

# Chapter 10 IMPACT FEES

## ARTICLE A. TRANSPORTATION AND PARKS AND RECREATION SERVICES IMPACT FEES

### 2-10A-1: PURPOSE:

### 2-10A-2: DEFINITIONS:

### 2-10A-3: IMPACT FEE CALCULATIONS:

### 2-10A-4: CAPITAL FACILITIES PLAN:

### 2-10A-5: GROSS IMPACT FEE CALCULATIONS AND SCHEDULES:

### 2-10A-6: FEE EXCEPTIONS AND ADJUSTMENTS:

### 2-10A-7: APPEAL PROCEDURE:

### 2-10A-8: ADMINISTRATIVE PROVISIONS:

#### **2-10A-1: PURPOSE:**

This impact fee policy is promulgated pursuant to the requirements of the impact fees act, Utah Code Annotated section 11-36-101 et seq. (the "act"). (Ord. 99-001, 3-23-1999)

#### **2-10A-2: DEFINITIONS:**

Words and phrases that are defined in the act shall have the same definition in this impact fee policy. 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 section 11-36-201(2)(e), there is an exception to the capital facilities plan for towns of five thousand (5,000) or less in population, based on the latest census. The town does meet this exception; therefore, the town has completed a limited scope capital facility plan, adopted in October 1998 (exhibit A attached to ordinance 99-001, "Capital Facility Plan").

**DEVELOPMENT ACTIVITY:** Any construction or expansion of a building, structure or use, any change in the use of a building or structure, or any change in the use of land that creates additional demand and need for public facilities.

**DEVELOPMENT APPROVAL:** Any written authorization from the town that authorizes the commencement of development activity, including, but not limited to, line extension agreements (LEAs).

**HOOKUP FEES:** Reasonable fees, not in excess of the approximate average costs to the town for services provided for and directly attributable to the connection to services provided by the town.

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

**MUNICIPALITY:** A local political subdivision of the state of Utah and herein shall mean Brian Head Town or "town".

**PROJECT IMPROVEMENTS:** Site improvements and facilities that are planned and designed to provide service for development resulting from a development activity and are necessary for the use and convenience of the occupant or users of development resulting from a 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:** Transportation improvements, and parks and recreation facility improvements of the town.

**SERVICE AREA:** Refers to a geographic area designated by the town based on sound planning or engineering principles in which a defined set of the town's public facilities provides service. The "service area", for purposes of this transportation and parks and recreation impact fee policy, includes all of the area within the jurisdictional boundaries of the town.

**SYSTEM IMPROVEMENTS:** Refer both to existing public facilities designed to provide services to service areas within the town at large and to future public facilities identified in reasonable plans for capital improvements adopted by the town that are intended to provide service to service areas within the town at large. "System improvements" do not include "project improvements", as defined in this section. (Ord. 99-001, 3-23-1999; amd. 2010 Code)

### **2-10A-3: IMPACT FEE CALCULATIONS:**

A. Ordinance Enacting Impact Fees: The town council will, by this article, approve an impact fee in accordance with the impact fee analysis set forth in exhibit B attached to ordinance 99-001, "Impact Fee Study", for transportation, and parks and recreation facilities.

1. Elements: In calculating the impact fee, the town may include the construction contract price, land acquisition costs, costs of improvements, material costs, the cost of fixtures, fees for planning, surveying and engineering services provided for and directly related to the construction of system improvements, and debt service charges if the town might use impact fees as revenue stream to pay principal and interest on bonds or other obligations to finance the cost of system improvements.
2. Notice And Hearing: Before adopting the ordinance, the town shall follow the notice and hearing requirements of Utah Code Annotated section 11-36-202(1)(F).
3. Contents Of Ordinance: The ordinance adopting or modifying an impact fee will contain such detail and elements as deemed appropriate by the town council, including a

designation of the service area or service areas within which the impact fee is to be calculated and imposed. The ordinance will include: a) a schedule of impact fees to be imposed for each type of system improvement; or b) the formula to be used by the town in calculating each impact fee, or both. A copy of this requirement is included in exhibit B attached to ordinance 99-001, "Impact Fee Study".

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 town affordable housing policy, and other development activities with broad public purposes.
  5. Previously Incurred Costs: To the extent that the new growth and development will be served by previously constructed improvements, the town impact fee may include public facility costs previously incurred by the town. The costs may include transportation and parks and recreation system improvements constructed with previously issued bonds and/or capital improvement reserve funds; the reimbursable costs under existing and future agreements with the developers for system improvements; and all projects included in the reasonable capital projects plan which are under construction or completed but have not been utilized to their capacity.
- B. Developer Credits: A developer may be allowed a credit against impact fees for any dedication of land or improvement to, or new construction of, system improvements provided by the developer provided that: 1) it is identified in the town reasonable capital projects plan; and 2) required by the town as a condition of approving the development activity. Otherwise, no credit may be allowed.
- C. Impact Fees Accounting:
1. Accounting, Reporting Requirements: The town shall follow the accounting and reporting requirements of Utah Code Annotated section 11-36-301. (Ord. 99-001, 3-23-1999; amd. 2010 Code)
  2. Impact Fee Expenditures: The town may expend impact fees covered by impact fees policy only for system improvements that are: a) public facilities identified in the town reasonable capital projects plan; and b) of the specific public facility type for which the fee was collected.
  3. Time Of Expenditure: Impact fees collected pursuant to the requirements of this impact fees policy are to be either 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 otherwise directs. 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, in 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 systems.
- F. Additional Fees And Costs: The impact fees authorized hereby are separate from and in addition to user fees and offer charges lawfully imposed by the town, such as engineering and inspection fees, 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 [2-10A-5](#) of this article.
- H. Imposition Of Additional Fee Or Refund After Development: 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. 99-001, 3-23-1999)

#### **2-10A-4: CAPITAL FACILITIES PLAN:**

- A. Written Analysis: As part of each reasonable capital projects plan, the town shall prepare a written analysis of each impact fee adopted or modified under the requirements of the impact fees policy that identifies the impact on system improvements required by development activity, estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity and identifies how the impact fee was calculated (impact fee study).
- B. Elements: The analysis may contain such elements as deemed relevant by the town. To the extent applicable and available, the analysis will identify the following: 1) the cost of existing facilities; 2) the manner of financing those facilities; 3) the relative extent to which newly developed properties and other properties have already contributed to the cost of existing public facilities; 4) the relative extent to which newly developed properties and other properties will contribute to the cost of existing public facilities in the future; 5) the extent, if

any, to which newly developed properties are entitled to a credit because the town is requiring the developer, by contractual arrangement or otherwise, to provide common facilities inside or outside the proposed development that have been provided by the town and financed through general taxation or other means, apart from user charges, in other parts of the town; 6) any extraordinary costs in servicing the newly developed property; and 7) the time-price differential that may be inherent in comparisons of amounts paid at different times (impact fee study). (Ord. 99-001, 3-23-1999)

#### **2-10A-5: GROSS IMPACT FEE CALCULATIONS AND SCHEDULES:**

Impact fee calculations and schedules shall be updated periodically through an updated capital facilities plan and impact fee analysis, and adopted by resolution in the consolidated fee schedule. (Ord. 99-001, 3-23-1999; amd. 2010 Code)

#### **2-10A-6: FEE EXCEPTIONS AND ADJUSTMENTS:**

- A. The town council may, on a project by project basis, authorize exceptions or adjustments to the then impact fee rate structure for those projects the town council determines to be of such be projects may include facilities being funded by tax supported agencies, affordable housing project or facilities of a temporary nature.
- 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. 99-001, 3-23-1999; amd. 2010 Code)

#### **2-10A-7: APPEAL PROCEDURE:**

- A. Application: The appeal procedure applies both to challenges to the legality of impact fees, to similar and related fees of the town and to the interpretation and/or application of those fees. By way of illustration, in addition to the legality of the impact fee schedule, determinations of the density of a development activity or calculation of the amount of the impact fee due will also be subject to this appeal procedure.
- B. Declaratory Judgment Action: Any person or entity residing in or owning property within the town and any organization, association or corporation representing the interests of persons or entities owning property within the town may file a declaratory judgment action challenging the validity of an impact fee only after having first exhausted their administrative remedies of this section.
- C. Request For Information Concerning Fee: Any person or entity required to pay an impact fee may file a written request for information concerning the fee with the town. The town will provide the person or entity with the town written impact fee analysis and other relevant information relating to the impact fee within fourteen (14) days after receipt of the request for information.
- D. Appeal To Town Before Payment Of Impact Fee: Any affected or potentially affected person or entity who wishes to challenge an impact fee prior to payment thereof may file a written request for information concerning the fee and proceed under the town appeal procedure.

- E. Appeal To Town After Payment Of Impact Fee; Statute Of Limitations For Failure To File: Any person or entity who has paid an impact fee and wishes to challenge the fee shall file a written request for information concerning the fee within thirty (30) days after having paid the fee and proceed under the town appeal procedure. If thirty (30) days has passed after payment of the impact fee and a written request for information or challenge has not been filed with the town, the person or entity is barred from filing an appeal with the town or seeking judicial relief.
- F. Appeal To Town: Any developer, landowner or affected party desiring to challenge the legality of any impact fee or related fee or exaction may appeal directly to the town council by filing a written challenge with the town; shall affirm, reverse or take action with respect to the challenge or appeal as the town council deems to be appropriate in light of the town policies and procedures and any applicable law, rule or regulation. The decision of the town council may include the establishment or calculation of the impact fee applicable to the development activity at issue; any impact fee set by the town council may include the establishment or calculation of the impact fee applicable to the development activity at issue. Any impact fee set by the town council may be the same as or higher or lower than that being appealed; provided, that it shall not be higher than the maximum allowed under the town lawful impact fee rate or form which is either in existence on the effective date of the act or as promulgated under the impact fees policy, as appropriate. The decision of the town council will be issued within thirty (30) days after the date the written challenge was filed with the town as mandated by Utah Code Annotated section [11-36-401\(4\)\(b\)](#). In light of the statutory mandated time restriction, the town shall not be required to provide more than three (3) working days' prior notice of the time, date and location of the informal hearing and the inconvenience of the hearing to the challenging party shall not serve as a basis of appeal of the town's final determination.
- G. Denial Due To Passage Of Time: Should the town, for any reason, fail to issue a final decision on a written challenge to an impact fee, its calculation or application, within thirty (30) days after the filing of that challenge with the town, the challenge shall be deemed to have been denied and any affected party to the proceedings may seek appropriate judicial relief from such denial.
- H. Judicial Review: Any party to the administrative action who is adversely affected by the town's final decision must petition the district court for a review of the decision within ninety (90) days of a final town decision upholding an impact fee, its calculation or application, or within one hundred twenty (120) days after the written challenge to the impact fee, its calculation or application, was filed with the town, whichever is earlier.
- I. Record Of Proceedings: After having been served with a copy of the pleadings initiating the town court review, the town shall submit to the court the record of the proceedings before the town, including minutes, and, if available, a true and correct transcript of any proceedings. If the town is able to provide a record of the proceedings, the town court's review is limited, by Utah Code Annotated section [11-36-401\(5\)\(c\)](#), to the record. The court may not accept or consider evidence outside of the record of proceedings before the town unless the evidence was offered to the town and improperly excluded in the proceedings before the town. If the record is inadequate however, the court may call witnesses and take evidence. The court is to affirm the town's decision if the decision is supported by substantial evidence in the record. (Ord. 99-001, 3-23-1999)

## **2-10A-8: ADMINISTRATIVE PROVISIONS:**

- A. Interpretation: This impact fee policy has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this impact fee policy 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 policy shall not repeal, modify or effect any impact fee of the town in existence as of the effective date hereof. 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 policy. (Ord. 99-001, 3-23-1999)