

ARTICLE 10: IMPACT FEES

10.1. PURPOSE

10.1.1. The Town requires that areas chosen for development shall be capable of being provided within a reasonable period of time with an adequate level of public facilities, including but not limited to:

- A. Roadway facilities;
- B. Regional public buildings;
- C. Regional recreation facilities;
- D. Park and trail systems;
- E. Fire protection facilities;
- F. School facilities;
- G. Water conservation and storage facilities.

10.1.2. This Section is intended to:

- A. Provide a rational system for identifying and mitigating costs associated with growth and development and the expansion of public services and facilities made necessary by land development activities, a growing population and economic activity levels;
- B. Ensure that the impact fees established by this Article are based on, and do not exceed, the cost of providing additional capital facilities necessitated by new development;
- C. Regulate the use and development of land to ensure that new development pays no more nor less than its fair share of the cost of capital expenditures necessary to provide adequate public services to developments within the Town;
- D. Assure that the system of impact fees implemented in this Article is linked to a capital facilities program designed to provide the facilities and equipment for which the impact fees are imposed;
- E. Ensure that the impact fees established by this Article are not used to offset existing deficiencies in capital facilities necessary to serve pre-existing development; and
- F. Ensure that new development that adequately mitigates or reduces the impact it creates on public services through site-specific dedications or improvements receives offsetting credit against its impact fee obligation.

10.2. USE OF FEES

10.2.1. All fees collected pursuant to this Article shall be accounted for in the manner required by 29-1-801, et seq., C.R.S., and other applicable law. Fees shall be deposited in an interest-bearing account that clearly identifies the lot, development activity, and development approval for which the impact fee was collected and the associated category, account, or fund of capital facility, by either aggregate or individual land development. Each such category, account, or fund shall be accounted for separately. Any interest or any income earned on moneys deposited in said interest-bearing account shall be credited to the account.

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SECTION 10.3 PAYMENT OF FEES

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- 10.2.2. Revenues from impact fees shall be used exclusively for capital facilities, as defined by Section 29-20-104.5, C.R.S.
- 10.2.3. No fees shall be used for periodic or routine maintenance, personnel costs, or operational expenses.
- 10.2.4. In the event that bonds or similar financing instruments are used for the advanced provision of any capital facilities for which impact fees are required, fee revenues may be used to pay debt service on such bonds or similar financing instruments.
- 10.2.5. The Town may enter into an intergovernmental agreement with any public agency or local government to jointly fund expenditures and provide capital facilities needed to serve the development for which the impact fees were imposed. To the extent such intergovernmental agreements utilize revenues from the fees imposed by this Article, they shall include such terms requiring compliance with this Article and Colorado law regarding impact fees, including Part 8, Article 1, Title 29 and Sections 29-20-103 and 29-20-104.5, C.R.S., and auditing of accounts and compliance as deemed appropriate by the Town Council.
- 10.2.6. In the event this Land Use Code is repealed or any such intergovernmental agreement is terminated, such capital facilities during their useful life shall continue to be utilized to provide services to the development for which the impact fees were imposed.
- 10.2.7. An impact fee may be used for the costs of any capital facilities within the same specific fee type or category for which the impact fee was originally collected, so long as the demand for such facilities is apportioned to the development activity in the same proportion as the original facility (New Addition by Ordinance 782).

10.3. PAYMENT OF FEES

- 10.3.1. As used in this Article and as defined in this Land Use and Development Code, the term “development approval” shall constitute a “development permit” as that term is used in Sections 29-20-103 and 29-20-104.5, C.R.S.
- 10.3.2. A developer requesting a development approval shall pay the impact fees established by this Article as a condition of development approval.
- 10.3.3. Where previous development activity has occurred prior to the imposition of the impact fees established by this Article, or for which impact fees were previously paid, impact fees for subsequent development activity on the same lot shall be based on the net increase, if any, in the impact fee based on the demand for capital facilities created by the new development activity as compared to the previous development activity.
- 10.3.4. For applications for an amendment or change to a development approval previously obtained, but for which the development activity was not completed, the amount of the impact fee for the subsequent development approval shall be based on the net increase, if any, in the demand for capital facilities created by the new development approval as compared to the impact fee paid for the previous development approval.

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SECTION 10.4 TIMING OF PAYMENT

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10.4. TIMING OF PAYMENT

- 10.4.1. Where development activities may result in multiple levels of development approvals, such as annexation, zoning, subdivision and building permit approval, impact fees shall be paid upon the earliest development activity to occur for which the amount of impact fees can be reasonably calculated. A development application shall not be considered a complete application for purposes of determining impact fees if the specific impact fee amount is unable to be calculated for any reason. In such event, the impact fees may be imposed on any level of development approval that enables calculation of the impact fees (Revision by Ordinance 782)
- 10.4.2. If for any reason the amount of the impact fee cannot be calculated at the time of the initial level of development approval, the Town may defer computation and payment of all or a part of the impact fee until a subsequent level of development approval, or the Town may require that an estimated fee be paid. If an estimated fee is paid, any underpayment shall be recovered at the time of the next development approval at which the impact fee can be reasonably calculated. In the event an over-payment is made, such over-payment shall be refunded, without interest, within 30 days following the date the impact fee can be completely computed.

10.5. ALTERNATIVE FEE CALCULATION

In lieu of payment of impact fee amounts set forth in this Article, the developer may prepare and submit to the Director a site-specific fiscal impact and fee calculation study for the development approval that is requested.

- 10.5.1. The site-specific fiscal impact and fee calculation study shall follow the prescribed methodologies and formats established by the Director. The fiscal impact study submitted shall show the basis upon which the site-specific fee calculation was made. The site-specific fiscal impact and fee calculation study shall be prepared and presented by professionals qualified in their respective fields.
- 10.5.2. The Director shall consider the documentation submitted by the developer, but is not required to accept such documentation reasonably deemed to be inaccurate or not reliable, and may, in the alternative, require the developer to submit additional or different documentation for consideration. If an acceptable site-specific fiscal impact and fee calculation study is not presented, the developer shall pay the impact fee set forth in this Article.
- 10.5.3. Determinations made by the Director pursuant to this paragraph may be appealed to the Board of Adjustment by filing a written request with the Town Manager within ten days of the Director's determination. Following the submittal of such request, the Board of Adjustment shall hold a public hearing to determine the amount of the impact fee, which shall be paid prior to the development approval. The decision of the Board of Adjustment shall be a final quasi-judicial decision for purposes of Rule 106(a)(4) and (b), C.R.C.P.

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SECTION 10.6 IMPACT FEE CREDIT FOR IMPROVEMENTS

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10.6. IMPACT FEE CREDIT FOR IMPROVEMENTS

Upon approval by the Town Council, any developer obligated to pay an impact fee shall receive a credit against the amounts due or to become due for any site-specific dedication or improvement provided by the developer to meet the same need for capital facilities for which the impact fee is imposed.

10.7. REFUND OF PAID FEES

- 10.7.1.** If a development approval expires without commencement of construction or development, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition for development approval, except when the fee has been expended or encumbered in advance of and in anticipation of development. The developer must submit an application for such refund to the Town Manager within 30 days of the expiration of the development approval. The Town shall have no obligation to refund any fee that has been expended or encumbered in advance of and in anticipation of the development.
- 10.7.2.** Any fee not expended or encumbered by the end of the calendar quarter immediately following ten years from the date the fee was paid by a developer shall, upon application of the then current landowner to the Town Manager, be returned to the landowner with interest earned on the fee, within 180 days of the expiration of such ten year period. Provided, however, that the Town Council, in its discretion, for good cause shown, may extend such period of time for an additional period as the Town Council deems reasonable and necessary.

10.8. LIEN FOR UNPAID FEES

All impact fees shall constitute a prior, perpetual lien upon each lot or parcel subject to the development approval for which the fees are imposed from the due date thereof, until paid. If such fee is not paid when due, in addition to any other means provided by law, the Town Clerk shall certify such delinquent fee to the Treasurer of Archuleta County, and the fee shall be collected in the same manner as though it were part of the taxes. The Town may withhold or revoke any development approval, including certificates of occupancy, for which payment of fees is delinquent.

10.9. EXEMPTION FROM PAYMENT OF FEES

The Town Council may, by resolution, grant an exemption from all or any part of the impact fee on the development of low- or moderate-income housing or affordable employee housing. The costs of capital facilities necessary to serve development for which the Town Council grants an exemption from impact fees shall be funded by other available revenues and shall not be imposed upon other development either directly or through a general impact fee increase.

10.10. IMPACT FEE AND FEE IN LIEU OF PUBLIC LAND DEDICATION SCHEDULE

The schedule of impact fees established and imposed by the Town shall be maintained by the Director. The impact fee amounts and rates are deemed to fairly, equitably, and proportionately mitigate the impacts on public facilities created by development within the Town.

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SECTION 10.11 ANNUAL ADJUSTMENT

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10.11. ANNUAL ADJUSTMENT

The impact fee schedule shall be reviewed and may be administratively adjusted without further Town Council action annually for inflation, beginning January 15, 2007, and annually on each anniversary date thereafter. Any such adjustment shall be based upon the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index, or an equivalent index applicable to Archuleta County.

10.12. DEFERRAL

- 10.12.1.** Payments of impact fees may be deferred for land development activities that provide public benefit to residents of the Town. The period of impact fee payment deferral shall not exceed ten years. The Town Council may, however, extend the deferral period upon consideration of extenuating circumstances. The Town Council, may, by resolution, establish a policy to ensure any deferral is granted consistent with this Section and upon terms to ensure payment.
- 10.12.2.** As a condition of receiving a deferral of the payment of impact fees, a development entity shall be required to enter into an agreement with the Town establishing terms of deferral, which shall be recorded in the real property records of the Archuleta County Clerk and Recorder. Impact fee deferral agreements shall include the property owner's consent to the revocation of a certificate of occupancy for any building which is the subject of the deferral upon the failure to timely make a deferred payment. Deferral agreements shall also establish a lien against the property for the amount of the unpaid deferred impact fees.