

**Development Impact Fees Ordinance
Ordinance 294-08**

A NEW ORDINANCE FOR THE CITY OF DRIGGS TO BE KNOWN AS THE "DEVELOPMENT IMPACT FEES ORDINANCE" TO ALLOW FOR THE COLLECTION OF DEVELOPMENT IMPACT FEES FOR FIRE, PARK AND STREET FACILITIES; ESTABLISHING SUCH FEES; PRESCRIBING THE PROCEDURES FOR THE COLLECTION OF SUCH FEES; ATTACHING AND INCORPORATING THE "CITY OF DRIGGS IMPACT FEE STUDY AND CAPITAL IMPROVEMENT PLANS" DATED April 28, 2008 AS APPENDIX "A" HERETO; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

The Development Impact Fees Ordinance of the City of Driggs, Idaho, is hereby enacted as follows:

**CHAPTER 1
DEVELOPMENT IMPACT FEES**

SECTION I-1: LEGISLATIVE FINDINGS:

The City Council of the City of Driggs, Idaho finds that:

- A. Based on the City of Driggs Comprehensive Plan adopted by the City pursuant to Chapter 65, Title 67, Idaho Code, including but not limited to the Capital Improvements Element of the Comprehensive Plan, and the general governmental goal of protecting the health, safety, and general welfare of the citizens of the City, it is necessary that the City's Public Facilities for (1) Fire, (2) Streets, and (3) Parks be expanded and improved to accommodate new Development within the City. Throughout this Chapter, the System Improvements for these three (3) types of Public Facilities are sometimes collectively referred to as the "City Capital Facilities" and sometimes individually referred to as a "City Capital Improvements Element."
- B. The City has formed the Development Impact Fee Advisory Committee required by Idaho Code Section 67-8205, and that Committee has performed the duties required of it pursuant to such statute. The City intends that the Committee continue to exist and to perform those duties identified in Idaho Code Section 67-8205 that occur following the adoption of Development Impact Fees.
- C. New residential and nonresidential Development imposes and will impose increasing and excessive demands upon City Capital Facilities.
- D. The revenues generated from new residential and nonresidential Development often do not generate sufficient funds to provide the necessary improvements of these City Capital Facilities to accommodate new Development.
- E. New Development is expected to continue, and will place ever-increasing demands on the City to provide and expand City Capital Facilities to serve new Development.
- F. The City has planned for the improvement of the City Capital Facilities in the Capital Improvements Element of the City of Driggs Comprehensive Plan.
- G. Chapter 82, Title 67 of the Idaho Code (the Idaho Development Impact Fee Act) authorizes the City to adopt a Development Impact Fee system to offset, recoup, or reimburse the portion of the

costs of needed improvements to the City Capital Facilities caused by new Development in the City.

- H. The creation of an equitable Development Impact Fee System would promote the purposes set forth in the Idaho Development Impact Fee Act, in that it would: (1) ensure that adequate Public Facilities are available to serve new growth and Development; (2) promote orderly growth and Development by establishing uniform standards by which local governments may require that those who benefit from new growth and Development pay a Proportionate Share of the cost of new Public Facilities needed to serve new growth and Development; (3) ensure that those who benefit from new growth and Development are required to pay no more than their Proportionate Share of the cost of Public Facilities needed to serve new growth and Development, and (4) prevent duplicate and ad hoc Development Requirements.
- I. The creation of an equitable Development Impact Fee system would enable the City to accommodate new Development, and would assist the City to implement the Capital Improvements Element of the Comprehensive Plan.
- J. In order to implement an equitable Development Impact Fee system for the City Capital Facilities, the City retained BBC Research & Consulting to prepare an impact fee study for these types of facilities. The resulting document is titled "City of Driggs, Development Impact Fees Study & Capital Improvements Element Plans," dated April 28, 2008, (the "Development Impact Fee Study"), and that document is hereby incorporated by reference.
- K. The methodology used in preparing the Development Impact Fee Study, when applied through this Chapter, complies with all applicable provisions of Idaho Law, including those set forth in Idaho Statutes Sections 67-8204(2), 67-8204(16), 67-8204(23), 67-8207 and 67-8209. The incorporation of the Development Impact Fee Study by reference satisfies the requirement in Idaho Statutes Section 67-8204(16) for a detailed description of the methodology by which the Development Impact Fees were calculated, and the requirement in Idaho Code Section 67-8204(24) for a description of acceptable Levels of Service for System Improvements.
- L. The Development Impact Fee Study contains the Capital Improvements Element of the City of Driggs Comprehensive Plan, and such element has been prepared in conformance with the requirements of Chapters 65 and 82 of Title 67 of the Idaho Code.
- M. The Development Impact Fee Study sets forth reasonable methodologies and analyses for determining the impacts of various types of new Development on the City Capital Facilities, and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such facilities created by new Development.
- N. In accordance with Idaho Code, the Development Impact Fee Study was based on actual System Improvement Costs or reasonable estimates of such costs. In addition, the Development Impact Fee Study uses a Fee calculation methodology that is net of credits for the Present Value of revenues that will be generated by new growth and Development based on historical funding patterns and that are anticipated to be available to pay for System Improvements, including taxes, assessments, user fees, and intergovernmental transfers.
- O. The Development Impact Fees described in this Chapter are based on the Development Impact Fee Study, and do not exceed the costs of System Improvements for City Capital Facilities to serve new Development that will pay the Development Impact Fees.
- P. The facilities for Fire, Streets, and Parks included in the calculation of fees in the Development Impact Fee Study will benefit all new residential and nonresidential Development throughout the City, and it is therefore appropriate to treat all areas of the City as a single Service Area for

purposes of calculating, collecting, and spending the Development Impact Fees collected from residential and nonresidential Development.

- Q. There is both a rational nexus and a rough proportionality between the Development impacts created by each type of Development covered by this Chapter and the Development Impact Fees that such Development will be required to pay.
- R. This Chapter creates a system by which Development Impact Fees paid by new Development will be used to finance, defray, or reimburse a portion of the costs incurred by the City to construct improvements for City Capital Facilities in ways that benefit the Development for which each Development Impact Fee was paid within a reasonable period of time after the Development Impact Fee is paid, and in conformance with Idaho Code Section 67-8210.
- S. This Chapter creates a system under which Development Impact Fees shall not be used to correct existing deficiencies for any capital facilities, or to replace or rehabilitate existing improvements, or to pay for routine operation or maintenance of those facilities.
- T. This Chapter creates a system under which there shall be no double payment of impact fees, in accordance with Idaho Code Section 67-8204(19).
- U. This Chapter is consistent with all applicable provisions of Chapter 82, Title 67, Idaho Code, concerning Development Impact Fee Ordinances.

SECTION I-2: AUTHORITY AND APPLICABILITY:

- A. This Chapter is enacted pursuant to the City's general police power, the authority granted to the City pursuant to Chapter 65 and 82, Title 67, Idaho Code, and other applicable laws of the State of Idaho.
- B. This Chapter shall apply to all areas of the City.

SECTION I-3: INTENT:

- A. This Chapter is adopted to be consistent with, and to help implement, the City of Driggs Comprehensive Plan, and particularly the Capital Improvements Element of that Plan.
- B. The intent of this Chapter is to ensure that new Development bears a Proportionate Share of the cost of improvements to City Capital Facilities; to ensure that such Proportionate Share does not exceed the cost of improvements to such facilities required to accommodate new Development; and to ensure that funds collected from new Development are actually used for improvements to City Capital Facilities that benefit such new Development.
- C. It is the further intent of this Chapter to be consistent with those principles for allocating a fair share of the cost of new capital facilities to new Development, and for adopting Development Impact Fee Ordinances, established by Chapter 82, Title 67 of the Idaho Code.
- D. It is not the intent of this Chapter to collect any money from any new Development in excess of the actual amount necessary to offset new demands for City Capital Facilities created by such new Development.
- E. It is not the intent of this Chapter that any monies collected from any Development Impact Fee deposited in an Impact Fee Account ever be commingled with monies from a different Impact Fee Account, or ever be used for a Development Impact Fee component different from that for which

the Fee was paid, or ever be used to correct current deficiencies in the City Capital Facilities or ever be used to replace, rehabilitate, maintain, or operate any City facility.

SECTION I-4: DEFINITIONS:

For the purpose of this Chapter, the following terms shall have the following meanings, some of which are assigned by Idaho Code Section 67-8203, as indicated:

ACCOUNTS: The Fire Capital Facilities Account, the Streets Capital Facilities Account, and the Parks Capital Facilities Account, established as part of the Development Impact Fee Trust Fund established in Section I-7 of this Chapter.

AFFORDABLE HOUSING: Housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the City of Driggs. Section 67-8203(1) Idaho Code.

APPROPRIATE: To legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity. Section 67-8203(2) Idaho Code.

BUILDING PERMIT: A Building Permit issued by the building official permitting the construction of a building or structure within the City of Driggs.

CAPITAL IMPROVEMENT: An improvement with a useful life of ten (10) years or more, by new construction or other action that increases the service capacity of a public facility. Section 67-8203(3) Idaho Code.

CAPITAL IMPROVEMENTS ELEMENT: A component of the City of Driggs Comprehensive Plan adopted pursuant to Chapter 65, Title 67, Idaho Code, which component meets the requirements of a Capital Improvements Plan pursuant to Chapter 65, Title 67 of the Idaho Code, Section 67-8203(4) Idaho Code.

CAPITAL IMPROVEMENTS PLAN: A plan adopted pursuant to this Chapter that identifies Capital Improvements for which Development Impact Fees may be used as a funding source. Section 67-8203(5) Idaho Code.

CITY: City of Driggs, Idaho.

CITY COUNCIL: The City Council of the City of Driggs, Idaho.

DEVELOPER: Any Person or legal entity undertaking Development, including a party that undertakes the subdivision of property pursuant to Idaho Code Sections 50-1301 through 50-1334. Section 67-8203(6) Idaho Code.

DEVELOPMENT: 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, that creates additional demand and need for Public Facilities or the subdivision of property that would permit any change in the use, character or appearance of land, except that "Development" shall not include activities that would otherwise be subject to the payment of the Development Impact Fee if such activities are undertaken by a taxing district as defined in Section 63-201, Idaho Code, in the course of carrying out the taxing district's public responsibilities, unless the adopted impact fee ordinance expressly includes taxing districts as being subject to Development Impact Fees. Section 67-8203(7) Idaho Code.

DEVELOPMENT APPROVAL: Any written authorization from a governmental entity that authorizes the commencement of a Development. Section 67-8203(8) Idaho Code.

DEVELOPMENT IMPACT FEE: The payment of money imposed as a condition of Development Approval to pay for a Proportionate Share of the cost of System Improvements needed to serve Development. Section 67-8203(9) Idaho Code. In the context of this Chapter, Development Impact Fee means one of the three (3) impact fees defined for the three (3) City Capital Facilities elements, and Development Impact Fees (in the plural) means all three (3) impact fees (or all of them that apply to the proposed Development pursuant to this Chapter.) The term does not include:

- A. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for Development;
- B. Connection or hookup charges;
- C. Availability charges for drainage, sewer, water or transportation for services provided directly to the Development; or
- D. Amounts collected from a Developer in a transaction in which the City or another governmental entity 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 the Capital Improvements, unless a written agreement is made pursuant to Idaho Code Section 67-8209(3) for credit or reimbursement.

DEVELOPMENT IMPACT FEE ADMINISTRATOR: That individual designated from time to time by the City Council of Driggs, Idaho, to administer the Development Impact Fee system established by this Chapter.

DEVELOPMENT IMPACT FEE STUDY: The document entitled “City of Driggs, Idaho Development Impact Fees Study & Capital Improvements Element Plans,” dated April 28, 2008, prepared by BBC Research & Consulting for the City, that sets forth reasonable methodologies and analyses for determining the impacts of various types of Development on the City Capital Facilities and determines the cost of expansions to those facilities necessary to meet the demands created by new Development.

DEVELOPMENT IMPACT FEE TRUST FUND: The trust fund established by Section 7-A of this Chapter that includes: a) a Fire Capital Facilities Account, b) a Streets Capital Facilities Account, and c) a Parks Capital Facilities Account. The Development Impact Fee Trust Fund is also sometimes called the Trust Fund.

DEVELOPMENT REQUIREMENT: A requirement attached to a developmental approval or other governmental action approving or authorizing a particular Development Project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval. Section 67-8203(10) Idaho Code.

EXTRAORDINARY COSTS: Those costs incurred as a result of an Extraordinary Impact. Section 67-8203(11) Idaho Code.

EXTRAORDINARY IMPACT: An impact that is reasonably determined by the governmental entity to: a) 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 Section 67-8214(2), or b) result in the need for System Improvements that are not identified in the Capital Improvements Plan. Section 67-8203(12) Idaho Code.

FEE PAYER: That Person who pays or is required to pay a Development Impact Fee. Section 67-8203(13) Idaho Code. A Fee Payer may include a Developer.

FIRE CAPITAL FACILITIES: Lands, as well as buildings, improvements to land, and related equipment and vehicles meeting the definition of “Capital Improvement,” used for fire and emergency medical service facilities included in the calculation of the Fire/EMS Impact Fee in the Development Impact Fee Study, and specifically including those related costs included in the definition of “System Improvement Costs,” but not including maintenance, operations, or improvements that do not expand capacity.

IMPACT-GENERATING LAND DEVELOPMENT: Land Development designed or intended to permit a use of the land that will contain more dwelling units or floor space than the then existing use of the land, or the making of any material change in the use of any structure or land in a manner that increases demand for City Capital Facilities. The type of proposed Impact-Generating Land Development shall be based on the proposed use of the land.

INDIVIDUAL ASSESSMENT: A study prepared by a Fee Payer, calculating the cost of expansions or improvements to one or more of the City Capital Improvements Elements required to serve the Fee Payer’s proposed Development, that is based on the established LOS standard, is performed on an average cost (not marginal cost) methodology, that uses the Service Units and unit construction costs stated in the Development Impact Fee Study, and is performed in compliance with any criteria for such studies established by this Chapter or by the City.

INFILL DEVELOPMENT: All development located within the 1920 City Limits.

LAND USE ASSUMPTIONS: A description of the Service Area and projections of land uses, densities, intensities, and population in the Service Area over at least a twenty (20) year period. Section 67-8203(16) Idaho Code.

LEVEL OF SERVICE (“LOS”): A measure of the relationship between service capacity and service demand for Public Facilities. Section 67-8203(17) Idaho Code.

MANUFACTURED HOME: A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, that, 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 that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure that 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. Section 67-8203(18) Idaho Code.

MODULAR BUILDING: Is defined in Section 39-4301, Idaho Code. Section 67-8203(19) Idaho Code.

PARK CAPITAL FACILITIES: Open space lands, as well as buildings, improvements to land, and related equipment meeting the definition of Capital Improvement, used for public parks, recreation, open space, and trail facilities included in the calculation of the Park Impact Fee in the Development Impact Fee Study, and specifically including those related costs included in the definition of “System Improvement Costs,” but not including maintenance, operations, or improvements that do not expand capacity.

PERSON: An individual, corporation, governmental agency, business trust, estate, partnership, association, two (2) or more Persons having a joint or common interest, or any other entity.

PRESENT VALUE: The total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money. Section 67-8203(20) Idaho Code.

PROJECT: A particular Development on an identified parcel of land. Section 67-8203(21) Idaho Code.

PROJECT IMPROVEMENTS: 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. Section 67-8203(22) Idaho Code.

PROPORTIONATE SHARE: That portion of the cost of System Improvements determined pursuant to Idaho Code Section 67-8207, that reasonably relates to the service demands and needs of the Project. Section 67-8203(23) Idaho Code.

PUBLIC FACILITIES: (a) water supply production, treatment, storage and distribution facilities; (b) wastewater collection, treatment and disposal facilities; (c) roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways; (d) storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; (e) parks, open space and recreation areas, and related Capital Improvements; and (f) public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

RECREATIONAL VEHICLE: A vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, that either has its own motive power or is mounted on or drawn by another vehicle. Section 67-8203(25) Idaho Code.

SERVICE AREA: Any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific Public Facilities provide service to Development within the area defined, on the basis of sound planning or engineering principles or both. Section 67-8203(26) Idaho Code.

SERVICE UNIT: 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. Section 67-8203(27) Idaho Code.

SUCCESSOR IN INTEREST: A Person, as defined by this Chapter, who gains a fee simple interest in land for which a Development Impact Fee is paid or a credit is approved pursuant to the terms of this Chapter.

SYSTEM IMPROVEMENTS: In contrast to Project Improvements, means Capital Improvements to Public Facilities that are designed to provide service to a Service Area including, without limitation, the type of improvements described in Idaho Code Section 50-1703. Section 67-8203(28) Idaho Code. For the purposes of this Chapter, the System Improvements are the Fire Capital Facilities, Streets Capital Facilities, and Parks Capital Facilities.

SYSTEM IMPROVEMENT COSTS: Costs incurred for construction or reconstruction of System Improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in Idaho Code Section 50-1702(h), to provide additional Public Facilities needed to serve new growth and Development. For clarification, System Improvement Costs do not include: (a) construction, acquisition or expansion of Public Facilities other than Capital Improvements identified in the Capital Improvements Plan; (b) repair, operation or maintenance of existing or new Capital Improvements; (c) upgrading, updating, expanding or replacing existing Capital Improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards; (d) upgrading, updating, expanding or replacing existing Capital Improvements to provide better service to existing development; (e) administrative and operating costs of the governmental entity unless such costs are attributable to development of the Capital Improvement plan, as provided in Idaho Code Section 67-8208; or (f) principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the

governmental entity to finance Capital Improvements identified in the Capital Improvements plan. Section 67-8203(29) Idaho Code.

STREETS CAPITAL FACILITIES: Lands, improvements to land, and equipment meeting the definition of “Capital Improvement,” used for the system of traffic signals and for the widening of bridges on arterial and collector roads, included in the calculation of the Streets Impact Fee in the Development Impact Fee Study, and consistent with the Capital Improvements Element, and specifically including those related costs included in the definition of “System Improvement Costs,” but not including maintenance, operations, or improvements that do not expand capacity.

SECTION I-5: DEVELOPMENT IMPACT FEES IMPOSED:

A. Fee Obligation

1. After the effective date of this Ordinance hereof, any Person who commences any Impact-Generating Land Development, except those exempted pursuant to subsection B of this section, shall be obligated to pay Development Impact Fees upon commencement of such activity. The amount of the Development Impact Fees shall be determined in accordance with this Chapter.
2. If the Fee Payer is applying for an extension of a permit issued previously, then the Development Impact Fees required to be paid shall be the net increase between the Development Impact Fees applicable at the time of the current permit application and any Development Impact Fees previously paid pursuant to this Chapter to finance similar types of System Improvements to accommodate demands created by the same Development.
3. If the Fee Payer is applying for a permit to allow a change of use or for the expansion, redevelopment, or modification of an existing development, the Development Impact Fees required to be paid shall be based on the net increase in the Development Impact Fees for the new use as compared to the previous use.

B. Exemptions

The following types of Development shall be exempted from payment of the Development Impact Fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first Building Permit for the proposed Development that creates the obligation to pay the Development Impact Fees, and any claim for exemption not made at or before that time shall have been waived. The Development Impact Fee Administrator or a designee shall determine the validity of any claim for exemption pursuant to the criteria set forth below.

1. Rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
2. Remodeling or repairing a structure that does not increase the number of Service Units;
3. Replacing a residential unit, including a Manufactured Home, with another residential unit on the same lot, provided that the number of Service Units does not increase;
4. Constructing an addition on a residential structure that does not increase the number of Service Units;

5. Placing a temporary construction trailer or office on a lot;
6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of System Improvements;
7. The installation of a Modular Building, Manufactured 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 Home, or Recreational Vehicle was legally in place on the lot or space prior to the effective date of this Ordinance hereof, or (b) a Development Impact Fee has been paid previously for the installation of a Modular Building, Manufactured Home or Recreational Vehicle on that same lot or space.
8. Projects for which a Development Impact Fee for each type of public facility covered by this Chapter has previously been paid in an amount that equals or exceeds the Development Impact Fee that would be required by this Chapter;
9. Projects built by the federal government or the State government; and
10. Public schools.

C. Fee Table and Calculation of Amount of Development Impact Fees

Fee Table:

Impact Fee Category	
Fire Fees	
Residential (per dwelling unit)	\$785.00
Nonresidential (per square foot)	\$0.37
Parks Fees	
Residential (per dwelling unit)	\$2,445.50
Nonresidential (per square foot)	\$0.15
Streets Fees	
Single Family (per dwelling unit)	\$1,327.00
Multifamily (per dwelling unit)	\$872.00
Retail (per square foot)	\$6.35
Office (per square foot)	\$1.95
Industrial (per square foot)	\$1.40

Total Fees	
Single Family (per dwelling unit)	\$4,557.50
Multifamily (per dwelling unit)	\$4,102.5
Retail (per square foot)	\$6.87
Office (per square foot)	\$2.47
Industrial (per square foot)	\$1.92

1. Using the Fee Table. Development Impact Fees shall be calculated using the Fee Table above, unless: (a) the Fee Payer requests an Individualized Assessment pursuant to subsection 2 below of this section, or (b) the City designates the proposed development as a Development of Extraordinary Impact in writing to the Fee Payer, in which case the provisions of subsection 3 below of this section shall apply.
 - a. Any Person who commences any new Impact-Generating Land Development, except those exempted pursuant to this Chapter, or those preparing an Individual Assessment pursuant to this Chapter, shall pay all Development Impact Fees applicable to the proposed development, as determined by the Fee Table above. Persons choosing to pay applicable Development Impact Fees pursuant to the Fee Table shall be deemed to have made a full and complete payment of the Project's Proportionate Share of City Capital Facilities costs for System Improvements, except as noted in subsection E of this Chapter.
 - b. If the proposed development is of a type not listed in the Fee Table above, then the City shall apply the Development Impact Fees applicable to the most nearly comparable type of land use listed in the Fee Table. The determination as to which type of development is most nearly comparable to the proposed development shall be made by referring to traffic generation rates for land uses published by Institute of Transportation Engineers, and by identifying that land use listed in the Fee Table whose traffic generation rates are most comparable to the proposed land use. If no traffic generation rate for the proposed land use appears in a publication of the Institute of Transportation Engineers, or if it not possible to determine which land use listed in the Fee Table has the most comparable traffic generation rates, then the most nearly comparable land use shall be determined by the Development Impact Fee Administrator based on comparison of other characteristics of the proposed land use (including employment or occupancy, the size of the facility, and the amount of parking to be provided) with the characteristics of those land uses listed in the Fee Table.
 - c. If the proposed Development includes a mix of those uses listed in the Fee Table, then the Development Impact Fees shall be determined by adding up the Development Impact Fees that would be payable for each use as if it were a freestanding use pursuant to the Fee Table. For example, Development Impact Fees for a church without ancillary facilities will be determined through the process in subsection A above; but Development Impact Fees for a church with a day care center shall be established by adding: (i) fees determined through the process in subsection A above for the church itself, and (ii) fees identified in the Fee Table for the daycare portion of the facility.

- d. If the Fee Payer requests that the City calculate the amount of Development Impact Fees due pursuant to the Fee Table, the City shall notify the Fee Payer of such amount within thirty (30) days after receipt of that request.
2. Using an Individual Assessment
 - a. In lieu of calculating the amount(s) of Development Impact Fees by reference to the Fee Table, a Fee Payer may request that the amount of the required Development Impact Fee be determined through an Individual Assessment for the proposed development. The Individual Assessment process shall permit consideration of studies, data, and any other relevant information submitted by the Fee Payer to adjust the amount of the fee. If a Fee Payer requests the use of an Individual Assessment, the Fee Payer shall be responsible for retaining a qualified professional to prepare the Individual Assessment that complies with the requirements of this Chapter, at the Fee Payer's expense. The Fee Payer shall bear the burden of proving by clear and convincing evidence that the resulting Individual Assessment is a more accurate measure of its Proportionate Share of the cost of City Capital Improvements, based on the City's adopted Levels of Service, than the Development Impact Fees that would otherwise be due pursuant to the Fee Table.
 - b. Each Individual Assessment shall be based on the same Level of Service standards and unit costs for System Improvements used in the Development Impact Fee Study, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.
 - c. An application for an Individual Assessment may be submitted at any time that the number of dwelling units in the proposed dwelling units and the types and amounts of development in each nonresidential category identified in the Fee Table is known. The City shall issue a decision within thirty (30) days following receipt of a completed application for Individual Assessment and supporting information from the applicant, so as not to unreasonably delay subsequent applications for or issuance of Building Permits.
 - d. Each Individual Assessment shall be submitted to the Development Impact Fee Administrator or a designee, and may be accepted, rejected, or accepted with modifications by the Development Impact Fee Administrator or a designee as the basis for calculating Development Impact Fees. The criteria for acceptance, rejection, or acceptance with modifications shall be whether the Individual Assessment is a more accurate measure of demand for the City Capital Improvements Element(s) created by the proposed Development, or the costs of those facilities, than the applicable fee shown in the Fee Table.
 - e. The decision by the Development Impact Fee Administrator or designee on an application for an Individual Assessment shall include an explanation of the calculation of the impact fee, shall specify the System Improvement(s) for which the impact fee is intended to be used, and shall include an explanation of those factors identified in Idaho Code Section 67-8207.
 - f. If an Individual Assessment is accepted or accepted with modifications by the Development Impact Fee Administrator or a designee then the Development Impact Fees due under this Chapter for such Development shall be calculated according to such Individual Assessment.

3. Extraordinary Impacts

- a. If the City determines that a proposed development generates Extraordinary Impacts that will result in Extraordinary Costs, the City will notify the Fee Payer of such determination within thirty (30) days after receipt of a request for a Certification pursuant to subsection D or a request for a Building Permit or Development Approval, whichever occurs first. Such notice shall include a statement that the potential impacts of such development on System Improvements are not adequately addressed by the Development Impact Fee Study, and that a supplemental study at the Fee Payer's expense will be required.
- b. Circumstances that may lead to a determination of Extraordinary Impacts include, but are not limited to: (i) an indication that traffic generation from the proposed Development or activity will exceed those typical for a facility or activity of its type, (ii) an indication that employment generated by the Development or activity will exceed those typical for a facility or activity of its type, (iii) an indication the assumptions used in the Development Impact Fee Study underestimate the level of activity or impact on City Capital Facilities from the proposed Development or activity, or (iv) an indication that levels of calls for law enforcement, fire, or emergency services from developments or activities owned or operated by the Fee Payer or its agents exceed the assumptions used in the Development Impact Fee Study.
- c. Within thirty (30) days following the designation of a Development with Extraordinary Impacts, the City shall meet with the Fee Payer to discuss whether the Fee Payer wants to: (i) pay for the supplemental study necessary to determine the System Improvement Costs related to the proposed Development, or (ii) modify the proposal to avoid generating Extraordinary Impacts, or (iii) withdraw the application for Certification, Building Permit, or Development Approval.
- d. If the Fee Payer agrees to pay for the supplemental study required to document the proposed Development's Proportionate Share of System Improvement Costs, then the City 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.
- e. Once the study has been completed, the Fee Payer may choose to: (i) pay the Proportionate Share of System Improvement Costs documented by the supplemental study, or (ii) modify the proposed development to reduce such costs, or (iii) withdraw the application. If the Fee Payer agrees to pay the System Improvement Costs documented in the supplemental study, that agreement shall be reduced to writing between the City and the Fee Payer prior to review and consideration of any application for any Development Approval or Building Permit related to the proposed Development.
- f. Notwithstanding any agreement by the Fee Payer to pay the Proportionate Share of System Improvement Costs documented by the supplemental study, nothing in this Chapter shall obligate the City to approve development that results in an Extraordinary Impact.

D. Certification

After the Development Impact Fees due for a proposed Development have been calculated pursuant to the Fee Table or the Individual Assessment, the Fee Payer may request the Development Impact Fee Administrator or a designee for a certification of the amount of Development Impact Fees due for that Development. Within thirty (30) days after receiving such request, the Development Impact Fee Administrator or a designee shall issue a written certification of the amount of Development Impact Fees due for the proposed Development. Such certification shall establish the Development Impact Fee so long as there is no material change to the particular Project as identified in the Individual Assessment Application, or the Fee Table. The Certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under Idaho Code Section 67-8207 and shall also specify the System Improvement(s) for which the Development Impact Fee is intended to be used.

E. Payment of Fees:

1. All Development Impact Fees due shall be paid to the City at the following times:
 - a. If a Building Permit or Manufactured Home installation permit is required, then at the time such permit is issued; or
 - b. If no Building Permit or Manufactured Home installation permit is required, then at the time that construction commences; or
 - c. At such other time as the applicant and the City have agreed to in writing, pursuant to applicable Idaho law.
2. All monies paid by a Fee Payer pursuant to the Fee Table shall be identified as Development Impact Fees and shall be promptly deposited in the appropriate Account(s) described in Section I-4.
3. A Fee Payer may pay a Development Impact Fee under protest in order to avoid delay in the issuance of a Building Permit or Development Approval. A Fee Payer making a payment under protest shall not be estopped from exercising the right of appeal provided in section I-10 below, nor shall such Fee Payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

SECTION I-6: SERVICE AREAS:

The following Service Areas are established for each Development Impact Fee Element.

- A. The Park Impact Fee Service Area shall include the entire City, and Park Impact Fees may be expended for Park Capital Facilities located anywhere in the City.
- B. The Streets Impact Fee Service Area shall include the entire City, and Streets Impact Fees may be expended for Streets Capital Facilities located anywhere in the City.
- C. The Fire Impact Fee Service Area shall include the entire City, and Fire Impact Fees may be expended for Fire Capital Facilities located anywhere in the City.

SECTION I-7: USE OF DEVELOPMENT IMPACT FEE FUNDS:

- A. Establishment of Trust Fund and Accounts

1. A Development Impact Fee Trust Fund (the "Trust Fund") is hereby established for the purpose of ensuring that the Development Impact Fees collected pursuant to this Chapter are used to address impacts reasonably attributable to new Development for which the Development Impact Fees are paid.
 2. The Trust Fund shall be divided into three (3) Accounts: a Fire Capital Facilities Account, a Streets Capital Facilities Account, and a Parks Capital Facilities Account.
 3. The Development Impact Fee Trust Fund shall be maintained in an interest bearing account. The interest earned on each Account shall not be governed by Idaho Code Section 57-127, but shall be considered funds of the Account and shall be subject to the same restrictions on uses of funds as the Development Impact Fees on which the interest is generated.
 4. Monies in each Account shall be considered to be spent in the order collected, on a first-in/first-out basis.
- B. Deposit and Management of the Trust Fund
1. All Development Impact Fees collected by the City pursuant to this Chapter shall be promptly deposited into the appropriate Account in the Trust Fund.
 2. The City shall maintain accounting records for each Account.
 3. As part of its annual audit process, the City shall prepare an annual report: (a) describing the amount of all Development Impact Fees collected, appropriated, or spent during the preceding year for each Capital Improvements Element and Service Area; and (b) describing the percentage of taxes and revenues from sources other than Development Impact Fees collected, appropriated or spent for System Improvements during the preceding year by Capital Improvements Element and Service Area.
- C. Limitations on Expenditures of Fees in Accounts
1. Fire Impact Fee. The monies collected from the Fire Impact Fee shall be used only to plan for and acquire or construct Fire Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Fire Capital Facilities within the City, or to reimburse the Fire District for such costs.
 2. Streets Impact Fee. The monies collected from the Streets Impact Fee shall be used only to plan for and acquire or construct Streets Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Streets Capital Facilities within the City, or to reimburse the City for such costs.
 3. Parks Impact Fee. The monies collected from the Parks Impact Fee shall be used only to plan for and acquire or construct Parks Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Parks Capital Facilities within the City, or to reimburse the City for such costs.

4. Development Impact Fees shall not be used to pay for any purpose that does not involve System Improvements that create additional service available to serve new growth and development.

SECTION I-8: REFUNDS OF DEVELOPMENT IMPACT FEES PAID:

A. Duty to Refund

Development Impact Fees shall be refunded to the Fee Payer, or to a Successor in Interest, in the following circumstances:

1. Service is available but never provided;
 2. A Building Permit or permit for installation of a Manufactured Home is denied or abandoned;
 3. The Fee Payer pays a Development Impact Fee under protest and a subsequent review of the Fee paid or the completion of an Individual Assessment determines that the Fee paid exceeded the Proportionate Share to which the governmental entity was entitled to receive; or
 4. The City has collected a Development Impact Fee and has failed to Appropriately or expend the collected Fees pursuant to subsection 8-B below.
- B. Failure to Encumber Trust Funds or Commence Construction: Any Development Impact Fees paid shall be refunded if the City has failed to commence construction of System Improvements in accordance with this Chapter, or to Appropriately funds for such construction, within eight (8) years after the date on which such Fee was paid. Any refund due shall be paid to the owner of record of the parcel for which the Development Impact Fees were paid. The City may hold Development Impact Fees for longer than eight (8) years if it identifies in writing: (i) a reasonable cause why the Fees should be held longer than eight (8) years; and (ii) an anticipated date by which the Fees will be expended, but in no event greater than eleven (11) years from the date they were collected. If the City complies with the previous sentence, then any Development Impact Fees identified in such writing shall be refunded to the Fee Payer if the City has failed to commence construction of System Improvements in accordance with this Chapter, or to Appropriately funds for such construction on or before the date identified in such writing.

C. No Refund Due:

Later Changes to Development. After a Development Impact Fee has been paid pursuant to this Chapter 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.

D. Interest:

Each refund shall include a refund of interest at one-half (1/2) the legal rate provided for in Idaho Code Section 28-22-104 from the date on which the Fee was originally paid.

E. Timing:

The City 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 City shall send the refund to the owner of record within ninety (90) days after the City determines that a refund is due.

F. Standing:

Any Person entitled to a refund shall have standing to sue for a refund under the provisions of this Chapter if there has not been a timely payment of a refund pursuant to subsections 8-A through 8-E above.

SECTION I-9: CREDITS AGAINST DEVELOPMENT IMPACT FEES:

A. Credits to be Issued:

When a Developer or his or her predecessor in title or interest has constructed System Improvements of the same category as a City Capital Improvements Element, or contributed or dedicated land or money towards the completion of System Improvements of the same category as a City Capital Improvements Element, and the City has accepted such construction, contribution, or dedication, the City shall issue a credit against the Development Impact Fees otherwise due for the same City Capital Improvements Element in connection with the proposed Development, as set forth in this section. Credit shall be issued regardless of whether the contribution or dedication to System Improvements was required by the City as a condition of Development Approval or was offered by the Developer and accepted by the City in writing, and regardless of whether the contribution or dedication was contributed by the Developer or by a Local Improvement District controlled by the Developer.

B. Limitations:

Credits against Development Impact Fees shall not be given for: (i) Project Improvements, or (ii) any construction, contribution, or dedication not agreed to in writing by the City prior to commencement of the construction, contribution, or dedication. Credits issued for one City Capital Improvements Element may not be used to reduce Development Impact Fees due for a different Capital Improvements Element. No credits shall be issued for System Improvements contributed or dedicated prior to the effective date of this Ordinance.

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 (100) percent 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 City 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 City at the Present Value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the Fee Payer to the City. The City 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 City as a more accurate measure of the value of the offered System Improvements to the City.

D. When Credits Become Effective:

1. Approved credits for land dedications shall become effective when the land has been conveyed to the City in a form acceptable to the City at no cost to the City, and has been

accepted by the City. When such conditions have been met, the City shall note that fact in its records. Upon request of the Fee Payer, the City shall issue a letter stating the amount of credit available.

2. 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 City, (b) a suitable maintenance and warranty bond has been received and approved by the City, and (c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the City and the State of Idaho. Approved credits for the construction of System Improvements may become effective at an earlier date if the Fee Payer posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement and the amount and terms of such security are accepted by the Development Impact Fee Administrator or a designee. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the City to construct the System Improvements for which the credit was given, whichever is higher. When such conditions have been met, the City shall note that fact in its records. Upon request of the Fee Payer, the City shall issue a letter stating the amount of credit available.

E. Application Procedures:

1. In order to obtain a credit against Development Impact Fees otherwise due, a Fee Payer shall submit a written offer to dedicate to the Development Impact Fee Administrator or a designee for specific parcels of qualifying land or a written offer to contribute or construct specific System Improvements to the City Capital Facilities in accordance with all applicable State or City design and construction standards, and shall specifically request a credit against the type of Development Impact Fees for which the land dedication or System improvement is offered. No request for a credit against Development Impact Fees shall be accepted unless a written offer to dedicate, contribute, or construct has previously been approved in writing by the City.
2. After receipt of the request for credit, the Development Impact Fee Administrator or a designee shall review the request and determine whether the land or System Improvements offered for credit will reduce the costs of providing City Capital Facilities by an amount at least equal to the value of the credit. If the Development Impact Fee Administrator or a designee determines that the offered credit satisfies that criteria, then the credit shall be issued. The City shall complete its review and determination of an application for credit within thirty (30) days after receipt of an application for credit.

F. Transferability of Credit:

A credit may only be transferred by the Fee Payer that has received the credit to a Successor in Interest pursuant to the terms of this Chapter. The credit may be used only to offset Development Impact Fees for the same City Capital Improvements Element for which the credit was issued. Credits shall be transferred by any written instrument clearly identifying which credits issued under this Chapter are being transferred, the dollar amount of the credit being transferred, and the City Capital Improvements Element for which the credit was issued. The instrument of transfer shall be signed by both the transferor and transferee, and a copy of the document shall be delivered to the Development Impact Fee Administrator or a designee for documentation of the change in ownership before it shall become effective.

G. Accounting of Credits:

Each time a request to use approved credits is presented to the City, the City shall reduce the amount of the Development Impact Fees for the type of Fee for which the credit is provided, and shall note in the City's records the amount of credit remaining, if any. Upon request of the Fee Payer or Successor in Interest to whom the credit was issued, the City shall issue a letter stating the amount of credit remaining.

H. Credits Exceeding Fee Amounts Due:

If the credit due to a Fee Payer pursuant to subsections A through G of this section exceeds the Development Impact Fee that would otherwise be due from the Fee Payer pursuant to section I-9 of this Chapter (whether calculated through the Fee Table or through an Independent Assessment), the Fee Payer may choose to receive such credit in the form of either: (1) a credit against future Development Impact Fees due for the same Capital Improvements Element, or (2) a reimbursement from Development Impact Fees paid by future Development that impacts the System Improvements contributed or dedicated by the Fee Payer. Unless otherwise stated in an agreement with the Fee Payer, the City shall be under no obligation to use any City funds, other than Development Impact Fees paid by other Development for the same City Capital Improvements Element – to reimburse the Fee Payer for any credit in excess of Development Impact Fees due.

I. Written Agreement Required:

If credit or reimbursement is due to the Fee Payer pursuant to this subsection, the City 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, and shall have a term not exceeding ten (10) years.

SECTION I-10: APPEALS AND MEDIATION:

Disputes regarding decisions made in the application of this Chapter shall be resolved through Appeal to the City Council, or through mediation, as set forth below.

A. Right to Appeal:

1. Any Fee Payer that is or may be obligated to pay a Development Impact Fee, or that claims a right to receive a refund, reimbursement, or credit under this Chapter, and who is dissatisfied with a decision made by the Development Impact Fee Administrator or a designee in applying this Chapter, shall first request that the Development Impact Fee Administrator reconsider the decision. A Fee Payer requesting reconsideration shall state in writing to the Development Impact Fee Administrator the reasons why the Fee Payer believes the decision to be in error. The Development Impact Fee Administrator shall issue a written decision confirming or modifying the decision within fifteen (15) days of receipt of a written request for reconsideration.
2. Any Fee Payer that is dissatisfied with the decision of the Development Impact Fee Administrator upon reconsideration pursuant to subsection A of this section, may appeal such decision to the City Council. The Fee Payer shall have the burden of proving by clear and convincing evidence that the decision was in error.
3. In order to pursue the appeal described in subsection A of this section, the Fee Payer shall file a written notice of the appeal with the Development Impact Fee Administrator or a designee within thirty (30) days after the date of the reconsideration, or the date on which the Fee Payer submitted a payment of Development Impact Fees under protest,

whichever is later. Such written application shall include a statement describing why the Fee Payer believes that the decision was in error, together with copies of any documents that the Fee Payer believes support the claim.

4. The City Council shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The Fee Payer shall have a right to be present and to present evidence in support of the appeal. The Development Impact Fee Administrator or designee who made the decision under appeal shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the City Council in considering the appeal shall be whether: (i) the decision or interpretation made by the Development Impact Fee Administrator after reconsideration, or (ii) the alternative decision or interpretation offered by the Fee Payer, more accurately reflects the intents of this Ordinance that new Development in the City pay its Proportionate Share of the costs of System Improvements to City Capital Facilities necessary to serve new Development. The City Council shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

B. Mediation:

1. Any Fee Payer that has a disagreement with the City regarding a Development Impact Fee that is or may be due for a proposed Development pursuant to this Chapter, may enter into a voluntary agreement with the City to subject the disagreement to mediation by a qualified independent party acceptable to both the Fee Payer and the City.
2. Mediation may take place at any time following the filing of a timely appeal pursuant to this section, 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 subsection A of this section.
3. Participation in mediation does not preclude the Fee Payer from pursuing other remedies provided for in this subsection.
4. If mediation is requested, any related mediation costs shall be shared equally by the Fee Payer and the City, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

SECTION I-11: ENFORCEMENT AND COLLECTION:

When any Development Impact Fee is due pursuant to the terms of this Chapter, or pursuant to the terms of any written agreement between a Fee Payer and the City authorized by this Chapter, and such Fee has not been paid in a timely manner, the City may exercise any or all of the following powers, in any combination, to enforce the collection of the Fee.

- A. The City may withhold Building Permits or other Development Approvals related to the Development for which the Fee is due until all Development Impact Fees due have been paid.
- B. The City may withhold utility services from the Development for which the Fee is due until all Development Impact Fees due have been paid.
- C. The City may add to the amount of the Fee interest at the legal rate provided for in Idaho Code Section 28-22-104 from the date on which the Fee was due.

- D. The City may impose liens for failure to timely pay a Development Impact Fee following procedures contained in Chapter 5, Title 45, Idaho Code.

SECTION I-12: MISCELLANEOUS PROVISIONS:

- A. Nothing in this Chapter shall be construed to create any additional right to develop real property or diminish the power of the City in regulating the orderly Development of real property.
- B. Nothing in this Chapter shall obligate the City to approve any development request that may reasonably be expected to reduce Levels of Service below minimum acceptable levels established in the Development Impact Fee Study.
- C. [Nothing in this Chapter shall restrict or diminish the power of the City: (1) to impose reasonable conditions on the annexation of any property to the City in accordance with Idaho Code, including conditions for recovery of Project or System Improvement Costs required as a result of such voluntary annexation, or (2) to negotiate and execute development agreements that may impose additional conditions on Development, including the recovery of Project or System Improvement Costs, either in connection with a proposed annexation or in connection with any other Development within the City].
- D. Notwithstanding any other provision of this Chapter, that portion of a Project for which a complete application for a Building Permit has been received by the City prior to the effective date of this Ordinance hereof shall not be subject to the Development Impact Fees imposed by this Chapter. If the resulting Building Permit is later revised or replaced after the effective date of this Chapter, and the new Building Permits reflects a Development density, intensity, or number of units more than ten percent (10%) higher than that reflected in the original Building Permit, then Development Impact Fees may be charged on the difference in density, intensity, or number of units between the original and the revised or replacement Building Permit.
- E. Nothing in this Chapter shall restrict the City from requiring Fee Payer or an applicant for a Development Approval or Building Permit to construct reasonable Project Improvements required to serve the applicant's Project, provided that such request does not duplicate a System Improvement in a category for which costs were included in the Development Impact Fee Study.
- F. Any monies, including any accrued interest not assigned to specific System Improvements within such Capital Improvements program and not expended pursuant to section 7 of this Chapter or refunded pursuant to section 8 of this Chapter shall be retained in the same Account until the next fiscal year.
- G. If the City discovers an error in the Development Impact Fee Study that results in assessment or payment of more than a Proportionate Share of System Improvement Costs on any proposed development, the City shall: (1) adjust the Development Impact Fee to collect no more than a Proportionate Share or (2) discontinue the collection of any Development Impact Fees until the error is corrected by ordinance.
- H. If Development 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 City within thirty (30) days after the City's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code Section 28-22-104 from the date on which the Fee was paid. Any amounts underpaid by the Fee Payer shall be paid to the City within thirty (30) days after the City's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code Section 28-22-104 from the date on which the Fee was paid. In the case of an underpayment to the City, the City may withhold issuance of Building Permits or Development Approvals for the Project for which the Development Impact Fee was paid until such

underpayment is corrected, and if amounts owed to the City are not paid within such thirty (30) day period, the City may also repeal any Building Permits or Development Approvals or Building Permits issued in reliance on the previous payment of such Development Impact Fee and refund such Fee to the Fee Payer.

- I. The Development Impact Fee Advisory Committee established during the preparation of the Development Impact Fee Study shall continue in existence, and shall be composed of not fewer than five (5) members appointed by City Council. Two (2) or more members shall be active in the business of Development, building, or real estate. The Committee shall serve in an advisory capacity and has been established to: (1) assist the City in adopting Land Use Assumptions; (2) review the Capital Improvements Plan, and proposed amendments, and file written comments; (3) monitor and evaluate implementation of the Capital Improvements Plan; (4) file periodic reports, at least annually, with respect to the Capital Improvements Plan and report to the City any perceived inequities in implementing the plan or imposing the Development Impact Fees; and (5) advise the City of the need to update or revise Land Use Assumptions, the Capital Improvements Plan, and Development Impact Fees.
- J. The City Council shall consider the Development Impact Fee Advisory Committee's recommended revision(s) to this Chapter at least once every twelve (12) months. The Committee's recommendations and the City Council's actions are intended to ensure that the benefits to a fee paying Development are equitable, in that the fee charged to the Development shall not exceed a Proportionate Share of the costs of System Improvements, and the procedures for administering Development Impact Fees remain efficient.
- K. Nothing in this Chapter shall be construed to prevent or prohibit private agreements between Developers, the City, the Idaho Transportation Department, and/or other governmental entities in regard to the construction or installation of System Improvements or providing for credits or reimbursements for System Improvement Costs incurred by a Developer or Fee Payer, including inter-project transfers of credits, or providing for reimbursement for Project Improvements that are used or shared by more than one Development Project. If it can be shown that a proposed Development has a direct impact on a public facility under the jurisdiction of the Idaho Transportation Department, then the agreement shall include a provision for the allocation of Development Impact Fees collected from the Developer or Fee Payer for the improvement of the Public Facility by the Idaho Transportation Department.
- L. Violation of this Chapter shall be a misdemeanor and shall be subject to those remedies provided in City of Driggs Code. Knowingly furnishing false information to any official of the City charged with the administration of this Chapter on any matter relating to the administration of this Chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed Development, shall be a violation of this Chapter.
- M. The section titles used in this Chapter are for convenience only, and shall not affect the interpretation of any portion of the text of this Chapter.
- N. All provisions, terms, phrases and expressions contained in this Chapter shall be liberally construed in order that the true intent and meaning of the Idaho Development Impact Fee Act and the City Council may be fully carried out.
- O. If any portion of this Chapter is subsequently determined to be inconsistent with any requirement of the constitutions of laws of the United States or Idaho, such provision shall be severed from the remainder of this Chapter, and the remainder shall remain in full force and effect.
- P. Any other Chapter or provision thereof in conflict with this Chapter is hereby repealed.

SECTION I-13: PUBLIC NOTICE:

This ordinance shall be published in full or in summary in one (1) issue of the Teton Valley News, a newspaper of general circulation published within the City of Driggs and the official newspaper thereof.

SECTION I-14: EFFECTIVE DATE:

This Ordinance shall be in full force and effect 30 days after adoption by City Council subject to meeting the public notice requirement of Section I-13.

PASSED BY THE COUNCIL OF THE CITY OF DRIGGS, IDAHO, this 7th day of October, 2008.

APPROVED BY THE MAYOR OF THE CITY OF DRIGGS, IDAHO, this 7th day of October, 2008.

Louis B. Christensen, Mayor

ATTEST:

Sonnie Adams, City Clerk