

TOWN OF BERTHOUD, COLORADO
ORDINANCE NO. 1277

AN ORDINANCE OF THE TOWN OF BERTHOUD COLORADO, AMENDING SECTIONS 101 AND FOLLOWING OF CHAPTER 10, ARTICLE 30 OF THE *BERTHOUD MUNICIPAL CODE*, ADOPTING INITIAL DEVELOPMENT IMPACT FEES TO DEFRAY CAPITAL COSTS FOR PUBLIC FACILITIES, TRANSPORTATION, AND PARKS AND RECREATION, PROVIDING FOR OTHER IMPACT FEES AS ESTABLISHED BY APPROPRIATE STUDIES, AND FOR THE TRACKING AND MANAGEMENT OF THE RESPECTIVE DEVELOPMENT IMPACT FEES COLLECTED.

WHEREAS, it is recognized by the Board of Trustees that new residential and nonresidential development places certain demands for the acquisition, establishment, upgrading, expanding and construction of public facilities to accommodate the needs of the community infrastructure, the needs of residents and the requirements of the business community; and

WHEREAS, the Board of Trustees of the Town of Berthoud commissioned and approved an impact fee study by Raftelis (“The Study”) to establish the appropriate amount of impact fees to be charged as fees to reimburse the Town of Berthoud for the impacts of development for Public Facilities, Transportation, and Parks and Recreation (“The Study Areas”) within the Town of Berthoud; and

WHEREAS, the Board of Trustees, on the 3rd day of March, 2020, held a public hearing regarding the proposed system of development impact fees, said public hearing being held in accordance with duly published notice, at which time they accepted testimony from all interested parties; and

WHEREAS, the Board of Trustees after considering all testimony and all other relevant facts available to the Board, the Board of Trustees has determined that substantial and sufficient evidence exists to support the adoption of a coordinated system of development impact fees to replace certain existing fees and exactions be paid uniformly by all new residential and non-residential developers to assist in the acquisition, establishment, upgrading, expanding and construction of public facilities to accommodate the needs of the residents and the business community as appropriate and necessary for the preservation of the health, safety and welfare of all residents of the Town of Berthoud, and as such advances a legitimate local government interest; and

WHEREAS, the Board of Trustees has determined that the development impact fees to be imposed are proportional to the impact upon public facilities imposed by new development of residential and non-residential property; and

WHEREAS, the Town Board of Trustees, after reviewing The Study, has adopted its findings and intends by this Ordinance to implement them; and

WHEREAS, the Board of Trustees through the adoption of this development impact fee ordinance has established adequate legislative standards and criteria to ensure that the development impact fees are rationally and consistently applied to all new residential and non-residential development within the Town of Berthoud;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COUNTIES OF LARIMER AND WELD, COLORADO; THAT;

Section I. Chapter 30-10 of the *Berthoud Municipal Code* is hereby repealed and re-enacted to read as follows:

Article 30-10: Development Impact Fees

Sec. 30-10-101. Intent.

This ordinance is enacted to establish the mechanism for the imposition of development impact fees to finance the capital costs of acquiring, establishing, upgrading, expanding and constructing public facilities that are necessary to accommodate such development. This ordinance is intended to assure that development bear an appropriate share of the cost of capital expenditures necessary to provide such public facilities within the Town of Berthoud and its service area as are required to serve the needs arising out of development. Therefore, it is the intent of this ordinance to accomplish the following:

- (1) Implement and be consistent with the Berthoud Comprehensive Plan;
- (2) Allocate a fair and equitable share of the cost of public facilities to new development;
- (3) Require new development to contribute its proportionate share of funds necessary to accommodate its impact on public facilities having a rational nexus to the proposed development, and for which the need is attributable to the proposed development.

Sec. 30-10-102. Findings.

The Board of Trustees makes the following findings based on extensive consultation with all municipal departments, the recommendations of past and current impact fee studies, testimony offered at the public hearing and careful study of municipal facility needs.

- (1) The Town of Berthoud is responsible for and committed to the provision of public facilities and services at levels necessary to support residential and non-residential growth and development.
- (2) Such facilities and services have been and will be provided by the Town utilizing funds allocated at the direction of the Board of Trustees.

(3) The growth experienced by the Town in recent years and projected growth rates require an excessive expenditure of public funds to maintain adequate facility standards.

(4) Each type of land development described in this Ordinance will create a need for the construction, equipping, or expansion of public capital facilities.

(5) The imposition of development impact fees is one preferred method of ensuring that public expenditures are not excessive, and that development bears a proportionate share of the cost of public capital facilities necessary to accommodate such development. This must be done to promote and protect the public health, safety and welfare.

(6) The fees established by Section 30-10-101 are derived from, are based upon, and are calculated not to exceed the costs of:

- a. Providing additional public capital facilities required by the new land developments for which they have levied the fees; or
- b. Compensating the Town of Berthoud for expenditures made for existing public facilities that they constructed in anticipation of new growth and development.

Sec. 30-10-103. Applicability and Rules of Construction.

(1) This ordinance shall be uniformly applicable to all new development that occurs within the corporate boundaries of the Town of Berthoud. All impact fees inconsistent with this ordinance are hereby repealed and replaced. However, all required dedications under the Berthoud Municipal Code shall remain in full force and effect.

(2) The provisions of this ordinance shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.

(3) For the purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction shall apply to the text of this ordinance:

- a. In the case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative tables, the text shall control.
- b. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- e. Words used in the present tense shall include the future, and words

used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

d. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

e. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

f. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

1. "And" indicates that all connected terms, conditions, provisions or events shall apply.

2. "Or" indicates that the connected terms, conditions, provisions or events may apply singly or in any combination.

3. "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

g. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances alike in kind or character.

Sec. 30-10-104. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Assessment" means a determination of the amount of a development impact fee.

(2) "Capital equipment" means equipment and furnishings with an expected life of at least five years and an aggregate value of at least \$5,000.

(3) "Capital improvement" means any of the following facilities that have a life expectancy of five or more years and are owned and operated by or for a municipality:

a. Storm water, drainage and flood control facilities;

b. Roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals,

landscaping and any local components of state and federal highways;

c. Parks, recreation buildings, outdoor recreational areas, open space, trails and related areas and facilities.

d. Public buildings, equipment, and vehicles necessary to support the efficient operation of the Town and its services.

(4) "Connection fee" means a reasonable fee for connection of a service line to an existing water, sewer or municipal utility.

(5) "Development impact fee" means a charge or assessment imposed by the Town on new development to generate revenue for funding or recouping the costs of capital improvements or facility expansions required by and attributable to the new development. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that function as described by this definition. The term does not include connection fees, dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, streets, sidewalks or curbs if previously approved agreements between the developer and the Town require the dedication or construction and is required by and attributable to the new development.

(6) "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, so the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities.

(7) "Fee" means a development impact fee.

(8) "Fee payer" means a person applying for the issuance of a building permit, subdivision or site plan approval, variance or other local land use decision that will create new development.

(9) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period.

(10) "New Development" means any activity that results in a net increase in the demand for additional public capital facilities, as defined in this Chapter:

a. The creation of a new single-family equivalent (SFE), except the replacement of existing units of the same size and density;

b. A net increase in the gross floor area of any nonresidential building or in the habitable portion of a residential building;

c. The conversion of a legally existing use to another permitted use if such change of use would create an increase in the demand for additional public facilities, as defined by this ordinance.

(11) "New Development" does not include:

- a. The reconstruction of a structure that fire or natural disaster has destroyed if there is no change nor change of use in the size and density of the structure;
- b. The replacement of a mobile home; or
- c. The construction of an accessory structure that would not increase the demand for facilities by the principal structure.

(12) "Public capital facilities" means the undivided interest of the Town of Berthoud in the assets, facilities, and equipment owned and operated by the Town of Berthoud or cooperatively with other governmental entities that have a useful life of no less than five years.

(13) "Public capital facilities" do not include the costs associated with the operation, maintenance, repair of such facilities or with facility replacements that do not increase the capacity or level of service, but does include reasonable costs for planning, engineering, design, land acquisition, and other reasonable costs associated with such facilities.

(14) "Qualified professional" means a professional engineer, surveyor, financial analyst, planner or other person providing services within the scope of his license, education or experience.

(15) "Roadway facilities" mean arterial or collector streets or roads including bridges, bike and pedestrian trails, bus bays, rights-of-way, traffic signals, landscaping at any local components of state or federal highways.

(16) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality to be served by the capital improvements or facility expansions specified in the capital improvements plan based on sound planning and engineering standards.

(17) "Service unit" means 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 category of capital improvements or facility expansions.

(18) "Town Administrative Official" means the Town Administrator appointed by the Board of Trustees or the municipal officials that he or she may designate to carry out the administration of this ordinance.

Sec. 30-10-105. Imposition of Development Impact Fees.

- (1) Any person, who, after the effective date of this Chapter seeks to undertake new development within the Town of Berthoud is hereby required to pay development impact fees in the manner and amount set forth in this Chapter.
- (2) No new building permit or new permit for any activity requiring payment of a development impact fee pursuant to Section 6 of this Chapter shall be issued unless and until the development impact fee hereby required has been paid.

Sec. 30-10-106. Computation of the Development Impact Fee.

- (1) The amount of the development impact fees shall be set forth in the current Town Fee Resolution and shall have been determined by the Town Board based on the most recent available cost and value of infrastructure, population, and capacity information. Such fees may be amended with the fee resolution based upon updates to any of the foregoing criteria. Except as specifically provided otherwise herein, all Impact Fees existing as of the date of this ordinance shall remain in full force and effect until modified by a Fee Resolution.
- (2) In the case of new development created by a change of use, redevelopment, or expansion or modification of an existing use, the development impact fee shall be based upon the net positive increase in the development impact fee for the new use as compared to that which was or would have been assessed for the previous use.

Sec. 30-10-107. Payment of Fee.

- (1) The fee payer shall pay all development impact fees required by this Chapter to the Town of Berthoud before issuance of a building permit or other permit required for a proposed new development.
- (2) All unpaid fees shall constitute a lien on the property and may be collected in the same manner as uncollected property taxes as provided by law.

Sec. 30-10-107. Appeals.

- (1) Any aggrieved party may appeal to contest the amount, collection or use of the development impact fee in the manner provided herein.
- (2) It shall be a condition to the commencement of such an appeal that the development impact fee from which the developer appeals shall be paid as and when the fee becomes due and payable, and upon default in making any such payment, such appeal may be dismissed.

(3) The only questions appealable under this section are the following:

- a. The amount of the fee charged and paid by the developer;
- b. The method of collection of the development impact fee;
- c. The use to which the particular fee paid by the developer is made by the Town.

(4) Appeals must be brought within 30 days of the date the development impact fee is payable.

(5) The appellant shall pay a filing fee of \$200 at the time of filing of the appeal. They shall file the notice of appeal with the Town Clerk.

(6) Following the filing of the notice of appeal, the Town Clerk shall compile a record of the ordinance imposing the development impact fee that is the subject of the appeal and a record of the management and expenditure of the proceeds of the development impact fee and shall transmit these documents to the Board of Trustees. In consultation with the Town departments, the Town Clerk shall also compile a report on each appeal in which the appellant is seeking a reduction or total refund in the development impact fee paid. This report shall specify the fiscal impact on the Town if the appeal overturns the development impact fee. If the fiscal impact report indicates that the appeal, if successful, will cause a revenue shortfall that otherwise was not budgeted with respect to the public facility, and if this revenue shortfall cannot be reconciled by reduction in impacts caused by development on the appellant's property, the report shall estimate whether it will be necessary for the Town to adjust development impact fees, or amend existing ordinances, to recover the proposed revenue shortfall.

(7) The appellant shall prepare and submit to the Board of Trustees, an independent fee calculation study for the new development activity that they propose. The appellant shall pay all costs incurred by the Town for the review of such study.

(8) The Board of Trustees shall hold a public hearing on the appeal at its earliest convenience, preceded by a notice published as provided by law not less than fifteen (15) days preceding the date of the hearing, providing fair opportunity for the appellant to be heard. The burden shall be on the appellant to establish illegality or impropriety of the fee from which they have taken the appeal. Following the close of the public hearing, the Board of Trustees shall deliberate upon the matter, and shall conduct such studies and inquiries as it deems appropriate to decide the appeal. The Board shall render their decision on the appeal within thirty (30) days of the hearing, unless such time is extended by mutual consent of the Board and the appellant.

(9) If the Board of Trustees determines that the appeal has merit, it shall

determine appropriate remedies. These may include reallocation of the proceeds of the challenged development impact fee to accomplish the purposes for which the fee was collected, refunding the development impact fee in full or in part, along with interest collected by the Town thereon, or granting the appellant the opportunity to make the development impact fee payment in installments, or such other remedies as in its sole judgement it deems appropriate in a particular case.

Sec. 30-10-108. Administration of Funds Collected

- (1) Interest earned on development impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of development impact fees under this Chapter.
- (2) Money from fees may be spent only for the purposes for which the fee was imposed as shown by any capital improvements plan adopted by the Town or as authorized by this Chapter.
- (3) The Town Treasurer shall have custody of all fee accounts and shall pay out the same only upon written orders of the Board of Trustees.
- (4) Funds withdrawn from the development impact fee accounts shall be used solely for acquiring, constructing, expanding or equipping those public capital facilities identified in this Chapter.
- (5) If bonds or similar debt instruments have been issued for public capital facilities constructed in anticipation of new development or are issued for advanced provision of capital facilities identified in this Chapter, development impact fees may be used to pay debt service on such bonds or similar debt instruments.

Sec. 30-10-109. Credits

- (1) Land and/or public capital facility improvements may be offered by the fee payer as total or partial payment of the required development impact fee. The offer must be determined to represent an identifiable dollar value computed in a manner acceptable to the Board of Trustees. If land or improvements are offered as payment, an independent appraisal acceptable to the Board shall determine the value of such land or improvements. The Board of Trustees, in its sole discretion, may authorize the fee payer a development impact fee credit in the amount of the value of the contribution.
- (2) Any claim for credit must be made no later than the time of application for the building permit.
- (3) Credits shall not be transferable from one project or development to another without written approval of the Board of Trustees.

(4) Credits shall not be transferable from one component of the public capital facility's development impact fee to any other component of this fee.

Sec. 30-10-110. Additional Assessments.

Payment of a development impact fee does not restrict the Town in requiring other payments from the fee payer, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or turning lanes to access the site or other infrastructure and facilities specifically benefitting the development as required by the land use review regulations contained in Chapter 16 of the *Berthoud Municipal Code*.

See. 30-10-111. Premature and Scattered Development.

Nothing in this Chapter shall be construed to limit the existing authority of the Board of Trustees to provide against development that is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Berthoud land use regulations.

See. 30-10-112. Review.

The Board of Trustees shall review the Development Impact Fee Schedule in association with its annual fee resolution process. Such review may result in recommended amendments in one or more of the fees based on the most recent data as may be available from the Bureau of the Census, local property assessment records, market data reflecting interest and discount rates, current construction cost information for public capital facilities, etc. The Board of Trustees shall approve amendments to the impact fees following public hearings called for that purpose, no more frequently than annually, based on such data. Amendments to the amount of any fee may be by Resolution setting forth the basis for any change.

Section 2. Effective Date. This ordinance shall be published and become effective as provided by law.

Section 3. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 4. Repealer. All ordinances or resolutions, or parts thereof in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 5. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than one copy of the adopted Code available for inspection

by the public during regular business hours.)

First reading approved this the 3rd day of March, 2020.

By: Michelle Adams
Town Clerk or Deputy Town Clerk

By: Duane Kaspert
Mayor of the Town of Berthoud

PASSED, ADOPTED, SIGNED AND APPROVED after second reading this
the 24th day of March, 2020.

By: Michelle Adams
Town Clerk or Deputy Town Clerk

By: Duane Kaspert
Mayor of the Town of Berthoud

