



ORDINANCE 961

A NEW ORDINANCE FOR THE CITY OF REXBURG TO BE KNOWN AS THE "STREETS DEVELOPMENT IMPACT FEE ORDINANCE" TO ALLOW FOR THE COLLECTION OF DEVELOPMENT IMPACT FEES, ESTABLISHING SUCH FEES, AND MORE PARTICULARLY SETTING FORTH THE TITLE AND PURPOSE AND PRESCRIBING THE PROCEDURES FOR CARRYING OUT THE PURPOSE HEREOF; ATTACHING AND INCORPORATING THE "CITY OF REXBURG STREETS DEVELOPMENT IMPACT FEE REPORT" DATED July 05, 2006 AS APPENDIX "A" HERETO; PROVIDING FOR LIBERAL CONSTRUCTION; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, after a public hearing by the City Council to consider a Report entitled, "City of Rexburg Streets Development Impact Fee Report," dated July 05, 2006, hereinafter referred to in this Ordinance as "Report," the City Council has made and does hereby make the following findings, to wit:

- 1) That the City is responsible for and committed to the provision of public facilities and services at levels necessary to cure any existing public service deficiencies in already developed areas;
- 2) That such facilities and service levels shall be provided by the City utilizing funds allocated via the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein;
- 3) That new development, however, will cause and impose increased and excessive demands on existing City public facilities and services that would not otherwise be necessary;
- 4) That the City Council has considered and accepted the findings contained in the "City of Rexburg Streets Development Impact Fee Report," dated July 05, 2006 which indicates build out projections, public facilities analysis and the methodology for the determination of impact fees and that these findings are incorporated herein by reference;
- 5) That the build out projections as contained in the "Report" are based on the land use assumptions obtained from the Madison County Transportation Plan, adjusted for the study area;
- 6) That the build out projections as contained in the "Report" indicate that such development will continue and will place ever increasing demands on the City to provide necessary public facilities;
- 7) That to the extent that new development places demands on public facility infrastructure, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands;
- 8) That the amount of the impact fee to be imposed shall be determined by the cost of the additional public facilities needed to support such development;
- 9) That the City Council, after careful consideration of the matter, hereby finds and declares that an impact fee imposed upon future development to finance public facilities, the demand for which is created by such development is in the best interest

of the general welfare of the City and its residents, is equitable, does not impose an unfair burden on such development by forcing developers and builders to pay more than their fair share or proportionate share of the cost, and deems it advisable to adopt this ordinance as hereinafter set forth;

- 10) That there is a reasonable relationship between the amount of the impact fee and the cost of public facilities attributable to the development upon which the fee will be imposed because the fee is based only on the cost of providing the facilities necessary to serve the new development as discussed in the "Report."

It is deemed by the Mayor and City Council to be for the interests of the City of Rexburg, Idaho, that said Ordinance be adopted, NOW, THEREFORE,

BE IT ORDAINED, by the Mayor and City Council of the City of Rexburg that a new ordinance be designated as the "STREETS DEVELOPMENT IMPACT FEE ORDINANCE", and is to read as follows:

Section 1
Title, Purpose and Definitions

01.010 TITLE AND PURPOSE: The provisions of this ordinance shall be known as the "City of Rexburg Streets Development Impact Fee Ordinance." The purpose of these regulations is to prescribe the procedure whereby developers of land shall pay an impact fee as set forth in this Ordinance for the purpose of providing the public facilities and system improvements needed to serve future residents and users of such development. It is further the purpose of this Ordinance to:

1. Ensure that adequate facilities are available to serve new growth and development;
2. Promote orderly growth and development by establishing uniform standards by which the City may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;
3. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements;
4. Collect and expend development impact fees pursuant to the enabling powers granted by the provision of the Idaho Development Impact Fee Act, Title 67, Chapter 82, Idaho Code;
5. Provide the legal and procedural basis for the implementation of development impact fees within 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.

01.020 DEFINITIONS: As used in this Title, the following words and terms shall have the following meanings, unless another meaning is plainly intended:

1. **BUILDING PERMIT:** The permit required for new construction and additions.
2. **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, or service improvement.
3. **CAPITAL IMPROVEMENTS PLAN:** A plan adopted and amended pursuant to the provision of the Development Impact Fee Act, Idaho

Code 67-8208 that identifies capital improvements for which development impact fees may be used as a funding source. The capital improvements plan is included as a part of the Development Impact Fee Report.

4. **CITY:** The City of Rexburg, a municipal corporation duly organized pursuant to the laws of the state of Idaho.
5. **DEVELOPMENT:** Any man-made change to improved or unimproved real property, the use of any principal structure or land, or any other activity that requires issuance of a building permit, or manufactured/mobile home permit, which creates additional demand and need for public facilities.
6. **DEVELOPMENT APPROVAL:** Any written duly authorized document from the City that authorizes the commencement of a development.
7. **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 cost 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; or
 - d. Amounts collected from a developer in a transaction in which the City 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 Section 67-8209(3), Idaho Code, for credit or reimbursement.
8. **DEVELOPMENT REQUIREMENT:** A requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.
9. **EXTRAORDINARY COSTS:** Those costs incurred as a result of an extraordinary impact.
10. **EXTRAORDINARY IMPACT:** An impact which is reasonably determined by the City to:

- a. Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Section 67-8214(2), Idaho Code;
- b. Result in the need for system improvements which are not identified in the Capital Improvements Plan;
- c. Have an impact which results in a lower than acceptable level of service.

- 11. **FEE PAYER:** That person who pays or is required to pay a development impact fee.
- 12. **GROSS FLOOR AREA:** The sum of the areas of the several floors of the building or structure, including areas used for human occupancy or required for the conduct of the business or use, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics when not used for human occupancy, nor any floor space in an accessory building, carport, or the main building intended or designed for the parking of motor vehicles in order to meet any City parking requirement nor nonresidential facilities; arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.
- 13. **IMPACT FEE:** See Development Impact Fee.
- 14. **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.
- 15. **LEVEL OF SERVICE:** A measure of the relationship between service capacity and service demand for public facilities.
- 16. **MANUFACTURED HOME:** A structure, constructed according to HUD/FHA manufactured home construction and safety standards, transportable in one (1) or more sections, which:
 - a. In the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or
 - b. When erected on site, is three hundred twenty (320) or more square feet; and
 - c. 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
 - d. Includes the plumbing, heating, air conditioning, and electrical systems contained therein;

- e. Except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, et seq.
17. **MOBILE HOME:** A structure similar to a manufactured home, but built to a mobile home code prior to June 15, 1976, the date of enactment of the Federal Manufactured Housing and Safety Standards Act (HUD Code).
 18. **MODULAR BUILDING:** Any building or building component, other than a manufactured / mobile home, which is constructed according to standards contained in the Uniform Building Code, as adopted 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.
 19. **PRESENT VALUE:** The total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.
 20. **PROJECT:** A particular development on an identified parcel of land.
 21. **PROJECT IMPROVEMENTS:** In contrast to system improvements, project improvements are site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and the convenience of the occupants or users of the project.
 22. **PROPORTIONATE SHARE:** That portion of the cost of system improvements determined pursuant to Section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project.
 23. **PUBLIC FACILITIES:** Means those types of improvements described in Idaho Code 50-1703, including but not limited to the following:
 - a. Circulation facilities, streets
 - b. Parks, open space and recreation areas, and related capital improvements; and
 - c. Public safety facilities, including law enforcement, fire, emergency medical and rescue.
 24. **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.

25. **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 public facility category (i.e. parks, law enforcement, fire, etc.) of capital improvements.
26. **SYSTEM IMPROVEMENTS:** In contrast to project improvements, mean capital improvements to public facilities which are designed to provide service to a service area including and without limitation, the type of improvements described in Section 50-1703, Idaho Code.
27. **SYSTEM IMPROVEMENTS 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 Section 50-1702 (h), Idaho Code, to provide additional public facilities needed to service 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. Administrative and operating costs of the City unless such costs are attributable to development of the capital improvements plan, as provided in Section 67-8208, Idaho Code; or
 - e. 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.
28. **UNIT(S) OF DEVELOPMENT:** A quantifiable increment of development activity measured in terms of dwelling units, or other appropriate measurements contained in the impact fee schedule incorporated in the “Report.”

Section 2
Application

02.010 APPLICATION:

- A. The provisions of this Ordinance shall apply uniformly to all those who benefit from new growth and development except as provided below.
- B. The provisions of this Ordinance shall not apply to the following:
 - 1. Rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
 - 2. Remodeling or repairing a structure that does not increase the number of service units;
 - 3. Replacing a residential unit, including a modular building or manufactured / mobile 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 that does not increase the number of service units;
 - 6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements;
 - 7. Upon demonstration by fee payer by documentation such as utility bills and tax records, to the installation of a modular building, manufactured / mobile home or recreational vehicle on that same lot or space for which a development impact fee has been paid previously, and as long as there is no increase in service units.
- 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 shall be submitted to and determined by the City Clerk, or his or her duly designated agent, within ninety (90) days. Appeals of the City Clerk's, or his or her duly designated agent, determination shall be made under the provisions of Section 11 of this Ordinance entitled "Appeals."

Section 3
Collection of Impact Fee

03.010 COLLECTION OF IMPACT FEE:

- A. The development impact fee shall be paid and collected at the time of issuance of a building permit or a manufactured/mobile home installation permit.
- B. No building permit or other equivalent City approval shall be issued for development as herein defined unless the impact fee is paid pursuant to this Ordinance.
- C. A manufactured / mobile home unit may not locate on a manufactured / mobile home site unless the impact fee is paid pursuant to this Ordinance or has been paid on a previous manufactured / mobile home unit on the same site.
- D. In the event payment is dishonored, the City shall have all lawful remedies including but not necessarily limited to the withholding of utility services, the imposition of reasonable interest and penalties, the imposition of liens pursuant to Chapter 5, Title 45, Idaho Code, the withholding of other City approvals required for the

development of other properties owned by the fee payer, and the issuance of “stop work” orders, and the revocation or suspension of the building permit.

Section 4
Capital Improvement Projects

04.010 CAPITAL IMPROVEMENT PROJECTS:

The capital improvement projects to be financed by the impact fee are those as listed in the "Report," incorporated herein by reference along with all footnotes, exhibits, appendices, and other attachments referenced.

Section 5
Calculation of Impact Fee

05.010 CALCULATION OF IMPACT FEE:

- A. The City shall calculate the amount of the impact fee due for each building permit and manufactured / mobile home installation permit by the procedure set forth in the "Report".
- B. The calculation of a development impact fee shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.
- C. A development impact fee shall be calculated on the basis of the Performance Standard for public facilities adopted in this Ordinance and in the “Report” that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.
- D. If the development for which a building permit is sought contains a mix of uses, the impact fee will be calculated for each type of use.
- E. Certification: Prior to making an application for a building permit or manufactured / mobile home installation permit, a prospective applicant may request in writing a written certification of the development impact fee schedule or individual assessment for a particular project which shall establish the development fee for a period of one (1) year from the date of certification. The certification shall include an explanation of facilities considered under Section 67-8207, Idaho Code. The certification shall specify the system improvement(s) for which the impact fee is intended to be used.
- F. Individual Assessment: 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. Individual assessments of development impact fees may be made by application to the City Clerk, or his or her duly designated agent, prior to receiving building permits manufactured / mobile home installation permits, or other necessary approvals from the City. The City Clerk, or his or her duly designated agent, shall evaluate such individual assessments under the guidelines provided for in section 05.010.F.4. If the guidelines are met, the individual assessment shall be approved by the City Clerk, or his or her duly designated agent. Any decision regarding a request for an individual assessment shall be provided in writing to the applicant and a copy of said decision, along with supporting documentation, shall be provided to the City Council within thirty (30) days of the decision.
 - 2. Late applications for individual assessments may be submitted within thirty (30) 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.

3. The City Clerk, or his or her duly designated agent, shall render a written decision regarding the individual assessment and forward it to the City Council within thirty (30) days of the date a complete application is submitted. The decision of the City Clerk, or his or her duly designated agent, shall establish the impact fee for the project in question for a period of one (1) year from the date said decision becomes final.
4. The City Clerk, or his or her duly designated agent, shall evaluate an application for individual assessment and may approve the same if fee payer has shown by clear and convincing evidence that the established impact fee is inappropriate and that the following facts and conditions exist.
 - a. Exceptional or extraordinary circumstances or conditions apply to the development that does not apply generally to other properties in the vicinity of the development.
 - b. An individual assessment is necessary for the reasonable and acceptable development of the property.
 - c. The approval of the individual assessment will not be materially detrimental to the public welfare or injurious to property in the vicinity in which the development is located.
 - d. The approval of the individual assessment will not adversely affect the capital improvement plan for the City.
5. Appeals to the City Clerk, or his or her duly designated agent, determination of individual assessment shall be made to the City Council by the filing of an appeal with the City Clerk within thirty (30) days of the date of mailing, faxing, or personal delivery of written notice of the decision of the City Clerk, or his or her duly designated agent. Final determination regarding the appeal of individual assessments shall be made by the City Council.

Section 6

General Methodology for Calculation

06.010 GENERAL METHODOLOGY FOR CALCULATION:

- A. The amount of the impact fee shall be calculated using the methodology contained in the "Report."
- B. A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with Section 67-8207, Idaho Code. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.
- C. A developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs, except as provided in Section 67-8214(3), Idaho Code. The schedule of development impact fees for various land users per unit of development shall be as set forth in the "Report."
- D. Proportionate Share Determination:
 1. All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not

exceed a proportionate share of the costs incurred or to be incurred by the City in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the City considers the following:

- a. Any appropriate credit, offset, or contribution of money, dedication of land, or construction of system improvements;
 - b. Payments reasonably anticipated to be made by or as a result of a 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; and
 - c. All other available sources of funding such system improvements.
2. In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the City:
- a. The cost of existing system improvements within the service area or areas;
 - b. The means by which existing system improvements have been financed;
 - c. The extent to which the new development will contribute to the cost of system improvements through taxation, assessments, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.
 - d. The extent to which the new development is required to contribute to the cost of existing system improvements in the future.
 - e. The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;
 - f. Extraordinary costs, if any, incurred in serving the new development;
 - g. The time and price differential inherent in a fair comparison of fees paid at different times; and
 - h. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The City shall develop a plan for alternative sources of revenue, which shall include but not necessarily be limited to plans generated during the City's annual budget process, lobbying efforts, tax increment financing, implementation of user fees and various forms of utilities.

Section 7
Inflationary Adjustment for Impact Fee

07.010 INFLATIONARY ADJUSTMENT INDEX FOR IMPACT FEE:

This ordinance provides for an automatic annual adjustment to the impact fee based on the Construction Materials index for Seattle. The adjustment may increase or decrease the impact fee depending on the value of the index for that year. The inflationary adjustment will be capped at 2.5% each year. The annual effective date of this fee adjustment shall coincide with the beginning date of the City's annual budget.

Section 8
Administration of Impact Fee

08.010 ADMINISTRATION OF IMPACT FEE:

- A. Transfer of funds to City Finance Officer: Upon receipt of impact fees, the City Finance Officer, or his or her duly designated agent, shall be responsible for placement of such funds into separate accounts as hereinafter specified. All such funds shall be deposited in interest-bearing accounts, within the Capital Projects Fund, in a bank authorized to receive deposits of city funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.
- B. Establishment and maintenance of accounts: The City Finance Officer, or his or her duly designated agent, shall establish separate accounts and maintain records for each such account whereby impact fees collected can be segregated.
- C. Maintenance of records: The City Finance Officer, or his or her duly designated agent, shall maintain and keep accurate financial records for each such account that shall show the source and disbursement of all revenues; that shall account for all monies received; that shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program; and that shall provide an annual accounting for each impact fee account showing the source and amount of all funds collected and the projects that were funded.
- D. Development impact fees shall only be spent for the public facility category (i.e. streets, parks, law enforcement, fire, etc.) of system improvements for which the fees are collected and either within or for the benefit of the service area in which the project is located.
- E. Review and modification: Unless the City Council deems some other time period is appropriate, the City shall at least once every five (5) years commencing from the date of the original adoption of the capital improvement plan, review the development potential of the area and update the capital improvements plan in accordance with the procedures set forth in Idaho Code Section 67-8206. The City may make any updates as are deemed necessary as a result of (1) development occurring in the prior year; (2) capital improvements actually constructed; (3) changing facility needs; (4) inflation; (5) revised cost estimates for capital improvements; (6) changes in the availability of other funding projects; and (7) such other factors as may be relevant.
- F. The City shall annually adopt a capital budget.
- G. As part of its annual audit process, the City shall prepare an annual Report describing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.
- H. All other requirements of Idaho Code 67-8210, regarding earmarking and expenditure of collected development impact fees, shall apply.

Section 9
Credits

09.010 CREDITS AND REIMBURSEMENT:

- A. In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of system improvements or contribution or dedication of land or money required by the City from a developer for system improvements of the public facility category (i.e. parks, police, circulation) for which the development impact fee is being collected. Credit or reimbursement shall not be given for project improvements unless those improvements are identified in the "Report" as a system improvement. In that

event, the credit given will only be given for those project improvements that are specifically listed in the “Report” and not for any portion of the improvements that would otherwise be required by zoning, subdivision, or other city regulations.

- B. If a developer is required to construct, fund or contribute system improvements in excess of the development project’s proportionate share of system improvement costs, the developer shall receive a credit on future impact fees or be reimbursed at the developer’s choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer(s) or fee payer. If a credit for the payment of future impact fees is requested, the credit shall be given only for the public facility category that received system improvements in excess of the development’s proportionate share.
- C. If credit or reimbursement is due to the developer pursuant to this section, the City shall enter into a written agreement, with the fee payer, 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 submit their request in writing on a form provided by the City and present documentation of costs or payments for facilities to the City Public Works Director or his or her duly designated agent prior to issuance of a building permit or manufactured / mobile home installation permit. The determination shall be made no more than forty-five (45) days after complete documentation is submitted to the City Public Works Director or his or her duly designated agent. Any appeal from such a determination by the City Public Works Director, or his or her duly designated agent, shall be pursuant to Section 11 of this Ordinance.

Section 10
Refunds

10.010 REFUNDS:

- A. The current owner or contract purchaser of property on which an impact fee has been paid may request a refund of such fee if:
 - 1. Service is available but never provided;
 - 2. The project for which a building permit has been used has been lawfully altered resulting in a decrease in the amount of the impact fee due; or
 - 3. The City, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to Section 67-8210(4) Idaho Code.
 - 4. A building permit or permit for installation of a manufactured / mobile home is denied or abandoned.
- B. The request for refund must be filed in writing and submitted to the City Clerk or his or her duly designated agent on a form provided by the City for such purpose. The Owner shall provide such documentation as the City Clerk, or his or her duly designated agent, may require proving such satisfaction, reconveyance, or releases from contract sellers, mortgagees, lien holders, and / or others having an interest in the real property for which an impact fee has been paid.
- C. A request for refund must be filed within the time allowed by law.
- D. Within ninety (90) days of the date of receipt of a request for refund, the City Clerk or his or her duly designated agent must provide the owner, in writing, with a

decision on the refund request including the reasons for the decision. If a right to refund exists, the City is required to send a refund to the owner of record within ninety (90) days after it is determined that a refund is due. A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in Section 28-22-104, Idaho Code.

- E. Owner may appeal the determination of the City Clerk, or his or her duly designated agent, to the City Council pursuant to the provisions in Section 11 of this Ordinance.

Section 11 Appeals

11.010 APPEALS:

- A. A developer or fee payer may appeal the written determination of the applicability and amount of the development impact fee, or refund, or any discretionary action or inaction by or on behalf of the City to the City Council.
- B. The developer or fee payer must file a notice of appeal to the City Council with the City Clerk within thirty (30) days following the written determination, discretionary action, or inaction. When filing an appeal, the fee payer shall submit a letter providing a full explanation of the request, the reason for appeal, as well as all supporting documentation.
- C. The filing of an appeal shall not stay required payment of the impact fee, however, a fee payer can pay a development impact fee under protest in order to obtain development approval or building permit.
- D. Upon voluntary agreement by the fee payer and the City, any disagreement related to the impact fee for the proposed development may be mediated by a qualified independent party.
 - 1. Mediation may take place at any time during the appeals process and participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this Ordinance.
 - 2. The fee payer and the City shall share mediation costs equally.

Section 12 Extraordinary Impacts

12.010 EXTRAORDINARY IMPACTS:

In determining the proportionate share of the cost of system improvements to be paid by the developer, the City Clerk or his or her duly designated agent shall consider whether any extraordinary costs will be incurred in serving the development based upon an extraordinary impact as defined in Section 1 of this ordinance. This determination shall be made prior to issuance of any permit for development and shall be paid prior to any such issuance except as may be provided pursuant to a private agreement between the parties as authorized by Idaho Code Section 67-8214.

If the City Clerk or his or her duly designated agent determines that the development will result in an extraordinary impact, it shall advise the fee payer in writing what the extraordinary impact is, the reason for the extraordinary impact, and the estimated costs to be incurred as a result of the extraordinary impact.

Nothing in this Ordinance shall obligate the City to approve any development that results in extraordinary impact.

The fee payer may appeal the determination of an extraordinary impact or the amount of extraordinary costs incurred in writing by filing a notice of appeal to the City Council with the City Clerk pursuant to the terms set forth in Section 11, entitled "Appeals." When filing an appeal, the

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fee payer shall submit a letter providing the reason for the appeal along with supporting documentation. The City Council shall consider the appeal and make a final determination within ninety (90) days of receipt of the written appeal.

Section 13
Streets Development Impact Fee Report

13.010 ADDENDUM “A”:

Addendum “A” entitled “Streets Development Impact Fee Report” dated July 05, 2006, along with all footnotes, exhibits, appendices, and other attachments referenced therein, all of which are by this reference incorporated herein as if set forth fully. A description of acceptable levels of service for system improvements is described in the “Report.”

Section 14
Bonding

14.010 BONDING:

Funds pledged toward retirement of bonds, revenue certificates, or other obligations of indebtedness for such projects may include impact fees and other city revenues as may be allocated by the City Council.

Section 15
Effects of Impact Fee on Zoning and Subdivision
Regulations, Impact Fee as Additional
and Supplemental Requirement

15.010 EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS:

This Ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Section 16
Other Powers and Rights Not Affected

16.010 OTHER POWERS AND RIGHTS NOT AFFECTED:

- A. Nothing in this Ordinance shall prevent the City from requiring a developer to construct reasonable project improvements in conjunction with a development project.
- B. Nothing in this Ordinance shall be construed to prevent or prohibit private agreements between property owners and developers, the Idaho Transportation Department, the City, and other governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer including inter-project transfers of credits or providing for reimbursement for project improvements which are used or shared by more than one (1) development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction of the Idaho Transportation Department, then the agreement shall include a provision for the allocation of impact fees collected from the developer for the improvement of the public facility by the Idaho Transportation Department.

- C. Nothing in this Ordinance shall obligate the City to approve development that results in an extraordinary impact. Extraordinary impacts shall be determined and processed pursuant to Section 12 of this Ordinance.
- D. Nothing in this Ordinance shall obligate the City to approve a development request that may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee ordinance. To this end, the City may impose a development impact fee for system improvement costs incurred subsequent to adoption of the ordinance to the extent that new growth and development will be served by the system improvements.
- E. Nothing in this Ordinance 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.
- F. Nothing in this Ordinance 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.
- G. Nothing herein shall restrict or diminish the power of the City to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a developer or owner, or to impose reasonable conditions thereon, including the recovery of project or system improvement costs required as a result of such voluntary annexation.

Section 17
Severability

17.010 SEVERABILITY:

The provisions of this Ordinance are hereby declared to be severable and if any provision of the Ordinance or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Ordinance.

Section 18
Public Health, Safety and Welfare

18.010 PUBLIC HEALTH, SAFETY AND WELFARE:

The provisions of this Ordinance are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience, and it shall be liberally construed to effectively carry out its purposes.

Section 19
Conflicts

19.010 CONFLICTS:

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 20
Partial Invalidity

20.010 PARTIAL INVALIDITY:

Should any sentence, section, clause, part, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

Section 21
No Waiver

21.010 NO WAIVER:

Neither the adoption of this ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this ordinance or be constructed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the City of Rexburg City Council or the validity of any such action to be taken upon matters pending before the City Council on the effective date of this ordinance.

Section 22
Public Notice

22.010 PUBLIC NOTICE

This ordinance shall be published in full or in summary in one (1) issue of the Standard Journal, a newspaper of general circulation published within the City of Rexburg and the official newspaper thereof.

Section 23
Public Notice

23.010 EFFECTIVE DATE

This Ordinance shall be in full force and effect 30 days after adoption by City Council subject to meeting the public notice requirement of Section 22.010.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 5th Day of July, 2006.

Shawn Larsen, Mayor

(SEAL)

Attest:

Blair D. Kay, City Clerk

