

**IMPACT FEE ORDINANCE NO. 446**  
**CASE NO. OA-143-09**  
**TITLE 7, CHAPTER 4, KOOTENAI COUNTY CODE**

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO DEVELOPMENT IMPACT FEES; ENACTING A NEW TITLE 7, CHAPTER 4, KOOTENAI COUNTY CODE, TO BE KNOWN AS THE KOOTENAI COUNTY DEVELOPMENT IMPACT FEE ORDINANCE, TO PROVIDE FOR THE IMPOSITION, COMPUTATION AND PAYMENT OF A FIRE IMPACT FEE, AN EMERGENCY MEDICAL SERVICE (EMS) IMPACT FEE, A SHERIFF'S DEPARTMENT IMPACT FEE, A JAIL IMPACT FEE, A PARKS AND WATERWAYS IMPACT FEE, AND A HIGHWAY IMPACT FEE ON FUTURE DEVELOPMENT; PROVIDING AUTHORITY, INTENT AND DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT OF SEPARATE IMPACT FEE FUNDS FOR EACH OF SUCH IMPACT FEES; PROVIDING FOR EXEMPTIONS, REFUNDS, CREDITS AND WAIVERS RESPECTING SUCH IMPACT FEES; PROVIDING GENERAL PROVISIONS, APPLICABILITY AND APPEALS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the authority granted in Section 67-8201, et seq., Idaho Code, and through intergovernmental agreements with Lakes Highway District, Post Falls Highway District, East Side Highway District, the Kootenai County Emergency Medical Services System ("KCEMSS"), and the several fire protection districts located within or serving portions of Kootenai County with the exception of Hauser Fire Protection District and St. Maries Fire Protection District, Kootenai County may impose Impact Fees to fund expenditures by the Kootenai County Sheriff's Department (including the Kootenai County Jail), the Kootenai County Parks and Waterways Department, KCEMSS, the Fire Districts, and the Highway Districts on Capital Improvements needed to serve new growth and development; and

WHEREAS, the County retained BBC Research and Consulting, Galena Consulting and Spink Butler, LLP (collectively, "Consultant") to analyze and assess new growth and development projections through December 31, 2017 in order to determine the demand for fire, law enforcement, jail, parks and waterways, emergency medical services (EMS), and highway Capital Improvements to accommodate new growth and development in the unincorporated area of Kootenai County; and

WHEREAS, the report entitled "Kootenai County Impact Fee Study and Capital Improvement Plans," dated April 15, 2008, as updated by the document entitled "Kootenai County Highway District Impact Fees Update," dated December 18, 2008, which were prepared by BBC Research and Consulting (collectively referred to as the "Impact Fee Study"), and the document entitled "Impact Fee Advisory Committee Recommendations – Draft," dated January 9, 2009, prepared by BBC Research and Consulting, as updated by Kootenai County Building and Planning Director Scott Clark on April 26, 2010, including the additional capital improvement plan materials attached thereto, set forth a reasonable methodology and analysis for determining and

quantifying the impacts of various types of new residential and nonresidential development on fire, EMS, law enforcement, jail, highway, and parks and waterways Public Facilities; quantifies the reasonable impact of new growth and development on the System Improvements addressed therein; determines the costs necessary to meet demands created by new growth and development; and determines Impact Fees as set forth in this Chapter that are at a level no greater than necessary to defray the cost of planned Capital Improvements to increase the service capacity of the County's existing fire, EMS, law enforcement, jail, highway, and parks and waterways Public Facilities. The County hereby establishes as standards the assumptions and Level of Service standards referenced in the Impact Fee Study as part of the County's current plans for future expansions to the fire, EMS, law enforcement, jail, highway, and parks and waterways Public Facilities.

WHEREAS, based on reasonable methodologies and analyses for determining the impacts of new growth and development on the County's fire, EMS, law enforcement, jail, highway, and parks and waterways Public Facilities, and a review and reliance on the Kootenai County Comprehensive Plan (the "Comprehensive Plan"), including, without limitation, the Capital Improvements Plans adopted via enactment of Resolution No. 2010-76 on September 9, 2010, the Impact Fee Study quantifies the impacts of new growth and development on Public Facilities, and establishes Impact Fees on new growth and development no greater than necessary to defray the cost of Capital Improvements that will increase the service capacity of Public Facilities to serve new growth and development.

WHEREAS, all of the Capital Improvements planned for and included in the Impact Fee Study which are to be funded by highway, fire, EMS, Sheriff's Department, jail, and parks and waterways Impact Fees, are directly related to services that the County, the Fire Districts, the Highway Districts, and KCEMSS are required or authorized to provide, and are services recognized as necessary public services under the general policies of the County pursuant to intergovernmental agreement, resolution, code or ordinance; and

WHEREAS, an equitable program for planning and financing Capital Improvements to increase the service capacity of 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 the County. Such protection requires that the County's fire, EMS, Sheriff's Department, jail, highway, and parks and waterways Public Facilities be expanded to accommodate new growth and development in the unincorporated area of Kootenai County.

WHEREAS, the highway, fire, EMS, law enforcement, jail, and parks and waterways Impact Fees to be imposed on new growth and development will be and are hereby legislatively adopted, will be generally applicable to a broad class of property and are intended to defray the projected impacts on such Capital Improvements caused by new growth and development as required by law; and

WHEREAS, the Impact Fee Study quantifies the reasonable impacts of new growth and development on existing highway, fire, EMS, Sheriff's Department, jail, and parks and

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waterways Capital Improvements, and the reasonable costs of Capital Improvements necessary to increase the service capacity of the fire, EMS, law enforcement, jail, highway, and parks and waterways Public Facilities now existing in Kootenai County to accommodate the additional demands and impacts of new growth and development; and

WHEREAS, based upon the Impact Fee Study, the testimony at public hearing and a review of all of the facts and circumstances, in the reasonable judgment of the Kootenai County Board of Commissioners ("Board"), the highway, fire, EMS, Sheriff's Department, jail, and parks and waterways Impact Fees hereby established are at levels no greater than necessary to defray the cost of Capital Improvements directly related to the categories of residential and nonresidential land development listed herein; and

WHEREAS, in adopting the highway, fire, EMS, Sheriff's Department, jail, and parks and waterways Impact Fees, the Board intends and has determined that such Impact Fees are designed to and do address Capital Improvements needs that are brought about by new growth and development, which needs are separate and distinct from the impacts and needs addressed by other requirements of the County, the Fire Districts, the Highway Districts, and KCEMSS, and in no circumstance do the Impact Fees set forth herein address the same subjects as other requirements of the County, the Fire Districts, the Highway Districts, or KCEMSS for site specific dedications or improvements; and

WHEREAS, the Impact Fees adopted hereby shall be collected and accounted for in accordance with Section 67-8201, et seq., Idaho Code; and

WHEREAS, in accordance with the procedural requirements of Title 67, Chapter 65, Idaho Code, the Capital Improvements Plans have been adopted as part of the Comprehensive Plan, and in accordance with the procedural requirements of Title 67, Chapter 82, Idaho Code, the Impact Fee Study and Capital Improvements Plans have been presented to and reviewed by the Board; and

WHEREAS, after due and timely notice, the Board held a public hearing to discuss, review and hear public comments on the proposed Impact Fees set forth herein; and

WHEREAS, the Impact Fees adopted hereby are fair and rational, charge new growth and development according to new growth and development's impact on the highway, fire, EMS, Sheriff's Department, jail, and parks and waterways Public Facilities in Kootenai County and benefit those who pay Impact Fees in a tangible way;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF KOOTENAI COUNTY, IDAHO AS FOLLOWS:

**SECTION 1.** The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Board.

**SECTION 2.** That Title 7, Kootenai County Code, be, and the same is hereby amended by the addition thereto of a **NEW CHAPTER**, to be known and designated as Title 7, Chapter 4, Kootenai County Code, and to read as follows:

**7-4-1: LEGISLATIVE FINDINGS:** The Board of County Commissioners of Kootenai County, Idaho hereby finds that:

- A. Based on the Kootenai County Comprehensive Plan adopted by the Board pursuant to Title 67, Chapter 65, Idaho Code, including but not limited to the Capital Improvements chapter contained therein, and the general governmental goal of protecting the health, safety, and general welfare of the citizens of the County, it is necessary that the Public Facilities for (1) highway, (2) fire, (3) EMS, (4) Sheriff's Department, (5) jail, and (6) parks and waterways be expanded and improved to accommodate new Development within the County. Throughout this Chapter, the System Improvements for these six (6) types of Public Facilities are sometimes collectively referred to as "Capital Facilities" and sometimes individually referred to as a "Capital Improvements Element."
- B. The County has formed the Development Impact Fee Advisory Committee required by Idaho Code § 67-8205, and that Committee has performed the duties required of it pursuant to such statute. The County intends that the Committee continue to exist and to perform those duties identified in Idaho Code § 67-8205 that occur following the adoption of Development Impact Fees.
- C. New residential and nonresidential Development imposes and will impose increasing and excessive demands upon Capital Facilities located within Kootenai County.
- D. The revenues generated from new residential and nonresidential Development often do not generate sufficient funds to provide the necessary improvements of these Capital Facilities to accommodate new Development.
- E. New Development is expected to continue, and will place ever-increasing demands on the County, the Fire Districts, the Highway Districts, and KCEMSS, to provide and expand Public Facilities to serve new Development.
- F. The County has planned for the improvement of Capital Facilities in the Capital Improvements chapter of the Kootenai County Comprehensive Plan. In addition, the Highway Districts, Fire Districts, and KCEMSS have adopted their respective Capital Improvements Plans by resolution or other official action.
- G. The Idaho Development Impact Fee Act, Title 67, Chapter 82, Idaho Code, authorizes the County to adopt a Development Impact Fee system to offset, recoup, or reimburse the portion of the costs of needed improvements to the Capital Facilities caused by new Development within the County.

- H. The creation of an equitable Development Impact Fee System would promote the purposes set forth in the Idaho Development Impact Fee Act, in that it would: (1) ensure that adequate Public Facilities are available to serve new growth and Development; (2) promote orderly growth and Development by establishing uniform standards by which local governments may require that those who benefit from new growth and Development pay a Proportionate Share of the cost of new Public Facilities needed to serve new growth and Development; (3) ensure that those who benefit from new growth and Development are required to pay no more than their Proportionate Share of the cost of Public Facilities needed to serve new growth and Development, and (4) prevent duplicate and *ad hoc* Development Requirements.
- I. The creation of an equitable Development Impact Fee system would enable the County to accommodate new Development, and would assist the County to implement the Capital Improvements Element of the Comprehensive Plan.
- J. In order to implement an equitable Development Impact Fee system for Capital Facilities, the County retained BBC Research & Consulting to prepare an impact fee study for these types of facilities. The resulting document, the “Kootenai County Impact Fee Study and Capital Improvements Plans,” dated April 15, 2008, was later updated by the document entitled “Kootenai County Highway District Impact Fees Update,” dated December 18, 2008 (collectively, the “Development Impact Fee Study”). The Development Impact Fee Study was later amended by the additional capital improvement plan materials attached to the document entitled “Impact Fee Advisory Committee Recommendations – Draft,” as updated by Kootenai County Building and Planning Director Scott Clark on April 26, 2010. The Development Impact Fee Study and all updates thereto are hereby incorporated by reference, and are available at the Office of the Kootenai County Board of Commissioners.
- K. The methodology used in preparing the Development Impact Fee Study, when applied through this Chapter, complies with all applicable provisions of Idaho Law, including those set forth in Idaho Code §§ 67-8204(2), 67-8204(16), 67-8204(23), 67-8207 and 67-8209. The incorporation of the Development Impact Fee Study and all updates thereto by reference satisfies the requirement in Idaho Code § 67-8204(16) for a detailed description of the methodology by which the Development Impact Fees were calculated, and the requirement in Idaho Code § 67-8204(24) for a description of acceptable Levels of Service for System Improvements.
- L. The Development Impact Fee Study, as updated, is incorporated into the Capital Improvements chapter of the Kootenai County Comprehensive Plan by reference therein, and such chapter has been prepared in conformance with the requirements of Title 67, Chapters 65 and 82, Idaho Code.
- M. The Development Impact Fee Study, as updated, sets forth reasonable methodologies and analyses for determining the impacts of various types of new Development on Capital Facilities, and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such facilities created by new Development.

- N. In accordance with Idaho Code, the Development Impact Fee Study, as updated, is based on actual System Improvement Costs or reasonable estimates of such costs. In addition, the Development Impact Fee Study, as updated, uses a Fee calculation methodology that is net of credits for the Present Value of revenues that will be generated by new growth and Development based on historical funding patterns and that are anticipated to be available to pay for System Improvements, including taxes, assessments, user fees, and intergovernmental transfers.
- O. The Development Impact Fees described in this Chapter are based on the Development Impact Fee Study, as updated, and do not exceed the costs of System Improvements for Capital Facilities to serve new Development that will pay the Development Impact Fees.
- P. The EMS, Sheriff's Department, jail, and parks and waterways Public Facilities included in the calculation of Fees in the Development Impact Fee Study, as updated, will benefit all new growth and development throughout the unincorporated area of the County. Therefore, it is appropriate to treat the unincorporated area of the County as a single Service Area for purposes of calculating, collecting and spending the Development Impact Fees collected from residential and nonresidential Development for these Public Facilities.
- Q. The highway and fire Public Facilities included in the calculation of Fees in the Development Impact Fee Study, as updated, are provided by highway districts and fire protection districts which serve certain portions of Kootenai County, and will benefit new growth and development occurring within each respective district. Therefore, it is appropriate to treat each highway district and fire protection district as a separate Service Area for purposes of calculating, collecting and spending the Development Impact Fees collected from residential and nonresidential Development for these Public Facilities.
- R. There is both a rational nexus and a rough proportionality between the Development impacts created by each type of Development covered by this Chapter and the Development Impact Fees that such Development will be required to pay.
- S. This Chapter creates a system by which Development Impact Fees paid by new Development will be used to finance, defray, or reimburse a portion of the costs incurred by the County, the Fire Districts, the Highway Districts, and KCEMSS to construct improvements for Capital Facilities in ways that benefit the Development for which each Development Impact Fee was paid within a reasonable period of time after the Development Impact Fee is paid, and in conformance with Idaho Code § 67-8210.
- T. This Chapter creates a system under which Development Impact Fees shall not be used to correct existing deficiencies for any capital facilities, or to replace or rehabilitate existing improvements, or to pay for routine operation or maintenance of those facilities.
- U. This Chapter creates a system under which there shall be no double payment of impact fees, in accordance with Idaho Code § 67-8204(19).

V. This Chapter is consistent with all applicable provisions of Title 67, Chapter 82, Idaho Code, concerning Development Impact Fee Ordinances.

**7-4-2: AUTHORITY, APPLICABILITY, AND EFFECTIVE DATE:**

- A. In addition to the general authorities set forth in section 1-1-2 of this Code, this chapter is enacted pursuant to the authority granted to the County pursuant to Title 67, Chapters 65 and 82, Idaho Code, and other applicable laws of the State of Idaho.
- B. The provisions of this chapter shall apply to all of the territory within the unincorporated area of Kootenai County with respect to impact fees payable to Kootenai County or to KCEMSS, and shall apply to all of the territory within the portions of each highway district or fire protection district within the unincorporated area of Kootenai County which has executed an intergovernmental agreement with the County for purposes of collection or expenditure of highway district or fire protection district Impact Fees pursuant to Section 67-8204A, Idaho Code, and other applicable laws of the State of Idaho.
- C. Applications for Building Permits received by the County prior to the Effective Date of this chapter, 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 this chapter, or amendment enacted after such Building Permit application, if a valid Building Permit has been issued or construction has commenced prior to the Effective Date of this chapter, or amendment. For Building Permits that expire or are revoked after the Effective Date of this chapter, the Fee payer shall be entitled to a refund of previously paid Impact Fees as provided further in section 7-4-8 of this chapter, provided that in the case of reapplication for Building Permit, the Impact Fee in effect at that time shall be paid.
- D. Notwithstanding any other provision of law, Development Requirements for System Improvements shall be imposed by the County only by way of Impact Fees imposed pursuant to and in accordance with Title 67, Chapter 82, Idaho Code, and this chapter.

**7-4-3: INTENT:** This Chapter is adopted to be consistent with, and to help implement, the Kootenai County Comprehensive Plan, and particularly the Capital Improvements chapter of that Plan.

A. The intent of this Chapter is:

- 1. To ensure that new Development bears a Proportionate Share of the cost of improvements to Capital Facilities; to ensure that such Proportionate Share does not exceed the cost of improvements to such facilities required to accommodate new Development; and to ensure that funds collected from new Development are actually used for improvements to Capital Facilities that benefit such new Development.

2. To be consistent with those principles for allocating a fair share of the cost of new capital facilities to new Development, and for adopting Development Impact Fee Ordinances, established by Title 67, Chapter 82, Idaho Code.
- B. It is not the intent of this Chapter:
1. To collect any money from any new Development in excess of the actual amount necessary to offset new demands for Capital Facilities created by such new Development.
  2. That any monies collected from any Development Impact Fee deposited in an Impact Fee Account ever be commingled with monies from a different Impact Fee Account, or ever be used for a Development Impact Fee component different from that for which the Fee was paid, or ever be used to correct current deficiencies in Capital Facilities or ever be used to replace, rehabilitate, maintain, or operate any such facility.

#### **7-4-4: DEFINITIONS:**

For purposes of this chapter, the following terms shall have the following meanings, some of which are assigned by Idaho Code § 67-8203, as indicated:

**ACCOUNTS:** The Fire Capital Facilities Account, Highway Capital Facilities Account, Jail Capital Facilities Account, Sheriff's Department Capital Facilities Account, EMS Capital Facilities Account, and Parks and Waterways Capital Facilities Account established as part of the Development Impact Fee Trust Fund pursuant to section 7-4-7 of this chapter.

**AFFORDABLE HOUSING:** Housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income within Kootenai County.

**APPROPRIATE:** To legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.

**BOARD:** The Board of County Commissioners of Kootenai County, Idaho.

**BUILDING PERMIT:** An official document or certificate issued by the County pursuant to Chapter 1 of this title which authorizes the construction or siting of any building.

**CAPITAL IMPROVEMENT:** An improvement with a useful life of ten (10) years or more, by new construction or other action that increases the service capacity of a public facility.

**CAPITAL IMPROVEMENTS ELEMENT:** A chapter of the Kootenai County Comprehensive Plan adopted pursuant to Title 67, Chapter 65, Idaho Code, including all documents incorporated by reference therein, which meets the requirements of a Capital Improvements Plan pursuant to Title 67, Chapter 82, Idaho Code.

**CAPITAL IMPROVEMENTS PLAN:** A plan adopted pursuant to Title 67, Chapter 82, Idaho Code that identifies Capital Improvements for which Development Impact Fees may be used as a funding source.

**COUNTY:** Kootenai County, Idaho.

**DEVELOPER:** Any Person or legal entity undertaking Development, including a party that undertakes the subdivision of property pursuant to Idaho Code §§ 50-1301 through 50-1334 and Title 10 of this code.

**DEVELOPMENT:** Any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, that creates additional demand and need for Public Facilities or the subdivision of property that would permit any change in the use, character or appearance of land, except that “Development” shall not include activities that would otherwise be subject to the payment of the Development Impact Fee if such activities are undertaken by a taxing district as defined in Idaho Code § 63-201 in the course of carrying out the taxing district’s public responsibilities.

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

**DEVELOPMENT IMPACT FEE:** The payment of money imposed as a condition of Development Approval to pay for a Proportionate Share of the cost of System Improvements needed to serve Development. In the context of this Chapter, Development Impact Fee means one of the six (6) Development Impact Fees defined for the six (6) Capital Facilities elements, and Development Impact Fees (in the plural) means all six (6) Development Impact Fees (or all of them that apply to the proposed Development pursuant to this chapter), unless the context clearly indicates otherwise. The term does not include:

- a. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for Development; or
- b. Amounts collected from a Developer in a transaction in which the County, a fire protection district, a highway district, or KCEMSS has incurred expenses in constructing Capital Improvements for the Development if the owner or Developer has agreed to be financially responsible for the construction or installation of the Capital Improvements, unless a written agreement is made pursuant to Idaho Code Section 67-8209(3) for credit or reimbursement.

**DEVELOPMENT IMPACT FEE ADMINISTRATOR:** The Director of the Kootenai County Building and Planning Department, or his or her designee.

**DEVELOPMENT IMPACT FEE STUDY:** The document entitled the “Kootenai County Impact Fee Study and Capital Improvement Plans,” dated April 15, 2008, as updated by the document entitled “Kootenai County Highway District Impact Fees Update,” dated December 18, 2008,

which were prepared by BBC Research & Consulting for the County, the Fire Districts, the Highway Districts, and KCEMSS, and as amended by the additional capital improvement plan materials attached to the document entitled “Impact Fee Advisory Committee Recommendations – Draft,” as updated on April 26, 2010, and as may be subsequently amended or updated, which set forth reasonable methodologies and analyses for determining the impacts of various types of Development on Capital Facilities and determines the cost of expansions to those facilities necessary to meet the demands created by new Development.

**DEVELOPMENT IMPACT FEE TRUST FUND:** The trust fund established under section 7-4-7 of this chapter that includes:

- a. a Fire Capital Facilities Account;
- b. a Highway Capital Facilities Account;
- c. a Jail Capital Facilities Account;
- d. a Sheriff’s Department Capital Facilities Account;
- e. an EMS Capital Facilities Account; and
- f. a Parks and Waterways Capital Facilities Account.

The Development Impact Fee Trust Fund is also sometimes called the Trust Fund.

**DEVELOPMENT REQUIREMENT:** A requirement attached to a developmental approval or other governmental action approving or authorizing a particular Development Project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

**EMS:** Emergency medical services.

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

**EXTRAORDINARY COSTS:** Those costs incurred as a result of an Extraordinary Impact.

**EXTRAORDINARY IMPACT:** An impact that is reasonably determined by the governmental entity with jurisdiction to:

- a. result in the need for System Improvements, the cost of which will significantly exceed the sum of the Development Impact Fees to be generated from the Project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code § 67-8214(2); or

- b. result in the need for System Improvements that are not identified in the Capital Improvements Plan.

**FEE PAYER:** That Person who pays or is required to pay a Development Impact Fee. A Fee Payer may include a Developer.

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

**FIRE DISTRICTS:** Refers collectively to the several fire protection districts located within or serving portions of Kootenai County, with the exception of the Hauser Fire Protection District and the St. Maries Fire Protection District.

**HEARING EXAMINER:** The Kootenai County hearing examiner, as established under section 2-1-3 of this code.

**HIGHWAY CAPITAL FACILITIES:** Lands, as well as buildings, improvements to land, and related equipment and vehicles meeting the definition of "Capital Improvement," used for public highway facilities included in the calculation of the Highway Impact Fees in the Development Impact Fee Study, and consistent with the Capital Improvements Element, and specifically including those related costs included in the definition of "System Improvement Costs," but not including maintenance, operations, or improvements that do not expand capacity.

**HIGHWAY DISTRICTS:** Refers collectively to Lakes Highway District, Post Falls Highway District, and East Side Highway District.

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

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

**JAIL CAPITAL FACILITIES:** Lands, as well as buildings, improvements to land, and related equipment and vehicles meeting the definition of "Capital Improvement," used for any police facilities designated as a "county jail" pursuant to Title 20, Chapter 6, Idaho Code, included in the calculation of the Jail Impact Fee in the Development Impact Fee Study, and specifically including those related costs included in the definition of "System Improvement Costs," but not including maintenance, operations, or improvements that do not expand capacity.

**KCEMSS:** The Kootenai County Emergency Medical Services System established and governed pursuant to Title 2, Chapter 3 of this code.

**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 ("LOS"):** A measure of the relationship between service capacity and service demand for Public Facilities.

**MANUFACTURED HOME:** A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, that, in the traveling mode, is eight feet (8') or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. § 5401 *et seq.*

**MODULAR BUILDING:** As defined in Idaho Code § 39-4301.

**PARKS AND WATERWAYS CAPITAL FACILITIES:** Lands, as well as buildings, improvements to land (including submerged lands), improvements to, on, or over public waterways, and related equipment and vehicles meeting the definition of Capital Improvement, used for public parks, recreation, open space, trail and waterways facilities included in the calculation of the Parks and Waterways Impact Fee in the Development Impact Fee Study, and specifically including those related costs included in the definition of "System Improvement Costs," but not including maintenance, operations, or improvements that do not expand capacity.

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

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

**PROJECT:** A particular Development on an identified parcel of land.

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

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

**PUBLIC FACILITIES:** Shall include EMS Capital Facilities, Fire Capital Facilities, Highway Capital Facilities, Jail Capital Facilities, Parks and Waterways Capital Facilities, and Sheriff's Department Capital Facilities.

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

**SERVICE AREA:** A defined geographic area in which specific Public Facilities provide service to Development within the area defined.

**SERVICE UNIT:** A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of Capital Improvements.

**SHERIFF'S DEPARTMENT CAPITAL FACILITIES:** Lands, as well as buildings, improvements to land, and related equipment and vehicles meeting the definition of "Capital Improvement," used for police facilities other than those designated as a "county jail" pursuant to Title 20, Chapter 6, Idaho Code, included in the calculation of the Sheriff's Department Impact Fee in the Development Impact Fee Study, and specifically including those related costs included in the definition of "System Improvement Costs," but not including maintenance, operations, or improvements that do not expand capacity.

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

**SYSTEM IMPROVEMENTS:** In contrast to Project Improvements, means Capital Improvements to Public Facilities that are designed to provide service to a Service Area including, without limitation, the type of improvements described in Idaho Code Section 50-1703. For the purposes of this Chapter, the System Improvements are the Fire Capital Facilities, Highway Capital Facilities, Jail Capital Facilities, Sheriff's Department Capital Facilities, EMS Capital Facilities, and Parks and Waterways Capital Facilities.

**SYSTEM IMPROVEMENT COSTS:** Costs incurred for construction or reconstruction of System Improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in Idaho Code § 50-

1702(h), to provide additional Public Facilities needed to serve new growth and Development. System Improvement Costs do not include:

- a. construction, acquisition or expansion of Public Facilities other than Capital Improvements identified in the Capital Improvements Plan;
- b. repair, operation or maintenance of existing or new Capital Improvements;
- c. upgrading, updating, expanding or replacing existing Capital Improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- d. upgrading, updating, expanding or replacing existing Capital Improvements to provide better service to existing development;
- e. administrative and operating costs of the governmental entity unless such costs are attributable to development of the Capital Improvement plan, as provided in Idaho Code § 67-8208; or
- f. principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance Capital Improvements identified in the Capital Improvements plan.

#### **7-4-5: IMPOSITION AND COMPUTATION OF DEVELOPMENT IMPACT FEES:**

##### **A. Fee Obligation.**

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

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

1. Rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
2. Remodeling or repairing a structure that does not increase the number of Service Units;
3. Replacing a residential unit, including a Manufactured Home, with another residential unit on the same lot, provided that the number of Service Units does not increase;
4. Constructing an addition on a residential structure that does not increase the number of Service Units;
5. Placing a temporary construction trailer or office on a lot;
6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of System Improvements;
7. The installation of a Modular Building, Manufactured Home, or Recreational Vehicle if the Fee Payer can demonstrate by documentation such as utility bills and tax records that either:
  - a. a Modular Building, Manufactured Home, or Recreational Vehicle was legally in place on the lot or space prior to the effective date of this chapter; or
  - b. a Development Impact Fee has been paid previously for the installation of a Modular Building, Manufactured Home or Recreational Vehicle on that same lot or space.
8. Projects for which a Development Impact Fee for each type of Public Facility covered by this Chapter has previously been paid in an amount that equals or exceeds the Development Impact Fee that would be required by this Chapter;
9. Projects built by the federal government or the State government; and
10. Public schools.

**C. Calculation of Amount of Development Impact Fees.**

1. Using the Fee Table. Development Impact Fees shall be calculated using the Fee Table contained in section 7-4-14 of this chapter, unless: (a) the Fee Payer requests an Individualized Assessment pursuant to subsection (C)(2) of this section, or (b) the County designates the proposed development as a Development of Extraordinary Impact in writing to the Fee Payer, in which case the provisions of subsection (C)(3) of this section shall apply.
  - a. Any Person who commences any new Impact-Generating Land Development, except those exempted pursuant to this Chapter, or those preparing an Individual Assessment pursuant to this Chapter, shall pay all Development Impact Fees applicable to the proposed development, as determined by the Fee Table contained in section 7-4-14 of this chapter. Persons choosing to pay applicable Development Impact Fees pursuant to section 7-4-14 of this chapter shall be deemed to have made a full and complete payment of the Project's Proportionate Share of Capital Facilities costs for System Improvements, except as noted in subsection (C)(3) of this section.
  - b. If the proposed development is of a type not listed in the Fee Table contained in section 7-4-14 of this chapter, then the County shall apply the Development Impact Fees applicable to the most nearly comparable type of land use listed therein. The determination as to which type of development is most nearly comparable to the proposed development shall be made by referring to traffic generation rates for land uses published by Institute of Transportation Engineers, and by identifying that land use listed in section 7-4-14 of this chapter whose traffic generation rates are most comparable to the proposed land use. If no traffic generation rate for the proposed land use appears in a publication of the Institute of Transportation Engineers, or if it not possible to determine which land use listed in section 7-4-14 of this chapter has the most comparable traffic generation rates, then the most nearly comparable land use shall be determined by the Development Impact Fee Administrator based on comparison of other characteristics of the proposed land use (including, without limitation, zoning, employment or occupancy, the size of the facility, and the amount of parking to be provided) with the characteristics of those land uses listed in section 7-4-14 of this chapter.
  - c. If the proposed Development includes a mix of those uses listed in section 7-4-14 of this chapter, then the Development Impact Fees shall be determined by adding up the Development Impact Fees that would be payable for each use as if it were a freestanding use pursuant to section 7-4-14 of this chapter.
  - d. If the Fee Payer requests that the County calculate the amount of Development Impact Fees due pursuant to section 7-4-14 of this chapter, the County shall notify the Fee Payer of such amount within thirty (30) days after receipt of that request.

2. Using an Individual Assessment.

- a. In lieu of calculating the amount(s) of Development Impact Fees in accordance with section 7-4-14 of this chapter, a Fee Payer may request that the amount of the required Development Impact Fee be determined through an Individual Assessment for the proposed development. The Individual Assessment process shall permit consideration of studies, data, and any other relevant information submitted by the Fee Payer to adjust the amount of the fee. If a Fee Payer requests the use of an Individual Assessment, the Fee Payer shall be responsible for retaining a qualified professional to prepare the Individual Assessment that complies with the requirements of this chapter, at the Fee Payer's expense. The Fee Payer shall bear the burden of proving by clear and convincing evidence that the resulting Individual Assessment is a more accurate measure of its Proportionate Share of the cost of Capital Improvements, based on the adopted Levels of Service, than the Development Impact Fees that would otherwise be due pursuant to the Fee Table.
- b. Each Individual Assessment shall be based on the same Level of Service standards and unit costs for System Improvements used in the Development Impact Fee Study, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.
- c. An application for an Individual Assessment may be submitted at any time that the number of dwelling units in the proposed dwelling and the types and amounts of development in each nonresidential category identified in section 7-4-14 of this chapter is known. The County shall issue a decision within thirty (30) days following receipt of a completed application for Individual Assessment and supporting information from the applicant, so as not to unreasonably delay subsequent applications for or issuance of Building Permits.
- d. Each Individual Assessment shall be submitted to the Development Impact Fee Administrator or a designee, and may be accepted, rejected, or accepted with modifications by the Development Impact Fee Administrator or a designee as the basis for calculating Development Impact Fees. The criteria for acceptance, rejection, or acceptance with modifications shall be whether the Individual Assessment is a more accurate measure of demand for the County Capital Improvements Element(s) created by the proposed Development, or the costs of those facilities, than the applicable fee shown in section 7-4-14 of this chapter.
- e. The decision by the Development Impact Fee Administrator or designee on an application for an Individual Assessment shall include an explanation of the calculation of the impact fee, shall specify the System Improvement(s) for which the impact fee is intended to be used, and shall include an explanation of those factors identified in Idaho Code § 67-8207.

- f. If an Individual Assessment is accepted or accepted with modifications by the Development Impact Fee Administrator, then the Development Impact Fees due under this Chapter for such Development shall be calculated according to such Individual Assessment.
3. Extraordinary Impacts.
- a. If the County determines that a proposed development generates Extraordinary Impacts that will result in Extraordinary Costs, the County will notify the Fee Payer of such determination within thirty (30) days after receipt of a request for a Certification pursuant to subsection (E) of this section or a request for a Building Permit or Development Approval, whichever occurs first. Such notice shall include a statement that the potential impacts of such development on System Improvements are not adequately addressed by the Development Impact Fee Study, and that a supplemental study at the Fee Payer's expense will be required.
- b. Circumstances that may lead to a determination of Extraordinary Impacts include, but are not limited to:
- i. an indication that traffic generation from the proposed Development or activity will exceed those typical for a facility or activity of its type;
  - ii. an indication that employment generated by the Development or activity will exceed those typical for a facility or activity of its type;
  - iii. an indication the assumptions used in the Development Impact Fee Study underestimate the level of activity or impact on Capital Facilities from the proposed Development or activity; or
  - iv. an indication that levels of calls for law enforcement, fire, or EMS services from developments or activities owned or operated by the Fee Payer or its agents exceed the assumptions used in the Development Impact Fee Study.
- c. Within thirty (30) days following the designation of a Development with Extraordinary Impacts, the County shall meet with the Fee Payer to discuss whether the Fee Payer wants to:
- i. pay for the supplemental study necessary to determine the System Improvement Costs related to the proposed Development;
  - ii. modify the proposal to avoid generating Extraordinary Impacts; or
  - iii. withdraw the application for Certification, Building Permit, or Development Approval.

d. If the Fee Payer agrees to pay for the supplemental study required to document the proposed Development's Proportionate Share of System Improvement Costs, then the County and the Fee Payer shall jointly select an individual or organization acceptable to both to perform such study, and the Fee Payer shall enter into a written agreement with such individual or organization to pay the costs of such study. Such agreement shall require the supplemental study to be completed within thirty (30) days of such written agreement, unless the Fee Payer agrees to a longer time.

e. Once the study has been completed, the Fee Payer may choose to:

- i. pay the Proportionate Share of System Improvement Costs documented by the supplemental study;
- ii. modify the proposed development to reduce such costs; or
- iii. withdraw the application.

If the Fee Payer agrees to pay the System Improvement Costs documented in the supplemental study, that agreement shall be reduced to writing between the County and the Fee Payer prior to review and consideration of any application for any Development Approval or Building Permit related to the proposed Development.

f. Notwithstanding any agreement by the Fee Payer to pay the Proportionate Share of System Improvement Costs documented by the supplemental study, nothing in this Chapter shall obligate the County to approve development that results in an Extraordinary Impact.

D. Error in Calculation. If the County discovers an error in the Development Impact Fee Study that results in assessment or payment of more than a Proportionate Share of System Improvement Costs on any proposed development, the County shall:

1. adjust the Development Impact Fee to collect no more than a Proportionate Share; or
2. discontinue the collection of any Development Impact Fees until the error is corrected via amendment to this chapter.

E. Certification. After the Development Impact Fees due for a proposed Development have been calculated pursuant to section 7-4-14 of this chapter or the Individual Assessment, the Fee Payer may request a certification of the amount of Development Impact Fees due for that Development from the Development Impact Fee Administrator. Within thirty (30) days after receiving such request, the Development Impact Fee Administrator shall issue a written certification of the amount of Development Impact Fees due for the proposed Development. Such certification shall establish the Development Impact Fee so long as there is no material change to the particular Project as identified in the Individual Assessment Application, or the impact fee schedule set forth in section 7-4-14 of this chapter. The Certification shall include

an explanation of the calculation of the impact fee, including an explanation of factors considered under Idaho Code § 67-8207, and shall also specify the System Improvement(s) for which the Development Impact Fee is intended to be used.

E. Payment of Fees.

1. After the Effective Date of this Chapter all Fee Payers shall pay the Impact Fees as provided by this Chapter to the Fee Administrator following application for a Building Permit and prior to the issuance of any Building Permit for a Dwelling Unit, or nonresidential building.
2. All Impact Fees paid by a Fee Payer pursuant to this Chapter shall be promptly deposited into the appropriate Account(s) in the Development Impact Fee Trust Fund described in section 7-4-7 of this chapter.
3. A Fee Payer may pay a Development Impact Fee under protest in order to avoid delay in the issuance of a Building Permit or Development Approval. A Fee Payer making a payment under protest shall not be estopped from exercising the right of appeal provided in section 7-4-10 of this chapter, nor shall such Fee Payer be estopped from receiving a refund of any amount deemed to have been illegally collected.
4. Mistake or Misrepresentation in Calculation or Payment.
  - a. If Development Impact Fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated.
  - b. Any amounts overpaid by a Fee Payer shall be refunded by the County within twenty-eight (28) days after the County's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the Fee was paid.
  - c. Any amounts underpaid by the Fee Payer shall be paid to the County within twenty-eight (28) days after the County's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the Fee was paid.
  - d. In the case of an underpayment to the County, the County may withhold issuance of Building Permits or Development Approvals for the Project for which the Development Impact Fee was paid until such underpayment is corrected, and if amounts owed to the County are not paid within such twenty-eight (28) day period, the County may also rescind any Development Approvals or Building Permits issued in reliance on the previous payment of such Development Impact Fee and refund such Fee to the Fee Payer.

**7-4-6: SERVICE AREAS:** For purposes of this chapter, service areas shall be defined as follows:

- A. The service area for the County, with respect to Jail, Parks and Waterways, and Sheriff's Department Capital Facilities, shall be the unincorporated area of Kootenai County in its entirety, and shall also include any incorporated city which agrees to collect Jail, Parks and Waterways, and/or Sheriff's Department Development Impact Fees pursuant to intergovernmental agreement between the County and that city.
- B. The service area for KCEMSS shall be the unincorporated area of Kootenai County in its entirety, and shall also include any incorporated city which agrees to collect EMS Development Impact Fees pursuant to intergovernmental agreement between KCEMSS and that city.
- C. The service areas for the Fire Districts shall be that portion of the unincorporated area of Kootenai County which is within the boundaries of each respective fire protection district, and shall also include any incorporated city, or portion thereof which is within the boundaries of any such fire protection district, which agrees to collect Fire Impact Fees pursuant to intergovernmental agreement between the fire protection district and that city.
- D. The service areas for the Highway Districts shall be that portion of the unincorporated area of Kootenai County which is within the boundaries of each respective highway district, and shall also include any incorporated city, or portion thereof which is within the boundaries of any such highway district, which agrees to collect Highway Development Impact Fees pursuant to intergovernmental agreement between the highway district and that city.

**7-4-7: USE OF DEVELOPMENT IMPACT FEE FUNDS:**

- A. Establishment of Trust Fund and Accounts.
  1. A Development Impact Fee Trust Fund (the "Trust Fund") is hereby established for the purpose of ensuring that the Development Impact Fees collected pursuant to this chapter are used to address impacts reasonably attributable to new Development for which the Development Impact Fees are paid.
  2. The Trust Fund shall be divided into six (6) Accounts:
    - a. a Fire Capital Facilities Account;
    - b. a Highway Capital Facilities Account;
    - c. a Jail Capital Facilities Account;
    - d. a Sheriff's Department Capital Facilities Account;
    - e. an EMS Capital Facilities Account; and
    - f. a Parks and Waterways Capital Facilities Account.

3. The Development Impact Fee Trust Fund shall be maintained in an interest bearing account. The interest earned on each Account shall not be governed by Idaho Code § 57-127, but shall be considered funds of the Account and shall be subject to the same restrictions on uses of funds as the Development Impact Fees on which the interest is generated.
4. Monies in each Account shall be considered to be spent in the order collected, on a first-in/first-out basis.
5. Any monies, including any accrued interest not assigned to specific System Improvements within such Capital Improvements program and not expended pursuant to subsection C of this section or refunded pursuant to section 7-4-8 of this chapter shall be retained in the same Account until the next fiscal year.

B. Deposit and Management of the Trust Fund.

1. All Development Impact Fees collected by the County pursuant to this chapter shall be promptly deposited into the appropriate Account in the Trust Fund.
2. The County shall maintain accounting records for each Account. With respect to the Fire Capital Facilities Account and the Highway Capital Facilities Account, these records shall indicate the amounts collected on behalf of each fire protection district and highway district, and the amounts distributed to each fire protection district and highway district, in addition to any other applicable accounting requirements.
3. As part of its annual audit process, the County, in conjunction with the Fire Districts, the Highway Districts, and KCEMSS, shall prepare an annual report:
  - a. describing the amount of all Development Impact Fees collected, appropriated, or spent during the preceding year for each Capital Improvements Element and Service Area; and
  - b. describing the percentage of taxes and revenues from sources other than Development Impact Fees collected, appropriated or spent for System Improvements during the preceding year by Capital Improvements Element and Service Area.

C. Limitations on Expenditures of Fees in Accounts.

1. Fire Development Impact Fee. The monies collected from Fire Impact Fees shall be used only to plan for and acquire or construct Fire Capital Facilities, to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Fire Capital Facilities within Kootenai County, to reimburse the fire protection district for such costs, or to recoup that

portion of the cost of preparing the fire protection district Capital Improvements Plan that is attributable to the Development's Proportionate Share of the cost of preparing the plan.

2. Highway Development Impact Fee. The monies collected from Highway Impact Fees shall be used only to plan for and acquire or construct Highway Capital Facilities, to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Highway Capital Facilities within Kootenai County, to reimburse the highway district for such costs, or to recoup that portion of the cost of preparing the highway district Capital Improvements Plan that is attributable to the Development's Proportionate Share of the cost of preparing the plan.
3. EMS Development Impact Fee. The monies collected from the EMS Impact Fee shall be used only to plan for and acquire or construct EMS Capital Facilities, to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of EMS Capital Facilities within Kootenai County, to reimburse KCEMSS or the County for such costs, or to recoup that portion of the cost of preparing the KCEMSS Capital Improvements Plan that is attributable to the Development's Proportionate Share of the cost of preparing the plan.
4. Jail Development Impact Fee. The monies collected from the Jail Impact Fee shall be used only to plan for and acquire or construct Jail Capital Facilities, to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Jail Capital Facilities within Kootenai County, to reimburse the County for such costs, or to recoup that portion of the cost of preparing the Jail Capital Improvements Plan that is attributable to the Development's Proportionate Share of the cost of preparing the plan.
5. Sheriff's Department Development Impact Fee. The monies collected from the Sheriff's Department Impact Fee shall be used only to plan for and acquire or construct Sheriff's Department Capital Facilities, to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Sheriff's Department Capital Facilities within Kootenai County, to reimburse the County for such costs, or to recoup that portion of the cost of preparing the Sheriff's Department Capital Improvements Plan that is attributable to the Development's Proportionate Share of the cost of preparing the plan.
6. Parks and Waterways Development Impact Fee. The monies collected from the Parks and Waterways Impact Fee shall be used only to plan for and acquire or construct Parks and Waterways Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Parks and Waterways Capital Facilities within Kootenai County, or to reimburse the County for such costs, or to recoup that portion of the cost of

preparing the Parks and Waterways Capital Improvements Plan that is attributable to the Development's Proportionate Share of the cost of preparing the plan.

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

#### **7-4-8: REFUNDS OF DEVELOPMENT IMPACT FEES PAID:**

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

1. Service is available but never provided;
2. A Building Permit or permit for installation of a Manufactured Home is denied or abandoned;
3. The Fee Payer pays a Development Impact Fee under protest and a subsequent review of the Fee paid or the completion of an Individual Assessment determines that the Fee paid exceeded the Proportionate Share to which the governmental entity was entitled to receive; or
4. The County has collected a Development Impact Fee and the County, the applicable fire protection district or the applicable highway district has failed to Appropriate or expend the collected Fees pursuant to subsection B of this section.

B. Failure to Encumber Trust Funds or Commence Construction. Any Development Impact Fees paid shall be refunded if the County, the applicable fire protection district or the applicable highway district has failed to commence construction of System Improvements in accordance with this Chapter, or to Appropriate funds for such construction, within eight (8) years after the date on which such Fee was paid. Any refund due shall be paid to the owner of record of the parcel for which the Development Impact Fees were paid. The County may hold Development 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 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.

If the County complies with the previous sentence, then any Development Impact Fees identified in such writing shall be refunded to the Fee Payer if the County, the applicable fire protection district or the applicable highway district has failed to commence construction of System Improvements in accordance with this Chapter, or to Appropriate funds for such construction on or before the date identified in such writing.

- C. Later Changes to Development; No Refund Due. After a Development Impact Fee has been paid pursuant to this chapter, no refund of any part of such Fee shall be made if the Project for which the Fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the Project or the number of units in the Project.
- D. Interest. Each refund shall include a refund of interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the Fee was originally paid.
- E. Timing. The County shall make a determination of whether a refund is due within thirty (30) days after receipt of a written request for a refund from the owner of record of the property for which the Fee was paid. When the right to a refund exists, the County shall send the refund to the owner of record within ninety (90) days after the County determines that a refund is due.
- F. Standing. Any Person entitled to a refund shall have standing to file an appeal pursuant to section 7-4-10 of this chapter if there has not been a timely payment of a refund as required under the provisions of this section.

#### **7-4-9: CREDITS AGAINST DEVELOPMENT IMPACT FEES:**

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

- B. Limitations. Credits against Development Impact Fees shall not be given for:

1. Project Improvements; or
2. any construction, contribution, or dedication not agreed to in writing by the County and, if applicable, the affected fire protection district or highway district, or KCEMSS, prior to commencement of the construction, contribution, or dedication.

Credits issued for one Capital Improvements Element may not be used to reduce Development Impact Fees due for a different Capital Improvements Element. No credits

shall be issued for System Improvements contributed or dedicated prior to the effective date of this chapter.

C. Valuation of Credit at Present Value.

1. Land. Credit for qualifying land dedications shall, at the Fee Payer's option, be valued at the Present Value of:
  - a. one hundred (100) percent of the most recent assessed value for such land as shown in the records of the County Assessor; or
  - b. that fair market value established by a private appraiser acceptable to the County in an appraisal paid for by the Fee Payer.
2. Improvements. Credit for qualifying acquisition or construction of System Improvements shall be valued by the County at the Present Value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the Fee Payer to the County. The County and, if applicable, the affected fire protection district or highway district, or KCEMSS, shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the County and, if applicable, the affected fire protection district or highway district, or KCEMSS, as a more accurate measure of the value of the offered System Improvements.

D. When Credits Become Effective.

1. Approved credits for land dedications shall become effective when the land has been conveyed to the County, fire protection district, highway district, or KCEMSS, as may be applicable, in a form acceptable to the entity to which the land is to be dedicated and at no cost to that entity, and has been accepted by that entity. When such conditions have been met, the County shall note that fact in its records. Upon request of the Fee Payer, the County shall issue a letter stating the amount of credit available.
2. Approved credits for acquisition or construction of System Improvements shall generally become effective when:
  - a. all required construction has been completed and has been accepted by the County and, if applicable, the affected fire protection district or highway district, or KCEMSS;
  - b. a suitable maintenance and warranty bond has been received and approved by the County; and

- c. all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the County and the State of Idaho.

Approved credits for the construction of System Improvements may become effective at an earlier date if the Fee Payer posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement and the amount and terms of such security are accepted by the Development Impact Fee Administrator or a designee. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the County, fire protection district, highway district, or KCEMSS, as may be applicable, to construct the System Improvements for which the credit was given, whichever is higher. When such conditions have been met, the County shall note that fact in its records. Upon request of the Fee Payer, the County shall issue a letter stating the amount of credit available.

#### E. Application Procedures.

1. In order to obtain a credit against Development Impact Fees otherwise due, a Fee Payer shall submit a written offer to dedicate to the Development Impact Fee Administrator for specific parcels of qualifying land or a written offer to contribute or construct specific System Improvements to the Capital Facilities in accordance with all applicable State or County design and construction standards, and shall specifically request a credit against the type of Development Impact Fees for which the land dedication or System improvement is offered. No request for a credit against Development Impact Fees shall be accepted unless a written offer to dedicate, contribute, or construct has previously been approved in writing by the County and, if applicable, the fire protection district, highway district, or KCEMSS.
  2. After receipt of the request for credit, the Development Impact Fee Administrator or a designee shall review the request and determine whether the land or System Improvements offered for credit will reduce the costs of providing Capital Facilities by an amount at least equal to the value of the credit. If the Development Impact Fee Administrator determines that the offered credit satisfies that criteria, then the credit shall be issued. The County shall complete its review and determination of an application for credit within thirty (30) days after receipt of an application for credit.
- F. Transferability of Credit. A credit may only be transferred by the Fee Payer that has received the credit to a Successor in Interest pursuant to the terms of this chapter. The credit may be used only to offset Development Impact Fees for the same Capital Improvements Element for which the credit was issued. Credits shall be transferred by any written instrument clearly identifying which credits issued under this chapter are being transferred, the dollar amount of the credit being transferred, and the Capital Improvements Element for which the credit was issued. The instrument of transfer shall be signed by both the transferor and transferee, and a copy of the document shall be delivered to the Development Impact Fee Administrator or a designee for documentation of the change in ownership before it shall become effective.

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

H. Credits Exceeding Fee Amounts Due. If the credit due to a Fee Payer pursuant to the provisions of this section exceeds the Development Impact Fee that would otherwise be due from the Fee Payer pursuant to section 7-4-5 of this chapter (whether calculated in accordance with section 7-4-14 of this chapter or through an Individual Assessment), the Fee Payer may choose to receive such credit in the form of either:

1. a credit against future Development Impact Fees due for the same Capital Improvements Element; or
2. a reimbursement from Development Impact Fees paid by future Development that impacts the System Improvements contributed or dedicated by the Fee Payer.

Unless otherwise stated in an agreement with the Fee Payer, the County, Fire Districts, Highway Districts, and KCEMSS shall be under no obligation to use any funds, other than Development Impact Fees paid by other Development for the same Capital Improvements Element, to reimburse the Fee Payer for any credit in excess of Development Impact Fees due.

I. Written Agreement Required. If a credit or reimbursement is due to the Fee Payer pursuant to this section, the County shall enter into a written agreement with the Fee Payer, negotiated in good faith, prior to the contribution, dedication, or funding of the System Improvements giving rise to the credit. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement, and shall have a term not exceeding ten (10) years.

**7-4-10: APPEALS AND MEDIATION:** Disputes regarding decisions made in the application of this Chapter shall be resolved through appeal, or through mediation, as set forth below.

A. Right to Appeal.

1. Any Fee Payer that is or may be obligated to pay a Development Impact Fee, or that claims a right to receive a refund, reimbursement, or credit under this chapter, and who is dissatisfied with a decision made by the Development Impact Fee Administrator in applying this chapter, shall first request that the Development Impact Fee Administrator reconsider the decision. A Fee Payer requesting reconsideration shall state in writing to the Development Impact Fee Administrator the reasons why the Fee Payer believes the decision to be in error. The Development Impact Fee Administrator shall issue a written decision confirming or modifying the decision within fourteen (14) days of receipt of a written request for reconsideration.

2. Any Fee Payer that is dissatisfied with the decision of the Development Impact Fee Administrator upon reconsideration pursuant to subsection (A)(1) of this section, may appeal such decision to a Hearing Examiner. In order to perfect such an appeal, the Fee Payer must file a written Notice of Appeal with the Development Impact Fee Administrator within twenty-eight (28) days after the date of the decision on reconsideration, or the date on which the Fee Payer submitted a payment of Development Impact Fees under protest, whichever is later. Such written application shall include a statement describing why the Fee Payer believes that the decision was in error, together with copies of any documents that the Fee Payer believes support the claim, and any applicable appeal fees.

3. Appeal Hearing Procedures.

- a. The Hearing Examiner shall hear the appeal within forty-two (42) days after receipt of a written notice of appeal.
- b. The Fee Payer shall have a right to be present and to present evidence in support of the appeal. The Development Impact Fee Administrator shall likewise have the right to be present and to present evidence in support of the decision.
- c. The criteria to be used by the Hearing Examiner in considering the appeal shall be whether the decision or interpretation made by the Development Impact Fee Administrator after reconsideration, or the alternative decision or interpretation offered by the Fee Payer, more accurately reflects the intent of this chapter that new Development in the County pay its Proportionate Share of the costs of System Improvements to Capital Facilities necessary to serve new Development.

The Fee Payer shall have the burden of proving by clear and convincing evidence that the Development Impact Fee Administrator's decision was in error.

- d. The Hearing Examiner shall issue findings of fact, conclusions of law, and a recommendation to affirm, reverse, or modify the decision of the Development Impact Fee Administrator within twenty-eight (28) days after hearing the appeal.

4. Board Action.

- a. After receiving the recommendation of the Hearing Examiner, the final decision on the appeal shall be made by the Board. The Board may summarily issue a final decision approving the findings of fact, conclusions of law, and recommendation of the Hearing Examiner, or may conduct an additional appeal hearing prior to making a final decision.
- b. The appeal hearing procedures set forth in subsection (3) of this section shall also apply to appeal hearings conducted by the Board.

- c. If the Board elects to conduct an additional appeal hearing, the final decision of the Board shall include findings of fact and conclusions of law, and, in the event of disagreement with the recommendation of the Hearing Examiner, an analysis providing a rationale for the Board's disagreement. The final decision of the Board shall be issued within twenty-eight (28) days after the appeal hearing before the Board.
5. The Board may adopt, by ordinance or resolution, additional procedures for the hearing of appeals brought pursuant to the provisions of this section.

B. Mediation.

1. Any Fee Payer that has a disagreement with the County regarding a Development Impact Fee that is or may be due for a proposed Development pursuant to this Chapter, may enter into a voluntary agreement with the County to subject the disagreement to mediation by a qualified independent party acceptable to both the Fee Payer and the County.
2. Mediation may take place at any time following the filing of a timely appeal pursuant to this section, or as an alternative to such appeal, provided that the request for mediation is filed no later than the last date on which a timely appeal could be filed pursuant to subsection (A)(2) of this section.
3. Participation in mediation does not preclude the Fee Payer from pursuing other remedies provided for in this section.
4. If mediation is requested, any related mediation costs shall be shared equally by the Fee Payer and the County, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

**7-4-11: ENFORCEMENT AND COLLECTION:**

- A. When any Development Impact Fee is due pursuant to the terms of this Chapter, or pursuant to the terms of any written agreement between a Fee Payer and the County authorized by this Chapter, and such Fee has not been paid in a timely manner, the County may exercise any or all of the following powers, in any combination, to enforce the collection of the Fee.
1. The County may withhold Building Permits or other Development Approvals related to the Development for which the Fee is due until all Development Impact Fees due have been paid.
  2. The County may withhold solid waste collection services from the Development for which the Fee is due until all Development Impact Fees due have been paid.

3. The County may add to the amount of the Fee interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the Fee was due.
  4. The County may impose liens for failure to timely pay a Development Impact Fee following procedures contained in Title 45, Chapter 5, Idaho Code.
- B. Any violation of this chapter shall constitute a misdemeanor punishable as set forth in Section 1-4-1 of this Code.
- C. The Board or the Development Impact Fee Administrator may seek monetary damages and/or equitable relief from a court of competent jurisdiction to compel payment of Development Impact Fees then due, to compel performance of any other duty established under this chapter, or to restrain conduct in violation of this chapter. Said legal and equitable remedies may be pursued in addition to or in lieu of criminal penalties.
- D. Knowingly furnishing false information to any official of the County charged with the administration of this Chapter on any matter relating to the administration of this Chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed Development, shall be a violation of this Chapter.

**7-4-12: DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE:**

- A. The Development Impact Fee Advisory Committee established during the preparation of the Development Impact Fee Study shall continue in existence, and shall be composed of not fewer than five (5) members appointed by the Board. Two (2) or more members shall be active in the business of Development, building, or real estate. The Committee shall serve in an advisory capacity and has been established to:
1. assist the County in adopting Land Use Assumptions;
  2. review the Capital Improvements Plan, and proposed amendments, and file written comments;
  3. monitor and evaluate implementation of the Capital Improvements Plan;
  4. file periodic reports, at least annually, with respect to the Capital Improvements Plan and report to the County any perceived inequities in implementing the plan or imposing the Development Impact Fees; and
  5. advise the County of the need to update or revise Land Use Assumptions, the Capital Improvements Plan, and/or Development Impact Fees.
- B. The Board shall consider the Development Impact Fee Advisory Committee's recommended revisions to this Chapter, if any, at least once every twelve (12) months. The Committee's recommendations and the Board's actions are intended to ensure that the benefits to a fee

paying Development are equitable, in that the fee charged to the Development shall not exceed a Proportionate Share of the costs of System Improvements, and the procedures for administering Development Impact Fees remain efficient.

#### **7-4-13: GENERAL PROVISIONS:**

##### **A. Reservations of Powers and Rights.**

1. Nothing in this Chapter shall be construed to create any additional right to develop real property or diminish the power of the County in regulating the orderly Development of real property.
2. Nothing in this chapter shall work to limit the use by the County, the Fire Districts, or the Highway Districts 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.
3. Nothing in this Chapter shall obligate the County to approve any development request that may reasonably be expected to reduce Levels of Service below minimum acceptable levels established in the Development Impact Fee Study.
4. Nothing in this Chapter shall restrict or diminish the power of the County, the Fire Districts, the Highway Districts, or KCEMSS to negotiate and execute development agreements that may impose additional conditions on Development, including the recovery of Project or System Improvement Costs, either in connection with a proposed annexation or in connection with any other Development within the County.
5. Nothing in this Chapter shall restrict the County from requiring a Fee Payer or an applicant for a Development Approval or Building Permit to construct reasonable Project Improvements required to serve the applicant's Project, provided that such request does not duplicate a System Improvement in a category for which costs were included in the Development Impact Fee Study.
6. Nothing in this Chapter shall be construed to prevent or prohibit private agreements between Developers, the County, the Fire Districts, the Highway Districts, KCEMSS, the Idaho Transportation Department, and/or other governmental entities in regard to the construction or installation of System Improvements or providing for credits or reimbursements for System Improvement Costs incurred by a Developer or Fee Payer, including inter-project transfers of credits, or providing for reimbursement for Project Improvements that are used or shared by more than one Development Project. If it can be shown that a proposed Development has a direct impact on a public facility under the jurisdiction of the Idaho Transportation Department, then the agreement shall include a provision for the allocation of Development Impact Fees collected from the Developer or Fee Payer for the improvement of the Public Facility by the Idaho Transportation Department.

B. "Grandfather" Clause. Notwithstanding any other provision of this chapter, that portion of a Project for which a complete application for a Building Permit has been received by the County prior to the effective date of this chapter shall not be subject to the Development Impact Fees imposed by this chapter. If the resulting Building Permit is later revised or replaced after the effective date of this chapter, and the new Building Permit reflects a Development density, intensity, or number of units more than ten percent (10%) higher than that reflected in the original Building Permit, then Development Impact Fees may be charged on the difference in density, intensity, or number of units between the original and the revised or replacement Building Permit.

C. Miscellaneous.

1. The section titles used in this chapter are for convenience only, and shall not affect the interpretation of any portion of the text of this chapter.
2. All provisions, terms, phrases and expressions contained in this chapter shall be liberally construed in order that the true intent and meaning of the Idaho Development Impact Fee Act and the Board may be fully carried out.
3. If any provision of this Ordinance shall be declared by a court of appropriate jurisdiction to be invalid, such decision shall not affect the validity of remaining portions of this Ordinance. Any remaining portions shall be interpreted to give effect to the spirit of this Ordinance prior to removal of the provisions declared invalid.

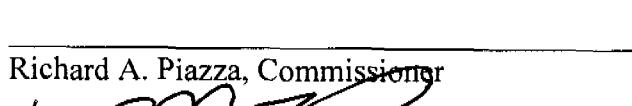
**7-4-14: FEE SCHEDULES: [RESERVED]**

**SECTION 3.** This Ordinance shall take effect and be in full force as of March 1, 2011; provided, however, that if an impact fee schedule has not been adopted by the Kootenai County Board of Commissioners on or before that date, this Ordinance shall be null and void, and shall have no further force or effect.

ADOPTED this 9th day of September 2010

**KOOTENAI COUNTY  
BOARD OF COMMISSIONERS**

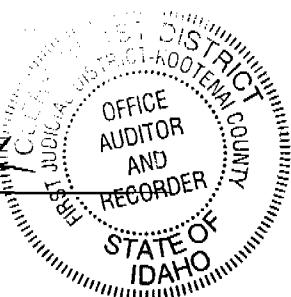
  
Elmer R. Currie, Chairman

  
Richard A. Piazza, Commissioner

  
W. Todd Tondee, Commissioner

**ATTEST:**  
DANIEL J. ENGLISH CLERK

By *Dawn Forest*  
Deputy Clerk



Publication Date: September 15, 2010

C: Building and Planning, Prosecuting Attorney (Civil and Criminal Divisions), Sterling Codifiers, All Fire Protection Districts (except Hauser and St. Maries Fire Protection Districts), Lakes Highway District, Post Falls Highway District, East Side Highway District, Kootenai County EMS System