

**ORDINANCE NO.**

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; ADOPTING TITLE 10, CHAPTER 8 TO ESTABLISH A COMPREHENSIVE STRUCTURE TO ADOPT, COLLECT, AND ADMINISTER CITY DEVELOPMENT IMPACT FEES; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, a development impact fee program provides an equitable means of providing public facilities and infrastructure needed to serve new growth and development; and

WHEREAS, Idaho Code Title 67, Chapter 82 (the “Idaho Development Fee Act”) authorizes governmental entities which comply with the requirements of said Act to impose by ordinance development impact fees; and

WHEREAS, the Council finds that this Ordinance meets the standards established by the Act for the adoption of development impact fee ordinances; and

WHEREAS; the Council believes that this Ordinance improves City functions; and

WHEREAS, a primary function of the City is to provide infrastructure and facilities necessary to deliver safe, effective, and efficient services which provide a high quality of life; and

WHEREAS, these infrastructure and facilities includes major transportation, parks and recreation, police, and fire/EMS facilities; and

WHEREAS, the growth of the City puts increased pressure on the infrastructure and facilities necessary to deliver these services and often necessitates improvements to infrastructure and facilities; and

WHEREAS, the City desires to provide an equitable method of paying for necessary improvements to these infrastructure and facilities; and

WHEREAS, the City recognizes that because new growth and development creates the need for these infrastructure and facility improvements and therefore should bear the costs of such improvements rather than existing taxpayers; and

WHEREAS, Idaho Code Title 67, Chapter 82 (the “Idaho Development fee Act”) provides for cities and counties to impose development impact fees to cover the costs of necessary infrastructure and facility improvements when they comply with the requirements of the Act; and

WHEREAS, the Council finds that this Ordinance meets the standards established by the Act for the adoption of development impact fee ordinances; and

WHEREAS, adopting the ordinance will effectively and equitably assist in funding necessary improvements to City infrastructure and facilities created by growth and development.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, THAT:

**SECTION 1:** Title 10, Chapter 8 of the City Code of the City of Idaho Falls, Idaho, is hereby adopted as follows:

10-8-1: LEGISLATIVE FINDINGS. The City finds that:

A. Based on the City Comprehensive Plan adopted pursuant to Title 67, Chapter 65, Idaho Code, including, but not limited to, the capital improvements element of the Comprehensive Plan, the capital facilities plans of various City Departments, and the general governmental goal of protecting the health, safety, and general welfare of the residents of the City, and its area of City impact, it is necessary that the City's public facilities for public safety (police and fire/EMS); and parks and recreation; and transportation to accommodate new growth and development within the City and its area of City impact.

B. New residential and nonresidential growth and development imposes and will continue to impose increasing demands upon the Public Facilities, as defined in this Chapter.

C. The revenues generated from new residential and nonresidential growth and development often do not generate sufficient general funds to provide the necessary improvements of these Public Facilities to accommodate new growth and development.

D. New growth and development are expected to continue and will place ever increasing demands on the City to provide and expand the Public Facilities to serve new growth and development.

E. The City has planned for the improvement of the Public Facilities in the capital improvements element of the City Comprehensive Plan.

F. The creation of an equitable impact fee system will enable the City to impose a proportionate share of the costs of needed improvements to the Public Facilities to accommodate new growth and development, and will assist the City in implementing the capital improvements element of the Comprehensive Plan.

G. In order to implement an equitable impact fee system for the Public Facilities, the City retained TischlerBise to prepare an impact fee study for these types of facilities. The resulting document titled "Capital Improvement Plan and Development Impact Fee Study of City of Idaho Falls, Idaho 2021", dated December 15, 2021, as amended from time to time by the Council, (the "Impact Fee Study"), recommended for approval by the Impact Fee Advisory Committee, is on file in the office of the Clerk.

H. The Impact Fee Study is consistent with the capital improvements element of the Comprehensive Plan, and uses the levels of service set forth in the Comprehensive Plan and the Capital Improvement Plan for these Public Facilities.

I. The Impact Fee Study sets forth reasonable methodologies and analyses for determining the impacts of various types of new growth and development on the Public Facilities and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such Public Facilities created by new growth and development.

J. The Impact Fee Study uses a calculation methodology in accordance with generally accepted accounting principles 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, and includes consideration of the following factors:

1. The cost of existing system improvements within the service area;
2. The means by which existing system improvements have been financed;
3. The extent to which the new growth and development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions;
4. The extent to which the new growth and development is required to contribute to the cost of existing system improvements in the future;
5. The extent to which the new growth and development should be credited for providing system improvements, without charge to other properties within the service area;
6. Extraordinary costs, if any, incurred in serving the new growth and development;
7. The time and price differential inherent in a fair comparison of impact fees paid at different times; and
8. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, transfers, and special taxation.

K. The maximum allowable impact fees described in this Chapter are based on the Impact Fee Study, and do not exceed the costs of system improvements for the Public Facilities to serve new growth and development that will pay the impact fees.

L. The police, fire/EMS, parks and recreation, and transportation Public Facilities included in the calculation of impact fees in the Impact Fee Study will benefit all new growth and development throughout the City, and it is therefore appropriate to treat all areas of the City and the area of City impact as a single service area for purposes of calculating, collecting and spending the impact fees collected.

M. 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 impact fees that such development will be required to pay.

N. This Chapter creates a system by which impact fees paid by new growth and development will be used to finance, defray or to provide capital improvements for the Public Facilities in ways that benefit the development for which impact fees were paid.

O. This Chapter creates a system under which impact fees shall not be used to correct existing deficiencies in Public Facilities, or to replace or rehabilitate existing Public Facilities, or to pay for routine operation or maintenance of those Public Facilities.

P. This Chapter is consistent with all applicable provisions of Title 67, Chapter 82, Idaho Code, concerning impact fee ordinances.

10-8-2: AUTHORITY, APPLICABILITY, AND EFFECTIVE DATE.

A. This Chapter is enacted pursuant to the City's general police powers pursuant to the authority granted to the City by Idaho Code Title 50, and pursuant to the authority granted to the City by Idaho Code § 67-8201, et seq.

B. The provisions of this Chapter shall apply to all of the territory within the limits of the City and to any unincorporated areas of the City within the City's area of city impact where the City has executed an intergovernmental agreement with Bonneville County for purposes of collection or expenditure of impact fees pursuant to Idaho Code § 67-8204A, and other applicable laws of the State of Idaho.

C. This Chapter is effective May 1, 2022 (the "effective date"), which effective date is at least thirty (30) days subsequent to the passage, approval and publication, according to law, of Ordinance \_\_\_\_\_, which adopted the provisions of this Chapter.

D. Applications for building permits received by the City prior to the effective date of this Chapter, or amendments to this Chapter, adopting impact fees or amending or adopting any methodology by which impact fees are calculated, shall be exempt from that portion of this Chapter, or amendment enacted after such building permit application, if a valid building permit has been issued or construction has commenced prior to the effective date of this Chapter or any amendment. For building permits that expire or are revoked after the effective date of this Chapter, the fee payer shall be entitled to a refund of previously paid impact fees as provided in this Chapter, provided that in the case of reapplication for building permit, the impact fee in effect at the time of the reapplication shall be paid.

10-8-3: INTENT.

A. The intent of this Chapter is to promote the health, safety and general welfare of the residents of the City and its area of City impact.

B. The intent of this Chapter is to be consistent with those principles for allocating a fair share of the cost of capital improvements to Public Facilities to serve new growth and

development in compliance with the provisions set forth in Idaho Code § 67-8201, et seq. The provisions of this Chapter shall be interpreted, construed and enforced in accordance with the provisions set forth in Idaho Code § 67-8201, et seq.

C. The intent of this Chapter is that impact fees should be charged, collected, and expended for police, fire/EMS, parks and recreation, and transportation capital improvements to increase the service capacity of such categories of Public Facilities, which capital improvements are included in approved capital improvements plans.

D. The intent of this Chapter is to ensure that Public facilities are available to serve new growth and development; new growth and development bears a proportionate share of the cost of police, fire/EMS, parks and recreation, and transportation capital improvements to such Public Facilities; such proportionate share does not exceed the cost of the capital improvements to such Public Facilities required to serve new growth and development; and the funds collected from new growth and development are used for capital improvements for Public Facilities that benefit new growth and development.

E. It is not the intent of this Chapter to collect any monies from new growth and development in excess of the actual amount necessary to offset new demands for capital improvements to Public Facilities created by such new growth and development.

F. It is not the intent of this Chapter that the impact fees be used to remedy any deficiency in police, fire/EMS, parks and recreation, and transportation capital improvements existing on the effective date hereof, or ever be used to replace, rehabilitate, maintain and/or operate any Public Facilities.

G. It is not the intent of this Chapter that any monies collected from an impact fee deposited in an impact fee fund ever be commingled with monies from a different fund or ever be used for capital improvements that are different from those for which the impact fee was paid.

H. It is not the intent of this Chapter that impact fees be used for:

1. Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plans.
2. Repair, operation or maintenance of existing or new capital improvements.
3. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.
4. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development to provide better service to existing development.
5. Administrative and operating costs of the City unless such costs are attributable to development of the capital improvements plans used to determine impact fees by a surcharge imposed by ordinance on the collection of an impact fee, which surcharge shall not exceed a development's proportionate share of the cost of preparing the capital

improvements plans.

6. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the City to finance capital improvements identified in the capital improvements plans.

10-8-4: **DEFINITIONS.** The following words and phrases, when used in this Chapter, shall have, unless the context clearly indicates otherwise, the following meanings:

**AFFORDABLE HOUSING:** Housing affordable to families whose incomes do not exceed eighty (80) percent of the median income for the service area.

**BUILDING PERMIT:** An official document or certificate by that name issued by the City authorizing the construction or siting of any building.

**CAPITAL IMPROVEMENTS:** Improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a Public Facility.

**CAPITAL IMPROVEMENTS ELEMENT:** A component of the City's Comprehensive Plan.

**CAPITAL IMPROVEMENTS PLAN:** A plan adopted pursuant to this Chapter that, in part, identifies capital improvements for which impact fees may be used as a funding source.

**DEVELOPER:** A person who subdivides or proposes to subdivide land, whether as an owner or an agent of an owner, and any person who installs improvements or structures on such land.

**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, which 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.

**DEVELOPMENT APPROVAL:** Any written authorization from a governmental entity which authorizes the commencement of a development.

**DEVELOPMENT REQUIREMENT:** A requirement attached to a development approval or other governmental action approving or authorizing a particular development including, without limitation, a rezoning, which development requirement compels the payment, dedication or contribution of goods, services, land and/or money as a condition of approval.

**EXTRAORDINARY COSTS:** Those costs incurred as a result of extraordinary impact, as defined in this Chapter.

**EXTRAORDINARY IMPACT:** An impact which is reasonably determined by the City to result in the need for police, fire/EMS, parks and recreation, and/or transportation system improvements, the cost of which will significantly exceed the sum of the impact fees to be generated from the project; or result in the need for police, fire/EMS, parks and recreation, and transportation system improvements that are not identified in the capital improvements plans.

**FEE ADMINISTRATOR:** The official appointed by the Mayor, with Council approval, and authorized to administer this Chapter.

**FEE PAYER:** A person who pays or is required to pay an impact fee or the fee payer's successor in interest.

**GOVERNMENTAL ENTITY:** Any unit of local government that is empowered by Idaho Code § 67-8201, et seq., to adopt an impact fee ordinance.

**IMPACT FEE:** A 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. The term does not include a charge or fee to pay the administrative, plan review or inspection costs associated with permits required for development.

**IMPACT FEE STUDY:** The document entitled the "Capital Improvement Plan and Development Impact Fee Study of City of Idaho Falls, Idaho 2021", dated December 15, 2021, as amended from time to time by the Council.

**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.

**LEVEL OF SERVICE:** A measure of the relationship between service capacity and service demand for Public Facilities.

**MANUFACTURED HOME:** A structure, constructed after June 15, 1976, pursuant to Idaho Code HUD manufactured home construction and safety standards.

**MODULAR BUILDING:** Any building or building component (other than a Manufactured Home, as defined in this Chapter) which is constructed according to standards contained in any City-adopted building code or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

**NONRESIDENTIAL DEVELOPMENT:**

A. **RETAIL:** Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. Retail includes, but is not limited to, shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, movie theaters, and lodging (hotel/motel).

B. **OFFICE:** Establishments providing management, administrative, professional, or business services. Office includes, but is not limited to, banks, business offices, medical offices, and veterinarian clinics.

C. **INDUSTRIAL:** Establishments primarily engaged in the production and transportation of goods. Industrial includes, but is not limited to, manufacturing plants, trucking companies, warehousing facilities, utility substations, power generation facilities, and telecommunications buildings.

D. INSTITUTIONAL: Public and quasi-public buildings providing educational, social assistance, or religious services. Institutional includes, but is not limited to, schools, universities, churches, daycare facilities, hospitals, health care facilities, and government buildings.

PRESENT VALUE: The total current monetary value of past, present or future payments, contributions or dedications of goods, services, materials, construction or money.

PROJECT: A particular development on an identified parcel of land.

PROJECT IMPROVEMENTS: Site improvements and facilities that are planned and designed to provide service for a project and that are necessary for the use and convenience of the occupants or users of the Project.

PROPORTIONATE SHARE: That portion of the cost of system improvements determined pursuant to Idaho Code § 67-8207, and this Chapter, which reasonably relates to the service demands for Public Facilities of a project.

PUBLIC FACILITY(IES):

- A. Public safety facilities, including police and fire/EMS facilities; and
- B. Parks open space and recreation areas, and related capital improvements; and
- C. Transportation facilities, including arterial streets, arterial intersections, arterial bridges, arterial appurtenances, and related arterial capital improvements.

RESIDENTIAL DEVELOPMENT HOUSING UNITS:

A. SINGLE FAMILY HOUSING UNITS:

- 1. SINGLE FAMILY DETACHED: A one-unit structure detached from any other house with open space on all four sides. Such structures are considered detached even if they have an adjoining shed or garage. A one-family house that contains a business is considered detached as long as the building has open space on all four sides.
- 2. SINGLE FAMILY ATTACHED (TOWNHOUSE): A one-unit structure that has one or more walls extending from ground to roof separating it from adjoining structures. In row houses (sometimes called townhouses), double houses, or houses attached to nonresidential structures, each house is a separate, attached structure if the dividing or common wall goes from ground to roof.
- 3. MOBILE HOME: A Manufactured Home, Modular Building, including both occupied and vacant mobile homes, to which no permanent rooms have been added. A Mobile Home used only for business purposes or for extra sleeping space or a Mobile Home for sale on a dealer's lot, at the factory, or in storage is not counted in the housing inventory.

B. **MULTIFAMILY HOUSING UNITS:** Two (2) or more units (duplexes and apartments) within a structure containing two (2) or more housing units, further categorized as units in structures with 2, 3 or 4, 5 to 9, 10 to 19, 20 to 49, and 50 or more apartments; a boat, recreational vehicle (RV), van, and the like that includes any living quarters occupied as a housing unit that does not fit the other categories (e.g., houseboats, railroad cars, campers, and vans). Recreational vehicles, boats, vans, railroad cars, and the like are included only if they are occupied as a current place of residence.

**SERVICE AREA:** The territory within the limits of the City and the City's area of City impact.

**SUCCESSOR IN INTEREST:** A person who gains legal title in real property for which an impact fee is paid or a credit is approved pursuant to the terms of this Chapter.

**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 § 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 plans;
- 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 improvements plans, as provided in Idaho Code § 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 plans.

**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 the City has the authority to make as described in Idaho Code § 50-1703.

#### 10-8-5: IMPOSITION AND COMPUTATION OF IMPACT FEES.

- A. Any application for or building permit required or issued, enabling the construction or the alteration or expansion of an existing structure or improvement, and, in the case of

construction that does not require a building permit, any building that takes place on or after the effective date of this Chapter, shall be subject to the imposition of impact fees in the manner and amount set forth in this Chapter. The methodology adopted for the purpose of determining police, fire/EMS, parks and recreation, and transportation impact fees shall be based upon the assumptions set forth in the Impact Fee Study.

B. Impact fees shall be required as a condition of approval of all residential and nonresidential development in the service area for which a building permit is required or issued, including the alteration or expansion of an existing structure or improvement, and shall be payable prior to the issuance of any building permit (or installation permit in the case of a manufactured home) for a residential development housing unit or a nonresidential development. Except as otherwise provided herein, after the effective date of this Chapter, no building permit shall be issued, or occupancy or use allowed, until the impact fees described in this Chapter have been paid, unless the development or alteration or improvement for which the permit is sought is exempted pursuant this Chapter or approved credits are used to cover the impact fee, as set forth in this Chapter. The Fee Administrator shall have the authority to withhold a building permit or stop construction, as the case may be, until the appropriate impact fee has been collected.

C. A fee payer required by this Chapter to pay an impact fee may choose to have the amount of such impact fee determined pursuant to either the fee schedule or subsections (D) through (F) of this Section. If the fee payer chooses to have the amount of such impact fee determined pursuant to subsections (D) through (F) of this Section, such impact fee shall be subject to the adjustment described in this Chapter, if applicable. If the project is a mix of those uses listed on the fee schedule, then the impact fees shall be determined by adding up the impact fees that would be payable for each use as if it were a freestanding use pursuant to the fee schedule.

D. Individual assessment of impact fees is permitted in situations where the fee payer can demonstrate by clear and convincing evidence that the established impact fee is inappropriate for the Project. Written application for individual assessment shall be made to the Fee Administrator at any time prior to receiving building permit(s). Late applications for individual assessment of impact fees may be considered for a period of sixty (60) days after the receipt of a building permit only if the fee payer demonstrates that the facts supporting such application were not known or discoverable prior to receipt of a building permit and that undue hardship would result if said application is not considered. Such independent impact fee calculation study for the fee payer's development shall be prepared at the fee payer's cost by a qualified professional and contain studies, data and other relevant information and be submitted to the Fee Administrator for review. Any such study shall be based on the same methodology and the same level of service standards, improvements and costs used in the Impact Fee Study, and shall document the methodologies and assumptions used. The City may hire a professional consultant to review any independent impact fee calculation study on behalf of the City, and may charge the reasonable costs of such review to the fee payer.

E. Any independent impact fee calculation study submitted by a fee payer may be accepted, rejected or accepted with modifications by the City as the basis for calculating impact fees. The City shall not be required to accept any study or documentation the City reasonably deems to be inaccurate or unreliable. The City shall have the authority to request that the fee payer

submit additional or different documentation for consideration in connection with review of any independent impact fee calculation. If such additional or different documentation is accepted or accepted with modifications as a more accurate measure of the impact fees due in connection with fee payer's proposed development than the applicable impact fees set forth in the fee schedule, then the impact fee due under this Chapter shall be calculated according to such documentation.

F. The Fee Administrator shall render a written decision establishing the impact fees in connection with the individual assessment within thirty (30) days of the date a complete application is submitted. The decision shall include an explanation of the calculation of the impact fees, shall specify the system improvement(s) for which the impact fees are intended to be used, and shall include an explanation of the following factors considered:

1. The cost of existing system improvements within the service area;
2. The means by which existing system improvements have been financed;
3. The extent to which the new growth and development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions;
4. The extent to which the new growth and development is required to contribute to the cost of existing system improvements in the future;
5. The extent to which the new growth and development should be credited for providing system improvements, without charge to other properties within the service area;
6. Extraordinary costs, if any, incurred in serving the new growth and development;
7. The time and price differential inherent in a fair comparison of impact fees paid at different times; and
8. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, transfers, and special taxation.

G. Certification of the impact fee for a Project may be applied for in the following manner:

1. Written application may be made to the Fee Administrator not later than thirty (30) days following applications for, or requirement of, a building permit for construction or alteration or expansion of an existing structure, or improvement on or within a Project. Late applications for certification of the impact fee will not be considered unless the fee payer demonstrates that the facts supporting such application were not known or discoverable until after the time had run and that undue hardship would result if said application is not considered.

2. The Fee Administrator shall provide the fee payer with a written impact fee

certification for the Project within thirty (30) days of the date a complete application is submitted. The certification provided by the Fee Administrator shall establish the impact fee for the Project in question, so long as there is no material change to the Project as identified in the certification application or the impact fee schedule. The certification shall include an explanation of factors considered, and shall specify the system improvement(s) for which the impact fee is intended to be used.

The certification 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 the factors considered, which factors are identified in subsection (F) of this Section.

H. Appeals of the Fee Administrator's determination of an individual assessment or certification shall be made to the City as provided further in this Chapter.

I. The City recognizes that there may be circumstances where the anticipated fiscal impacts of a proposed development are of such magnitude that the City may be unable to accommodate the development without excessive or unscheduled public expenditures that exceed the amount of the anticipated impact fees from such development. If the City determines that a proposed development would create such an extraordinary impact on the City's police, fire/EMS, parks and recreation, and/or transportation public facilities, the City may refuse to approve the proposed development. In the alternative, the City may calculate a pro rata share per residential development housing unit, or square feet of nonresidential development, of the extraordinary impact and charge a reasonable extraordinary impact fee that is greater than would ordinarily be charged.

J. If the City discovers an error in its impact fee formula that results in assessment or payment of more than a proportionate share, City shall, at the time of assessment on a case-by-case basis, adjust the impact fee to collect no more than a proportionate share or discontinue the collection of any impact fees until the error is corrected by Ordinance.

#### 10-8-6: PAYMENT OF IMPACT FEES

A. After the effective date of this Chapter, all fee payers shall pay the impact fees as provided by this Chapter to the Fee Administrator following application for a building permit and prior to the issuance of any building permit for a residential development housing unit, or nonresidential development.

B. All impact fees paid by a fee payer pursuant to this Chapter shall be promptly deposited in the impact fee fund described in this Chapter.

#### 10-8-7: IMPACT FEE FUNDS ESTABLISHED. REFUNDS OF IMPACT FEES PAID.

A. There is hereby established a police impact fee fund into which shall be deposited all police impact fees for the purpose of ensuring police impact fees collected pursuant hereto are designated for the accommodation of police capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

B. There is hereby established a fire/EMS impact fee fund into which shall be deposited all fire/EMS impact fees for the purpose of ensuring fire/EMS impact fees collected pursuant hereto are designated for the accommodation of fire/EMS capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

C. There is hereby established a parks and recreation impact fee fund into which shall be deposited all parks and recreation impact fees for the purpose of ensuring parks and recreation impact fees collected pursuant hereto are designated for the accommodation of parks and recreation capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

D. There is hereby established a transportation impact fee fund into which shall be deposited all transportation impact fees for the purpose of ensuring transportation impact fees collected pursuant hereto are designated for the accommodation of transportation capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

E. Each impact fee fund established in this Section shall be an interest-bearing account which shall be accounted for separately from other impact fee funds and from other City funds. Any interest or other income earned on monies deposited in a fund shall be credited to such fund. Expenditures of impact fees shall be made only for the category of system improvements (including full project costs, such as design, acquisition, engineering, management, construction, project development, etc.) for which the impact fees were collected and as identified in the capital improvements plans.

F. Except as otherwise provided in this Chapter, monies from each fund, including any accrued interest, shall be limited to the financing of acquisition, expansion, and/or improvement of capital improvements, or for principal and interest payments on bonds or other borrowed revenues used to acquire, expand or improve such capital improvements, necessary to serve new growth and development. Impact fees in each established impact fee fund shall be spent within eight (8) years from the date such impact fees were collected on a first in/first out (FIFO) basis. The City may hold the impact fees longer than the prescribed time period if the city identifies, in writing:

1. A reasonable cause why the impact fees should be held longer; and
2. The anticipated date by which the impact fees will be expended but in no event longer than eleven (11) years from the date the impact fees were collected.

G. The Fee Administrator shall prepare quarterly and annual reports to be provided to the Impact Fee Advisory Committee and the Council, which reports shall:

1. Describe the amount of all impact fees collected, appropriated or spent for system improvements during the preceding quarter or year, as applicable, by category of Public Facility; and
2. Describe the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements during the preceding quarter or year, as applicable, by category of Public Facility.

H. Funds shall be deemed expended when payment of such funds has been approved by the City. The fee payer or successor in interest shall be entitled to a refund of the impact fee if:

1. Services for which an impact fee is required are never provided;
2. A building permit or permit for installation of a manufactured home is revoked or abandoned;
3. The City, after collecting the impact fee, has failed to appropriate and expend the collected impact fees, as required by Idaho Code; or
4. The fee payer pays an impact fee under protest and a subsequent review of the impact fee paid or the completion of an individual assessment determines that the impact fee paid exceeded the proportionate share to which the City was entitled to receive.

I. When the right to a refund exists, within ninety (90) days after the City determines that a refund is due, the City shall provide written notice of entitlement to a refund, to the owner of record and the fee payer who paid the impact fees at the address shown on the application for development approval, or to a successor in interest who has notified the City of a transfer of the right or entitlement to a refund and who has provided to the City a mailing address. When the right to a refund exists, the City shall also publish the notice of entitlement to a refund within thirty (30) days after the expiration of the eight (8) year period after the date that the impact fees were collected. Such published notice shall contain the heading "Notice of Entitlement to Impact Fee Refund".

J. A refund shall include interest at one-half ( $\frac{1}{2}$ ) the legal rate provided for in Idaho Code § 28-22-104, from the date on which the impact fee was originally paid.

K. In order to be eligible for a refund, a fee payer, successor in interest or owner of record shall file a written application for a refund with the Fee Administrator within six (6) months of the time such refund becomes payable under subsection (E) of this Section, or within six (6) months of publication of the notice of entitlement to a refund, whichever is later. If a successor in interest claims a refund of impact fees, the Fee Administrator may require written documentation that such rights have been transferred to the claimant prior to issuing the requested refund. Refunds shall be paid within sixty (60) days after the date on which the Fee Administrator determines that a sufficient proof of claim for a refund has been made.

L. 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 as provided herein.

#### 10-8-8: EXEMPTIONS FROM IMPACT FEES

A. The following types of land development shall be exempt from payment of the impact fees imposed by this Chapter:

1. Rebuilding or replacing a residential development housing unit or the same

amount of square feet of a nonresidential development on the same lot and existing on the effective date of this Chapter, provided that the rebuilt or replaced residential development housing unit or nonresidential development does not increase the need for police, fire/EMS, parks and recreation, and transportation public facilities, and such residential development housing unit or nonresidential development is rebuilt or replaced and ready for occupancy within two (2) years of removal or substantial damage. For the purposes of this Subsection, "substantial damage" shall mean damage from any cause or source whereby the cost of restoring the residential development housing unit or nonresidential development to a condition allowing use of occupancy would be equal to or exceeds fifty percent (50%) of the market value before the damage occurred.

2. Construction of an unoccupied, detached accessory structure, or addition of uses related to a residential development housing unit unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.
3. Remodeling or repairing a residential development housing unit or a nonresidential development in a manner that does not increase the need for police or fire/EMS or parks and recreation or transportation public facilities.
4. Placing a temporary construction trailer or office on a lot.

B. An impact fee shall be assessed for installation of a modular building or manufactured home unless the fee payer can demonstrate (by documentation, such as utility bills and tax records), either:

1. That a modular building or manufactured home was legally in place on the lot or space prior to the effective date of this Chapter; or
2. That an impact fee has been paid previously for the installation of a modular building or manufactured home on that same lot or space.

C. Developments determined by the Council that provide affordable housing may be exempt from the impact fee requirement, provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than impact fees.

1. Current housing affordability guidelines published by the U.S. Department of Housing and Urban Development ("HUD") shall be used to determine whether residential development housing units in the development qualify as affordable housing.
2. Affordable housing projects are required to demonstrate that the projects will provide residential development housing units to eligible families based on HUD income and family size guidelines.
3. Providers of affordable residential development housing units shall demonstrate a long-term commitment to provide affordable housing for a period of not less than twenty (20) years.

D. Appeals of the Fee Administrator's determination shall be made as provided further in this Chapter.

10-8-9: CREDIT REIMBURSEMENTS.

A. All system improvements constructed, funded or contributed for police, fire/EMS, parks and recreation, and transportation capital improvements for which an impact fee is imposed, over and above those required by the City in connection with new development, shall result in either a credit on future impact fees or reimbursement, at the fee payer's option, for such excess to be paid by future development that benefits from such system improvements. However, no credit or reimbursement shall be provided for:

1. Project improvements;
2. Any construction, funding or contribution not agreed to in writing by the City prior to commencement of such construction, funding or contribution; and
3. Any construction, funding or contribution of a type of capital improvements not included in the calculation of the applicable impact fee.

B. In the calculation of impact fees for a Project pursuant to this Chapter, credit shall be given for the present value of all tax and user fee revenue generated by the fee payer within the service area and used by the City for system improvements of the category for which the impact fee is being collected. If the amount of such credit exceeds the impact fee for a Project, the fee payer shall receive a credit on future impact fees.

C. In the calculation of impact fees for a Project, credit or reimbursement, at the fee payer's option, shall be given for the present value of any construction of system improvements or contribution of land or money required by the City from the fee payer for system improvements of the category for which the impact fee is being collected, including system improvements paid for through Local Improvement District assessments, if any.

D. If credit or reimbursement is due to the fee payer, the City and fee payer shall enter into a written agreement, negotiated in good faith, prior to the construction, funding or contribution. The written agreement shall include, at minimum, a description of how the system improvements are to be valued, and the amount of the credit or the amount, time, and form of reimbursement. To assist in such reimbursement, the City shall continue to collect impact fees from other developers whose proposed developments will benefit from such construction, funding or contribution, and will promptly transfer such funds to the fee payer. If a successor in interest claims a reimbursement or credit, the Fee Administrator may require written documentation that such rights have been conveyed to the claimant prior to issuing the requested reimbursement or credit.

E. Approved credits may be used to reduce the amount of impact fees of the category for which the impact fee is being collected in connection with any new growth and development until the amount of the credit is exhausted. Each time a request to use approved credits is presented to the City, the City shall reduce the amount of the applicable impact fee otherwise

due from the fee payer and shall note in City records the amount of credit remaining, if any. Upon request of the fee payer, the City shall issue a letter stating the amount of credit available. If the credit has not been exhausted within eight (8) years of the date of issuance of the first building permit for which an impact fee was due and payable, or within such other time period as may be designated in writing by the City, such credit shall lapse, unless a refund of the remaining credit is applied for as set forth in this Chapter.

F. Approved credits or reimbursement shall only be used to reduce the amount of the impact fee of the category for which the impact fee is otherwise due, and shall not be paid to the fee payer in cash or in credits against any other monies due from the fee payer to the City.

G. Credit for land dedications shall, at the fee payer's option, be valued at:

1. One hundred percent (100%) of the most recent assessed value for such land as shown in the records of the Bonneville County Assessor; or
2. That fair market value established by an MAI appraiser reasonably acceptable to the City in an appraisal paid for by the fee payer.

Credit for contribution or construction of system improvements shall be valued by the City based on complete engineering drawings, specifications, and construction cost estimates submitted by the fee payer to the City, which estimates shall be revised as actual costs become available. The City shall determine the amount of credit due based on the information submitted, or, if the City determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs reasonably acceptable to the City as a more accurate measure of the value of the offered system improvements to the City.

H. Approved credits for land dedications shall become effective when the land has been conveyed to and accepted by the City in a form reasonably acceptable to the City and at no cost to the City. Approved credits for contribution or construction of system improvements shall generally become effective when:

1. All required construction has been completed and has been accepted by the City; and
2. All design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the City.

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 in the amount and under terms reasonably acceptable to the City.

I. Credit may only be transferred by a fee payer that has received credit to such fee payer's successor in interest. The credit may be used only to offset impact fees for the same category for which the credit was issued. Credits shall be transferred by any written instrument clearly identifying which credits are being transferred, the dollar amount of the credit being transferred, and the system improvements 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 Fee Administrator for documentation of the transfer before the transfer shall be deemed effective.

10-8-10: APPEALS. The decisions of the Fee Administrator may be appealed as provided in this Section:

A. Any fee payer who is or may be obligated to pay an impact fee, may appeal a decision made by the Fee Administrator to the Council. Such decisions that may be appealed include:

1. The applicability of an impact fee to the development.
2. The amount of an impact fee to be paid for the development.
3. The availability, amount or application of any credit.
4. The amount of any refund, reimbursement or credit.

A fee payer may pay an impact fee under protest in order to obtain a development approval or building permit(s) and, by paying such impact fee, shall not be estopped from exercising the right of appeal provided herein, nor shall the fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected. Upon final disposition of an appeal, the impact fee shall be adjusted in accordance with the decision rendered and, if necessary, a refund paid.

B. In order to pursue an appeal, the fee payer shall file a written notice of appeal with the Clerk within fifteen (15) days after the date of the decision being appealed or the date on which the fee payer submitted a payment of impact fees under protest, whichever is later. Such written appeal shall include a statement describing why the appellant believes that the decision was in error, together with copies of any documents that the appellant believes supports their claim.

C. The Clerk shall notify the fee payer of the hearing date on the appeal, which notice shall be given no less than fifteen (15) days prior to the date of the hearing. The Council shall hear the appeal within thirty (30) days after receipt of a written notice of appeal. The appellant shall have a right to attend and to present evidence in support of the appeal. The Fee Administrator who made the decision under appeal shall likewise have the right to attend and to present evidence in support of the Fee Administrator's decision. The burden of proof in the hearing shall be on the fee payer to demonstrate to the Council by a preponderance of evidence that the amount of the impact fee, credit, reimbursement or refund was not properly calculated.

D. The criteria to be used by the Council shall be whether the decision or interpretation made by the Fee Administrator or the alternative decision or interpretation offered by the appellant, more accurately reflects the intent of this Chapter that new growth and development in the City pay its proportionate share of the costs of system improvements for Public Facilities necessary to serve new development. The Council may affirm, reject or revise the decision of the Fee Administrator, providing written findings of fact and conclusions, within fifteen (15) days after hearing the appeal. The Council shall modify the amount of the impact fee, credit,

refund or reimbursement only if there is a preponderance of the evidence in the record that the Fee Administrator erred, based upon the methodologies contained in the Impact Fee Study, this Chapter and/or capital improvements plans. The decision of the Council shall be final.

E. A fee payer may request that the City enter into mediation by a qualified independent party to address a disagreement related to the impact fee for new growth and development. If both parties agree to mediation, costs for the independent mediation service shall be shared equally by the fee payer and the City. Mediation may take place at any time during an appeals process; however, any time limitation relevant to an appeal shall be tolled until the mediation occurs.

#### 10-8-11: ADDITIONAL PROVISIONS

A. Nothing in this Chapter shall limit or modify the rights of any person to complete any development for which a lawful building permit was issued prior to the effective date hereof.

B. Nothing in this Chapter shall prevent the City from requiring a developer to construct reasonable project improvements in conjunction with a project.

C. Nothing in this Chapter shall limit the ability of the City to enter into intergovernmental agreements as provided in Idaho Code § 67-8204A.

D. The impact fees described in this Chapter, and the administrative procedures of this Chapter shall be reviewed at least once every five (5) years to ensure that:

1. The demand and cost assumptions and other assumptions underlying such impact fees are still valid;
2. The resulting impact fees do not exceed the actual costs of providing police, fire/EMS, parks and recreation, and/or transportation system improvements required to serve new growth and development;
3. The monies collected in any impact fee fund have been and are expected to be spent for system improvements of the type for which such impact fees were paid; and
4. Such system improvements will benefit those developments for which the impact fees were paid.

E. Violation of this Chapter shall be subject to those remedies provided in this 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 or use of a proposed development, shall be a violation of this Chapter and a misdemeanor.

F. Except for such impact fee as may be calculated, paid and accepted pursuant to an independent impact fee calculation study, the amount of each impact fee shall be in an amount set from time to time by Resolution of the Council based upon the definitions of Non-

residential Development and Residential Development Housing Units in this Chapter.

**SECTION 2.** Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

**SECTION 3.** Codification Clause. The Clerk is instructed to immediately forward this Ordinance to the codifier of the official municipal code for proper revision of the Code.

**SECTION 4.** Publication and Effective Date. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect not less than thirty (30) days following its passage, approval, and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Idaho Falls, Idaho, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

\_\_\_\_\_  
KATHY HAMPTON, CITY CLERK

\_\_\_\_\_  
REBECCA L. NOAH CASPER, Ph.D., MAYOR

(SEAL)

STATE OF IDAHO )

County of Bonneville                    ) ss:  
  )

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO, DO  
HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance  
entitled, “AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A  
MUNICIPAL CORPORATION OF THE STATE OF IDAHO; ADOPTING TITLE  
10, CHAPTER 8 TO ESTABLISH A COMPREHENSIVE STRUCTURE TO  
ADOPT, COLLECT, AND ADMINISTER CITY DEVELOPMENT IMPACT FEES;  
PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY  
SUMMARY, AND ESTABLISHING EFFECTIVE DATE.”

\_\_\_\_\_  
KATHY HAMPTON, CITY CLERK

(SEAL)