

Chapter 4-12
DEVELOPMENT IMPACT FEE ORDINANCE

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Section 4-12-01 SHORT TITLE

This Chapter shall be known and may be cited as the "Boise City Development Impact Fee Ordinance."

Section 4-12-02 APPLICABILITY

This Chapter shall apply to all new development located within any impact fee service area for the City of Boise, as described by the most current Capital Improvement Plan and Impact Fee Study adopted by the City of Boise.

Section 4-12-03 FINDINGS; GENERAL PROVISIONS

The City Council finds that, unless otherwise exempt, all new development creates an impact and therefore an increased demand for public services. As such, those users who create the

additional demand should bear the cost of new public facilities when new growth or development requires new public facilities.

- A. This Chapter shall not be construed to subject any development to double payment of the same impact fees.
- B. An impact fee shall not be invalid because the intended improvement for which the fee was paid results in an incidental benefit to owners or developers within a service area other than the fee payer.
- C. After payment of impact fees or the execution of an agreement for payment of impact fees, the City may not assess additional impact fees or increase fees to be paid unless the number of service units increases or the scope of the development changes.
- D. In the event of an increase in the number of service units or the schedule of the development changes, the additional impact fees assessed are limited to the amount attributable to the additional service units or change in scope of the development.

Section 4-12-04 RULES OF CONSTRUCTION

For the purposes of this Chapter, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used throughout this Chapter, but not defined herein, shall have their plain, ordinary, and common meaning. Words in any gender shall apply to the feminine, masculine and neuter genders.

Section 4-12-05 DEFINITIONS

For the purpose of this Chapter, the following terms, phrases and words shall have the meaning given herein:

AFFORDABLE HOUSING: Housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service areas as defined in this Chapter.

APPLICANT:

Person or entity applying for a building permit or other approval that is otherwise subject to the provisions of this Chapter.

ASSESSMENT:

The development impact fee calculated for a particular project that is charged to the fee payer or developer.

BUILDING:

Any structure having a roof and separated from another structure by space or by walls without communicating doors or windows or any similar opening and erected for the purpose of providing support or shelter for persons, animals, things or property.

BUILDING PERMIT:

An official document or certificate issued by the Boise City Building Division of Planning and Development Services, authorizing the construction or siting of any building. For purposes of this Chapter, the term "building permit" shall also include tie-down permits for structures or buildings, such as a mobile home that do not require a building permit in order to be occupied.

CAPITAL IMPROVEMENTS:

Any of the following facilities, including existing facilities, facility expansions or new facilities, that have a useful life of ten (10) years or more, by new construction or other action, that are owned and operated by or on behalf of the City and described in the currently adopted Capital Improvements Plan including:

1. *Fire Capital Improvements.* Buildings for fire and rescue and essential equipment.
2. *Park and Recreation Capital Improvements.* Parks, recreational areas, and related facilities, including trails and greenbelt improvements.
3. *Police Capital Improvements.* Buildings for police and essential equipment.

CAPITAL IMPROVEMENTS PLAN (CIP):

A plan adopted and amended pursuant to the provisions of the Idaho Development Impact Fee Act which identifies capital improvements for which impact fees may be used as a funding source.

CITY:

The city of Boise City, Idaho.

CITY COUNCIL:

The duly constituted governing body of the City.

COMPREHENSIVE PLAN:

The Boise City Comprehensive Plan known as "Blueprint Boise" as updated and amended from time to time pursuant to Idaho Code Title 67, Chapter 65 and Boise City Code Title 11.

COUNTY:

The county of Ada County, Idaho.

DEDICATION:

The conveyance of property for governmental use, through donation of the property by the owner and acceptance by the City or other applicable governmental agency pursuant to this Chapter or other law.

DEVELOPER:

Any person, corporation, organization or other legal entity undertaking development, including a party that undertakes 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.

DEVELOPMENT APPROVAL:

Any written authorization from the City or another governmental entity party, which authorizes the commencement of a development.

DEVELOPMENT IMPACT FEE:

A fee calculated by the City and assessed on new development in order to pay for the proportionate share of the cost of system improvements needed to serve new growth. This term is also referred to as an impact fee in this Chapter and includes lump-sum fees, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described. The term does not include the following:

1. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;
2. Connection or hookup charges;
3. Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or
4. Amounts collected from a developer in a transaction in which the governmental entity 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 REQUIREMENT:

A requirement attached to a development approval or other governmental action that approves or authorizes a particular development project including, but not limited to, a rezone, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

DWELLING UNIT OR ACCESSORY DWELLING UNIT:

A building or portion of a building designed for or whose primary purpose is for residential occupancy, and which consists of one or more rooms which are arranged, designed or used as living, cooking, and sleeping quarters for one or more persons.

ENCUMBER:

To reserve funds for a specific expenditure or an identified project. The following constitute an encumbrance for purposes of this Chapter:

1. Execution of a contract by the City for acquisition of land or capital equipment or toward the design or construction of an improvement; or
2. Adoption of a resolution by the City Council authorizing the commencement of eminent domain; or
3. Execution of an agreement for the rendering of services to the City, which are incidental and necessary to the acquisition of land, capital equipment, or the design and construction of an improvement.

EXTRAORDINARY COSTS:

Those costs incurred as a result of an extraordinary impact attributable to new development.

EXTRAORDINARY IMPACT:

An impact which is reasonably determined by the City to: (i) result in the need for police, fire or parks and recreation system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or (ii) result in the need for system improvements which are not identified in the CIP.

FEE PAYER:

A person or legal entity that pays or is required to pay a development impact fee. Taxing districts are expressly included within this definition of "Fee Payer," unless the taxing district enters into a written agreement with Boise City that provides otherwise.

IMPACT:

The effect of development on the fire service network, police facilities, parks network, or recreational facilities in a given area produced by the additional population attracted by development for purposes of this Chapter.

IMPACT FEE ADMINISTRATOR:

The person designated to administer this Chapter on behalf of the City.

IMPACT FEE STUDY:

The most current “Capital Improvements Plan and Impact Fee Study” adopted by the City and as may be amended, that includes the CIP updates, land use assumptions, methodology, and impact fee calculations.

LAND USE:

The primary category of use for any principal or accessory building, structure or use located on a development site for purposes of this Chapter.

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 standardized measure of the relationship between service capacity and service demand provided by a public facility or system of public facilities. The LOS contained in the Impact Fee Study is expressly adopted and incorporated into this Chapter.

MOBILE OR MANUFACTURED HOME:

A manufactured structure as defined in Idaho Code 39-4105(8) and (9).

MODULAR BUILDING:

Any building or building component, other than a manufactured home, which is constructed according to standards contained in the *Uniform Building Code*, as adopted by the City, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

MULTI-UNIT:

A structure that contains two (2) or more separate residential dwelling units, whether a single building or multiple buildings, which comprise one complex.

NON-RESIDENTIAL DEVELOPMENT:

Any development project not providing for residential housing.

OWNER OF RECORD:

The person or entity holding legal title to the real property, including the local, state or federal government or any subdivision thereof.

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 specific improvements and facilities that are planned, designed, or built to provide service for a specific development and that are necessary for the use and convenience of the occupants or users of the development.

PROPORTIONATE SHARE:

The portion of the costs to provide system improvements which is reasonably and fairly related to the service demands and needs of new development.

PUBLIC FACILITIES:

Publicly owned parks, recreational facilities, open space, greenbelt, and trails, including related park and trail improvements, fire facilities, and police facilities including:

1. Wastewater collection, treatment and disposal facilities;
2. Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection, and enhancement improvements;
3. Landscaping associated with roads, streets and bridges, and the rights of way associated therewith;
4. Parks, open space and recreation areas, and related capital improvements; and
5. Public safety facilities, including law enforcement, fire, emergency medical and rescue, and street lighting facilities.

RECREATIONAL VEHICLE:

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

RESIDENTIAL DEVELOPMENT:

Any building designed to be used as housing, such as single-unit dwellings, accessory dwelling units, apartments, condominiums, mobile homes, or manufactured homes, intended for occupancy by one or more persons and not offering other services.

SERVICE AREAS:

A defined geographic area identified by the City in the comprehensive plan, the CIP, or by an intergovernmental agreement between the City and another governmental entity, for which

development potential may create the need for capital improvements to be funded by impact fees.

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. The following service units are used for the analysis and calculation of impact fees under this Chapter:

1. *Fire.* Fire equivalent dwelling units, which each represent the average number of fire and emergency calls for service per development unit for each land use category, as more fully described in the Impact Fee Study.
2. *Parks and Recreation.* Residential population, which each represent the average number of persons per housing unit based on housing size, as more fully described in the Impact Fee Study.
3. *Police.* Police equivalent dwelling units, which each represent the average number of police calls for service per development unit for each land use category, as more fully described in the Impact Fee Study.

SINGLE-UNIT ATTACHED DWELLING UNIT:

A housing unit which shares a common wall with an adjoining unit. The common wall must extend from the foundation through the attic.

SINGLE-UNIT DETACHED DWELLING UNIT:

Conventional home where one family normally occupies one dwelling unit in one structure which may be found in subdivisions or on single lots.

SYSTEM IMPROVEMENTS:

Capital improvements to the parks and recreation, fire, or police system designed to provide service within the specific service area.

SYSTEM IMPROVEMENT COSTS:

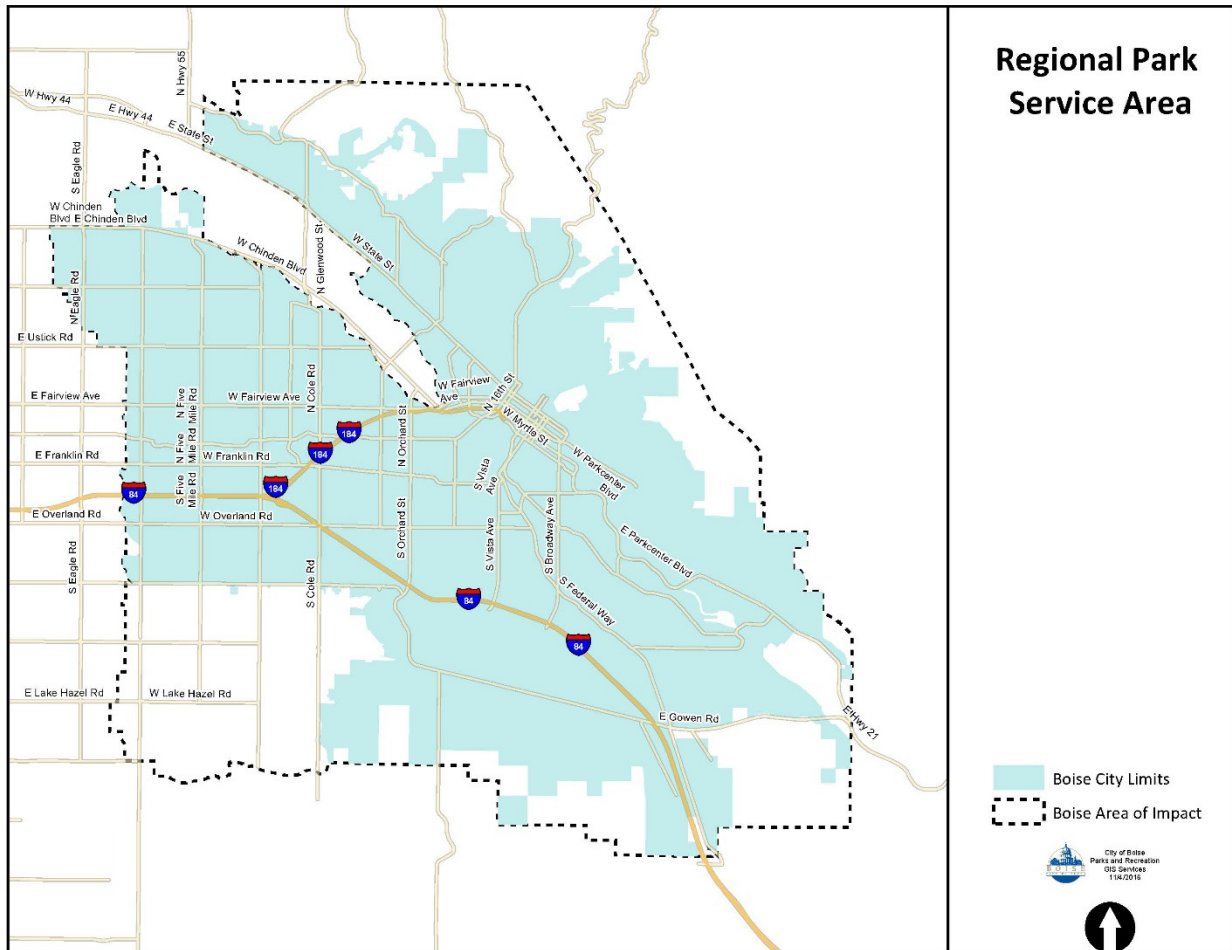
Costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs in order to provide additional public facilities needed to serve new growth and development.

UNIT(S) OF DEVELOPMENT:

A quantifiable increment of development activity dimensioned in terms of equivalent dwelling units or other appropriate measurements identified by the Impact Fee Study.

Section 4-12-06 REGIONAL PARK IMPACT FEE SERVICE AREA

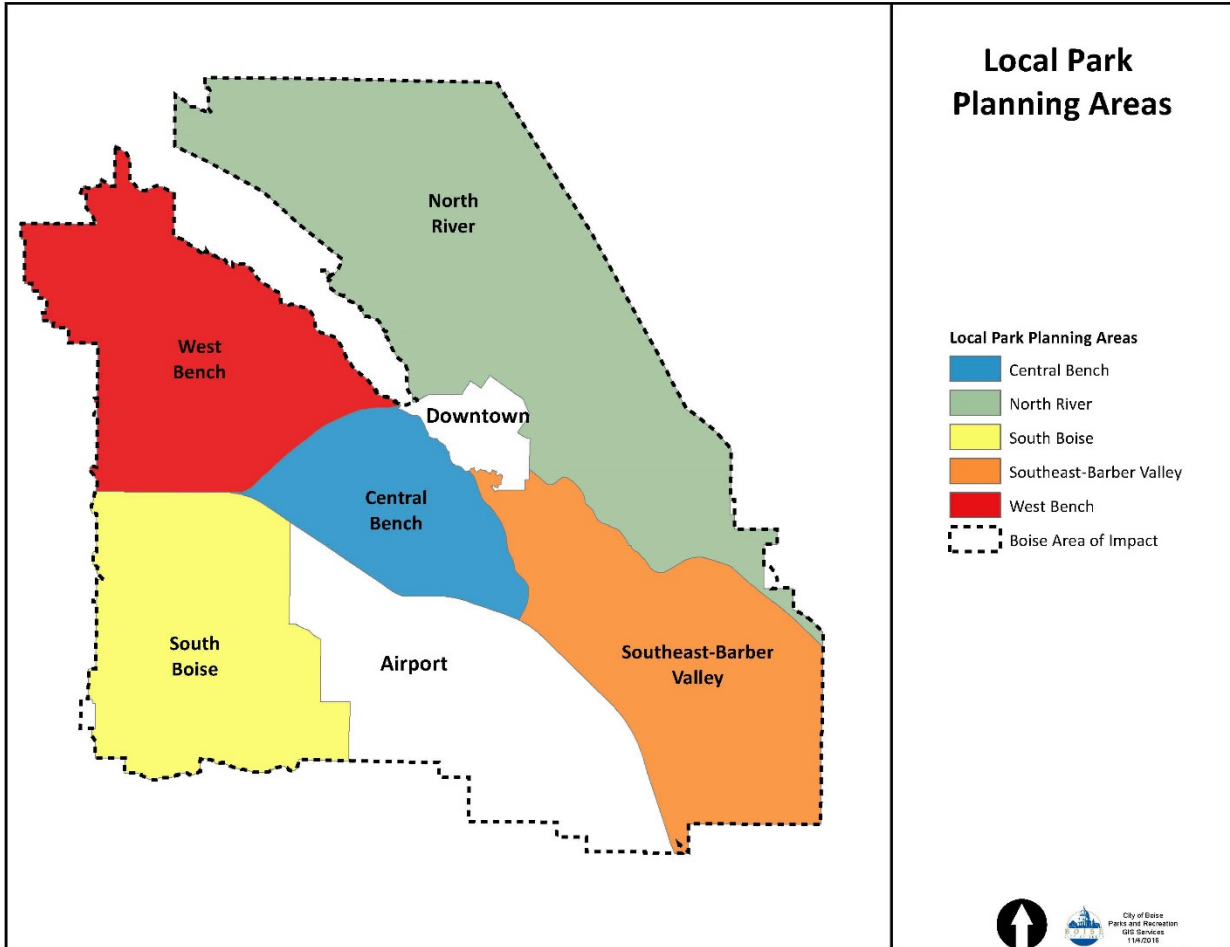
There is hereby established one (1) regional park impact fee service area, to include all land within the City and its designated Area of Impact, the boundaries of which are depicted by the map below and incorporated by reference herein and as may be amended from time to time.



This drawing is to be used only for reference purposes. Boise City is not responsible for any inaccuracies herein contained.

Section 4-12-07 LOCAL PARK IMPACT FEE SERVICE AREAS

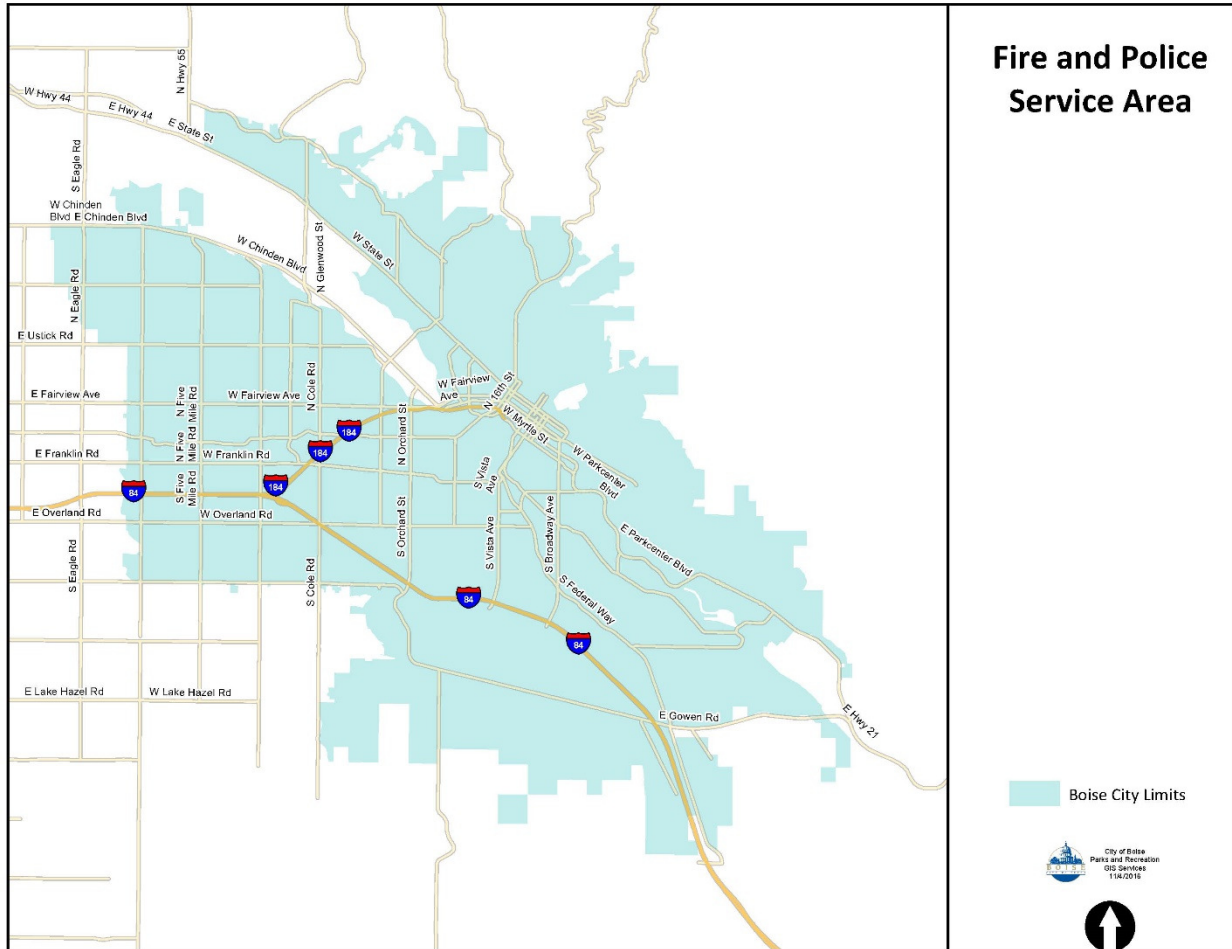
There is hereby established local park impact fee service areas, to include certain land within the City and its designated Area of Impact, the boundaries of which are depicted by the map below and incorporated by reference herein and as may be amended from time to time.



This drawing is to be used only for reference purposes; Boise City is not responsible for any inaccuracies herein contained.

Section 4-12-08 FIRE IMPACT FEE SERVICE AREA

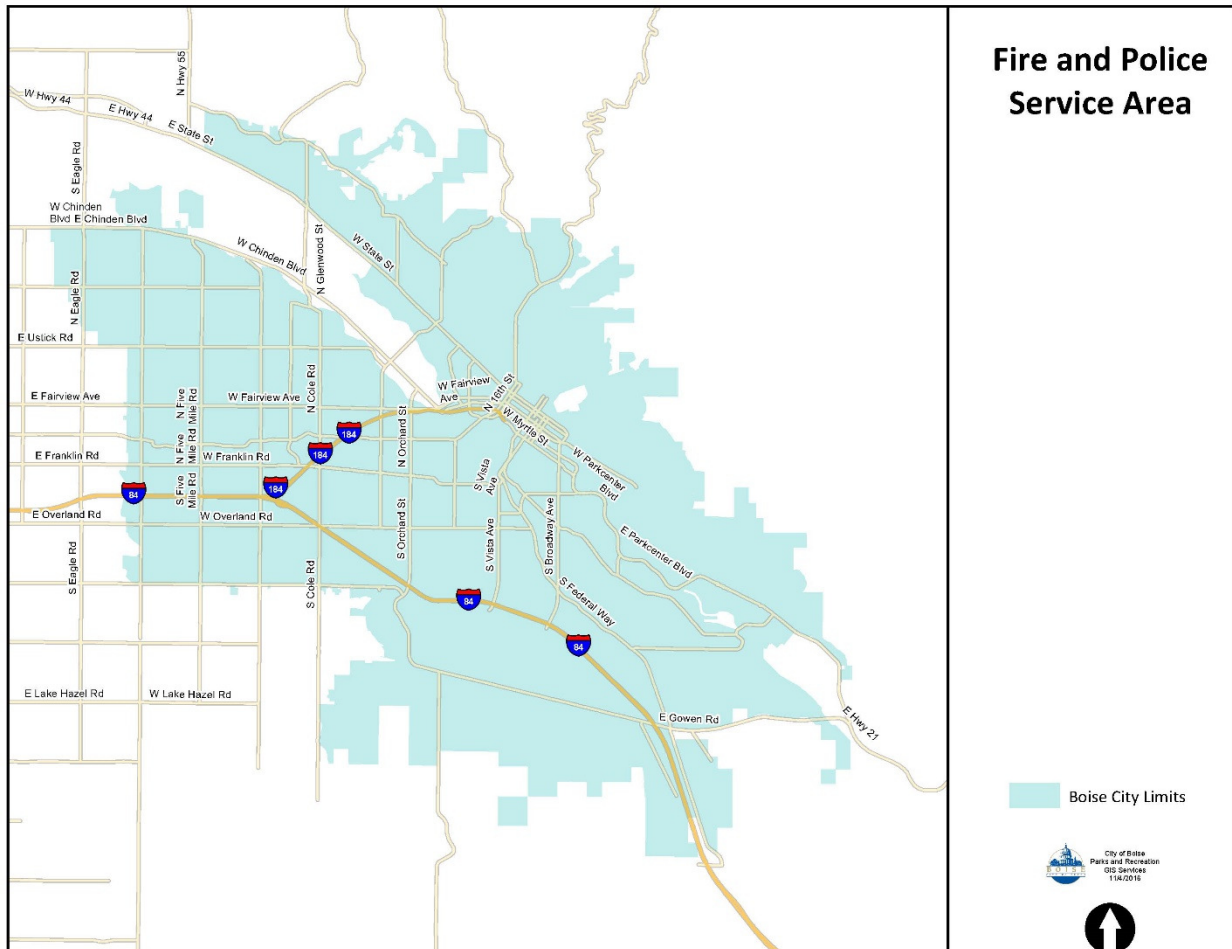
There is hereby established one (1) fire impact fee service area, to include all land within the City, the boundaries of which are depicted by the map below and incorporated by reference herein and as may be amended from time to time.



This drawing is to be used only for reference purposes; Boise City is not responsible for any inaccuracies herein contained.

Section 4-12-09 POLICE IMPACT FEE SERVICE AREA

There is hereby established one (1) police impact fee service area, to include all land within the City, the boundaries of which are depicted by the map below and incorporated by reference herein and as may be amended from time to time.



Section 4-12-10 LAND USE ASSUMPTIONS

Land use assumptions used in developing a CIP shall be based on the most recently adopted assumptions by the appropriate land use planning agency or agencies.

- A. Land use assumptions for the City shall be updated at least every five (5) years commencing from the date of the adoption of the CIP(s). Impact fees shall be recalculated in accordance with Idaho Code section 67-8206.

- B. Amendment to the land use assumptions shall incorporate projections of changes in land uses, densities, intensities and population for each service area for a period not less than twenty (20) years.

Section 4-12-11 DETERMINATION OF SERVICE UNITS

The number of service units for regional park, local park, fire, and police impact fees shall be determined by using the land use and service unit equivalency table(s) adopted by and contained within the currently adopted Impact Fee Study.

Section 4-12-12 DEVELOPMENT IMPACT FEES PER SERVICE UNIT

A. The maximum impact fee per service unit for each service area shall be established by each category of capital improvements. The maximum impact fee per service unit for each service area for each category of capital improvement shall be computed in the following manner:

- 1. For each category of capital improvements, calculate the total projected costs of capital improvements necessitated by and attributable to new development in the service area identified in the impact fee CIP;**
- 2. From such amount, subtract a credit in the amount of revenues, if any, including the payment of debt, to be generated by new service units during the period the CIP is in effect, including the payment of debt, associated with the capital improvements in the plan;**
- 3. Divide the resultant amount by the total number of service units anticipated within the service area based on land use assumptions for that service area.**

B. The impact fees imposed on new development shall be calculated for each new service unit by using the impact fee per service unit as set forth in Schedules A, B, C, and D below.

Schedule A - Regional Park Impact Fees

Proposed Regional Park Impact Fee Schedule				
Residential by Size	Unit	Persons/Housing Unit	Net Cost / Person	Cost / Residential Unit
Less than 700	0.63		\$250	\$157
701 – 1,400	1.63		\$250	\$407
1,401 – 2,500	2.47		\$250	\$618

2,501 – 3,200	2.83	\$250	\$708
More than 3,200	3.00	\$250	\$750

Schedule B - Local Park Impact Fees

Local Park Impact Fee Schedule by Service Area						
Residential Unit by Size	Central Bench	Downtown	North River	South East/Barber Valley	South West	West Bench
Less than 700	\$73	\$0	\$296	\$310	\$218	\$228
701- 1,400	\$188	\$0	\$767	\$804	\$565	\$589
1,401-2,500	\$285	\$0	\$1,163	\$1,218	\$855	\$893
2,501-3,200	\$327	\$0	\$1,331	\$1,396	\$979	\$1,022
More than 3,200	\$346	\$0	\$1,412	\$1,479	\$1,038	\$1,084

Schedule C - Fire Impact Fees

Fire Impact Fee Schedule			
Residential Unit by Size	Persons/ Housing Unit	Net Cost / Person	Cost / Residential Unit
Less than 700	0.63	\$209	\$132
701-1,400	1.63	\$209	\$342
1,401-2,500	2.47	\$209	\$517
2,501-3,200	2.83	\$209	\$593

More than 3,200	3.00	\$209	\$628
Non-Residential	Fire EDU / 1,000 Sq. Ft.	Net Cost / EDU	Cost /1,000 Sq. Ft.
Industrial	0.15	\$238	\$36
Retail	1.02	\$238	\$243
Office	1.32	\$238	\$315

Schedule D - Police Impact Fees

Police Impact Fee Schedule			
Residential Unit by Size	Persons/Housing Unit	Net Cost / Person	Cost / Residential Unit
Less than 700	0.66	\$97	\$61
701-1,400	1.63	\$97	\$157
1,401-2,500	2.47	\$97	\$239
2,501-3,200	2.83	\$97	\$273
More than 3,200	3.00	\$97	\$290
Non-Residential	Police EDU / 1,000 Sq. Ft.	Net Cost / EDU	Cost /1,000 Sq. Ft.
Industrial	0.32	\$110	\$36
Retail	2.73	\$110	\$300
Office	1.14	\$110	\$125

- A. Prior to issuance of a building permit, the fee payer shall pay impact fees, in accordance with this Chapter. The Impact Fee Administrator shall rely upon the information contained in the building permit application(s), planning application(s), or other planning entitlement(s) documents associated with the development.
1. The fee payers shall pay all impact fees prior to the issuance of a building permit, unless otherwise agreed to in writing by the City and the fee payer. No construction shall commence nor shall the City issue a building permit unless and until the fee payer has satisfied the provisions of this Chapter.
 2. Completed applications for building permits received within 120 days of the effective date of any amendment to this Chapter that affects the impact fee calculation, will be exempt from that portion of the amendment. The complete application must include permitted plans signed and sealed by a State of Idaho licensed engineer or architect, if required, that shows all site work, and complies with all applicable zoning, architectural, structural, electrical, mechanical, plumbing, and environmental requirements.
 3. Applications for building permits filed prior to the effective date of any amendment to this ordinance, but which expire or are revoked, shall be subject to the provisions of the most current ordinance in effect at the time of reapplication. In the event that an amendment results in a change in the amount of impact fees charged for a particular category of public facility, the fee payer shall pay the impact fee amount in effect upon the date of his or her reapplication.
 4. If a building permit expires or is revoked and development or construction does not commence, the owner of record shall be entitled to a refund of previously paid impact fees for that development as set forth by Boise City Code section 4-12-21.
 5. The owner of record shall not receive a refund for proposed development activity resulting in a negative fee calculation or in cases in which final City approval has not occurred.
- B. If development results in either the expansion of an existing non-residential land use, a change from a non-residential land use type to a different non-residential land use type, or a change from a residential to non-residential land use type, then an impact fee shall be assessed only for the additional impact attributable to the expansion, change or more intensive use.
- C. When a building or structure will be removed or demolished, the fee payer shall pay an impact fee based upon the difference between the fee that would have been paid for the previous structure and the fee for new structure on the site, provided that the prior structure was removed or demolished not more than ten (10) years prior to the application for a building permit and documentation of its previous existence and size is provided to the

Impact Fee Administrator. In all other cases the replacement structure will be treated as new development.

- D. If the proposed development does not conform to a land use category identified by the most current adopted Impact Fee Study, then the Impact Fee Administrator shall apply the land use category that most closely resembles the proposed use.
- E. An impact fee will be assessed for installation of a modular building, manufactured home, or recreational vehicle unless the fee payer demonstrates:
 - 1. That a modular building, manufactured home, or recreational vehicle legally occupied the site prior to the effective date of this Chapter; or
 - 2. That an impact fee had been paid previously for the installation of a modular building, manufactured home, or recreational vehicle on that same site.

Lawful storage of a recreational vehicle does not constitute an installation for purposes of this Chapter.

- F. If the City Council determines that a proposed development activity would create an extraordinary impact on the City's public facilities system, resulting in the City's inability to accommodate the development without excessive or unscheduled public expenditures, the City Council may refuse to approve the proposed development activity and may recommend to the other affected government agencies that the project not be approved. In the alternative, the City Council may calculate a pro rata share per service unit of the extraordinary impact and charge an impact fee greater than the fee indicated by use of the fee schedule.
- G. 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.
 - 1. Written application for an individual assessment shall be made to the Impact Fee Administrator prior to receipt of building permits or other necessary approvals or entitlements from the City. The individual assessment process shall consider of studies, data, and any other relevant information submitted by the fee payer supporting adjustment of the impact fee. Late applications for individual assessment of impact fees may be considered for a period of sixty (60) days after the receipt of a building permit only if the fee payer demonstrates that the facts supporting the application were not known or discoverable prior to receipt of the building permit and that undue hardship would result if the application is not considered.
 - 2. The Impact Fee Administrator shall render a written decision regarding the individual assessment within thirty (30) days of receipt of the application. The decision

by the Impact Fee Administrator shall include an explanation of the calculation of the impact fee and an explanation of factors considered under Idaho Code section 67-8707 and shall specify the system improvement(s) for which the impact fee is intended to be used. The decision of the Impact Fee Administrator shall establish the impact fee for the development for one (1) year from the date of the final decision.

Section 4-12-14 COLLECTION AND PENALTIES

The City may utilize the following means and methods to ensure the payment of impact fees:

1. Charge interest on any unpaid portions of the impact fee with interest at the highest legally allowable rate and a penalty of five per cent (5%) for each thirty (30) day period payment is late;
2. Withholding the building permit until the impact fee is paid;
3. Withholding utility services until the impact fee is paid; or
4. Creation of a lien for failure to pay the impact fee following the procedures set forth in Idaho Code Title 45, Chapter 5.

Section 4-12-15 IMPACT FEE OFFSETS AND CREDITS

A fee payer shall receive credit or reimbursement for the present value of any system improvement, the value of dedication of real property to the City, or other contribution required by the City from the developer for system improvements of the category for which the impact fee is being collected, including system improvements paid for pursuant to a local improvement district.

- A. All offsets and credits against impact fees shall be subject to the following limitations and shall be granted based on this Chapter:
1. No offset or credit shall be given for the dedication or construction of project improvements or site-related facilities.
 2. A fee payer shall not receive an offset or credit in excess of that amount to be collected from the assessed impact fee.
 3. The unit costs used to calculate the offsets or credits shall not exceed those assumed for the capital improvements included in the CIP(s) for the category of facility within the service area for which the impact fee is imposed.

4. An offset or credit shall lapse ten (10) years after receipt of the first building permit issued after the effective date of this Chapter or within such period as may be otherwise agreed to by written agreement.
 5. The City will not reimburse the property owner or fee payer for an offset or credit when no impact fees for the new development can be collected pursuant to this Chapter or for any amount exceeding the total impact fees due for the new development for the category of capital improvement.
 6. The amount of any offset or credit shall not include the amount attributable to participation by the City in the development.
- B. An offset or credit associated with a plat shall be applied to an impact fee at the time of application for the first building permit for the subject property and will continue to be applied until the offset or credit is exhausted for that development.

Section 4-12-16 EXEMPT DEVELOPMENT ACTIVITIES

A fee payer shall claim an exempt development activity upon application for a building permit.

The following development activities are exempt from the payment of impact fees:

1. Construction of publicly owned buildings or structures, which are solely for governmental purposes, unless the City determines that the development activity will create an extraordinary burden on public facilities owned or operated by the City.
2. Rebuilding or replacing a structure destroyed or damaged by fire or other catastrophe, with a new structure which does not increase the impact over that attributable to the destroyed or damaged structure, provided that the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
3. The remodel or repair of a structure that does not increase the number of service units;
4. Replacing an existing use on the same site, provided the number of units does not increase;
5. Placing a temporary construction trailer or office on a site;
6. Alteration or expansion of an existing dwelling unit where that alteration or expansion does not increase the number of service units;
7. Construction of accessory buildings or structures typical to residential uses, such as tennis courts or clubhouses, which will not result in an increase in the number of service

units or the fee payer can demonstrate that the use does not create a significant impact on the capacity of system improvements.

Section 4-12-17 AFFORDABLE HOUSING IMPACT FEE RELIEF PROGRAM

Applicants seeking relief pursuant to the terms of this program, as set forth below, shall make written application to the Impact Fee Administrator.

(Reserved)

Section 4-12-18 ESTABLISHMENT OF ACCOUNTS

- A. To ensure that impact fees will benefit the appropriate development, the City will establish separate interest-bearing impact fee trust accounts for each category of capital improvement within each service area for which the impact fee is collected.
- B. Interest earned shall be credited to the account on which it was earned and shall be used solely for the purposes specified in the CIP.
- C. The City shall establish adequate financial and accounting controls to ensure that impact fees are utilized solely for purposes authorized by this Chapter. Disbursement of funds shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Chapter. Impact fees shall be expended within a reasonable period of time, but not to exceed a maximum of 8 (eight) years, unless extended as provided by Boise City Code section 4-12-18(D) from the date the fees were collected, on a first-in, first-out basis (FIFO). Funds shall be deemed expended for purposes of this Chapter when payment for a capital cost has been approved by the City.
- D. The City may hold the impact fees for longer than eight (8) years, but no more than eleven (11) years from the date the fees were collected, if it identifies in writing:
 - 1. A reasonable cause why the fees should be held longer than the eight (8) years; and
 - 2. An anticipated date by which the fees will be expended.
- E. If it is determined that the impact fees have not been expended for capital facilities identified by the CIP within the authorized time frame and any permitted extensions, then such fees, including interest shall be refunded as set forth by the Chapter.
- F. A financial report on the impact fee trust accounts shall be provided annually to the Mayor and Council. The report shall include:
 - 1. The amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area;

2. The percentage of tax and revenue other than impact fees collected appropriated or spent for system improvements during the preceding year by category of public facility and service area.
3. The length of time that unexpended impact fees have been held and the expiration date of those impact fees.

Section 4-12-19 EXPENDITURE OF IMPACT FEES

- A. Except as otherwise provided, impact fees, including accrued interest, shall only be expended on public facilities identified in the CIP for the relevant service area. Impact fees may be expended for, but not limited to, the construction contract price, surveying and engineering fees, and land acquisition costs for public facilities. Impact fees may also be used to pay the principal and interest payments (including sinking fund payments) on bonds or other borrowed revenues used to acquire, expand, or improve public facilities. Expenditures may be made to purchase additional land from a fee payer where such purchase is consistent with the purpose of this Chapter.
- B. Impact fees collected pursuant to this Chapter shall not be used to pay for any of the following:
 1. Construction, acquisition, or expansion of projects or assets other than capital improvements or facility expansions identified in the CIP(s);
 2. Repair, operation, or maintenance of existing or new capital improvements or facility expansion;
 3. Upgrade, update, expansion, or replacement of existing capital improvements to provide better service to existing development;
 4. Upgrade, update, expansion, or replacement of existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards; and
 5. Administrative and operating costs incurred by the City.

Section 4-12-20 APPEALS

- A. **Appeal of Administrative Decisions by a Fee Payer.** The City shall contract with qualified independent individuals to sit as hearing officers in order to consider administrative appeals filed under this Chapter. Except for the determination of an individual assessment, a fee payer may appeal a final decision of the Impact Fee Administrator by filing a written notice of administrative appeal with the Boise City Clerk within thirty (30) days of (a) a written decision by the Impact Fee Administrator or (b) the acceptance of payment of the impact fee under protest. The appeal shall contain a written explanation of the appeal and documentation to be considered by the Hearing Officer. A fee payer may pay an impact fee under protest in order to obtain a building permit and shall not be precluded from exercising the right of appeal as provided herein.
1. Except as otherwise provided in this Chapter, a decision of the Impact Fee Administrator may be appealed by the developer or fee payer to the hearing officer for the following reasons:
 - a. The applicability of an impact fee to the new development;
 - b. The method of calculating the amount of the impact fee;
 - c. The availability or the amount of the offset or credit;
 - d. The application of the offset or credit against the impact fee due; or,
 - e. The amount of a refund due.
 2. The burden of proof shall be on the fee payer to demonstrate that the Impact Fee Administrator erred in his/her decision. Following a hearing on the appeal, the hearing officer shall issue a written decision within thirty (30) days of the conclusion of the hearing. The written decision of the hearing officer shall constitute the final decision.
 3. The Boise City Clerk shall schedule the appeal before the hearing officer as soon as practical. The hearing officer may affirm, reject, or revise the decision of the Impact Fee Administrator and shall issue a written decision providing findings of fact and conclusions of law supporting the decision. The written decision of the hearing officer shall be mailed to the City and the fee payer, certified mail, return receipt requested.

- B. **Protest of Expenditure by Interested Person.** Any person with standing may protest the expenditure of impact fees within two (2) years of the expenditure by filing a protest with the Boise City Clerk. The City Clerk shall set the matter for hearing before the City Council within thirty (30) days of receipt of the protest. The protesting party shall identify the impact fee expenditure to be protested and the basis of the protest. The City Council shall render a decision regarding the protest within thirty (30) days of the close of the hearing on the matter.
- C. **Appeal of an Individual Assessment.** Appeals of the Impact Fee Administrator's determination of individual assessment shall made to the City Council by the filing of an appeal with the Boise City Clerk within ten (10) days of the decision of the Impact Fee Administrator. The appeal shall contain a written explanation of the appeal and documentation to be considered by the City Council.
1. The burden of proof shall be on the fee payer to demonstrate that the Impact Fee Administrator erred in their decision.
 2. The Boise City Clerk shall schedule the appeal before the City Council as soon as practical. The City Council may affirm, reject, or revise the decision of the Impact Fee Administrator. Following a hearing on the appeal, the City Council shall issue a written decision within thirty (30) days of the conclusion of the hearing. The written decision of the City Council shall constitute the final decision.
- D. **Mediation.** At any time during the appeal process, the fee payer and the City may voluntarily enter into mediation with respect to any disagreement related to the impact fee for a proposed development. Mediation shall be conducted by a qualified independent party selected by mutual agreement. The cost of such mediation will be shared equally by the fee payer or property owner and the City.
- E. **Judicial Review.** Any party of record aggrieved by the decision of the hearing officer or the City Council may within twenty-eight (28) days of receipt of the hearing officer's decision seek judicial review by filing a petition in the District Court in the manner provided by Idaho Code Title 67, Chapter 52.

(Added, 6647, 03/11/2008)

Section 4-12-21 REFUNDS

The City shall refund development impacts fees upon request as set forth below.

- A. If a fee payer has paid an impact fee erroneously, the fee payer shall be entitled to a refund of the fee paid with interest.
- B. If a fee payer has paid an impact under protest in which a subsequent review of the payment or individual assessment concludes that the fee exceeded the proportionate share to which the City was entitled, the property owner of record shall be entitled to a refund of the fee paid with interest. Only upon written authorization from the property owner may the refund be issued to another designated party, if the developer or fee payer is not the property owner.
- C. If a fee payer has paid an impact fee and has obtained a building permit or any other permit for a development or extension thereto, and the permit or extension for which the fee was paid later expires without the possibility of further extension, and the development activity for which the fee was imposed did not occur and no impact was resulted, then the property owner of record shall be entitled to a refund of the fee paid, with interest. Only upon written authorization from the property owner may the refund be issued to another designated party, if the developer or fee payer is not the property owner.
- D. If the City, after collecting the fee when service is not available, fails to appropriate and expend the collected development impact fee pursuant to Idaho Code section 67-8210(4) or this Chapter the following shall apply:
 - 1. The monies eligible for refund shall be deposited into a refund trust account. The funds shall not be spent.
 - 2. To expedite the refund process and reduce the associated administrative costs, monies eligible for refund shall be aggregated into ninety (90) day blocks. For the purpose of eligibility for refund, money shall be deemed spent in the order in which it was deposited into the appropriate trust fund FIFO.
 - 3. The City will send by certified mail to the current owner of each affected property as disclosed by the most current property tax roll maintained by the Ada County Assessor's Office.
- E. Interest shall be paid at one-half ($\frac{1}{2}$) the legal rate as set forth in Idaho Code section 28-22-104 from the date on which the fee was paid.

Section 4-12-22 UPDATE OF CAPITAL PLANS AND REVISION OF FEES

Prior to assessing new or amended impact fees the City shall prepare and adopt an updated CIP for each category of capital improvements.

- A. There shall be a non-refundable surcharge of one percent (1.0%) of the assessed impact fee for the cost of preparing or updating the CIP(s) which is attributable to determining the associated impact fee. This surcharge is not an impact fee and cannot be reduced by any credits.
- B. The CIP shall be prepared by qualified professions in fields relating to finance, engineering, planning, and transportation in consultation with the Development Impact Fee Advisory Committee.
- C. Schedules may be amended without revised land use assumptions and CIP(s) at any time prior to the required update provided in subsection (B), provided that they are amended according to changes in construction costs from an approved index.
- D. The City shall prepare a CIP for each category of necessary public facility for which an impact fee will be charged that evaluates the need for capital facilities for new development in accordance with Idaho Code section 67-8208.
- E. More than one CIP and associated impact fee study may be adopted, so long as no more than one of each is effective for each category of necessary public facility at any one time. Multiple categories of necessary public facilities may be included in a single CIP and its associated impact fee study.
- F. The City may reserve capacity in a CIP to serve one or more planned future developments, including capacity reserved through a development agreement. All reservations of existing capacity must be disclosed in the CIP at the time it is adopted.
- G. The Impact Fee Study shall summarize the contents of the CIP(s), and provide the following information:
 - 1. Maps of the proposed service area(s) within which an impact fee is to be assessed.
 - 2. The number of existing and projected equivalent dwelling units for each service area, based upon the land use assumptions.
 - 3. Information regarding all necessary public facilities for which impact fees are to be assessed.
 - 4. Schedules of the proposed impact fees for each necessary public facility, for each service area, on a per-equivalent dwelling unit basis, including details of other revenue to be applied.

Section 4-12-23 CERTIFICATION

A. A developer may request a written certification of the impact fee schedule or individual assessment which shall establish the impact fee for a particular development, so long as there is no material change to the particular development as identified in the individual assessment application or the impact fee schedule the certification shall be binding. A certification may be applied for in the following manner.

1. Written application may be made to the Impact Fee Administrator not later than sixty (60) days from preliminary plat approval by the Boise City Council. Late applications for certification of the impact fee schedule shall not be considered unless the fee payer makes a showing that the facts supporting such application were not known or discoverable within such sixty (60) day period and that undue hardship would result if the application is not considered.

B. The Impact Fee Administrator shall provide the applicant with a written certification of the impact fee schedule or individual assessment for the particular project within thirty (30) days of the date of application for certification. The certification shall establish the impact fee for the particular project for a period of one (1) year from the date of certification, so long as there is no material change to the particular project as identified in the individual assessment application or the impact fee schedule. The certification shall include an explanation of the factors considered under Boise City Code section 4-12-05 and shall specify the system improvement(s) for which the impact fee is intended to be used.

Section 4-12-24 VESTED RIGHTS

Nothing in this Chapter shall limit or modify the rights of any person to complete any development for which a lawful building permit was issued prior to the effective date of this Chapter and on which there has been good faith reliance and a substantial change of position.

Section 4-12-25 OTHER POWERS AND RIGHTS NOT AFFECTED

- A. The City shall not require a developer to construct reasonable project improvements in conjunction with a development project.
- B. Nothing in this Chapter shall prevent or prohibit private agreements between property owners or developers and the City in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer including inter-project transfers of credits or providing for reimbursement for project Improvements which are used or shared by more than one development project.
- C. The City shall not be obligated to approve development which results in extraordinary impact.

- D. The City shall not be obligated to approve any development request which may reasonably be expected to reduce levels of service below minimum acceptable levels as established herein.
- E. The Chapter does not create any additional right to develop real property or diminish the power of the City in regulating the orderly development of real property within the service area.
- F. Nothing in this Chapter shall limit the use by the City of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.

Section 4-12-26 SAVINGS CLAUSE

If any section, subsection, sentence, clause or provision of this Chapter is held invalid, the remainder of this Chapter shall not be affected by such invalidity.

(ORD 29-18, Amended, 8/28/18; Ord-43-16, Repeal & Enacted, 12/13/16; Added, 6647, 03/11/2008; ORD-43-16, Repealed and Replaced 12/13/16; Repealed and Replaced, 6647, 03/11/2008; 5532, Enacted, 04/12/94; Repealed and Enacted, Ord-8-14, 03/11/14; Repealed and Replaced, 6647, 03/11/2008; 6462, Amended, 04/11/2006; 5532, Added, 04/12/1994