



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;

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

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

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

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.

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

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 Appropriately 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

- 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.

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

APPENDIX 1: FEE SCHEDULE

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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
Residential Dwelling Units - Calculated by Square Footage											
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
Non-Residential Construction (per 1,000 square feet)											
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