

Chapter 4-12

DEVELOPMENT IMPACT FEE ORDINANCE

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Section 4-12-01 SHORT TITLE, APPLICABILITY, AND PURPOSE

- A. This ordinance shall be known and may be cited as the "Development Impact Fee Ordinance."
- B. This ordinance shall apply to the development of property located within the boundaries of Boise City as well as "service areas" identified in the Boise City/Ada County Area of Impact Agreement as the same is amended from time to time.
- C. The Boise City Council finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of Boise City and of the Area of City Impact. It is the intent by enacting this chapter to:
 1. Ensure that adequate facilities are available to serve growth and new development;
 2. Promote orderly growth and development by establishing uniform standards by which the City requires that those who benefit from growth and new development pay no more than a proportionate share of the cost of new public facilities needed to serve new growth and development;

3. Ensure that those who benefit from growth and new 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 to prevent duplicate and *ad hoc* development requirements;
 4. Collect and expend development impact fees pursuant to the enabling powers granted by the provisions of the Idaho Development Impact Fee Act, Idaho Code Title 67, Chapter 82;
 5. Provide the legal and procedural basis for the implementation of development impact fees within the City and the Area of City Impact; and
 6. Ensure that any capital improvement funded wholly or in part with impact fee revenue shall first be included in an approved capital improvements plan that lists the capital improvements that may be funded with impact fee revenues as well as the estimated costs and timing for each improvement.
- D. It is intended that this chapter will be amended as capital improvements plans are approved and adopted as part of the Comprehensive Plan, pursuant to the provisions of Idaho Code § 67-8208, to include specific methodology for the calculation of development impact fees for specific categories of public facilities. Development impact fees shall not be charged, collected or expended for public facilities which are not included in an approved capital improvements plans that lists the capital improvements which may be funded with impact fee revenues, as well as the estimated costs and timing for each improvement. No amendment to this chapter adopting an impact fee for public facilities or amending or adopting the methodology for calculating an impact fee shall be effective unless approved by ordinance adopted by the Boise City Council in accordance with the procedural requirements of Idaho Code § 67-8206.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94)

Section 4-12-02 RULES OF CONSTRUCTION

- A. This chapter shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.
- B. Unless otherwise stated, the following rules of construction shall apply to the text of this chapter.
 1. If there is any conflict between the text of this chapter and any table, summary table or illustration, the text shall control.
 2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
 3. The phrase "used for" includes "arranged for", "designed for", or "occupied for."
 4. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

5. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
6. Words used in the present tense shall include the future; words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; and use of the masculine gender shall include the feminine.
7. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either... or", the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. "Either... or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94)

Section 4-12-03 DEFINITIONS

For the purpose of this chapter, the following terms, phrases and words shall have the meaning given herein:

AFFORDABLE HOUSING:

Housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service areas as defined in this chapter.

APPROPRIATE:

To legally obligate by contract or otherwise commit to use by appropriation or other official act of the City.

APPLICANT:

Person who applies for a building permit or submits a plat or waiver of plat or is otherwise subject to the provisions of this chapter.

BUILDING:

Any structure having a roof entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or any similar opening and erected for the purpose of providing support or shelter for persons, animals, things or property of any kind.

BUILDING PERMIT:

An official document or certificate by that name issued by the Boise City Building Division of Planning and Development Services, authorizing the construction or citing of any building. For purposes of this chapter, the term "building permit" shall also include tie-down permits for those structures or buildings, such as a mobile home, that do not require a building permit in order to be occupied.

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 PLAN:

A plan adopted and amended pursuant to the provisions of the Idaho Development Impact Fee Act, Idaho Code § 67-8208, which identifies capital improvements for which development impact fees may be used as a funding source.

CAPITAL IMPROVEMENTS PLAN SURCHARGE:

A surcharge imposed on the collection of a development impact fee pursuant to Idaho Code § 67-8208, which surcharge does not exceed the development's proportionate share of the cost of preparing the capital improvements plan.

CITY COUNCIL:

The City Council of Boise City, Idaho.

COMMUNITY PARK:

A park planned primarily to provide active and structured recreation activities for young people and adults. In general, community park facilities are designed for organized activities and sports, although individual and family activities are also encouraged. Community parks can also provide indoor facilities to meet a wider range of recreation interests. Where there are no neighborhood parks, the community park can also serve this function.

In comparison to neighborhood parks, community parks serve a much larger area and offer more facilities. Their service area is roughly a 1-2 mile radius, and will support a population of approximately 7,500-15,000 persons, depending upon size and facilities. As a result they require more support facilities such as parking, rest rooms, covered play areas, etc. Community parks usually exceed 20 acres in size and often have sports fields or similar facilities as the central focus of the community park.

COMPREHENSIVE PARK AND RECREATION SYSTEM PLAN (CPRSP):

The component of the Comprehensive Plan of the City as it relates to parks and recreation, as adopted and amended pursuant to the Local Planning Act, Idaho Code Title 67, Chapter 65, including the maps contained within the Boise City Comprehensive Park and Recreation System Plan describing "Park Planning Service Areas", "Community Park Service Areas" and "Neighborhood Park Service Areas." Copies of such maps may be obtained at the office of the Boise City Clerk or viewed and obtained at the Administrative Office of the Boise City Department of Parks and Recreation.

COMPREHENSIVE PLAN:

The Boise City Comprehensive Plan known as "Boise City Comprehensive Plan" as updated and amended from time to time pursuant to Idaho Code § 67-6508.

CREDIT(S):

The present value of system improvements, contribution or dedication of land or money required by the City from a developer for system improvements of the category for which the development impact fee is being collected.

DEDICATION:

A deliberate appropriation of land by its owner to Boise City for use as public facilities as the same are defined herein.

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.

DEVELOPMENT APPROVAL:

Any written authorization from the City or another governmental entity party to a joint powers agreement with the City, which authorizes the commencement of a development.

DEVELOPMENT 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. This term is also referred to as an impact fee in this ordinance. The term does not include the following:

- (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 charges for services provided directly to the development.
- (d) Amounts collected from a developer in a transaction in which the 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 § 67-8209 (3) for credit or reimbursement.

DEVELOPMENT REQUIREMENT:

A requirement attached to a development 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.

DWELLING UNIT:

A building or portion of a building designed for or whose primary purpose is for residential occupancy, and which consists of one or more rooms which are arranged, designed or used as living and/or sleeping quarters for one or more persons. Dwelling unit—includes mobile home or motel/hotel/rooming house.

EXISTING AND FUTURE DEVELOPMENT:

The lawful land use which physically exists or for which the landowner holds a valid building permit as of the effective date of this ordinance or that maximum level of development activity for which a previous impact fee was paid under the provisions of this chapter. As used in this chapter, the term "lawful land use" shall not include a land use which has been established or maintained in violation of this chapter or applicable codes.

EXTRAORDINARY COSTS:

Those costs incurred as a result of extraordinary impact.

EXTRAORDINARY IMPACT:

An impact which is reasonably determined by the City to: (i) result in the need for police, fire or parks and recreation system improvements, the cost of which will significantly exceed the sum of the

development impact fees to be generated from the project; (ii) or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code § 67-8214(2); or (iii) result in the need for system improvements which are not identified in the capital improvements plan.

FEE ADMINISTRATOR:

The official or designee appointed by the Mayor with City Council approval, to administer this chapter.

FEE PAYER:

A person intending to commence a proposed development for which an impact fee computation is required, or a person who has paid an impact fee, provided an irrevocable letter of credit, or made a contribution in lieu of fee pursuant to this chapter.

HEARING OFFICER:

An experienced, fair and impartial individual with whom the City contracts for the purpose of hearing and deciding administrative appeals filed pursuant to the provisions of Section 4-12-18 below.

IMPACT:

The effect of on the local public facilities in a given area produced by the additional population attracted by development.

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.

LOW INCOME HOUSING:

Housing affordable to families whose incomes do not exceed fifty per cent (50%) of the median income for the service area as defined in this chapter.

MANUFACTURED HOME:

A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the 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 sec.*

MODULAR BUILDING:

Any building or building component, other than a manufactured home, which is constructed according to standards contained in the *Uniform Building Code*, as adopted by the City 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.

MULTI-FAMILY:

A building, or portion thereof, containing two (2) or more dwelling units excluding attached single family townhouse dwelling units located on individual lots.

NEIGHBORHOOD PARK:

A combination playground and park, designed primarily for non-supervised, non-organized recreation activities. They are generally small in size (3 to 10 acres), and typically serve residents within a half-mile radius. At average residential densities, this amounts to a service area population of about 3,000 to 5,000 residents. Since these neighborhood parks are located within walking and bicycling distance of most users, the activities they support often become a daily pastime for neighborhood children.

NON-RESIDENTIAL DEVELOPMENT:

Any development project not providing for residential dwelling units.

OWNER:

The person holding legal title to the real property, including the local, state or federal government or any subdivision thereof.

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 identifiable parcel of land.

PROJECT IMPROVEMENTS:

Site improvements and facilities that are planned and designed to provide for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

PROPORTIONATE SHARE:

The proportionate share of the costs to provide system improvements as determined pursuant to Idaho Code § 67-8207, and Boise City Code Section 4-12-05, less the portion of general tax and other revenues allocated by the City to system improvements, that reasonably relate to the service demands and needs of the project.

PUBLIC FACILITIES:

Shall include:

- (a) Wastewater collection, treatment and disposal facilities;
- (b) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
- (c) Landscaping associated with roads, streets and bridges and the rights of way associated therewith;
- (d) Parks, open space and recreation areas, and related capital improvements; and
- (e) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

PUBLIC FACILITIES PLANNING AREA:

(a) A defined geographic area identified by the City in the comprehensive plan, in a capital facilities plan or by intergovernmental agreement between the City and another governmental entity for

which public facilities needs have been determined or in which specific facilities provide service to development based upon assumptions made in accordance with generally accepted planning and engineering standards.

(b) The public facilities planning and service areas for the Boise Department of Parks and Recreation as identified in the CPRSP include #1-North River Area (including, Northwest, North End, Downtown and Warm Springs Areas), #2-Southeast Area, #3-Central Bench and Airport Areas, #4-West Bench area, and #5 Southwest Area. The park planning service areas are for the purpose of planning neighborhood and community parks. Natural open space, trails, and special use park facilities, including, but not limited to, sports fields (baseball, softball, soccer, lacrosse, football, etc.), picnic facilities and related outdoor park and recreation activities are deemed to serve the entire community and impact fees for such facilities shall be charged equally within the boundaries of Boise City, including the Boise City Area of City Impact.

(c) The public facilities planning and service areas for the Boise Fire Department and the Boise Police Department include all lands within the City of Boise and within the area of impact as now defined or as may be amended from time to time.

RECREATIONAL VEHICLE:

A vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

SERVICE 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 police, fire or parks and recreation capital improvements.

SYSTEM IMPROVEMENTS:

In contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area including, without limitation, the type of improvements described in Idaho Code § 50-1703.

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 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 City unless such costs are attributable to development of the capital improvements plan, 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 City to finance capital improvements identified in the capital improvements plan.

UNIT(S) OF DEVELOPMENT:

A quantifiable increment of development activity dimensioned in terms of dwelling units, or other appropriate measurements contained in the impact fee schedule.

(Repealed and Replaced, Ord. 6647, 03/11/2008, 6462, Amended, 04/11/2006; 6114, Amended, 12/11/2001, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95)

Section 4-12-04 GENERAL PROVISIONS

All development is deemed to create an impact and therefore an increased demand for public services. As such, the cost of new public facilities should be borne by new users to the extent new use requires new public facilities. Therefore, any application for a building permit enabling the construction on or after the effective date of this impact fee ordinance or any amendment hereto which provides for impact fees for any additional allowed category of public facilities, adopted by the Boise City Council pursuant to the provisions of Idaho Code § 67-8206, shall be subject to the imposition of impact fees in the manner and amount set forth in this chapter as it is adopted initially or as it is amended as provided for in section 4-12-01D, hereof.

- A. Applications for building permits received by the Building Division of Planning and Development Services prior to the effective date of this ordinance or amendments hereto adopting impact fees or amending or adopting any methodology by which impact fees are calculated, will be exempt from that portion of the impact fee ordinance or amendment enacted after the application, if a complete building permit is issued within 120 days of the effective date of this ordinance or amendment. A complete application for a building permit shall be defined as including permitted plans signed and sealed by a State of Idaho licensed engineer or architect showing all site work, zoning compliance, architectural, structural, electrical, and plumbing work. Applications for building permits filed prior to the effective date of this ordinance or amendment but which become null and void shall be subject to the provisions of the impact fee ordinance in the event of reapplication. In the event that an amendment involves a change in the amount of impact fees charged for a particular category of public facility, the fee payer shall pay the lesser impact fee amount.

For building permits which expire or are revoked after the effective date of this ordinance the fee payer shall be entitled to a refund of previously paid impact fees (see section 4-12-07 below) provided that in the case of reapplication for permit, the impact fee in effect at that time shall be paid.

- B. All fee payments shall be made to the fee administrator prior to the issuance of a building permit unless otherwise agreed to in writing by the City and the applicant; and no building shall commence nor shall a building permit be issued unless and until the applicant has satisfied the provisions of this chapter. Violation of this provision shall be subject to the sanctions set forth in section 4-12-05 E.
- C. This chapter shall not be construed to subject any development to double payment of the same impact fees.
- D. A development impact fee shall not be deemed invalid because the intended improvement for which the fee was paid may result in an incidental benefit to owners or developers within a

service area other than the fee payer.

- E. 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 which exceed the amount of the anticipated impact fees from such development. If the Council determines that a proposed development activity would create such an extraordinary impact on the City's public facilities system, the Council may refuse to approve the proposed development activity and/or may recommend to the other affected government agencies that the project not be approved. In the alternative, the Council may calculate a *pro rata* share per service unit of the extraordinary impact and charge an impact fee greater than the fee indicated by use of the fee schedule.
- F. Individual assessments of development impact fees may be made by application to the fee administrator who shall evaluate such individual assessments under the guidelines provided for in section 4-12-16 of this ordinance. If the guidelines are met the individual assessment shall be approved by the fee administrator and forwarded to the City Council within thirty (30) days of receiving such application. An adverse decision by the fee administrator may be appealed to the Council under section 4-12-16 of this chapter. Final determination regarding individual assessments shall be made by the City Council.
 - a. The fee administrator shall periodically review the contents of the adopted impact fee ordinance and, when appropriate, make recommendations for revisions to the Boise City Council. The Boise City Council shall consider the fee administrator's recommended revision(s) to the Boise City development impact fee ordinance at least once every twelve (12) months. The fee administrator's recommendations and the City Council's action are intended to ensure that the benefits to a fee-paying development are equitable, in that the fee charged the development shall not exceed a proportionate share of the costs of system improvements, and the procedures for administering impact fees remain efficient.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95)

Section 4-12-05 DEVELOPMENT IMPACT FEE - STANDARDS AND PROCEDURES

The development impact fee reflects the need for capital improvements to public facilities created by new development. Any person requesting a building permit for development or who is otherwise subject to this chapter, shall pay the impact fee equal to the sum of impact fees reflected in the impact fee schedules set forth in the Boise City Code and determined pursuant to the following:

- A. The development impact fee shall not exceed a "proportionate share" of the costs incurred or the costs that will be incurred by the City in the provision of "system improvements" to serve the new development.
- B. The "proportionate share" is the cost attributable to the new development after consideration by the City of the following factors:
 - 1. Any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements;

2. Payments reasonably anticipated to be made by or as a result of the new development in the form of user fees, debt service payments, or taxes which are dedicated for system improvements for which development impact fees would otherwise be imposed;
 3. All other available sources of funding such system improvements.
- C. In determining the "proportionate share" of the cost of system improvements to be paid by the developer, the following additional factors shall be 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 development will contribute to the cost of system improvements through taxation, assessments, or developer or landowner contributions;
 4. The extent to which the new development is required to contribute to the cost of existing system improvements in the future;
 5. The extent to which the new 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 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, intergovernmental transfers, and special taxation as set forth more specifically in the comprehensive plan as required by Idaho Code § 67-8207 (2) (h).
- D. After payment of development impact fees to the fee administrator or the execution of an agreement for payment of development impact fees, additional impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.
- E. To ensure collection of development impact fees the fee administrator may use the following means and methods:
1. Additions to the impact fee for interest at the highest legally allowable rate as well as a penalty of five per cent (5%) for each thirty (30) day period payment is late under the terms of this chapter or the agreement between the fee payer and the City;
 2. Withholding the building permit until the impact fee is paid;
 3. Withholding utility services until the impact fee is paid; and

4. Imposition of liens for failure to timely pay the impact fee following the procedures set forth in Idaho Code title 45, chapter 5.
- F. A fee payer may request the City enter into mediation by a qualified independent party to address a disagreement related to the impact fee for a proposed 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 and does not preclude a payer from pursuing other remedies as provided for in this ordinance.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5766, Amended, 11/19/96)

Section 4-12-06 DETERMINATION OF DEVELOPMENT IMPACT FEES

Prior to issuance of a building permit for development, the applicant or owner shall pay impact fees, in accordance with this section.

- A. General Formula: The development impact fee per service unit may not exceed the amount determined by dividing the costs of the capital improvements described in the capital improvements plan and as required by Idaho Code §67-8208(1) (f), by the total number of projected service units as described in the capital improvements plan and as required by Idaho Code §67-8208(1) (g). If the number of new service units projected over a reasonable period of time is less than the total number of service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units described in Idaho Code § 67-8208(1)(g) by the total projected new service units described in that section.
- B. In the case of development activity involving a change of use and/or magnitude of use in which a building permit is required, the applicant shall be required to pay the computed impact fee for any proposed development activity for which the impact fee has not been previously paid. When any building permit expires or is revoked after the effective date of this ordinance and a fee has not previously been paid under this chapter the applicant shall be required to comply with the provisions herein. No refunds will be given for proposed development activity resulting in a negative fee calculation.
- C. No impact fee payment shall be required for any development activity when the total calculated fee is less than fifty dollars (\$50.00).
- D. If the type of dwelling unit within a proposed or current development is not specified in the impact fee schedules contained in this chapter, the fee administrator shall use the dwelling unit most nearly comparable in computing the fee.
- E. In determining existing development activity and the units of proposed or existing development, the fee administrator shall use the building permit and certificate of use information contained in the building or zoning records of Boise City.
- F. A development impact fee will be assessed for installation of a modular building, manufactured home or recreational vehicle unless the fee payer can demonstrate by documentation such as utility bills and tax records either:

1. That a modular building, manufactured home or recreational vehicle was legally in place on the lot or space prior to the effective date of this chapter; or
2. That 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.

Lawful storage of a recreational vehicle shall not be deemed installation for purposes of this chapter.

- G. Expansion or change in use shall be considered development subject to the provisions of this chapter whether or not it requires a building permit. Impact fees for expansion of use or change in use shall be based upon the difference between the fee that would have been paid for the previous use and the fee for uses in the finished development. When a structure, other than a residential one, has been removed or demolished, the impact fee for any new development on the site shall be calculated as provided in this section, provided that the prior use was removed or demolished not more than twelve months prior to the application for a building permit, and documentation of its previous existence and size is available. In all other cases it will be treated as new development. This provision applies to structures that were in existence prior to the effective date of this ordinance. Any person who initiates expansion or change in use of a building shall first notify the fee administrator of the contemplated activity in those instances which do not require a building permit.

(Repealed and Replaced, Ord. 6647, 03/11/2008, 6462, Amended, 04/11/2006; 5685, Amended, 11/28/1995; 5532, Added, 04/12/1994)

Section 4-12-07 REFUND OF IMPACT FEES PAID

A. The fee payer or current owner shall be entitled to a refund of the impact fee if (1) a building permit encompassing fee paying development expires or is revoked, or (2) if the public facility for which the fee was paid is available but never provided, or (3) the City, after collecting the fee when the public facility for which the fee was paid is not available, has failed to appropriate and expend the collected development impact fees within eight (8) years on a first-in, first-out (FIFO) basis, except that the City shall retain the general administrative or specified administrative charge portion of the fee to cover the cost of the administration of the impact fee calculation, collection and refund. However, no refund shall be provided for the cost of completed improvements contributed in lieu of fee unless otherwise provided for in a development agreement.

B. Any impact fee trust funds refunded shall be returned to the fee payer or current owner by the fee administrator with accrued interest at one half (1/2) the legal rate as provided for in Idaho Code §28-22-104. The fee payer or current owner shall be required to submit a written request for refund to the fee administrator before issuance of the refund can be authorized. No refunds of development impact fees will be provided for in the event the payer does not request such a refund prior to the expiration of one (1) year following the eight (8) year period from the date the development impact fee was paid.

C. The City may hold the impact fees for longer than eight (8) years if it identifies, in writing:

1. A reasonable cause why the fees should be held longer than the eight (8) years; and
2. 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.

D. Refunds shall be sent to the fee payer, or person entitled to such refund within ninety (90) days of their approval by the City.

E. Funds shall be deemed expended for purposes of this chapter when payment of said funds has been approved by Boise City.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95; Ord. No. 5766, Amended, 11/19/96)

Section 4-12-08 EXEMPTIONS

A. The following shall be exempted from payment of development impact fees:

1. Rebuilding the same amount of floor space of a structure which 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 which 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. Placing a temporary construction trailer or office on a lot;
5. Constructing an addition on a residential structure which does not increase the number of service units;
6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouses, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements; and
7. Constructing dwelling units for the purpose of providing shelter for the homeless.

B. Developments determined by the Boise City Council to be consistent with the Comprehensive Plan and that provide affordable or low income housing as defined herein, may be exempt from the impact fee requirement, to the extent that such housing will be supplied, provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

1. Current housing affordability guidelines published by the Department of Housing and Urban Development (HUD) shall be used to determine whether housing units in the development qualify as affordable or low income housing.
2. Affordable or low income housing projects are required to demonstrate that they will provide units to eligible families based on HUD income and family size guidelines.

3. Providers of affordable or low income housing must demonstrate a long term commitment to provide affordable or low income housing for a period of not less than twenty (20) years.

- C. An exemption must be claimed by the fee payer upon application for a building permit. Any exemption not so claimed shall be deemed waived by the fee payer. Applications for exemption under section 04-12-08 shall be heard by the City Council within thirty (30) days of the date submitted. All other requests for exemptions shall be submitted to and determined by the fee administrator. Appeals of the fee administrator's determination shall be made under the provisions of section 04-12-16 of this chapter.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95; Ord. No. 5766, Amended, 11/19/96)

Section 4-12-09 CREDITS

- A. In the calculation of impact fees for a particular project, credit shall only be given for the present value of any construction of system improvements or contribution or dedication of land or an interest in land or money required by the City from a developer for system improvements. Credit shall not be given for project Improvements.
- B. A developer who is required to construct, fund or contribute system improvements in excess of the impact fees which would otherwise have been paid by the development project, shall receive a credit on future impact fees or be reimbursed, at the developer's option, for such excess construction, funding or contribution from analogous impact fees paid by future development located in the service area which is benefited by such improvements.
- C. If credit or reimbursement is due to the developer pursuant to this section, the City and the developer shall enter into a written agreement, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.
- D. Any person requesting such credit or reimbursement shall present documentation of costs or payments for facilities to be considered by the fee administrator for use in determining the amount of credit or reimbursement to be given. The determination shall be made no more than thirty (30) days after complete documentation is submitted to the fee administrator. Any appeal from such a determination by the fee administrator will be reviewed by a qualified hearing officer pursuant to the procedures set forth in section 4-12-16 of this chapter.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95; Ord. No. 5766, Amended, 11/19/96)

Section 4-12-10 SUITABILITY OF LAND OFFERED FOR DEDICATION

In the event that a developer intends to contribute or dedicate an interest in land in lieu of paying impact fees or a portion thereof, the following procedures and criteria shall be applied:

- A. The fee administrator with the advice of the appropriate department head and the City Attorney will determine whether the land proposed for dedication is acceptable. The City Attorney will be guided by the following considerations:

1. Size: The size of the parcel is expressed as a net amount and is exclusive of street right-of-way, existing and proposed easements, borrow pits, lakes and other man-made or natural conditions which restrict or impede the intended use of such areas.
 2. Unity: The land to be dedicated shall form a single parcel of land except where aforesaid review determines that two or more parcels would be in the best public interest.
 3. Shape: The configuration of the parcel of land is such as to be usable for public facilities purposes as determined by the City.
 4. Location: The land to be dedicated is so located as to serve the needs of the development, by being within the service area public facilities.
 5. Access: Appropriate access to the land to be dedicated is provided by improved public street frontage.
 6. Utility: Dedicated land should be usable for public facilities purposes and meet the following criteria prior to its final acceptance by the City Council:
 - a. The property is platted and ready to be developed.
 - b. All utilities are in place and are at the perimeter of the site and include roads, walks, curbs, water lines, sewer lines, electric service lines, and telephone service lines.
 - c. All utilities are of sufficient quality and quantity to adequately service the site.
 - d. The property is filled and compacted to comply with all appropriate subdivision codes, building and zoning codes, and flood insurance laws and regulations. The fill and compaction are of sufficient quality to accept the improvements contemplated.
 7. Plans: City, regional and state plans shall be taken into consideration when evaluating land proposals for dedication.
 8. The fee administrator shall determine, based on specific review of each application, whether the proposed site contains the requisite site characteristics consistent with public facilities criteria. This determination shall be in writing and shall specify the reasons the site was approved or denied credit for inclusion in the land dedication requirement. The fee administrator's determination shall be made within thirty (30) days from the date of receipt of the request and shall be forwarded to the City Council for action. The Council may affirm, reject or revise the determination of the fee administrator providing written findings of facts and conclusions of law.
- B. Appeals of the fee administrator's determination of land suitability shall made to the City Council by the filing of an appeal with the Boise City Clerk no later than ten (10) days following the date of the decision of the fee administrator.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95)

Section 4-12-11 IMPACT FEE SERVICE AREAS AND TRUST ACCOUNTS

- A. Service areas shall correspond to the Boise City Planning service area maps as the same are adopted as part of capital improvements plan approved by the City Council, indicating the designated planning service areas for the public facilities needed, including but not limited to, those associated with parks and recreation, fire prevention and suppression, law enforcement and emergency medical.
- B. To ensure that impact fees will benefit the appropriate development, all impact fees will be deposited in a designated "Trust Fund" for the individual system improvement and service area. A combination of interest bearing trust accounts for each service area for the various system improvements shall be established and maintained by the Finance and Administration Department of Boise City and with fees accountable to the individual department designated to provide the specific system improvements. Such trust accounts shall correspond to the official service area map or maps as the same are adopted and amended from time to time by action of the Boise City Council, and each account shall be so designated as a separate and distinct account.
- C. All impact fees collected by the fee administrator will be promptly deposited into the proper trust account, except general administrative charges may be directed to the appropriate department to underwrite the cost of administering this chapter.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95)

Section 4-12-12 IMPACT FEE EXPENDITURES

- A. Except as otherwise provided herein, funds from the impact fee trust funds, including any accrued interest, shall be limited to the financing of acquisition, expansion, and/or improvement of real property, capital facilities of identified system improvements, or for principal and interest payments (including sinking fund payments) on bonds or other borrowed revenues used to acquire, expand or improve such facilities necessitated to mitigate the impact of new development within the respective service area from which the fees are collected. Expenditures may be made to purchase additional land from a fee payer where such purchase is consistent with the purpose of this chapter.
- B. Trust account funds shall be deemed expended in the order in which they are collected.
- C. A financial report on the impact fee trust funds shall be provided annually by the fee administrator to the Mayor and Council.
- D. Any interested citizen may challenge the expenditure of any impact fee funds within two (2) years of said expenditure by filing a protest with the Boise City Clerk. The City Clerk shall set the matter for hearing before the City Council within thirty (30) days of the filing of such protest. The protesting party shall specifically identify the impact fee expenditure and the basis of the protest. The City Council shall render a decision regarding the protest within fifteen (15) days after the close of the hearing on the matter.

(Repealed and Replaced, Ord. 6647, 03/11/2008, 6462, Amended, 04/11/2006; 5532, Added, 04/12/1994)

Section 4-12-13 PARK AND RECREATION IMPACT FEES

- A. **PARK IMPACT FEE - PURPOSE AND IMPLEMENTATION:** All residential development is deemed to create an impact and therefore an increased demand for public facilities. The cost for

new parks and recreation public facilities should, therefore, be borne by new residential development. Therefore, any application for a building permit on or after the effective date of this impact fee ordinance shall be subject to the imposition of park and recreation impact fees in the manner and amount set forth in this chapter.

B. PAYMENT OF PARK IMPACT FEE: Prior to receiving a building permit or commencing construction of any building for which park impact fees are to be paid pursuant to this chapter, whichever first occurs, the applicant therefore must demonstrate that the appropriate impact fee has been paid to the fee administrator. The fee administrator and/or the Building Division of Planning and Development Services 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. METHODOLOGY: The methodology adopted for the purpose of determining parks and recreation impact fees is based upon the assumptions set forth in the CPRSP and are contained in the adopted fee methodology report. The fee methodology report establishes the following standards for parks and recreation public facilities:

PARK DESCRIPTION	STANDARD
Neighborhood Parks	1.1 Acre/1,000 Population
Community Parks	0.5 Acre/1,000 Population
Special Use Parks	2.4 Acre/1,000 Population
Recreational Trails	0.41 Mile/1,000 Population
Natural Open Space	8.3 Acre/1,000 Population

Additionally the fee methodology report assumes the following in numbers of occupants per dwelling unit:

Single Family Residential	2.44/Unit
Multi-Family Residential (800 sq. ft & more)	2.16/Unit
Multi-Family Residential (Under 800 sq. ft.)	1.45/Unit
Accessory Dwelling Unit	1.00/Unit
Hotel/Motel/Bed & Breakfast	0.68/Room

D. DEVELOPMENT IMPACT FEE SCHEDULE FOR BOISE PARKS AND RECREATION FACILITIES: Pursuant to the adopted assumptions in the CPRSP and fee methodology report, development impact fees for parks and recreation public facilities are set forth in the following table:

PARK DESCRIPTION	IMPACT FEE \$/PERSON	SINGLE FAMILY \$/ RESIDENCE	MULTI FAMILY \$/ RESIDENCE Under 800sq ft	MULTI FAMILY \$/ RESIDENCE 800 sq ft and Over	<u>HOTEL /MOTEL/B&B/ \$/ROOM</u>
Neighborhood Parks	\$129.35	\$315.61	\$187.56	\$279.40	\$87.96
Community Parks	\$44.68	\$109.00	\$64.78	\$96.50	\$30.38
Special Use Parks	\$256.44	\$625.72	\$371.84	\$553.92	\$174.38
Recreational Trails	\$24.02	\$58.62	\$34.84	\$51.89	\$16.34
Natural Open Space	\$97.70	\$238.38	\$141.66	\$211.02	\$66.43
Park Capital Improvement Plan Surcharge	\$3.50	\$7.98	\$4.34	\$6.34	\$2.49
TOTAL	\$555.69	\$1,355.32	\$805.01	\$1,199.06	\$377.97

(Repealed and Replaced, Ord. 6647, 03/11/2008, 6462, Amended, 04/11/2006; 6114, Amended, 12/11/2001; 5954, Amended, 11/09/1999; 5766, Amended, 11/19/1996; 5685, Amended, 11/28/1995; 5532, Added, 04/12/1994)

Section 4-12-14 POLICE DEVELOPMENT IMPACT FEES

- A. **POLICE IMPACT FEE - PURPOSE AND IMPLEMENTATION:** All-development is deemed to create an impact and therefore an increased demand for public police facilities. The cost for new public police facilities should, therefore, be borne by new development. Therefore, any application for a building permit enabling development on or after the effective date of this impact fee ordinance is subject to the imposition of police impact fees in the manner and amount set forth in this chapter.
- B. **METHODOLOGY:** The methodology adopted for the purpose of determining police impact fees is based upon the assumptions set forth in the comprehensive plan and are contained in the adopted fee methodology report. The fee methodology report establishes the service standard of 1.3 officers per thousand population. Future growth for the City of Boise and its area of city impact over the next ten (10) years is set forth in the following table:

Category	Population	Total Units or Square Feet		Total Square Footage	Distribution
		2007	2017		
Residential	250,066	86,435	105,960	223,575,178	87%
Nonresidential		27,254,446	34,627,427	34,627,427	13%
Total				258,202,605	100%

C. DEVELOPMENT IMPACT FEE SCHEDULE FOR BOISE POLICE: Pursuant to the assumptions in the adopted Comprehensive Plan and Fee Methodology Report, development impact fees for public police facilities are set forth in the following table:

Impact Fee by Land Use (rounded):	
Residential (per dwelling unit)	\$151
Nonresidential (per square foot)	\$0.06

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5685, Amended, 11/28/95)

Section 4-12-15 FIRE DEVELOPMENT IMPACT FEES

- A. FIRE IMPACT FEE - PURPOSE AND IMPLEMENTATION: All development is deemed to create an impact and therefore an increased demand for public fire facilities. The cost for new public fire facilities should, therefore, be borne by new development. Therefore, any application for a building permit enabling development on or after the effective date of this impact fee ordinance is subject to the imposition of fire impact fees in the manner and amount set forth in this chapter.
- B. METHODOLOGY: The methodology adopted for the purpose of determining fire impact fees is based upon the assumptions set forth in the comprehensive plan and are contained in the adopted fee methodology report. The fee methodology report establishes the service standard of a response time of four (4) minutes. Future growth for the City of Boise and its area of City impact over the next 10 years is set forth in the table found in section 4-12-14B above.
- C. DEVELOPMENT IMPACT FEE SCHEDULE FOR BOISE FIRE DEPARTMENT: Pursuant to the assumptions in the adopted Comprehensive Plan and fee methodology report, development impact fees for public fire facilities are set forth in the following table:-

Fire Impact Fee by Land Use (rounded):	
Residential (per dwelling unit)	\$515
Nonresidential (per square foot)	\$0.21

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94)

Section 4-12-16 INDIVIDUAL ASSESSMENT

- A. 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.
 - 1. Written application for individual assessment shall be made to the fee administrator prior to receiving building permits or other necessary approvals from the city in instances where building permits are not required. 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. 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 makes a showing 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.

2. The fee administrator shall render a written decision regarding the individual assessment of impact fees within thirty (30) days of the date a complete application is submitted. The decision by the fee administrator shall include an explanation of the calculation of the impact fee, including an explanation of factors considered under Idaho Code § 67-8707 and shall specify the system improvement(s) for which the impact fee is intended to be used. The decision of the fee administrator shall establish the impact fee for the project in question for a period of one (1) year from the date said decision becomes final.
3. Appeals of the fee administrator's determination of individual assessment shall made to the City Council by the filing of an appeal with the Boise City Clerk no later than ten (10) days following the date of the decision of the fee administrator.

(Repealed and Replaced, Ord. 6647, 03/11/2008Ord. No. 5532, Enacted, 04/12/94)

Section 4-12-17 CERTIFICATION

Certification of the impact fee schedule for a particular project may be applied for in the following manner.

1. Written application may be made to the fee administrator not later than sixty (60) days from preliminary plat approval by the Boise City Council. Late applications for certification of the impact fee schedule shall not be considered unless the fee payer makes a showing that the facts supporting such application were not known or discoverable within such sixty (60) day period and that undue hardship would result if the application is not considered.
2. The fee administrator shall provide the applicant with a written impact fee schedule for the particular project within thirty (30) days of the date of application for certification of the impact fee schedule. The certified schedule provided by the fee administrator shall be based upon the adopted comprehensive plan and fee methodology report. The certified schedule shall establish the impact fee for the project in question for a period of one (1) year from the date of certification. The certification shall include an explanation of the factors considered under Boise City Code section 4-12-05, and shall specify the system improvement(s) for which the impact fee is intended to be used.
3. The certification of the impact fee schedule may be appealed as provided in Boise City Code section 4-12-18.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94)

Section 4-12-18 APPEALS OF ADMINISTRATIVE DECISIONS

- A. The City shall contract with qualified individuals for the purpose of sitting as hearing officers. Such individuals shall have a working knowledge of this ordinance as well as the Idaho Development Impact Fee Act.
- B. Except as otherwise provided in this chapter, the decisions of the fee administrator may be appealed by the fee payer to the hearing officer. Decisions of the hearing officer shall be final.
 1. If a fee payer wishes to appeal, the fee payer shall first file a Notice of Administrative Appeal with the Boise City Clerk, on the form provided by the fee administrator. All

appeals shall be filed within thirty (30) days after the earlier of: (a) issuance of a written decision by the fee administrator; or (b) the fee administrator's acceptance of payment of the development impact fee. When filing an appeal the fee payer shall submit a letter providing a full explanation of the request, the reason for the appeal, as well as all supporting documentation. A fee payer may pay a development impact fee under protest in order to obtain a building permit and shall not be estopped from exercising the right of appeal provided herein, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

2. The Boise City Clerk shall schedule the appeal before the hearing officer as soon as practical. The hearing officer may affirm, reject or revise the decision of the fee administrator, providing written findings of fact and conclusions of law. The written decision of the hearing officer shall be mailed to the fee payer, certified mail, return receipt requested.
3. A party aggrieved by the decision of the hearing officer may within twenty eight (28) days of receipt of the hearing officer's decision seek judicial review by filing a petition in the District Court in the manner provided by Idaho Code, title 67, chapter 52.

(Added, Ord. 6647, 03/11/2008)

Section 4-12-19 VESTED RIGHTS

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 of this ordinance and on which there has been a good faith reliance and a substantial change of position. (Added, Ord. 6647, 03/11/2008)

Section 4-12-20 OTHER POWERS AND RIGHTS NOT AFFECTED

- A. Nothing in this chapter shall prevent the City from requiring a developer to construct reasonable project improvements in conjunction with a development project.
- B. Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers and the City in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer including inter-project transfers of credits or providing for reimbursement for project Improvements which are used or shared by more than one development project.
- C. Nothing in this chapter shall obligate the City to approve development which results in extraordinary impact.
- D. Nothing in this chapter shall obligate the City to approve any development request which may reasonably be expected to reduce levels of service below minimum acceptable levels as established herein.
- E. 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 within the service area.

F. Nothing in this chapter shall work to limit the use by the City of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.
(Added, Ord. 6647, 03/11/2008)

Section 4-12-21 SAVINGS CLAUSE.

If any section, subsection, sentence, clause or provision of this chapter is held invalid, the remainder of this chapter shall not be affected by such invalidity.
(Added, Ord. 6647, 03/11/2008)