

Chapter 10 - ARTICLE D.

CULINARY WATER FACILITIES IMPACT FEES

2-10D-1: PURPOSE:

2-10D-2: DEFINITIONS:

2-10D-3: WRITTEN IMPACT FEE ANALYSIS:

2-10D-4: IMPACT FEE CALCULATIONS:

2-10D-5: CAPITAL FACILITIES PLAN:

2-10D-6: IMPACT FEES SCHEDULE AND FORMULA:

2-10D-7: FEE EXCEPTIONS AND ADJUSTMENTS:

2-10D-8: APPEAL PROCEDURE:

2-10D-9: ADMINISTRATIVE PROVISIONS:

2-10D-1: PURPOSE:

This impact fee article establishes the town culinary water impact fee policies and procedures and repeals certain provisions of prior ordinances related to culinary water impact fees and conforms to the requirements of the Utah impact fees act, Utah Code Annotated [Title 11, chapter 36a](#). This article repeals any prior ordinances related to culinary water impact fees and establishes impact fees for culinary water facilities within the town wide service area, provides a schedule of impact fees for differing types of land use development, and sets forth direction for challenging, modifying and appealing impact fees. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-2: DEFINITIONS:

Words and phrases that are defined in the act shall have the same definition in this impact fee article. The following words and phrases shall have the following meanings:

CAPITAL FACILITIES PLAN: The plan required by Utah Code Annotated section [11-36-201](#) of the act. In Utah Code Annotated section [11-36-201](#) (2)(e), there is an exception to the capital facilities plan for cities of five thousand (5,000) or less in population, based on the latest census. Brian Head Town does meet this exception, but has completed a capital facilities plans in accordance with the act and has adopted the capital facilities plan in conjunction with this article.

DEVELOPMENT ACTIVITY: Any construction or expansion of building, structure or use, any change in use of building or structure, or any change in the use of land located within the Brian Head town wide service area that creates additional demand and need for public facilities related to culinary water.

DEVELOPMENT APPROVAL: Any written authorization from the town that authorizes the

commencement of development activity. Typically, development approval would be in the form of a building permit issued by the town building department.

IMPACT FEE: A payment of money imposed upon development activity as a condition of development approval. "Impact fee" includes development impact fees, but is not a tax, a special assessment, a hookup fee, a building permit fee, a fee for project improvements, or other reasonable permit or application fee.

PROJECT IMPROVEMENTS: Site improvements and facilities that are planned and designed to provide service for development resulting from a development activity and are necessary solely for the use and convenience of the occupants or users of said development activity. "Project improvements" do not include "system improvements", as defined in this section.

PROPORTIONATE SHARE OF THE COST OF PUBLIC FACILITY IMPROVEMENTS: An amount that is roughly proportionate and reasonably related to the service demands and needs of a development activity.

PUBLIC FACILITIES: For purposes of this article, culinary water or improvements or facilities of the town for the Brian Head town wide service area.

SERVICE AREA: Refers to a geographic area designated by the town based on sound planning and engineering principles in which a defined set of the town public facilities provides service. For purposes of this article, the Brian Head town wide service area shall have coterminous boundaries with the town. The Brian Head town wide service area is identified in the map attached to ordinance 09-002 (exhibit A: "Map Of The Brian Head Town wide Service Area").

SYSTEM IMPROVEMENTS: Refer both to existing public facilities designed to provide services within the Brian Head town wide service area and to future public facilities identified in the culinary water capital facilities plan adopted by the town that are intended to provide service to the Brian Head town wide service area. "System improvements" do not include "project improvements", as defined in this section.

TOWN: A local political subdivision of the state of Utah and is referred to herein as Brian Head Town. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-3: WRITTEN IMPACT FEE ANALYSIS:

- A. Executive Summary: A summary of the findings of the written impact fee analysis that is designed to be understood by a lay person is included in the culinary water impact fee analysis and demonstrates the need for impact fees to be assessed on development activity. The executive summary has been available for public inspection at least fourteen (14) days prior to the adoption of this article.
- B. Written Impact Fee Analysis: The town has commissioned the written culinary water impact fee analysis for the culinary water impact fees that identifies the impacts upon the culinary water system and the facilities required by development activity, demonstrates how those impacts on system improvements are reasonably related to development activity, estimates the proportionate share of the costs of impacts on system

improvements that are reasonably related to the development activity, and identifies how the impact fees are calculated. A copy of written culinary water impact fee analysis has been available for public inspection at least fourteen (14) days prior to the adoption of this article.

- C. Proportionate Share Analysis: The town has prepared a proportionate share analysis which analyzes whether or not the proportionate share of the costs of future public facilities is reasonably related to new development activity. The proportionate share analysis identifies the costs of existing public facilities, the manner of financing existing public facilities, the relative extent to which new development will contribute to the cost of existing facilities and the extent to which new development is entitled to a credit for payment towards the costs of new facilities from general taxation or other means apart from user charges in other parts of the town. A copy of the proportionate share analysis is included in the written culinary water impact fee analysis and has been available for public inspection at least fourteen (14) days prior to the adoption of this article. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-4: IMPACT FEE CALCULATIONS:

- A. Article Enacting Impact Fees: The town council will, by this article, approve impact fees in accordance with the written impact fee analysis.
1. Elements: In calculating the impact fee, the town has included the construction costs, land acquisition costs, costs of improvements, fees for planning, surveying and engineering services provided for and directly related to the construction of system improvements, and outstanding or future debt service charges if the town might use impact fees as a revenue stream to pay principal and interest on bonds or other obligations to finance the cost of system improvements.
 2. Notice And Hearing: In conjunction with the approval of this article, the town held a public hearing on February 24, 2008, and made a copy of ordinance 99-002 available to the public, at least fourteen (14) days before the date of the hearing, all in conformity with the requirements of Utah Code Annotated section [10-9-103\(2\)](#). After the public hearing, the Town Council adopted this impact fee article as presented herein.
 3. Contents Of Article: This article adopting or modifying an impact fee contains such detail and elements as deemed appropriate by the town council, including a designation of the town wide service area within which the impact fees are to be calculated and imposed. The town wide service area will be the only service area included in this analysis, with a map defining their boundaries included in exhibit A, "Map Of The Brian Head Town wide Service Area", attached to ordinance 99-002. Ordinance 99-002 includes: a) a schedule of impact fees to be imposed for culinary water; and b) the formula to be used by the town in calculating the impact fee.
 4. Adjustments: The standard impact fee may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The standard impact fee may also be adjusted to ensure that impact fees are imposed fairly for affordable housing projects, in accordance with the local government's affordable housing policy, and other

development activities with broad public purposes. The impact fee assessed to a particular development may also be adjusted should the developer supply sufficient written information and/or data to the town showing a discrepancy between the fee being assessed and the actual impact on the system.

5. Previously Incurred Costs: To the extent that new growth and development will be served by previously constructed improvements, the town impact fees may include public facility costs and outstanding bond costs related to the culinary water improvements previously incurred by the town. These costs may include all projects included in the capital facilities plan which are under construction or completed but have not been utilized to their capacity, as evidenced by outstanding debt obligations. Any future debt obligations determined to be necessitated by growth activity will also be included to offset the costs of future capital projects.
- B. Developer Credits: A developer may be allowed a credit against impact fees for any dedication or improvement to land or new construction of system improvements provided by the developer; provided that it is 1) identified in the town capital facilities plan; and 2) required by the town as a condition of approving the development activity. Otherwise, no credit may be given.
- C. Impact Fees Accounting: The town will establish a separate interest bearing ledge account for the impact fees collected pursuant to this article, and will conform to the accounting requirements provided in the impact fees act. All interest earned on the collection of culinary water impact fees shall accrue to the benefit of the segregated account. Impact fees collected prior to the effective date hereof need not meet the requirements in the subsection.
1. Reporting: At the end of each fiscal year, the town shall prepare a report on each fund or account generally showing the source and amount of all monies collected, earned and received by the fund or account, and each expenditure from the fund or account.
 2. Impact Fee Expenditures: The town may expend impact fees covered by the impact fees policy only for system improvements that are: a) public facilities identified in the town capital facilities plan; and b) of the specific public facility type for which the fee was collected. Impact fees will be expended on a first in, first out ("FIFO") basis.
 3. Time Of Expenditure: Impact fees collected pursuant to the requirements of this impact fees article are to be expended, dedicated or encumbered for a permissible use within six (6) years of the receipt of those funds by the town, unless the town council directs otherwise. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.
 4. Extension Of Time: The town may hold previously dedicated or unencumbered fees for longer than six (6) years if it identifies in writing: a) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and b) an absolute date by which the fees will be expended.
- D. Refunds: The town shall refund any impact fees paid by a developer, plus interest actually earned, when: 1) the developer does not proceed with the development activity and files a written request for a refund; 2) the fees have not been spent or encumbered; and 3) no impact has resulted. An impact that would preclude a developer from a refund from the

town may include any impact reasonably identified by the town, including, but not limited to, the town having sized facilities and/or paid for, installed and/or caused the installation of facilities based in whole or in part upon the developer's planned development activity even though that capacity may, at some future time, be utilized by another development.

- E. Other Impact Fees: To the extent allowed by law, the town council may negotiate or otherwise impose impact fees and other fees different from those currently charged. Those charges may, at the discretion of the town council, include, but not be limited to, reductions or increases in impact fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the town system.
- F. Additional Fees And Costs: The impact fees authorized hereby are separate from and in addition to user fees and other charges lawfully imposed by the town and other fees and costs that may not be included as itemized component parts of the impact fee schedule. In charging any such fees as a condition of development approval, the town recognizes that the fees must be a reasonable charge for the service provided.
- G. Fees Effective At Time Of Payment: Unless the town is otherwise bound by a contractual requirement, the impact fee shall be determined from the fee schedule in effect at the time of payment in accordance with the provisions of section [2-10D-6](#) of this article.
- H. Imposition Of Additional Fee Or Refund After Development Activity: Should any developer undertake development activities such that the ultimate density or other impact of the development activity is not revealed to the town, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the impact fee is not initially charged against all units or the total density within the development, the town shall be entitled to charge an additional impact fee to the developer or other appropriate person covering the density for which an impact fee was not previously paid. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-5: CAPITAL FACILITIES PLAN:

The town has developed a culinary water capital facilities plan for the town culinary water system. The culinary water capital facilities plan has been prepared based on reasonable growth assumptions for the town wide service area, and analyzes the general demand characteristics of current and future users of each system. Furthermore, the capital facilities plan identifies the impact on system improvements created by development activity and estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-6: IMPACT FEE SCHEDULE AND FORMULA¹:

A. Maximum Supportable Impact Fees:

1. The fee schedule included herein represents the maximum impact fees which the town may impose on development within the defined townwide service area and are based upon general demand characteristics and potential demand that can be created by

each class of user. The town reserves the right under the impact fees act, Utah Code Annotated section [11-36-202](#)(2)(c),(d), to assess an adjusted fee to respond to unusual circumstances to ensure that fees are equitably assessed.

2. This adjustment may result in a higher impact fee if the town determines that a user would create a greater than normal impact on any of the systems. The town may also decrease the impact fee if the developer can provide documentation that the proposed impact will be less than what could be expected, given the type of user (Utah Code Annotated section [11-36-202](#)(3)(a)).

- B. Actual Impact Fee Determination: The town is seeking funding from various sources which may or may not include grant monies. The town is not able to recoup costs of capital facilities paid through federal grants, but can do so for the loan portion only. The actual impact fee will be set at or below the following recommended maximum impact fee prior to the effective date hereof and will be listed on the town consolidated fee schedule before May 25, 2009, which is the effective date of this article.

RECOMMENDED MAXIMUM CULINARY WATER IMPACT FEES

	Fee Per ERC
Maximum culinary water impact fee	\$13,593.94

FORMULA FOR CALCULATING CULINARY WATER IMPACT FEES

Type Of Unit	Conversion Factor
Single-family	1 ERC
Condo unit	1 ERC
All other	Per actual fixture unit calculations ¹

Note:

1. One ERC is equivalent to 24 water fixture units as calculated in table 604.3 of the 2006 international plumbing code, and 20 drainage fixture units as calculated in table 709.1 of the 2006 international plumbing code.

(Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-7: FEE EXCEPTIONS AND ADJUSTMENTS:

- A. The Town Council may, on a project by project basis, authorize exceptions or adjustments to the impact fees due from development for those projects the Town Council determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include facilities being funded by tax supported agencies, affordable

housing projects, or facilities of a temporary nature. The Town Council may elect to waive or adjust impact fees in consideration of economic benefits to be received from the developer's activity.

- B. Applications for exceptions are to be filed with the town at the time the applicant first requests the extension of service to the applicant's development or property. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-8: APPEAL PROCEDURE:

- A. Any person or entity that has paid an impact fee pursuant to this article may challenge the impact fee by filing:
 - 1. An appeal to the town pursuant to subsections B, C and D of this section;
 - 2. A request for arbitration as provided in Utah Code Annotated section [11-36-402\(1\)](#), as amended; or
 - 3. An action in state district court as provided in Utah Code Annotated section [11-36-401\(4\)\(c\)\(iii\)](#), as amended.
- B. Application: Any person or entity that has paid an impact fee pursuant to this article may challenge or appeal the impact fee by filing a written notice of appeal with the town council within thirty (30) days of the date that the fee was paid.
- C. Hearing: Upon receiving the written notice of appeal, the town shall set a hearing date to consider the merits of the challenge or appeal. The person or entity challenging or appealing the fee may appear at the hearing and present any written or oral evidence deemed relevant to the challenge or appeal. Representatives of the town may also appear and present evidence to support the imposition of the fee.
- D. Decision: The hearing panel, which shall consist of the Town Council or such other body as the town shall designate, shall hold a hearing and make a decision within thirty (30) days after the date the challenge or appeal is filed. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

2-10D-9: ADMINISTRATIVE PROVISIONS:

- A. Interpretation: This impact fee article has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this impact fee article shall not be affected by such division or by any heading contained herein.
- B. Effective Date: Except as otherwise specifically provided herein, this impact fee article shall not repeal, modify or affect any impact fee of the town in existence as of the effective date hereof, other than those expressly referenced in section [2-10D-1](#) of this article. All impact fees established, including amendments and modifications to previously existing

impact fees, after the effective date hereof, shall comply with the requirements of this impact fee article. (Ord. 09-002, 2-24-2009, eff. 5-25-2009)

[Footnote 1:](#) Fees included in this section are the maximum supportable impact fees which can be assessed. Adjustment to these fees may be made with adequate documentation from the developer that the true impact differs from that shown.