

Ordinance 1, 2012

AN ORDINANCE PROVIDING FOR THE IMPOSITION, COMPUTATION, AND PAYMENT OF LAND DEVELOPMENT FEES TO OFFSET THE IMPACT OF NEW GROWTH IN THE TOWN AND PROVIDING FOR THE ESTABLISHMENT OF SEPARATE IMPACT FEE FUNDS, AND PROVIDING FOR EXEMPTIONS, REFUNDS, AND APPEALS

WHEREAS, pursuant to the authority granted in Section 29-20-101, C.R.S. and a condition of issuance of a development or building permit, the Town may impose an growth impact fee or other similar development charge to fund expenditures by the town for capital facilities needed to serve new development; and

WHEREAS, the Town has prepared an *Analysis of Growth Projections, Impacts to Capital Needs and Capital Improvement Plan (Plan)* for the period of 2012 through 2021 dated January, 2012 concerning the demand anticipated to be placed by new growth upon the Town's Parks and Recreation, Fire and EMT Safety Services, and Streets and Bridges; and

WHEREAS, based on reasonable methodologies and analyses for determining the impacts of new development on the Town's Parks and Recreation, Fire and EMT Safety Services, Water Plant Capacity and Streets and Bridges, the Plan quantifies the reasonable impacts of new development on capital facilities, and establishes growth impact fees, also referred to as Land Development Charges, no greater than necessary to defray the projected impacts on capital facilities directly related to proposed new development; and

WHEREAS, in preparing the Plan, the Town relied upon a reasonable assessment of the expected capital improvements needed over the period of growth and has reviewed and analyzed which elements of new development are or would generate demand for additional capital facilities addressed therein; and

WHEREAS, it is the opinion of the Board that that machines, equipment and any improvement with a useful life of five years or greater is a "Capital Facility"; and

WHEREAS, the Town's Parks and Recreation, Fire and EMT Safety Services, Water Plant Capacity and Streets and Bridges impact fees to be imposed on new development will be and are hereby legislatively adopted, will generally be applicable to a broad class of property and are intended to defray the projected impacts on such facilities and improvements caused by proposed development as required by law; and,

WHEREAS, the Plan quantifies the reasonable impacts of proposed development on the Town's Parks and Recreation, Fire and EMT Safety Services, Water Plant Capacity and Streets and Bridges, and the reasonable costs of infrastructure that would be necessary to construct and expand the Town's capital facilities to accommodate the additional demands and impacts of proposed development, and based upon the Plan and a review of all facts and circumstances, in the reasonable judgment of the Board, the impact development fees hereby established are at levels no greater than necessary to defray the impacts directly related to the categories of land development listed; and,

WHEREAS, the Plan has been presented to and reviewed by the Board of Trustees; and,

WHEREAS, in adopting the Town's Parks and Recreation, Fire and EMT Safety Services, Water plant Capacity and Streets and Bridges, the Board intends and has determined that such fees are designed to and do address capital facilities needs which are brought about by development generally, which facilities are separate and distinct from the impacts by other requirements of the Town's ordinances and in no circumstances do the impact fees set forth herein address the same subjects as other requirements of the Town ordinances for site specific dedications and improvements; and,

WHEREAS, the impact fees hereby adopted do not remedy any deficiency in existing capital facilities without regard to proposed development; and,

WHEREAS, provisions are included herein to ensure that no individual landowner or applicant is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee or other similar development fee is charged; and

WHEREAS, provisions are included herein to provide for an offset or a credit against the impact fees payable by a particular applicant where site specific dedication or improvement is required from the same applicant for the same capital need; and

WHEREAS, the impact fees adopted hereby shall be collected and accounted for in accordance with Section 29-1-801 *et seq.*, C.R.S., and each and each category of impact fee adopted herein shall be accounted for separately; and

WHEREAS, after due and timely notice, the Town Board of Trustees, on two separate occasions, held a public meeting to discuss, review and hear public comment on the proposed fees, and has recommended adoption of the proposed impact fees; and

WHEREAS, based on testimony at public meeting and in the reasonable judgment of the Board, it finds that: (1) new development upon which the impact fees are charged creates a need for the capital facilities being funded by the fees; (2) new development will benefit from the construction of the facilities and improvements to be funded by the impact fees, and: (3) the amounts of the facilities and improvements to be funded by the impact fees are directly related to that new development; and,

WHEREAS, the impact fees adopted hereby are fair and rational, charge new development according to its impact on the Town's capital facilities, and benefit the developers who pay them in a tangible way.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTES OF THE TOWN OF JAMESTOWN, COLORADO:

Section 1. Intent: the intent of this ordinance is to comply with the provisions set forth in Section 29-20-101 *et seq.* and to ensure that new development bears a proportionate share of the cost of capital facilities and improvements. It is not the intent of this ordinance that impact or development fees be used to remedy any deficiency in capital facilities or improvements.

Section 2. Definitions:

**Applicant** means any person or entity who files an application with the Town or with the County in accordance with an effective Intergovernmental Agreement (IGA) for a building permit to construct a non residential or residential land development unit or an addition to an existing land development unit as defined in this section.

**Capital facility** means any improvement or facility that is directly related to any service the Town is authorized to provide, has an estimated useful life of five years or more and is required by ordinance or policy of the Town.

**Complete application** means that an application shall not be considered complete unless and until all the required information and submittal materials, in the amounts and dimensions required by code, have been submitted per the current Intergovernmental Agreement (IGA) with Boulder county, as amended, and/or the Town Clerk has certified the application complete. The decision of the Town Clerk as to the completeness of the application shall be final.

**Impact Fee:** see land development fee.

**Impact Fee Study** means the study: *Analysis of Growth Projections, Impacts to Capital Needs and Capital Improvement Plan (Plan) for the period of 2012 through 2021* dated January 2012 and its appendices.

**Land development** means any construction, reconstruction expansion or conversion of a building, structure or use, or any change in the use of any building or structure that requires a building permit and creates additional demand for public services.

**Land development fee** shall mean the fee assessed to land development, in dollars per square foot for the following impacted services:

- Town's Parks and Recreation land development fee
- Fire and EMT Safety Services land development fee
- Streets and Bridges land development fee
- Water Plant Capacity Improvement land development fee.

For purposes of this ordinance, Impact Fee Study (the plan), and appendices; the terms "land development fee" and "impact fee" are interchangeable and have the same definition.

**Non-Residential Land Development Unit** shall mean any commercial or industrial building or any size greater than 120 square feet, whose purpose it to house a business or materials or equipment used in a business. Any land development unit not meeting the definition of residential or for which the definition is unsure, shall be deemed non residential.

**Residential Land Development Unit** shall mean any apartment, duplex or housing structure, whether or not free standing, otherwise separate from any other residence, designed for human occupancy.

Section 3. Imposition and Computation of Land Development Fees: (per Impact Fee Study)

1. For Parks and Recreation	\$ .21	per square foot
2. For Fire and EMT Safety Services	.54	"
3. For Streets and Bridges	.29	"
4. For Water Plant Capacity	<u>.12</u>	"
	\$1.16	"

Fees apply to residential and non residential land development units.

After the effective date of this ordinance, no building permit shall be issued until a complete application has been submitted and the land development fees described above have been paid. The obligation to pay such fees shall run with the land. In the case of the Water Plant Capacity Improvement fee, such application shall be submitted and fee shall be collected when the applicant applied for a Water Tap Permit.

The Town Clerk shall impose the applicable fees prior to the issue of any development or Building Permit(s).

The land development fee shall be in addition to any other fees imposed by Town ordinance or by Boulder County under any effective intergovernmental agreement with the Town.

Section 4. Land Development Fee Funds: There are hereby established the following funds for the purpose of ensuring that land development fees collected pursuant to this ordinance are designated for capital facilities impacted by new growth.

- A Parks and Recreation Land Development Fee Fund: into which shall be deposited all parks and recreation land development fees.
- A Fire and EMT Safety Services Land Development Fee Fund: into which shall be deposited all Safety Services land development fees.
- A Streets and Bridges Land Development Fee Fund: into which shall be deposited all Streets and Bridges land development fees.
- A Water Plant Capacity Improvement Fee Fund: into which shall be deposited all Water plant Capacity Improvement land development fees.

Each fund shall be an interest bearing account and shall be accounted for separately from other town funds. Each fund shall contain only those fees collected in association with that fund plus any interest paid on the deposited funds.

Section 5. Use of Land Development Fees:

- The monies in the Parks and Recreation Land Development Fee Fund shall be used only: (1) to acquire land for, or to acquire, develop or to construct parks,

recreation and open space facilities and improvements; or (2) for refunds as described in Section 7.

- The monies in the Fire and EMT Safety Services Land Development Fee Fund shall be used only: (1) to acquire land for, or to acquire, develop or construct a new fire/EMT station or addition onto the present station, or to acquire related Fire/EMT capital facilities or improvements; or (2) for refunds as described in Section 7.
- The monies in the Streets and Bridges Land Development Fee Fund shall be used only: (1) to acquire land for or to acquire, develop or construct public facility improvements, including transportation facility improvements or storm drainage facilities or improvements and fire hydrants; or (2) for refunds as described in Section 7.
- The monies in the Water plant Capacity Improvement Land Development Fee Fund shall be used only: (1) to acquire land for, or to acquire, develop or construct structures for, or to acquire related capital facilities or improvements; or (2) for refunds as described in Section 7.

No monies from any of the above listed funds may be used for shall be spent for periodic or routine maintenance or rehabilitation of any Town Facility.

Section 6. Exemptions from Land Development Fees: The following types of land development shall be exempted from payment of any land development fee imposed by this ordinance:

1. The square footage of residential unfinished basements, outdoor decks or patios, attached or unattached garages, sheds or any structure provided such structures or attachments do not exceed 1200 total square feet and are designed solely for residential use or storage shall be exempted from land development fees.
2. The square footage of any structure of 120 square feet or less or any structure for which a building permit is not required.
3. Reconstruction, alteration or replacement of a habitable residential or functional non residential land development unit in existence prior to the effective date of this ordinance or any land development unit for which land development fees have been paid under the provisions of this ordinance. This exemption is limited to the original square footage of the residential or non residential land development unit. The original square footage of the structure as calculated using the provisions of this ordinance shall be used to calculate the exempted square footage. This provision may also be applied to any destroyed or partially destroyed residential or non residential land development unit.
4. Any development by the federal government, State of Colorado, Boulder County, the Boulder Valley School District, the Town of Jamestown, or Jamestown Municipal Waterworks.

Section 7. Refunds of Land Development Fees Paid:

1. Fees deposited in each fund shall be appropriated and expended within ten years from the date on which such fee was paid. Any fees not so appropriated shall be refunded, upon application to the Town to the current owner of record of the property for which the land development fee were paid, together with interest at the two year treasury rate adjusted annually on the last day of each year from the date of collection to the date of refund; provided however that the Town shall retain an additional 2% of the fee(s) to offset the cost of the refund.
2. A complete application for a refund under the provisions of this ordinance shall be required to be made to the Town Clerk/Treasurer within six (6) months of the expiration date of such ten year period following the date of payment of such fee.
3. If a refund is due the amount shall be divided proportionately among all applicants for refunds who have filed during said six month period in accordance with the formula set forth in Appendix A to the *Analysis of Growth Projections, Impacts to Capital Needs and Capital Improvement Plan (Plan) for the period of 2012 through 2021*.

Section 8. Appeals:

1. Any property owner or applicant may appeal the following decision(s) of the Town Clerk to the Town Board of Trustees pursuant to such administrative hearing process as may be established by the Town.
  - a. The applicability of a land development fee to the development.
  - b. The amount of a land development fee to be paid for the development.
  - c. The amount of any refund as determined by the Town.
2. All appeals shall be requested in writing and delivered to the Town Clerk.
3. The burden of proof in any such hearing shall be on the applicant to demonstrate that the impact fee or refund was not properly calculated by the Town. The burden shall be on the applicant to provide the Town Board with (eight copies) of all relevant data analysis and reports which would assist the Board in determining whether the fee should be adjusted.
4. The Town Clerk shall notify the applicant of the time and date of such hearing within 30 days of notice from the applicant which shall be no less than 15 days prior to such hearing. If desired, and if agreeable to the Town, the applicant may waive all or part of the 15 day notice, or request an extension of up to 30 days for such hearing.

Section 9. Miscellaneous Provisions:

1. Interest earned on monies in each development fee fund shall be considered part of each such fund and shall be subject to the same restrictions applicable to the fees deposited in such fund(s).

2. Monies in each fund shall be considered spent in the order collected.
3. Any monies including accrued interest not assigned to specific projects in any year shall be retained the fund for the next fiscal year.
4. The fees and administrative procedures of this ordinance shall be reviewed at least once every seven years to ensure that processes and assumptions remain valid.
5. Credits or offsets: In adopting this schedule of fees, the Board intends and has determined that they are designed to and do address the needs for capital facilities brought about by development generally, which capital facilities are separate and distinct from impacts addressed by other requirements, development agreements, or ordinances, and in no circumstances do these fees address the same subjects as other requirements, development agreements or ordinances for site specific dedication or improvements. An applicant who determines that any fee in this ordinance is redundant to other requirements, development agreement or ordinance may request reimbursement using the process outlined in Section 8.

Section 10. Repeal: Upon the effective date of this ordinance, Ordinance 2, Series 2001, is hereby repealed in its entirety. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

This section shall not prohibit the Town from imposing impact or land development fees or other similar charges pursuant to a schedule that was adopted by the Board prior to October 21, 2001.

Section 11. Severability: If any portion of this ordinance is held to be invalid for any reason, such decisions shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 12. Saving Clause: The repeal or modification of any provision of this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining all proper actions, suits, proceedings and prosecutions for the enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings or prosecutions.


Section 13. Safety Clause; Ordinance Immediately Effective: The Board of Trustees herewith finds, determines and declares that this ordinance is necessary to the immediate preservation of the public health and safety in order to timely provide for


safety of citizens and preservation of property. This ordinance shall be effective upon adoption and signing by the Mayor if approved by three-fourths of the members of the Board of Trustees.

**INTRODUCED, READ, ADOPTED, APPROVED, SIGNED AND ORDERED  
PUBLISHED THIS 6<sup>th</sup> DAY OF FEBRUARY, 2012.**

**TOWN OF JAMESTOWN, COLORADO**

Attest:

  
TARA SCHOEDINGER, Mayor

  
MARY ELLEN BURCH, TOWN CLERK