

ORDINANCE NO. 579
Case No. ORA22-0003
DEVELOPMENT IMPACT FEES

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; PROVIDING FOR A SHORT TITLE, AUTHORITY, APPLICABILITY, AND PURPOSE; PROVIDING FINDINGS AND DEFINITIONS; ESTABLISHING SERVICE AREAS, THE METHODOLOGY FOR CALCULATION OF IMPACT FEES, THE IMPOSITION OF IMPACT FEES AND EXEMPTIONS THERETO, AND THE METHOD OF COLLECTION AND ENFORCEMENT OF IMPACT FEES; ESTABLISHING A PROCESS FOR IMPACT FEE CERTIFICATION; ESTABLISHING PROCESSES FOR INDIVIDUAL ASSESSMENT, DEVELOPER CREDITS AND REIMBURSEMENTS, EXTRAORDINARY IMPACT DETERMINATIONS, AND FEE PAYER REFUNDS; PROVIDING FOR THE ESTABLISHMENT OF IMPACT FEE CAPITAL PROJECTS FUNDS AND FUND ACCOUNTS AND THE USE AND EXPENDITURE OF IMPACT FEES; PROVIDING PROCESSES FOR APPEALS, PROTESTS AND MEDIATION; PROVIDING FOR PERIODIC REVIEWS OF CAPITAL IMPROVEMENTS PLANS AND THE FILING OF AN ANNUAL REPORT; ESTABLISHING A DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE; PROVIDING GENERAL PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1. That Title 7, Kootenai County Code, shall be, and 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:

CHAPTER 4
DEVELOPMENT IMPACT FEES

7.4.101: SHORT TITLE, APPLICABILITY, EXEMPTIONS, AND PURPOSE:

A. Short Title. This chapter shall be known and may be cited as the *Kootenai County Development Impact Fee Ordinance*.

B. Authority. This ordinance is enacted pursuant to the County's general police powers and its authority to enact ordinances as set forth in Article XII, Section 2 of the Idaho Constitution and section 31-714, Idaho Code, its authority as provided by the Act and other applicable laws of the state of Idaho to impose and collect development impact fees on behalf of a fire protection district or an ambulance district; and the County's authority to enter into an Intergovernmental Agreement with one or more fire protection districts or ambulance districts as provided for in section 67-8204A, Idaho Code when jointly affected by growth and development for the purpose of agreeing to impose, collect and expend development impact fees in order for new growth and development

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pay their proportionate share of the cost of public facilities to serve that new growth and development.

C. Applicability. This chapter shall apply to the Development of property located within the boundaries of the following taxing districts in unincorporated Kootenai County: East Side Fire Protection District, Hauser Lake Fire Protection District, Kootenai County Fire and Rescue, Mica-Kidd Island Fire Protection District, Northern Lakes Fire Protection District, Spirit Lake Fire Protection District, and Timberlake Fire Protection District (collectively, “the participating Fire Districts”), and the Kootenai County Ambulance District, operating by and through the Kootenai County Emergency Medical Services System (KCEMSS).

D. Purpose. The intent of this chapter is to ensure that new residential and non-residential development bear a proportionate share of the cost of System Improvements, to ensure that such proportionate share does not exceed the cost of such System Improvements required to accommodate new Development, and to ensure that funds collected from new Development are actually used for System Improvements in accordance with the Act.

7.4.102: LEGISLATIVE FINDINGS: The Board of County Commissioners of Kootenai County, Idaho hereby finds that:

A. Kootenai County is experiencing considerable growth and development within the unincorporated area of the County.

B. The new growth and development occurring within unincorporated Kootenai County is placing, and will continue to place, ever-increasing demands on the participating Fire Districts whose boundaries include land in unincorporated Kootenai County, and on KCEMSS, which serves Kootenai County in its entirety, to provide, improve and expand existing public safety facilities to serve that new growth and development, and the tax revenues generated from that new growth and development does not generate sufficient funds to provide the necessary improvements and expansion of those public safety facilities to protect the public health, safety and welfare. Therefore, the users that create the increased demand should bear their proportionate share of the cost of public safety facilities needed to serve the new growth and development.

C. The participating Fire Districts and KCEMSS have adopted their respective Capital Improvements Plans by resolution or other official action. In addition, the County has planned for the improvement of Capital Facilities in the Capital Improvements chapter of the Kootenai County Comprehensive Plan, including the approval of the respective Capital Improvements adopted by the participating Fire Districts and KCEMSS.

D. The Act authorizes counties and cities 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.

E. 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;

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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.

F. 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.

G. In order to implement an equitable Development Impact Fee system for Capital Facilities, the participating Fire Districts and KCEMSS retained Galena Consulting to prepare impact fee studies for their respective Capital Facilities (“the Development Impact Fee Studies”). The Development Impact Fee Studies are incorporated into 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.

H. The methodology used in preparing the Development Impact Fee Studies, when applied through this chapter, complies with all applicable provisions of the Act. The incorporation of the Development Impact Fee Studies and all updates thereto into the Comprehensive Plan satisfies the requirement in subsection 67-8204(16), Idaho Code for a detailed description of the methodology by which the Development Impact Fees were calculated, and the requirement in subsection 67-8204(24), Idaho Code for a description of acceptable Levels of Service for System Improvements.

I. The Development Impact Fee Studies set 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.

J. In accordance with Idaho Code, the Development Impact Fee Studies are based on actual System Improvement Costs or reasonable estimates of such costs. In addition, the Development Impact Fee Studies use 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.

K. The Development Impact Fees described in this Chapter are based on the Development Impact Fee Studies, and do not exceed the costs of System Improvements for Capital Facilities to serve new Development that will pay the Development Impact Fees.

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L. The fire Public Facilities included in the calculation of Fees in the Development Impact Fee Studies are provided by the participating Fire Districts, each of which serves certain portions of Kootenai County, and will benefit new growth and development occurring within each respective district. Therefore, it is appropriate to treat each participating Fire 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.

M. The EMS 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 in its entirety 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.

N. 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.

O. 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 participating Fire 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 section 67-8210, Idaho Code.

P. 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.

Q. This chapter creates a system under which there shall be no double payment of Development Impact Fees, in accordance with subsection 67-8204(19), Idaho Code.

R. Fire Protection Districts organized pursuant to Title 31, Chapter 14, Idaho Code do not have authority to make and adopt ordinances as a method of carrying out their statutory duties.

S. The Kootenai County Ambulance District, organized pursuant to Title 31, Chapter 14, Idaho Code and which is a party to the Master Joint Powers Agreement establishing KCEMSS, also does not have authority to make and adopt ordinances as a method of carrying out its statutory and contractual duties.

T. The Act requires a governmental entity to adopt an ordinance in order to impose and collect development impact fees.

U. The Act does provide, pursuant to section 67-8204A, Idaho Code, in circumstances where the County and the Fire Protection District or Ambulance District are both affected by the considerable growth and development as is occurring within the County, that the County and the Fire Protection District or Ambulance District may enter into an intergovernmental agreement for the purpose of

agreeing to collect and expend development impact fees for System Improvements which provides for a new funding mechanism for those System Improvements Costs incurred by the Fire Protection District or Ambulance District to meet the demand and growth occurring within the County and which promotes and accommodates orderly growth and development and protects the public health, safety and general welfare of the people, residential and non-residential establishments within the boundaries of the County.

V. The County has constitutional authority to make and adopt ordinances pursuant to Article XII, Section 2 of the Idaho Constitution, and it also has statutory authority to make and adopt ordinances pursuant to section 31-714, Idaho Code.

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

7.4.103: DEFINITIONS: As used in this chapter, the following words and terms shall have the following meanings, unless another meaning is plainly intended, and words and terms appearing in the singular number includes the plural and the plural the singular:

ACT: The Development Impact Fee Act, Title 67, Chapter 82, Idaho Code.

AMBULANCE DISTRICT: The Kootenai County Ambulance District, organized pursuant to Title 31, Chapter 39, Idaho Code, in which the County Commissioners serve as the governing board thereof.

APPROPRIATE: To legally obligate by contract or otherwise commit to the expenditure of funds by appropriation or other official act of the Board of Commissioners of a participating Fire District, the County Commissioners on behalf of the Kootenai County Ambulance District and/or KCEMSS, or the KCEMSS Joint Powers Board.

BOARD OF COMMISSIONERS: Refers to either the Board of Commissioners of a participating Fire District or the KCEMSS Joint Powers Board, as applicable.

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 structure or the setting of a mobile home, manufactured home, or modular building.

CAPITAL IMPROVEMENTS: Improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a participating Fire District's or KCEMSS' Capital Facilities.

CAPITAL IMPROVEMENTS ELEMENT: A component of the Capital Improvements Plan adopted by the County and a participating Fire District or KCEMSS pursuant to Title 67, Chapter 82, Idaho Code, which meets the requirements of capital improvements plans set forth in the Act.

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.

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CAPITAL PROJECTS FUND: Shall mean and refer to the participating Fire District's or KCEMSS' Development Impact Fee Capital Projects Fund as established by action of the Board of Commissioners of the participating Fire District or the KCEMSS Joint Powers Board, as set forth in resolutions duly adopted by each respective board, and, pursuant to section 7.4.112 of this chapter and subsection 67-8210(1), Idaho Code, is the respective Capital Projects Fund into which the participating Fire District's or KCEMSS' Impact Fees shall be deposited and maintained by the participating Fire District or KCEMSS, respectively.

COUNTY: Kootenai County, Idaho.

COUNTY COMMISSIONERS: The Board of County Commissioners of Kootenai County, Idaho.

COUNTY IMPACT FEE ADMINISTRATOR: The Director of Kootenai County Community Development, or his or her designee.

DEVELOPER: Any person or legal entity undertaking Development and/or the subdivision of property pursuant to sections 50-1301 through 50-1334, Idaho 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, which creates additional demand and need for public facilities and/or subdivision of property that would permit any change in the use, character or appearance of land.

DEVELOPMENT APPROVAL: Any written duly authorized document from the County which authorizes the commencement of a Development.

DEVELOPMENT IMPACT FEE: *See* IMPACT FEE.

DEVELOPMENT REQUIREMENT: A requirement attached to an approval of particular Development or other County 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 condition of approval.

DWELLING UNIT: Any structure, or portion thereof, providing living facilities for one family as herein defined, including provisions for living, sleeping, eating, cooking and sanitation.

EXTRAORDINARY COSTS: Those costs incurred as result of an extraordinary impact.

EXTRAORDINARY IMPACT: An impact which is reasonably determined by a participating Fire District or KCEMSS to:

- a. result in the need for Fire or EMS 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 subsection 67-8214(2), Idaho Code; or
- b. result in the need for Fire or EMS System Improvements which are not identified in the applicable Capital Improvements Plan(s).

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FAMILY: Shall be as defined in section 8.9.202 of this code.

FEE PAYER: The person who pays or is required to pay the Development Impact Fees provided for in this chapter. A fee payer may include a Developer.

FIRE DISTRICT: A fire protection district organized pursuant to Title 31, Chapter 14, Idaho Code. "Participating Fire District" shall refer to a Fire District which has entered into an intergovernmental agreement with the County for the collection and expenditure of Development Impact Fees.

FIRE DISTRICT ADMINISTRATOR: The Administrator of Development Impact Fees for or on behalf of the participating Fire District, or his or her designee.

FIRE or EMS CAPITAL FACILITIES: Describes those stations, apparatuses, vehicles and equipment of the participating Fire District or KCEMSS which are identified in the applicable Capital Improvements Plan, and specifically including those related costs including System Improvement Costs, but not including maintenance, operations, or improvements that do not expand their capacity.

GOVERNING BOARD: The Board of Commissioners of a participating Fire District, or the KCEMSS Joint Powers Board, as applicable.

IMPACT FEE: A payment of money imposed as condition of Development Approval to pay for a proportionate share of the costs of System Improvements needed to serve the Development. This term shall not include the following:

- a. A charge or fee to pay the administrative plan review, or inspection cost associated with permits required for Development;
- b. Connection or hookup charges;
- c. Availability charges for drainage, sewer, water or transportation charges for services provided directly to the development; or
- d. Amounts collected from a Developer in a transaction in which the participating Fire 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 those Capital Improvements, unless a written agreement is made, pursuant to subsection 67-8209(3), Idaho Code, for credit or reimbursement.

INTERGOVERNMENTAL AGREEMENT: The intergovernmental agreement between the County and a participating Fire District or KCEMSS pursuant to section 67-8204A, Idaho Code, for the collection and expenditure of Fire or EMS Impact Fees, as applicable, established pursuant to this chapter.

IMPACT FEE ADVISORY COMMITTEE: The Development Impact Fee Advisory Committee formed and staffed by the County pursuant to section 67-8205, Idaho Code, to consider and

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recommend the respective Capital Improvements Plans prepared by the participating Fire Districts and KCEMSS, and any amendments, revisions or updates of the same.

KCEMSS: The Kootenai County Emergency Medical Services System, a joint administrative entity established via a Master Joint Powers Agreement between the County Commissioners, in their capacity as the governing board of the Ambulance District, the City of Coeur d'Alene, and the fire protection districts located within Kootenai County, for the provision of emergency and non-emergency medical services within Kootenai County.

KCEMSS ADMINISTRATOR: The Administrator of Development Impact Fees for or on behalf of KCEMSS, or his or her designee.

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 ten (10) year period.

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

MANUFACTURED HOME: A structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in such structure, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. §§ 5401 *et seq.*

MOBILE HOME: A factory-assembled structure or structures constructed prior to June 15, 1976, and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

MODULAR BUILDING: Any building or building component, other than a manufactured or mobile home, that is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

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, in contrast to System Improvements, shall mean 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 System Improvement Costs determined pursuant to section 67-8207, Idaho Code which reasonably relates to the service demands and needs of the Project.

PUBLIC FACILITIES: Land, buildings, apparatus, vehicles and equipment used for fire suppression, protection, and prevention, rescue, and emergency medical services, and water supply production, storage and distribution facilities, which have a useful life of ten (10) years or more.

RECREATIONAL VEHICLE: A motor home, travel trailer, fifth-wheel trailer, park model recreational vehicle, truck camper or folding camping trailer, with or without motive power, designed for recreational or emergency occupancy. This definition does not include pickup truck hoods, shells, or canopies designed, created or modified for occupational usage, but does include school buses and van-type vehicles which have been converted to recreational use.

SERVICE AREA: Land which lies both within the boundaries of a participating Fire District and within unincorporated Kootenai County, or in the case of KCEMSS, the unincorporated area of Kootenai County in its entirety, in which specific Public Facilities provide service to Development on the basis of sound planning or engineering principles or both as identified in the participating Fire District's or KCEMSS' Capital Improvements Plan, as applicable.

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. As specifically used in this chapter, service units shall include all dwelling units as defined herein and also includes nonresidential Development on a square-foot basis.

SYSTEM IMPROVEMENTS, in contrast to Project Improvements, shall mean Capital Improvements to Public Facilities which are designed to provide service to a Service Area. For purposes of this chapter, System Improvements are for Fire or EMS Capital Facilities designed to provide both fire protection and emergency medical services.

SYSTEM IMPROVEMENT COSTS: Costs incurred for construction or reconstruction of System Improvements, including design, acquisition, engineering and other costs, and also including, without limitation, the type of costs described in subsection 50-1702(h), Idaho Code, to provide additional Public Facilities needed to service new growth and Development.

For clarification, System Improvement Costs do not include:

- a. Construction, acquisition or expansion of Public Facilities other than Capital Improvements identified in the Capital Improvements Plan;
- b. Improvements, repair, operation or maintenance of existing or new capital;

- 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 participating Fire District, KCEMSS, and/or the County, unless such costs are attributable to Development of the Capital Improvements Plan, as provided in section 67-8208, Idaho Code, as it may be amended; 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 participating Fire District or KCEMSS to finance Capital Improvements identified in the Capital Improvements Plan.

TRUST ACCOUNT: The interest-bearing account(s) within a participating Fire District's or KCEMSS' Impact Fee Capital Projects Fund, as established in this chapter.

7.4.104: ESTABLISHMENT OF SERVICE AREAS:

- A. Establishment of Service Areas for Participating Fire Districts. There is hereby established a Service Area for each participating Fire District consisting of all land that is both within the boundary of the participating Fire District and within the unincorporated area of Kootenai County.
- B. Establishment of Service Area for KCEMSS. There is hereby established a Service Area for KCEMSS consisting of all land within the unincorporated area of Kootenai County in its entirety.

7.4.105: IMPOSITION OF IMPACT FEES; FEE SCHEDULE:

A. Imposition of Fire and EMS Impact Fees.

- 1. Fire Impact Fees are hereby imposed on all new Development located within the boundaries of each participating Fire District's Service Area as set forth in this section.
- 2. An EMS Impact Fee is hereby imposed on all new Development located within the unincorporated area of Kootenai County as set forth in this section.

B. Fee Schedule. Fire and EMS Impact Fees shall be calculated in accordance with the fee schedule set forth below, which provides for standard fees based on the total number of Dwelling Units or square feet of nonresidential space in the Development, unless (a) the Fee Payer requests an individual assessment pursuant to section 7.4.109 of this chapter; or (b) the participating Fire District with jurisdiction or KCEMSS finds that the Development will have an Extraordinary Impact pursuant to section 7.4.112 of this chapter. The methodology for determining the costs per Service Unit provided for in the fee schedule is set forth in the participating Fire District's or KCEMSS' Capital Improvements Plan as adopted by the County pursuant to section 67-8208, Idaho Code.

1. East Side Fire Protection District.

Residential (per Dwelling Unit)	\$ 1,800
Non-Residential (per square foot)	\$ 0.90

2. Hauser Lake Fire Protection District.

Residential (per Dwelling Unit)	\$ 3,666
Non-Residential (per square foot)	\$ 1.83

3. Kootenai County Emergency Medical Services System (KCEMSS).

Residential (per Dwelling Unit)	\$ 132
Non-Residential (per square foot)	\$ 0.07

4. Kootenai County Fire and Rescue.

Residential (per Dwelling Unit)	\$ 1,207
Non-Residential (per square foot)	\$ 0.60

5. Mica-Kidd Island Fire Protection District.

Residential (per Dwelling Unit)	\$ 1,994
Non-Residential (per square foot)	\$ 1.00

6. Northern Lakes Fire Protection District.

Residential (per Dwelling Unit)	\$ 1,302
Non-Residential (per square foot)	\$ 0.65

7. Spirit Lake Fire Protection District.

Residential (per Dwelling Unit)	\$ 1,725
Non-Residential (per square foot)	\$ 0.98

8. Timberlake Fire Protection District.

Residential (per Dwelling Unit)	\$ 2,842
Non-Residential (per square foot)	\$ 1.42

D. Annual Inflationary Adjustment. On January 1 of each calendar year the impact fee may be adjusted to account for year over year inflationary increases in System Improvement Costs based on the Construction Cost Index (CCI) prepared by the Engineering News Record and/or some other inflationary increase as recommended in the annual periodic report filed by the Impact fee

Advisory Committee. This index measures the cost of construction materials and labor and is distinctly different from the Consumer Price Index.

E. Developer's Election. A Developer shall have the right to elect to pay a project's proportionate share of System Improvements Costs by payment of Impact Fees in accordance with this section as full and complete payment of the Development project's proportionate share of System Improvements Costs, except as provided in subsection 67-8214(3), Idaho Code.

F. Calculation of Fees. Upon submittal of a complete application for a Building Permit or setting permit for the Development to the County, the County shall calculate the Fire and EMS Impact Fees for the Development within twenty-eight (28) days of submittal unless:

1. The Fee Payer had previously requested and been granted an individual assessment pursuant to this chapter;
2. The participating Fire District or KCEMSS has previously determined the Development may have an Extraordinary Impact pursuant to this chapter; or
3. The participating Fire District or KCEMSS has previously determined and entered into a written agreement for impact fee credit or reimbursement.

7.4.106: EXEMPTIONS:

A. The provisions of this chapter shall not apply to the following:

1. Rebuilding the same amount of floor space of a structure which is destroyed by fire or other catastrophe, provided the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
2. Remodeling or repairing a structure which does not increase the number of Service Units;
3. Replacing a residential unit, including a manufactured home, mobile home, or modular building, with another residential unit on the same parcel; provided that the number of Service Units does not increase;
4. Placing a temporary construction trailer or office on a parcel;
5. Constructing an addition on a residential structure which does not increase the number of Service Units;
6. Adding accessory uses that are customarily incidental to a residential use, such as a tennis court or a clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of System Improvements;
7. The placement of a recreational vehicle on a parcel in accordance with the applicable provisions of Title 8 of this code; or

8. The setting of a mobile home, manufactured home, or modular building, if the Fee Payer can demonstrate by documentation such as utility bills and tax records that either:

a. a mobile home, manufactured home, or modular building was lawfully in place on the lot or space prior to the effective date of this chapter; or

b. an Impact Fee has been paid previously for the mobile home, manufactured home, or modular building on that same lot or space.

B. Exemption Claim Process. A Fee Payer shall claim an exempt development activity upon application for a Building Permit, or if no Building Permit is required, before construction or setting commences. Any exemption not so claimed shall be deemed waived by the Fee Payer. Claims for exemption shall be determined by the County within fourteen (14) days of receipt of the claim for exemption.

7.4.107: COLLECTION OF IMPACT FEES; ENFORCEMENT:

A. Payment of Fees. Fire and EMS Impact Fees shall be paid to the County at the following times:

1. If a Building Permit is required, then before or at the time the permit is issued;
2. If no Building Permit is required, then before or at the time that construction commences; or
3. At such other time as the Fee Payer or Developer, and the participating Fire District with jurisdiction and/or KCEMSS, have agreed upon in writing with notice to the County.

B. Enforcement. When any Fire or EMS Impact Fee is due pursuant to this chapter, or pursuant to the terms of any written agreement between a Fee Payer and the participating Fire District or KCEMSS, and such Fire or EMS Impact Fee has not been paid in a timely manner, the County may exercise any or all of the following powers as applicable to its authority, in any combination, to enforce the collection of the unpaid Fire or EMS Impact Fee:

1. Withhold, suspend, or revoke Building Permits, Certificates of Occupancy, or other County Development Approvals related to the Development for which the Fire or EMS Impact Fee is due until all Fire or EMS Impact Fees due have been paid, and issue stop work orders for any work associated with the Development;
2. Add interest to the Fire or EMS Impact Fee not paid in full at the legal rate provided for in section 28-22-104, Idaho Code plus five percent (5%), beginning on the date at which the payment of the Fire or EMS Impact Fee was due until paid in full;
3. Impose a penalty of five percent (5%) of the total Fire or EMS Impact Fee (not merely the portion dishonored, late or not paid in full) per month beginning on the date at which the payment of the Fire or EMS Impact Fee was due until paid in full; and

4. Impose a lien pursuant to the authority of subsection 67-8213(4), Idaho Code, for failure to timely pay a Fire or EMS Impact Fee following the procedures contained in Title 45, Chapter 5, Idaho Code.

C. In the event a Fire or EMS Impact Fee is paid directly to a participating Fire District or KCEMSS, then the Fire District or KCEMSS Administrator shall immediately notify the County of said payment.

D. All Fire and EMS Impact Fees paid to the County shall be transferred to the Fire District or KCEMSS Administrator, as applicable, on a monthly basis.

7.4.108: CERTIFICATION:

A. A Fee Payer may request a written certification of the impact fee schedule or individual assessment which shall establish the impact fees for that Development. Such certification shall establish the Fire and EMS Impact Fees so long as there is no material change to the particular Development as identified in the individual assessment application, or the impact fee schedule.

B. A certification may be applied for in the following manner:

1. Requests for certification shall be in writing and made to the Fire District or KCEMSS Administrator.

2. Within twenty-eight (28) days after receiving such request, the Fire District or KCEMSS Administrator shall issue a written certification of the amount of the Fire or EMS Impact Fee due for the proposed Development. The certification shall include an explanation of the calculation of the Fire or EMS Impact Fee, including an explanation of factors considered under section 67-8207, Idaho Code, and shall also specify the System Improvement(s) for which the Fire or EMS Impact Fee is intended to be used.

3. The Fire District or KCEMSS Administrator shall provide the certification to the Fee Payer and the County.

7.4.109: INDIVIDUAL ASSESSMENT:

A. Requests for Individual Assessment Authorized. In lieu of calculating the amount of a Fire or EMS Impact Fee using the impact fee schedule in section 7.4.105 of this chapter, an individual assessment of Impact Fees is permitted when the Fee Payer demonstrates by clear and convincing evidence that the established Impact Fee is inappropriate.

B. Individual Assessment Process.

1. A Fee Payer may file a written request for an Individual Assessment of the Development by the participating Fire District or KCEMSS with the Fire District or KCEMSS Administrator prior to the receipt of a Building Permit or other necessary approval or entitlement from the County. The Individual Assessment process shall involve consideration of studies, data, and any other relevant information submitted by the Fee Payer in support of adjusting the amount

of the challenged Fire or EMS Impact Fee(s). If a Fee Payer files a request for the use of an Individual Assessment, the Fee Payer shall be responsible for retaining a qualified professional to prepare an Individual Assessment that complies with the requirements of the Act and 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 System Improvements, based on the participating Fire District's or KCEMSS' adopted Level of Service, than the development impact fees that would otherwise be due pursuant to the fee schedule.

2. Each Individual Assessment request and supporting documentation submitted by the Fee Payer shall be based on the same level of service standards and unit costs for System Improvements used in the participating Fire District's or KCEMSS' Capital Improvements Plan, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.

3. Each Individual Assessment request delivered to the Fire District or KCEMSS Administrator may then be accepted, rejected, or accepted with modifications by the Fire District or KCEMSS Administrator as the basis for calculating the Fire or EMS Impact Fee. The criteria for acceptance, rejection or acceptance with modifications shall be whether the Individual Assessment is a more accurate measure of demand for System Improvements elements created by the proposed Development, or the costs of those facilities, than the applicable fee shown in the fee schedule.

4. The Fire District or KCEMSS Administrator shall issue a written decision within twenty-eight (28) days following receipt of a completed request for Individual Assessment together with all supporting information from the Fee Payer, so as not to unreasonably delay the Fee Payer's subsequent applications to the County for Building Permits.

5. The decision by the Fire District or KCEMSS Administrator on an application for an Individual Assessment shall include an explanation of the calculation of the Fire or EMS Impact Fee, shall specify the System Improvement(s) for which the Fire or EMS Impact Fee is intended to be used, and shall include an explanation of those factors identified in section 67-8207, Idaho Code.

6. If an Individual Assessment is accepted or accepted with modifications by the Fire District or KCEMSS Administrator, then the Fire or EMS Impact Fee due under this chapter for such Development shall be calculated according to such Individual Assessment.

7. The Fire District or KCEMSS Administrator shall provide notice of final determination of an Individual Assessment to the Fee Payer and Kootenai County.

7.4.110: DEVELOPER CREDITS AND REIMBURSEMENT:

A. When Credits are Authorized. Whenever a Developer or a predecessor in title or interest has constructed System Improvements of the same category as a participating Fire District's or KCEMSS' Capital Improvements Element, or has contributed or dedicated land or money towards the completion of System Improvements of the same category as an element of a participating Fire

District's or KCEMSS' Capital Improvements Plan, and the participating Fire District or KCEMSS has accepted such construction, contribution or dedication, the participating Fire District or KCEMSS shall issue a credit against the Fire or EMS Impact Fees otherwise due for the same Fire District's or KCEMSS' 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 participating Fire District or KCEMSS as a condition of Development Approval or was offered by the Developer and accepted by the participating Fire District or KCEMSS 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. When Credits are Not Authorized. Credits against a Fire or EMS District Impact Fee shall not be given for: (a) Project Improvements; or (b) any construction, contribution or dedication not agreed to in writing by the participating Fire District or KCEMSS before the construction, contribution, or dedication occurred. Credits issued for one Capital Improvements Element of a participating Fire District or KCEMSS may not be used to reduce Fire or EMS Impact Fees due for a different capital improvement. No credits shall be issued for System Improvements contributed or dedicated prior to the effective date of this chapter.

C. Valuation of Credits 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 percent (100%) 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 participating Fire District or KCEMSS 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 participating Fire District or KCEMSS at the present value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the Fee Payer to the participating Fire District or KCEMSS. The Fire District or KCEMSS Administrator 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 participating Fire District or KCEMSS as a more accurate measure of the value of the offered System Improvements to the participating Fire District or KCEMSS.

D. When Credits Become Effective.

1. Land. Approved credits for land dedications shall become effective when the land has been conveyed to the participating Fire District or KCEMSS in a form acceptable to the participating Fire District or KCEMSS, at no cost to the participating Fire District or KCEMSS, and has been accepted by the participating Fire District or KCEMSS. Upon request of the Fee Payer, the participating Fire District or KCEMSS shall issue a letter stating the amount of credit available.

2. Improvements. 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 participating Fire District or KCEMSS, (b) a suitable maintenance and warranty bond has been received and approved by the participating Fire District or KCEMSS, and (c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the participating Fire District or KCEMSS and the state of Idaho. Upon request of the Fee Payer, the participating Fire District or KCEMSS shall issue a letter stating the amount of credit available.

E. Credit Request Process.

1. Request. In order to obtain a credit against a Fire or EMS Impact Fee otherwise due, a Fee Payer must submit to the Fire District or KCEMSS Administrator a written offer to dedicate to the participating Fire District or KCEMSS specific parcels of qualifying land, or a written offer to contribute or construct specific System Improvements to participating Fire District or KCEMSS Capital Facilities in accordance with all applicable design and construction standards, and must specifically request a credit against the type of Fire or EMS Impact Fee for which the land dedication or System Improvements are offered.

2. Review. After receipt of the written offer and request for credit, the Fire District or KCEMSS Administrator shall review the request and determine whether the land or System Improvements offered for credit will reduce the costs of providing participating Fire District or KCEMSS Capital Facilities by an amount at least equal to the value of the credit. If the Fire District or KCEMSS Administrator determines that the offered credit satisfies that criterion and will be acceptable to the governing board of the participating Fire District or KCEMSS, then the credit shall be issued. The participating Fire District or KCEMSS shall complete its review and determination of an application within twenty-eight (28) days after receipt of an application for credit.

3. Credits Exceeding Fee Amounts Due. If the credit due to a Fee Payer pursuant to subsection (C) of this section exceeds the Fire or EMS Impact Fee that would otherwise be due from the Fee Payer pursuant to the chapter (whether calculated through the Impact Fee schedule in section 7.4.105 of this chapter or through an individual assessment), the Fee Payer may choose to receive such credit in the form of either: (a) a credit against future Fire or EMS Impact Fees due for the same System Improvements; or (b) a reimbursement from Fire or EMS 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 participating Fire District or KCEMSS shall be under no obligation to use any of the Fire or EMS Impact Fee funds, other than Fire or EMS Impact Fees paid by other Development for the same System Improvements, to reimburse the Fee Payer for any credit in excess of Fire or EMS Impact Fees that are due.

4. Written Agreement Required. If credit or reimbursement is due to the Fee Payer pursuant to this section, the participating Fire District or KCEMSS 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.

5. The Fire District or KCEMSS Administrator's determination on the written offer of request for credit shall be provided to the Fee Payer and the County.

7.4.111: METHODOLOGY FOR CALCULATION OF FIRE OR EMS IMPACT FEES:

A. General Provisions.

1. **Accounting Principles.** The calculation of the Fire and EMS Impact Fees shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or Developers within the service area other than the Fee Payer.

2. **Levels of Service.** Each Fire or EMS Impact Fee shall be calculated on the basis of levels of service for Public Facilities in the adopted Capital Improvement Plan that are applicable to existing Development as well as new growth and Development. The construction, improvement, expansion or enlargement of new or existing Public Facilities for which the Fire or EMS Impact Fee is imposed must be attributable to the capacity demands generated by the new Development.

B. Methodology. Fire and EMS Impact Fees shall not exceed a proportionate share of the cost of the System Improvements determined in accordance with section 67-8207, Idaho Code. Fire and EMS Impact Fees shall be based on actual System Improvements Costs or reasonable estimates of such costs. The amount of each Fire or EMS Impact Fee shall be calculated using the methodology contained in the then-current Capital Improvements Plan duly adopted by each respective participating Fire District or KCEMSS, as appropriate.

C. Proportionate Share Determination.

1. The Fire or EMS Impact Fee shall be based on a reasonable and fair formula or method under which the Fire or EMS Impact Fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the participating Fire District or KCEMSS in the provision of System Improvements to serve the new Development. The proportionate share is the costs attributable to the new Development after the participating Fire District or KCEMSS considers the following:

- a. Any appropriate credit, offset or contribution of money, dedication of land or construction of System Improvements;
- b. Payments reasonably anticipated to be made by or as a result of a new Development in the form of user fees and debt service payments;
- c. That portion of general tax or other revenues allocated by the participating Fire District or KCEMSS to System Improvements; and
- d. All other available sources of funding such System Improvements.

2. In determining the proportionate share of the cost of System Improvements to be paid by the Developer, the following factors shall be considered by the participating Fire District or KCEMSS and accounted for in the calculation of the participating Fire District's or KCEMSS' Impact Fee:

- a. The costs of existing System Improvements within the Service area;
- b. The means by which existing System Improvements have been financed;
- c. The extent to which the new Development will contribute to System Improvement Costs through taxation, assessments, or developer or landowner contributions, or has previously contributed to System Improvement Costs through Developer or landowner contributions;
- d. The extent to which the new development is required to contribute to the cost of existing System Improvements in the future;
- e. The extent to which the new Development should be credited for providing System Improvements, without charge to other properties within the Service Area;
- f. Extraordinary costs, if any, incurred in serving the new Development;
- g. The time and price differential inherent in a fair comparison of fees paid at different times; and
- h. The availability of other sources of funding for System Improvements, including, without limitation, user charges, general tax levies, intergovernmental transfers and special taxation.

7.4.112: EXTRAORDINARY IMPACT:

A. A participating Fire District or KCEMSS may make an initial determination that Development may impose an Extraordinary Impact as a result of a review of a Development application transmitted by the County to the participating Fire District or KCEMSS pursuant to the County's zoning authority under the Local Land Use Planning Act, Title 67, Chapter 65, Idaho Code.

B. Process.

1. Within twenty-eight (28) days after the Fire District or KCEMSS Administrator's receipt from the County of the Development application, the Fire District or KCEMSS Administrator will notify the Fee Payer and the County of the Fire District or KCEMSS Administrator's initial determination that the Development may impose an Extraordinary Impact. Such notice shall also state that a supplemental study will be required at the Fee Payer's expense.
2. Within twenty-eight (28) days following the designation of a Development with Extraordinary Impact, the Fire District or KCEMSS Administrator shall meet with the Fee Payer to discuss whether the Fee Payer wants to: (a) pay for the supplemental study necessary to determine the System Improvements Costs related to the proposed Development; (b) modify the proposal to avoid generating Extraordinary Impact; or (c) withdraw the Development application.

3. If the Fee Payer agrees to pay for the supplemental study required to document the proposed Development's proportionate share of System Improvements Costs, then the participating Fire District or KCEMSS and the Fee Payer shall jointly select an individual or organization acceptable to both to perform such study. 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 twenty-eight (28) days of such written agreement, unless the Fee Payer agrees to a longer time.

4. Once the study has been completed, the Fee Payer may choose to: (a) pay the proportionate share of System Improvements Costs documented by the supplemental study; or (b) modify the proposed Development to reduce such costs; or (c) withdraw the application. The Fire District or KCEMSS Administrator shall notify the County of the Fee Payer's choice within fourteen (14) days of the Fee Payer's decision.

5. If the Fee Payer agrees to pay the System Improvements Costs documented in the supplemental study, that agreement shall be reduced to writing between the participating Fire District or KCEMSS and the Fee Payer prior to review and consideration of any application for any Development approval or Building Permits related to the proposed Development. The Fire District or KCEMSS Administrator shall provide a copy of the agreement to the County within fourteen (14) days after the agreement has been signed by both parties.

6. Notwithstanding any agreement by the Fee Payer to pay the proportionate share of System Improvements Costs documented by the supplemental study, nothing in this ordinance shall obligate the County to approve Development that results in an Extraordinary Impact to a participating Fire District or KCEMSS.

7.4.113: FEE PAYER REFUNDS:

A. Duty to Refund:

1. A Fire or EMS Impact Fee shall be refunded to a Fee Payer, or successor in interest, or a property owner in the following circumstances:

a. Service is available but never provided;

b. A Building Permit, or permit for installation of a manufactured home, is denied or abandoned;

c. The Fee Payer pays a Fire or EMS 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 participating Fire District or KCEMSS was entitled to receive;

d. The participating Fire District or KCEMSS has collected a Fire or EMS Impact Fee and the participating Fire District or KCEMSS has failed to appropriate or expend the collected fees pursuant to paragraph (2) below; or

e. Failure of the participating Fire District or KCEMSS to commence construction or encumber the fund in the participating Fire District's or KCEMSS' Development Impact Fee Capital Projects Fund.

2. Any Fire or EMS Impact Fee paid shall be refunded if the participating Fire District or KCEMSS 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 collected by the participating Fire District or KCEMSS. Any refund due shall be paid to the owner of record of the parcel for which the Fire or EMS Impact Fee was paid. The participating Fire District or KCEMSS may hold Fire or EMS Impact Fees for longer than eight (8) years, but in no event longer than eleven (11) years, from the date collected if the participating Fire District or KCEMSS identifies in writing: (a) a reasonable cause why the fees should be held longer than eight (8) years; and (b) an anticipated date by which the fees will be expended. If the participating Fire District or KCEMSS complies with the previous sentence, then any Fire or EMS Impact Fees so identified shall be refunded to the Fee Payer if the participating Fire District or KCEMSS has failed to commence construction of System Improvements in accordance with the written notice, or to appropriate funds for such construction on or before the date identified in such writing.

3. After a Fire or EMS Impact Fee has been paid pursuant to this chapter and after a certificate of occupancy has been issued by the County, 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.

4. Each refund shall include a refund of interest at one-half the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was originally paid.

B. Process. The participating Fire District or KCEMSS shall make a determination of whether a refund is due within twenty-eight (28) days after receipt of a written request for a refund from the Fee Payer, successor in interest, or an owner of record of the property for which the fee was paid. When the right to a refund exists, the participating Fire District or KCEMSS shall send the refund within ninety-one (91) days after the participating Fire District or KCEMSS determines that a refund is due.

7.4.114: ESTABLISHMENT OF FIRE DISTRICT OR KCEMSS CAPITAL PROJECTS FUND; TRUST ACCOUNTS:

A. Capital Projects Funds Established. The Capital Projects Fund established by each participating Fire District and KCEMSS will be maintained by that Fire District or KCEMSS, as applicable, for the purpose of ensuring that all Fire or EMS Impact Fees collected, pursuant to this chapter, are used to address impacts reasonably attributable to new Development for which the Fire or EMS Impact Fees are paid. The Capital Projects Fund shall have its own interest-bearing Account. The interest earned on the account pursuant to subsection 67-8210(1), Idaho Code, shall not be governed by section 57-127, Idaho Code, but shall be considered funds of the Capital Projects Fund, and shall be subject to the same restrictions on uses of funds as the Fire or EMS Impact Fees on which the interest is generated.

DEVELOPMENT IMPACT FEE ORDINANCE – 21

B. Deposit of Fire or EMS Impact Fees. All monies paid by a Fee Payer, pursuant to this chapter, shall be identified as Fire or EMS Impact Fees, and upon receipt by the participating Fire District or KCEMSS, shall be promptly deposited by the participating Fire District or KCEMSS Administrator in the Capital Projects Fund Account.

1. Monies in the Capital Projects Fund Account shall be spent in the order collected, on a first-in, first-out basis.
2. The participating Fire District or KCEMSS shall maintain and keep accurate financial records for the Account. Such records shall:
 - a. Show the source and disbursement of all revenues;
 - b. Account for all monies received;
 - c. Ensure that the disbursement of funds from the Account shall be used solely and exclusively for the provisions of projects specified in the Capital Improvements Plan; and
 - d. Provide an annual accounting for the Fire or EMS Impact Fee Capital Projects Fund Account showing the source and amount of all funds collected and the projects that were funded. A copy of this annual accounting shall be provided to the County as part of the annual audit process set forth in section 7.4.118 of this chapter.

7.4.115: EXPENDITURE OF FIRE OR EMS IMPACT FEES:

A. Expenditures. Expenditures of Fire or EMS Impact Fees collected and deposited in the Capital Projects Fund shall be made only for System Improvements within the Service Area for which the Impact Fee was collected in accordance with the Capital Improvements Plan.

B. Capital Improvements Plan Reimbursement; Surcharge. A portion of each Impact Fee collected may be designated as a surcharge for reimbursement of the participating Fire District or KCEMSS for the cost of preparing the Capital Improvements Plan in accordance with section 67-8208, Idaho Code. The surcharge shall not exceed the Development's proportionate share of the cost of preparing the Capital Improvements Plan.

7.4.116: APPEALS, PROTESTS AND MEDIATION:

A. Appeals. Any Fee Payer that is or may be obligated to pay a Fire or EMS Impact Fee, Individual Assessment or an Extraordinary Impact, or that claims a right to receive a refund, reimbursement, exemption or credit under this chapter, and who is dissatisfied with a decision made either by the County or by the participating Fire District or KCEMSS Administrator in applying this chapter, may appeal such decision. The Fee Payer shall have the burden on appeal of proving by clear and convincing evidence that the decision was in error.

B. Appeal Process.

1. Appeals of denials of an exemption from Impact Fees under section 7.4.106 of this chapter.

a. A Fee Payer shall file a written notice of the appeal with Kootenai County Community Development within twenty-eight (28) days after the date of a denial of an exemption. The notice of appeal shall include a statement describing why the Fee Payer believes that the appealed decision was in error, together with copies of any documents that the Fee Payer believes support the claim.

b. Kootenai County Community Development staff shall schedule a hearing in front of the County Commissioners within sixty-three (63) days of receiving the appeal.

c. Appeal hearings shall be conducted in accordance with section 8.8.506 of this code. The Fee Payer or its representative shall have a right to be present and to present evidence in support of the appeal. The County personnel who made the decision under appeal or their representatives shall likewise have the right to be present and to present evidence in support of the decision.

d. The County Commissioners shall consider the decision denying the exemption and also consider any additional evidence that may be offered by the Fee Payer and County staff. The County Commissioners may affirm, reverse, or modify in whole or in part the decision appealed from, and shall issue a written decision within twenty-eight (28) days after the conclusion of the hearing.

d. A final decision of the County Commissioners may be judicially reviewed pursuant to section 31-1506, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure.

2. Appeals of impact fee schedule assessments, refunds, reimbursements, credits, individual assessments, or extraordinary impacts under this chapter.

a. The Fee Payer shall file a written notice of appeal with the Fire District or KCEMSS Administrator within twenty-eight (28) days after the date of the Fire District or KCEMSS Administrator's decision, or the date on which the Fee Payer submitted a payment of the Fire or EMS Impact Fee under protest, whichever is later. The notice of appeal shall include a statement describing why the Fee Payer believes that the appealed decision was in error, together with copies of any documents that the Fee Payer believes support the claim.

b. The governing board of the participating Fire District or KCEMSS shall hear the appeal within sixty-three (63) days after receipt of a written notice of appeal.

c. Appeal hearings shall be conducted substantially in accordance with section 8.8.506 of this code. The Fee Payer or its representative shall have a right to be present and to present evidence in support of the appeal. The Fire District or KCEMSS Administrator who made the decision under appeal or its representatives shall likewise have the right to be present and to present evidence in support of the decision.

d. The criteria to be used by the governing board of the participating Fire District or KCEMSS in considering the appeal shall be whether: (a) the decision or interpretation made by the Fire District or KCEMSS Administrator, or (b) the alternative decision or

interpretation offered by the Fee Payer, more accurately reflects the intent of this chapter that new development in the Service Area pay its proportionate share of the costs of system improvements to participating Fire District or KCEMSS facilities necessary to serve new development, and whether the chapter has been correctly applied.

e. The governing board of the participating Fire District or KCEMSS shall issue a decision upholding, reversing, or modifying the decision being appealed within twenty-eight (28) days after hearing the appeal.

B. Payment Under Protest. A Fee Payer may pay a Fire or EMS Impact Fee under protest in order not to delay the issuance of a Building Permit by the County. A Fee Payer making a payment under protest shall not be estopped from exercising the right to appeal provided herein, nor shall such Fee Payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

C. Mediation.

1. Any Fee Payer that has a disagreement with a decision made by the County or a decision made by the Fire District or KCEMSS Administrator regarding a Fire or EMS Impact Fee determination that is or may be due for a proposed Development pursuant to this chapter, may enter into a voluntary agreement with the County and/or the governing board of the participating Fire District or KCEMSS to subject the disagreement to mediation by a qualified independent party acceptable to all parties to the mediation.

2. Mediation may take place at any time following the filing of a timely appeal, or as an alternative to such appeal, provided that a request for mediation filed prior to the filing of an appeal must be filed no later than the last date on which a timely appeal could be filed pursuant to this section.

3. Participation in mediation does not preclude the Fee Payer from pursuing other remedies provided for in this section, but no such remedies shall be pursued while the mediation is pending except as necessary to prevent prejudice to the pursuit of such remedies.

4. If mediation is requested, any related mediation costs shall be shared equally by the parties to the mediation, including the Fee Payer, the participating Fire District or KCEMSS and/or the County, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

5. In the event that mediation does not resolve the issues, the Fee Payer retains all rights of appeal as set forth in this section.

7.4.117: PERIODIC REVIEWS; ANNUAL BUDGET:

A. Review and Modification of Capital Improvements Plan. Unless the governing board of a participating Fire District or KCEMSS deems some other period is appropriate, each governing board shall, at least once every five (5) years, commencing from the date of the original adoption of the Capital Improvements Plan, review the then-current Development potential within its

Service Area and update the Capital Improvements Plan in cooperation with the County and in accordance with the procedures set forth in section 67-8206, Idaho Code. Each update shall be prepared by the Fire District or KCEMSS Administrator in consultation with the Impact Fee Advisory Committee.

B. Annual Budget. Each participating Fire District or KCEMSS shall annually adopt a capital budget and deliver a copy to the County within twenty-eight (28) days of adoption.

7.4.118: AUDIT: As part of its annual audit process, each Fire District and KCEMSS shall prepare and forward to the County an annual report: (a) describing the amount of all Fire or EMS Impact Fees collected, appropriated or spent during the preceding year; and (b) describing the percentage of taxes and revenues from sources other than the Fire or EMS Impact Fees collected, appropriated or spent for System Improvements during the preceding year.

7.4.119: IMPACT FEE ADVISORY COMMITTEE:

A. Purpose. Pursuant to section 67-8205, Idaho Code, there is hereby established an Impact Fee Advisory Committee whose purpose is to carry out the duties as set forth in subsection 67-8205(3), Idaho Code.

B. Membership. The Impact Fee Advisory Committee shall be composed of not fewer than five (5) members. Two (2) or more members shall be active in the business of development, building or real estate. Two (2) or more members shall be persons who are not active in the business of development, building or real estate. All members must be residents of Kootenai County.

C. Meetings. Meetings may be called by the Impact Fee Advisory Committee by giving reasonable notice of the time and place of the meeting, and the agenda for the meeting, in accordance with the Open Meetings Law, Title 74, Chapter 2, Idaho Code. The Impact Fee Advisory Committee may adopt reasonable rules as are necessary to carry out the duties and responsibilities of the committee, subject to the approval of the County Commissioners, and elect such officers as deemed necessary.

7.4.120: MISCELLANEOUS PROVISIONS:

A. Nothing in this chapter shall prevent a participating Fire District or KCEMSS from requiring a Developer to construct reasonable Project Improvements, as are required by the fire codes and other rules that are adopted by the state fire marshal, in conjunction with a Development.

B. Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Idaho Transportation Department and governmental entities in regard to the construction or installation of System Improvements or providing for credits or reimbursements for System Improvements Costs incurred by a Developer, including inter-project transfers of credits or providing for reimbursement for Project Improvements which are used or shared by more than one (1) Development project.

C. Nothing in this chapter shall obligate the County to approve Development which results in an Extraordinary Impact.

D. Nothing in this chapter shall obligate a participating Fire District or KCEMSS to approve any Development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in this chapter.

E. Nothing in this chapter shall be construed to create any additional right to develop real property or to diminish the County's ability to regulate the orderly development of real property within its boundaries.

F. Nothing in this chapter shall work to limit the use by the County of the power of eminent domain or supersede or conflict with requirements or procedures authorized in Idaho Code for local improvement district or general obligation bond issues.

G. 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 Fire or EMS Impact Fee imposed by this chapter. If the resulting Building Permit is later revised or replaced after the effective date of the ordinance codified in this chapter, and the new Building Permit(s) reflects a development density, intensity, development size or number of Service Units more than ten percent (10%) higher than that reflected in the original Building Permit, then the Fire or EMS Impact Fee may be charged on the difference in density, intensity, development size or number of Service Units between the original and the revised or replacement Building Permit.

H. Any monies, including any accrued interest not assigned to specific System Improvements within such Capital Improvements Plan and not expended or refunded pursuant to this chapter, shall be retained in the same account until the next participating Fire District or KCEMSS fiscal year.

I. If the participating Fire District or KCEMSS discovers an error in the Capital Improvements Plan that results in assessment or payment of more than a proportionate share of System Improvement Costs on any proposed Development, the Fire District or KCEMSS Administrator shall: (a) adjust the Fire or EMS Impact Fee to collect no more than a proportionate share; or (b) discontinue the collection of any Fire or EMS Impact Fees until the error is corrected by ordinance.

J. If Fire or EMS Impact Fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated. Any amounts overpaid by a Fee Payer shall be refunded by the participating Fire District or KCEMSS within twenty-eight (28) days after the participating Fire District's or KCEMSS' acceptance of the recalculated amount, with interest at the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was paid. Any amounts underpaid by the Fee Payer shall be paid to the participating Fire District or KCEMSS within twenty-eight (28) days after the Fire District or KCEMSS Administrator's acceptance of the recalculated amount, with interest at the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was paid. In the case of an underpayment to the participating Fire District or KCEMSS, the Fire District or KCEMSS Administrator may request the County, and the County may withhold issuance of the Building Permit or Development Approval for the project for which the Fire or EMS Impact Fee was paid until such underpayment is corrected, and if amounts owed to the participating Fire District or KCEMSS are not paid within such twenty-eight (28) day period, the participating Fire District or KCEMSS Administrator may also ask the

County to, and the County may revoke any Building Permit or Development Approval issued in reliance on the previous payment of such Fire or EMS Impact Fee and refund such fee to the Fee Payer.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.

SECTION 4. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

ADOPTED this 20th day of October, 2022.

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**

Leslie Duncan, Chairman

**ATTEST:
JIM BRANNON, CLERK**

By:

DEPUTY CLERK



Excused

Chris Fillios, Commissioner

Bill Brooks, Commissioner

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