

ORDINANCE NO. 2005- 06-05

AN ORDINANCE OF BEAR RIVER CITY ENTITLED MUNICIPAL IMPACT FEES, WHICH IMPOSES IMPACT FEES FOR THE PARK, WASTEWATER SYSTEM AND ROAD SYSTEM.

WHEREAS, Bear River City ("City" hereafter) has been experiencing growth and development and this is expected to continue which creates a demand for adequate public facilities and infrastructure which are reasonably related to and necessary in order to service anticipated future growth; and

WHEREAS, the City is authorized to enact impact fees for public facilities in accordance with the provisions of the Utah Impact Fees Act, Utah Code Ann. § 11-36-101, *et seq.*; and

WHEREAS, the City has caused reasonable plans relating to the wastewater system, road system, and park and recreation system to be prepared upon which the impact fees are based, as required by law; and

WHEREAS, the City has caused a written analysis to be prepared by the Economic Associates of Utah, Inc., for each impact fee which identified and analyzed the proportionate share of the costs of the impacts on public facilities which are reasonably related to and necessary to service anticipated future growth; and

WHEREAS, the written analysis prepared by Economic Associates of Utah, Inc., considered revenue sources for financing the existing and future system improvements necessary to accommodate future growth and established that impact fees are necessary in order to achieve an equitable allocation of the costs of providing existing and future adequate public facilities and system improvements which are reasonably related to and necessary to service anticipated future growth; and identifies a methodology establishing how the proposed impact fees for such public facilities was calculated; and

WHEREAS, the City has identified and analyzed through the impact fee analysis the statutory criteria as to whether a proportionate share of the cost of such existing and new facilities is reasonably related to new development activity as set forth in the Utah Impact Fees Act; and

WHEREAS, the City has complied with all applicable notice and public hearing requirements as established under the Utah Impact Fees Act and related statutes; and

WHEREAS, a public hearing was held before the Bear River City Council on Thursday, May 12, 2005, to receive public input and comment on the proposed adoption of the impact fees enactment; and

WHEREAS, the impact fees established by this ordinance are reasonably related to the cost of providing such public facilities necessitated by anticipated future growth within the City or are reasonably related to public facility costs previously incurred by the City to the extent that

new growth and development will be served by the previously constructed improvements and said fees do not exceed the highest fee justified by the written analysis; and

WHEREAS, after a consideration of all the relevant factors, the Bear River City Council finds and determines that it is in the best interests of the health, safety and general welfare of its current and future residents to adopt this ordinance in order to provide for adequate public facilities to service anticipated future growth and development, the need for which is reasonably related to and created by the anticipated future growth;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BEAR RIVER CITY, UTAH, as follows:

#### SECTION I:

The City Council hereby approves and adopts the reports from Economic Associates of Utah, Inc., entitled "Bear River City Impact Fee Analysis, April 25, 2005" and the analysis reflected therein for each of the impact fees in question.

#### SECTION II:

Add the ordinance entitled Municipal Impact Fees to the Code of Revised Ordinances of the City of Bear River City.

The Code of Revised Ordinances of Bear River City is hereby amended and all previous Titles, Chapters, Resolutions and Ordinances, regarding existing impact fees if any are hereby repealed and Municipal Impact Fees is hereby added and shall read as follows:

#### CHAPTER 1-100. Municipal Impact Fees.

##### 1-101. Impact Fees Imposed.

Impact fees are hereby imposed as a condition of the issuance of a building permit by the City for any Development Activity which creates additional demand and need for public facilities for the wastewater system, the road system, and park and recreation system as set forth in Exhibit A which is attached hereto and incorporated herein by this reference.

##### 1 -102. Service Areas:

The entire area of the City and any areas outside the City serviced by such systems are hereby designated and established as one service area with respect to the wastewater system, road system, and park and recreation system.

##### 1 -103. Time of Collection:

Unless otherwise provided by the City Council, impact fees shall be paid to the City prior to the issuance of a building permit by the City.

**1-104. Adjustment of Impact Fees.**

- A. The City may adjust the impact fees imposed pursuant to this ordinance as necessary in order to:
1. Respond to unusual circumstances in specific cases;
  2. Ensure that the impact fees are imposed fairly;
  3. Permit the adjustment of the amount of the fee based upon studies and data submitted by an applicant or developer, as approved by the City Council; and
  4. Allow a credit against impact fees, as approved by the City Council, for dedication of land for, improvement to, or new construction of, any system improvements by the applicant or developer if the facilities are identified in the City's Facilities, Capital Improvement Plan or other reasonable Plans and are required by the City as a condition of approving the development activity. No credits shall be given for project improvements not defined by the Utah Impact Fees Act.
- B. The City Planning Commission shall have the authority to make recommendation on such adjustments based upon information submitted by an applicant or developer and any recommendations from other appropriate City officials or employees, including the City Engineer.
- C. The City may adopt policies consistent with this ordinance and any resolutions passed by the City Council to assist in the implementation, administration and interpretation of this ordinance related to Municipal Impact Fees.
- D. If the applicant, developer, person or entity is not satisfied with the City Planning Commission's recommendation, an appeal may be made to the City Council under the procedures set forth in Section 1-106, below.

**1-105. Accounting, Expenditure and Refund of Impact Fees.**

The City shall account for, expend and refund impact fees collected pursuant to this Chapter in accordance with the provisions of the Utah Impact Fees Act.

**1-106. Administrative Challenges and Appeals Procedure.**

- A. Any person or entity required to pay an impact fee imposed by the City who believes the fee does not meet the requirements of law may file a written request for information with the City as provided by law.
- B. Within two weeks of the receipt of the request for information, the City shall provide the person or entity with the written analysis required by the Act and with any other relevant information relating to the impact fee.

C. Within 30 days after paying an impact fee, any person or entity who has paid the fee and wishes to challenge the fee shall:

1. File a written appeal with the Bear River City Recorder setting forth in detail all factual and legal grounds in support of the appeal and challenge to the impact fee, and which is relied upon by the appealing party with respect to the fees challenged. Upon receipt of the written appeal, the City Recorder shall forward the appeal, together with any recommendations from the City Engineer, to the City Council and shall schedule a public hearing before the City Council on the appeal for the purpose of receiving input from all interested persons. The City Council shall thereafter render its decision on the appeal no later than 30 days after the date the appeal was filed with the City Recorder. Any person or entity who has failed to comply with the administrative remedies established by this section, may not file or join an action challenging the validity of any impact fee.

D. Any person or entity who was a party to an appeal under this section who is adversely affected by the decision of the City Council may petition the District Court for a review of the decision within 90 days of a decision upholding an impact fee by the City Council or within 120 days after the date the challenge to the impact fee was filed, whichever is earlier. The petition for review of the decision shall be filed in the First District Court for Box Elder County.

E. In the event a petition is filed with the District Court, the City shall transmit to the reviewing Court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

F. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for the purposes of subsection E above.

G. If there is a record:

1. the District Court's review is limited to the record provided by the City; and
2. the District Court may not accept or consider any evidence outside the City's record unless that evidence was offered to the City and the Court determines that it was improperly excluded by the City.

H. If there is an inadequate record, the Court may call witnesses and take evidence.

I. The District Court shall affirm the decision of the City if the decision is supported by substantial evidence in the record.

J. The judge may award reasonable attorney's fees and costs to the prevailing party in an action brought under this section.



**1-107. Challenging an Impact Fee by Arbitration – Procedure – Appeal – Costs.**

- A. Each person or entity intending to challenge an impact fee under subsection 1-406 shall file a written request for arbitration with Bear River City within 30 days.
- B. If a person or entity files a written request for arbitration under subsection (A), an arbitrator or arbitration panel shall be selected as follows:
  - 1. The City and the person or entity filing the request may agree on a single arbitrator within ten days after the day the request for arbitration is filed; or
  - 2. If a single arbitrator is not agreed to in accordance with Subsection (B)(1), an arbitration panel shall be created with the following members:
    - i. Each party shall select an arbitrator within 20 days after the day the request is filed; and
    - ii. The arbitrators selected under Subsection (B)(2)(i) shall select a third arbitrator.
- C. The arbitration panel shall hold a hearing on the challenge within 30 days after the date:
  - 1. The single arbitrator is agreed on under Subsection (B)(1); or
  - 2. The two arbitrators are selected under Subsection (B)(1)(i).
- D. The arbitrator or arbitration panel shall issue a decision in writing within ten days from the date the hearing under Subsection ( C ) is completed.
- E. Except as provided in this section, each arbitration shall be governed by Title 78, Chapter 31a, Utah Arbitration Act.
- F. The parties may agree to:
  - 1. Binding arbitration;
  - 2. Formal, nonbinding arbitration; or
  - 3. Informal, nonbinding arbitration.
- G. IF the parties agree in writing to binding arbitration:
  - 1. The arbitration shall be binding;
  - 2. The decision of the arbitration panel shall be final;
  - 3. Neither party may appeal the decision of the arbitration panel; and
  - 4. Notwithstanding Subsection (J) , the person or entity challenging the impact fee may not also challenge the impact fee under any subsection of 1-406 nor under Subsections 11-36-401(1), (4)(c)(i), or (4)(c)(iii) of the Utah State Code.
- H.
  - 1. Except as provided in Subsection (H)(2), if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63, Chapter 46b, Administrative Procedures Act.
  - 2. For purposes of applying Title 63, Chapter 46b, Administrative Procedures Act, to formal, nonbinding arbitration under this section, notwithstanding Section 63-46b-20, “agency” means Bear River City.

- I. 1. An appeal from a decision in an informal, nonbinding arbitration may be filed with the 1<sup>st</sup> District Court.  
2. Each appeal under Subsection (I)(1) shall be filed within 30 days after the date the arbitration panel issues a decision under Subsection (D).  
3. The district court shall consider de novo each appeal filed under this Subsection (I).  
4. Notwithstanding Subsection (J), a person or entity that files an appeal under this Subsection (J) may not also challenge the impact fee under any subsection of 1-406 nor under Subsection 11-36-401(1), (4)(c)(I), or (4)(c)(iii) of the Utah State Code.
- J. 1. Except as provided in Subsection (G)(4) and (I)(4), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Subsection 1-406(A), (D)(3)(i), or (D)(3)(iii), or Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii) of the Utah State Code.  
2. The filing of a written request for arbitration with 30 days tolls all time limitations under Subsection 1-406 until the date the arbitration panel issues a decision.
- K. The person or entity filing a request for arbitration and Bear River City shall equally share all costs of an arbitration proceeding under this section.

SECTION III: SEVERABILITY

If any section, paragraph, sentence, clause or phrase of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

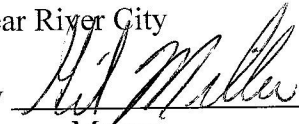
SECTION IV: EFFECTIVE DATE

The Bear River City Council specifically finds that it is necessary for the immediate preservation of the health, safety and welfare of the present and future inhabitants of the City that this ordinance take effect immediately, and therefore this ordinance shall take effect immediately after passage by the City Council and subsequent posting as required by law.

PASSED AND ADOPTED by the City Council of Bear River City, State of Utah, this 2<sup>nd</sup> day of June, 2005

Bear River City

By

  
Mayor

ATTEST:

By

  
City Clerk/Recorder

Posting Date: June 3, 2005

### **CERTIFICATE OF DUE POSTING**

I, Carol S. Andreasen, City Clerk/Recorder of Bear River City, Box Elder County, Utah, hereby certify that I, on the 3<sup>rd</sup> day of June, 2005, in the City of Bear River City, County of Box Elder, State of Utah, posted the foregoing Ordinance No. 2005-06-05 in a likely manner, a copy of which is hereto attached, in each of three of the most public places in the said City of Bear River City, to-wit:

1. Bear River City Office Building, 5871 N 4700 W, Bear River City
2. Country Archers Market, 4670 W 5900 N, Bear River City
3. Bear River City Post Office, 4670 W 5900 N, Bear River City

WITNESS my hand this 3<sup>rd</sup> day of June, 2005.

Carol S. Andreasen

Carol S. Andreasen

Bear River City Clerk/Recorder

# **Exhibit A**

## **Table of Wastewater Impact Fee Schedule**

Size of Water Meter in Inches	Capacity Ratio to 3/4" Line	Impact Fee
0.75	1.00	\$6,000
1.00	1.78	\$10,680
1.50	4.00	\$24,000
2.00	7.11	\$42,660
3.00	16.00	\$96,000
4.00	28.44	\$170,640
6.00	64.00	\$384,000

## **Table of Recommended Road Impact Fee Schedule**

Fee per Standard Residential Unit	\$3,200
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## **Table of Recommended Park and Recreation Impact Fee Schedule**

Fee per Standard Residential Unit	\$1,000
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