when service is not available has failed to appropriate or expend the collected Impact Fee pursuant to Section 8, subsection 2 below; or
  - iv. The Impact Fee was paid under protest and subsequent review of the Impact Fee paid or completion of an individual assessment determines that the fee paid exceeded the Proportionate Share which the County was entitled to receive pursuant to the Act.
2. Any Impact Fee paid shall be refunded if the County has failed to expend the funds within eight (8) years after the date on which such fee was collected by the County. The County may hold Impact Fees for longer than eight (8) years but in no event longer than eleven (11) years from the date collected if the County identifies in

writing: (a) a reasonable cause why the fees should be held longer than eight (8) years; and (b) an anticipated date by which the fees will be expended. If the County complies with the previous sentence, then any Impact Fees so identified shall be refunded to the owner of record of the property for which the fee was paid if the County fails to expend the funds on or before the date identified in such writing.

3. If a certificate of occupancy has been issued by the County for the Project for which an Impact Fee has been paid, no refund of any part of such fee shall be made if the Project for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the Project or the number of units in the Project.
  4. Each refund shall include a refund of interest at one-half the legal rate provided for in Idaho Code § 28-22-104 from the date on which the fee was originally paid.
- B. Process: The County shall make a determination of whether a refund is due within thirty (30) days after receipt of a written request for a refund from the owner of record of the property for which the fee was paid. When the right to a refund exists, the County shall send the refund within ninety (90) days after the County determines that a refund is due. Any refund due will be paid to the owner of record of the parcel for which the County's Impact Fee was paid.

#### **SECTION 9: ESTABLISHMENT OF IMPACT FEE FUNDS; FUND ACCOUNTS:**

- A. Impact Fee Fund Established. The County shall establish and maintain an Impact Fee Fund and ensure that all Impact Fees collected pursuant to this chapter are used to address impacts reasonably attributable to new Development for which the Impact Fees are paid. The Impact Fee Fund shall have its own interest-bearing account. Pursuant to Idaho Code § 67-8210(1), interest earned on the Account shall be considered funds of the Impact Fee Fund, and not funds subject to Idaho Code § 57-127, and shall be subject to all restrictions on use of Impact Fees set forth in this chapter and in Title 67 Chapter 82 of the Idaho Code.
- B. Deposit of Impact Fees. All monies paid by a Fee Payer pursuant to this chapter shall be identified as Impact Fees and upon receipt by the County shall be promptly deposited in the Account.
1. Monies in the Impact Fee Fund shall be spent in the order collected, on a first-in/first-out basis.
  2. The County shall maintain and keep accurate financial records for the Impact Fee Fund which records shall:
    - i. Be maintained for each Fee Category;
    - ii. Show the source and disbursement of all revenues;
    - iii. Account for all monies received;

- iv. Ensure that the disbursement of funds from the Impact Fee Fund for each Fee Category shall be used solely and exclusively for the provisions of projects specified in the Capital Improvements Plan for that Fee Category; and
- v. Provide an annual accounting for the Impact Fee Fund showing the source and amount of all funds collected and the projects that were funded for each Fee Category, which annual accounting shall be provided to the County as part of the annual audit process of this chapter.

**SECTION 10: APPEALS, PROTEST AND MEDIATION:**

- A. Appeals. Any Fee Payer that claims a right to receive a refund, exemption, credit or reimbursement under this chapter, may appeal a discretionary decision made by the County in applying this chapter through the process set forth in this section. The Fee Payer shall have the burden on appeal of proving by clear and convincing evidence that the decision was in error.
- B. Appeal Process.
  - 1. Appeals of denials of an exemption from Impact Fees under this ordinance:
    - i. A Fee Payer shall file a written notice of the appeal with the County within thirty (30) days after the date of a denial of an exemption. Such notice of appeal shall include a statement describing why the Fee Payer believes that the appealed decision was in error, together with copies of any documents that the Fee Payer believes support the claim.
    - ii. The County shall schedule a hearing in front of the County Board of Commissioners within thirty (30) days of receiving the appeal. The Fee Payer or its representative shall have a right to be present and to present evidence in support of the appeal. The County personnel who made the decision under appeal or their representatives shall likewise have the right to be present and to present evidence in support of the decision.
    - iii. The County Board of Commissioners shall consider the decision denying the exemption and also consider any additional evidence that may be offered by the Fee Payer and County staff. The County Board of Commissioners may affirm, reverse, or modify in whole or in part the decision appealed from and issue a written decision within thirty (30) days.
    - iv. A final decision of the County Board of Commissioners may be judicially reviewed pursuant to Idaho Code § 31-1506.
  - 2. Appeals of impact fee schedule assessments, refunds, reimbursements, credits, or extraordinary impacts under this chapter.

- i. The Fee Payer shall file a written notice of the appeal with the County within thirty (30) days after the date of the County's decision, or the date on which the Fee Payer submitted a payment of the Impact Fee under protest, whichever is later. Such written application shall include a statement describing why the Fee Payer believes that the appealed decision was in error, together with copies of any documents that the Fee Payer believes support the claim.
  - ii. The County's Board of County Commissioners shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The Fee Payer or its representative shall have a right to be present and to present evidence in support of the appeal. The County personnel who made the decision under appeal or their representatives shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the County's Board of County Commissioners in considering the appeal shall be whether: (a) the decision or interpretation made by the County or (b) the alternative decision or interpretation offered by the Fee Payer, more accurately reflects the intent of this chapter that new Development in the Service Area pay its Proportionate Share of the costs of System Improvements to Public Facilities necessary to serve new Development and whether the chapter has been correctly applied. The County's Board of County Commissioners shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.
- C. Payment Under Protest. A Fee Payer may pay an Impact Fee under protest in order not to delay the issuance of a Building Permit by the County. A Fee Payer making a payment under protest shall not be estopped from exercising the right to appeal provided herein, nor shall such Fee Payer be estopped from receiving a refund of any amount deemed to have been illegally collected.
- D. Mediation.
  - 1. Any Fee Payer that has a disagreement with a decision made by the County regarding an Impact Fee determination that is or may be due for a proposed Development pursuant to this chapter, may enter into a voluntary written agreement with the County to subject the disagreement to mediation by a qualified independent party acceptable to both parties.
  - 2. Mediation may take place at any time following the filing of a timely appeal, or as an alternative to such appeal, provided that the request for mediation is filed no later than the last date on which a timely appeal could be filed pursuant to this section.
  - 3. Participation in mediation does not preclude the Fee Payer from pursuing other remedies provided for in this section.
  - 4. If mediation is requested, any related mediation costs shall be shared equally by the



parties to the mediation, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

5. In the event that mediation does not resolve the issues, the Fee Payer retains all rights of appeal as set forth in this section.

#### **SECTION 11: PERIODIC REVIEWS; ANNUAL BUDGET:**

- A. **Review and Modification of Capital Improvements Plan.** The County shall, at least once every five (5) years, commencing from the date of the original adoption of the Capital Improvements Plan, review the Development potential and update the Capital Improvements Plan in accordance with the procedures set forth in Idaho Code § 67-8206, as it may be amended. Each update shall be prepared by the County in consultation with the Advisory Committee.
- B. **Annual budget.** The County shall annually adopt a capital improvements budget.

#### **SECTION 12: AUDIT:**

As part of its annual audit process, the County shall prepare an annual report: (a) describing the amount of all Impact Fees collected, appropriated or spent during the preceding year by Fee Category; and (b) describing the percentage of taxes and revenues from sources other than the Impact Fees collected, appropriated or spent for System Improvements during the preceding year by Fee Category.

#### **SECTION 13: ADVISORY COMMITTEE:**

- A. **Establishment and Purpose.** Pursuant to Idaho Code § 67-8205, there is hereby established a Development Impact Fee Advisory Committee, whose purpose is to carry out the duties as set forth in Idaho Code § 67-8205(3), as it may be amended.
- B. **Membership.** The Advisory Committee shall be composed of not fewer than five (5) members, all of whom must reside within the County. Two (2) or more members shall be active in the business of development, building or real estate. Two (2) or more members shall not be in the business of development, building or real estate. Employees or officials acting in their official capacity for a governmental entity may not be appointed as members of the committee.
- C. **Meetings.** Meetings may be called by the Advisory Committee by giving reasonable notice of the time and place of the meeting in accordance with the Open Meetings Law, Idaho Code §§ 74-201 *et seq.*, as may be amended. The Advisory Committee shall adopt reasonable rules as are necessary to carry out the duties and responsibilities of the committee subject to the approval of the County, and elect such officers as deemed necessary.

#### **SECTION 14: MISCELLANEOUS PROVISIONS:**

- A. Nothing in this chapter shall prevent the County from requiring a Developer to construct

reasonable Project Improvements, as are required by the fire codes and other rules that are adopted by the state fire marshal, in conjunction with a Development.

- B. Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Idaho Transportation Department and governmental entities in regard to the construction or installation of System Improvements or providing for credits or reimbursements for System Improvements Costs incurred by a Developer including inter-Project transfers of credits or providing for reimbursement for Project Improvements which are used or shared by more than one (1) Project.
- C. Nothing in this chapter shall obligate the County to approve Development which results in an Extraordinary Impact.
- D. Nothing in this chapter shall obligate the County to approve any Development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in this chapter.
- E. Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the County in regulating the orderly development of real property within its boundaries.
- F. Nothing in this chapter shall work to limit the use by the County of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.
- G. The County shall develop a plan for alternative sources of revenue, which shall include but not necessarily be limited to plans generated during the annual budget process, lobbying efforts, tax increment financing, and implementation of user fees, administrative and regulatory fees and other forms of revenue.
- H. Notwithstanding any other provision of this chapter, that portion of a Project for which a valid Building Permit has been issued by the County, prior to the effective date of this chapter, shall not be subject to the Impact Fee imposed by this chapter. If the Building Permit is later revised or replaced after the effective date of the ordinance codified in this chapter, and the new Building Permit(s) reflects a development density, intensity, development size or number of Service Units more than ten percent (10%) higher than that reflected in the original Building Permit, then the Impact Fee may be charged on the difference in density, intensity, development size or number of Service Units between the original and the revised or replacement Building Permit.
- I. Any monies, including any accrued interest not assigned to specific System Improvements within such Capital Improvements Plan and not expended or refunded pursuant to this chapter shall be retained in the same account until the next fiscal year.
- J. If the County discovers an error in the Capital Improvements Plan that results in assessment or payment of more than a proportionate share of System Improvement Costs on any proposed Development, the County shall: (a) adjust the Impact Fee to collect no more than a proportionate share; or (b) discontinue the collection of any Impact Fees until the error is

APPENDIX 1: FEE SCHEDULE

corrected by ordinance.

- K. If Impact Fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated. Any amounts overpaid by a Fee Payer shall be refunded by the County within thirty (30) days after the acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the fee was paid. Any amounts underpaid by the Fee Payer shall be paid to the County within thirty (30) days after the acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the fee was paid.

**SECTION 15: SEVERABILITY.** If any provision of this chapter is determined to be invalid by a court decision, the remaining portions of this chapter shall be considered severable and shall remain unaffected by such decision.

ADOPTED this 22 day of May, 2023.

**Board of Teton County Commissioners**

By: Cynthia J. Riegel  
Cindy Riegel, Chair

ATTEST:

[Signature]  
May 22, 2023 County Clerk Chief Deputy

PUBLISHED: \_\_\_\_\_

# APPENDIX 1: FEE SCHEDULE

Teton County Impact Fee Schedule											
County Fee Categories											
Sq. Feet	Persons per Household	Vehicle Trips per Unit	Recreation (154 cpp)	Sheriff (373 cpp)	Emergency Mgmt (267 cpp)	Circulation - Pathways (544 cpp)	Circulation - Roadways (cpvt = 388)	Circulation Total	County Fee Totals	**Fire Dist. Fees (508pp)	Combined Total Fees
<b>Residential Dwelling Units - Calculated by Square Footage</b>											
Under 500	0.83	2.65	\$ 128	\$ 310	\$ 222	\$ 452	\$ 1,028	\$ 1,480	\$ 2,139	\$ 422	\$ 2,560
500 - 999	1.76	4.47	\$ 271	\$ 656	\$ 470	\$ 957	\$ 1,734	\$ 2,692	\$ 4,089	\$ 894	\$ 4,983
1,000 - 1,499	2.29	5.53	\$ 353	\$ 854	\$ 611	\$ 1,246	\$ 2,146	\$ 3,391	\$ 5,210	\$ 1,163	\$ 6,373
1,500 - 1,999	2.68	6.28	\$ 413	\$ 1,000	\$ 716	\$ 1,458	\$ 2,437	\$ 3,895	\$ 6,022	\$ 1,361	\$ 7,384
2,000 - 2,499	2.97	6.87	\$ 457	\$ 1,108	\$ 793	\$ 1,616	\$ 2,666	\$ 4,281	\$ 6,639	\$ 1,509	\$ 8,148
2,500 - 2,999	3.21	7.34	\$ 494	\$ 1,197	\$ 857	\$ 1,746	\$ 2,848	\$ 4,594	\$ 7,143	\$ 1,631	\$ 8,774
3,000 - 3,499	3.42	7.75	\$ 527	\$ 1,276	\$ 913	\$ 1,860	\$ 3,007	\$ 4,867	\$ 7,583	\$ 1,737	\$ 9,320
3,500 - 3,999	3.60	8.1	\$ 554	\$ 1,343	\$ 961	\$ 1,958	\$ 3,143	\$ 5,101	\$ 7,960	\$ 1,829	\$ 9,788
4,000 - 4,499	3.75	8.41	\$ 578	\$ 1,399	\$ 1,001	\$ 2,040	\$ 3,263	\$ 5,303	\$ 8,281	\$ 1,905	\$ 10,186
4,500 - 4,999	3.89	8.68	\$ 599	\$ 1,451	\$ 1,039	\$ 2,116	\$ 3,368	\$ 5,484	\$ 8,573	\$ 1,976	\$ 10,549
5,000 - 5,499	4.02	8.93	\$ 619	\$ 1,499	\$ 1,073	\$ 2,187	\$ 3,465	\$ 5,652	\$ 8,844	\$ 2,042	\$ 10,886
5,500 - 5,999	4.13	9.16	\$ 636	\$ 1,540	\$ 1,103	\$ 2,247	\$ 3,554	\$ 5,801	\$ 9,080	\$ 2,098	\$ 11,178
6,000 - 6,499	4.24	9.37	\$ 653	\$ 1,582	\$ 1,132	\$ 2,307	\$ 3,636	\$ 5,942	\$ 9,309	\$ 2,154	\$ 11,463
6,500 - 6,999	4.34	9.56	\$ 668	\$ 1,619	\$ 1,159	\$ 2,361	\$ 3,709	\$ 6,070	\$ 9,516	\$ 2,205	\$ 11,721
7,000 - 7,499	4.43	9.74	\$ 682	\$ 1,652	\$ 1,183	\$ 2,410	\$ 3,779	\$ 6,189	\$ 9,706	\$ 2,250	\$ 11,957
7,500 - 7,999	4.52	9.91	\$ 696	\$ 1,686	\$ 1,207	\$ 2,459	\$ 3,845	\$ 6,304	\$ 9,893	\$ 2,296	\$ 12,189
8,000 or more	4.6	10.07	\$ 708	\$ 1,716	\$ 1,228	\$ 2,502	\$ 3,907	\$ 6,410	\$ 10,062	\$ 2,337	\$ 12,399
<b>Non-Residential Construction (per 1,000 square feet)</b>											
Development Type	Trips per 1,000 sf		Recreation (154 cpp)	Sheriff (124 cpvt)	Emergency Mgmt (cpvt = 88)	Circulation - Pathways (544 cpvt)	Circulation - Roadways (388 cpvt)	Circulation Total	County Fee Totals	**Fire Dist. Fees (256 cpvt)	Combined Total Fees
Retail	14.06			\$ 1,743	\$ 1,237		\$ 5,455	\$ 5,455	\$ 8,436	\$ 3,599	\$ 12,035
Office	5.42			\$ 672	\$ 477		\$ 2,103	\$ 2,103	\$ 3,252	\$ 1,388	\$ 4,640
Industrial	2.44			\$ 303	\$ 215		\$ 947	\$ 947	\$ 1,464	\$ 625	\$ 2,089
Institutional	5.39			\$ 668	\$ 474		\$ 2,091	\$ 2,091	\$ 3,234	\$ 1,380	\$ 4,614
Lodging (per room)	4.00		\$ 293	\$ 496	\$ 352	\$ 1,034	\$ 1,552	\$ 2,586	\$ 3,727	\$ 1,024	\$ 4,751

\*\* Fire District Fees are pending approvals from the Teton County Fire District.

Cpp= cost per person  
 Cpvt=cost per vehicle trip  
 Pp= per person