

Chapter 1 – ELMORE COUNTY

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Section 12-1-1: SHORT TITLE, APPLICABILITY, EXEMPTIONS, AND PURPOSE:

- A. Short title: This chapter shall be known and may be cited as the Elmore County Development Impact Fee Ordinance.
- B. Findings: The Board of Elmore County Commissioners finds that:
 - 1. The County is experiencing considerable growth and development.
 - 2. The new growth and development occurring within Elmore County will place ever-increasing demands on the county to provide, improve and expand existing public facilities to serve that new growth and development. The tax revenues generated from that new growth and development often does not generate sufficient funds to provide the necessary improvements and expansion of the public facilities to protect the public health, safety, and welfare. Those users that create the increased demand should bear their proportionate share of the cost of public facilities needed to serve the new growth and development.
- C. Authority: This title is enacted pursuant to the county's general police powers, its authority to enact ordinances, and its authority as provided by Title 67 Chapter 82 and other applicable laws of the State of Idaho to impose and collect development impact fees for the purpose of new growth and development to pay their proportionate share of the cost of public facilities.
- D. Applicability: This chapter shall apply to the development of property located within the boundaries of Elmore County.
- E. Purpose: The intent of this chapter is to ensure that new residential and non-residential development bears a proportionate share of the cost of system improvements; to ensure that such proportionate share does not exceed the cost of such system improvements required to accommodate new development; and to ensure that funds collected from new development are actually used for system improvements.

12-1-2: DEFINITIONS: As used in this chapter, the following words and terms shall have the following meanings, unless another meaning is plainly intended and words and terms appearing in the singular number includes the plural and the plural the singular:

- A. ACCOUNT: The interest-bearing account within the Impact Fee Capital Projects Fund as established in this chapter.
- B. ADVISORY COMMITTEE: The County's Development Impact Fee Advisory Committee ("Advisory Committee") formed and staffed by the County pursuant to Idaho Code § 67-8205 to prepare and recommend the Capital Improvements Plan and any amendments, revisions, or updates of the same.
- C. APPROPRIATE: To legally obligate by contract or otherwise commit to the

expenditure of funds by appropriation or other official act of the Board of Commissioners.

- D. BUILDING PERMIT: The permit required for foundations, new construction, and additions pursuant to Chapter 1, Title 9, Elmore County Code.
- E. CAPITAL FACILITIES: Land, buildings, roadway, intersection and bridge improvements, apparatus, vehicles, and equipment as identified in the County's Capital Improvements Plan as adopted by the County, and specifically including those related costs including system improvement costs, but not including maintenance, operations, or improvements that do not expand their capacity.
- F. CAPITAL IMPROVEMENTS: Improvements with a useful life of ten (10) years or more, by new construction or other action, which increases the service capacity of the county's public facilities.
- G. CAPITAL IMPROVEMENTS PLAN: The impact fee study and capital improvements plan adopted by the county that identifies the capital facilities for which the county's impact fees may be used as a funding source as found in the Comprehensive Plan appendix.
- H. CAPITAL PROJECTS FUND: The County's Development Impact Fee Capital Projects Fund established by action of the County Board of Commissioners pursuant to section 11 of this chapter and Idaho Code § 67-8210(1).
- I. COUNTY: Elmore County, Idaho.
- J. COUNTY BOARD OF COMMISSIONERS: The Board of Commissioners of Elmore County.
- K. DEVELOPER: Any person or legal entity undertaking development and/or the subdivision of property pursuant to Idaho and Elmore County Code.
- L. DEVELOPMENT: Any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities and/or subdivision of property that would permit any change in the use, character or appearance of land.
- M. DEVELOPMENT APPROVAL: Any written duly authorized document from the county which authorizes the commencement of a development.
- N. DEVELOPMENT REQUIREMENT: A requirement attached to a developmental approval or other county governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as condition of approval.
- O. DWELLING UNIT: Any structure, or portion thereof, providing living facilities for one family as herein defined, including provisions for living, sleeping, eating, cooking and sanitation.

- P. DWELLING UNIT, MULTI- FAMILY: A building or portion thereof designed for or used by two (2) or more families or housekeeping units.
- Q. DWELLING UNIT, SINGLE- FAMILY: A building designed for or used exclusively for residential purposes by one family or housekeeping unit.
- R. FEE PAYER: The person who pays or is required to pay the county's impact fee. A fee payer may include a Developer.
- S. IMPACT FEE: A payment of money imposed as condition of development approval to pay for a proportionate share of the costs of system improvements needed to serve the development. The term does not include the following:
1. A charge or fee to pay the administrative plan review, or inspection cost 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 county has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of those capital improvements, unless a written agreement is made, pursuant to Idaho Code § 67-8209(3) as it may be amended, for credit or reimbursement.
- T. JOINT ADVISORY COMMITTEE: The County and both participating Fire Districts' Joint Development Impact Fee Advisory Committee formed and staffed pursuant to Idaho Code § 67-8205 to recommend capital improvement plans and any amendments, revisions, or updates of the same.
- U. LAND USE ASSUMPTIONS: A description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a ten (10) year period.
- V. LEVEL OF SERVICE: A measure of the relationship between service capacity and service demand for public facilities.
- W. MANUFACTURED/ MOBILE HOME: A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained in such structure, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. §§ 5401 et seq.

- X. MODULAR BUILDING: Any building or building component other than a manufactured/mobile home, which is constructed according to the International Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.
- Y. PRESENT VALUE: The total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.
- Z. PROJECT: A particular development on an identified parcel of land.
- AA. PROJECT IMPROVEMENTS: In contrast to system improvements, shall mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.
- BB. PROPORTIONATE SHARE: Shall mean that portion of system improvement costs determined pursuant to Idaho Code § 67-8207 which reasonably relates to the service demands and needs of the Project.
- CC. PUBLIC FACILITIES: Land, buildings and equipment used for roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local component of state or federal highways; parks, open space and recreation areas, including all related capital improvements; and public safety facilities, including law enforcement which have a useful life of ten (10) years or more.
- DD. 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.
- EE. SERVICE AREA: Land within the boundaries of Elmore County as established pursuant Chapter 14, Title 31, Idaho Code, in which specific public facilities provide service to development on the basis of sound planning or engineering principles or both as identified in the county's capital improvements plan.
- FF. SERVICE UNIT: A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements. As specifically used in this title, service units include all dwelling units as defined herein and includes, on the square foot basis, nonresidential development.
- GG. SYSTEM IMPROVEMENTS: In contrast to project improvements, shall mean capital improvements to public facilities which are designed to provide service to a service area.
- HH. SYSTEM IMPROVEMENT COSTS: Costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering, and other costs, and also including, without limitation, the type of costs described in Idaho Code § 50-1702(h), as it may be amended, to

provide additional public facilities needed to service new growth and development. For clarification, system improvement costs do not include:

1. Construction, acquisition, or expansion of public facilities other than capital improvements identified in the capital improvements plan;
2. Improvements, repair, operation, or maintenance of existing or new capital;
3. Upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
4. Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
5. Administrative and operating costs of the county unless such costs are attributable to development of the capital improvements plan, as provided in Idaho Code § 67-8208, as it may be amended; and
6. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the county to finance capital improvements identified in the capital improvements plan.

12-1-3: ESTABLISHMENT OF SERVICE AREAS; IMPOSITION OF IMPACT FEE; FEE SCHEDULE; EXEMPTIONS:

A. Establishment of Service Areas: There is hereby established a service area which service area includes all land in Elmore County.

B. Imposition of Impact Fees: Impact fees for the county are hereby imposed on all new development located within Elmore County.

C. Fee Schedule: Impact fees shall be calculated in accordance with the fee schedule set forth below providing for standard fees based on the total number of dwelling units or square feet of nonresidential space in the development. The methodology for determining the costs per service unit provided for in the fee schedule is set forth in the County's Capital Improvements Plan as adopted by the County pursuant to Idaho Code § 67-8208, as it may be amended.

Development Type	Sheriff*	Jail**	Impact Fee
Residential (per housing unit)			
Single family	\$275	\$1,664	\$2,365
Multifamily	\$207	\$1,252	\$1,779
Nonresidential (per 1,000 square feet)			
Retail	\$525	\$3,254	\$4,600
Office	\$202	\$1,254	\$1,772
Industrial	\$91	\$563	\$796
Institutional	\$201	\$1,246	\$1,761

*Sheriff fees will not be applied to, or collected for, any portion of a development located within the city limits of the City of Mountain Home.

**Jail fees will be applied on the following schedule: a 20% reduction will be applied in the first calendar year after commencement of fee payments, and a 10% reduction will be applied in the second calendar year of fee payments. Commencing in the third calendar year of fee payments, the full amount of jail fees will be applied and will be applied every year thereafter.

D. Developer's Election: A developer shall have the right to elect to pay a project's proportionate share of system improvements costs by payment of impact fee according to the fee schedule as full and complete payment of the development project's proportionate share of system improvements costs, except as provided in Idaho Code § 67-8214(3), as it may be amended.

E. Procedures: Upon submittal of complete building permit plans or manufactured home installation permit, the county shall calculate the impact fee for the development within thirty (30) days of submittal or with issuance of building permit whichever occurs first.

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

1. Rebuilding the same amount of floor space of a structure which is destroyed by fire or other catastrophe, provided the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
2. Remodeling or repairing a structure which does not increase the number of service units;
3. Replacing a residential unit, including a manufactured/mobile home, with another residential unit on the same lot; provided that, the number of service units does not increase;
4. Placing a temporary construction trailer, office or an RV used as living quarters per Elmore County Code on a lot;
5. Constructing an addition on a residential structure which does not increase the number of service units;
6. Adding uses that are typically accessory to residential uses, such as tennis court or a clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements; or
7. The installation of a modular building, manufactured/mobile home or recreational vehicle if the fee payer can demonstrate by documentation such as utility bills and tax records that either a modular building, manufactured/mobile home or recreational vehicle was legally in place on the lot or space prior to the effective date of this chapter; or an impact fee has

been paid previously for the modular building, manufactured/mobile home or recreational vehicle on that same lot or space.

G. Exemption Claim Process: A fee payer shall claim an exempt development activity upon application of a building permit or manufactured/mobile home installation permit, or if no building permit or manufactured/mobile home installation permit required, prior to the time construction commences. Any exemption not so claimed shall be deemed waived by the fee payer. Claims for exemption shall be determined by the county within fifteen (15) days of receipt of the claim for exemption.

12-1-4: COLLECTION OF IMPACT FEES; ENFORCEMENT:

A. Collection of Impact Fees: The impact fee shall be paid to the county at the following times:

1. If a Building Permit or manufactured/mobile home installation permit is required, then before or at the time the permit is issued;
2. If no Building Permit or manufactured/mobile home installation permit is required, then at the time that construction commences; or
3. At such other time as the fee payer or developer and the county have agreed upon in writing with notice to the county.

B. Enforcement: When any impact fee is due pursuant to this chapter, or pursuant to the terms of any written agreement between a fee payer and the county, and such impact fee has not been paid in a timely manner, the county may exercise any or all of the following powers as applicable to its authority, in any combination, to enforce the collection of the impact fee:

1. Withhold building permits, manufactured home installation permits, or other county development approval related to the development for which the impact fee is due until all impact fees due have been paid, and issue stop work orders, and revoke or suspend a building permit;
2. Withhold utility services from the development for which the impact fee is due until all impact fees due have been paid;
3. Add interest to the impact fee not paid in full at the legal rate provided for in Idaho Code § 28-22-104, as it may be amended, plus five percent (5%) beginning on the date at which the payment of the impact fee was due until paid in full;
4. Impose a penalty of five percent (5%) of the total impact fee (not merely the portion dishonored, late or not paid in full) per month beginning on the date at which the payment of the impact fee was due until paid in full; and
5. Impose a lien pursuant to the authority of Idaho Code § 67-8213(4) for failure to timely pay an impact fee following the procedures contained in

12-1-5: CERTIFICATION:

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

B. Requests for certification shall be in writing and made to the county. Within thirty (30) days after receiving such request, the county shall issue a written certification of the amount of the impact fee due for the proposed development. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under Idaho Code § 67-8207 and shall also specify the system improvement(s) for which the impact fee is intended to be used. The county shall provide the certification to the fee payer.

12-1-6: INDIVIDUAL ASSESSMENT: In lieu of calculating the amount of the impact fee using the impact fee schedules in section 3 of this chapter, an individual assessment of impact fees is permitted when the fee payer demonstrates by clear and convincing evidence that the established impact fee is inappropriate.

A. Individual Assessment Process:

1. A fee payer may file a written request for an individual assessment of the development by the county with the county prior to the receipt of a building permit or other necessary approvals or entitlements from the county. A request for an individual assessment process shall involve consideration of studies, data, and any other relevant information submitted by the fee payer to adjust the amount of the impact fee. If a fee payer files a request for the use of an individual assessment, the fee payer shall be responsible for retaining a qualified professional to prepare the individual assessment that complies with the requirements of this chapter, at the fee payer's expense. The fee payer shall bear the burden of proving by clear and convincing evidence that the resulting individual assessment is a more accurate measure of its proportionate share of the cost of system improvements, based on the county's adopted level of service, than the development impact fees that would otherwise be due pursuant to the fee schedule.

2. Each individual assessment request and supporting documentation submitted by the fee payer shall be based on the same level of service standards and unit costs for system improvements used in the county's capital improvements plan, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.

3. Each individual assessment request delivered to the county may then be accepted, rejected, or accepted with modifications by the county as the basis for calculating the impact fee. The criteria for acceptance, rejection or acceptance with modifications shall be whether the individual assessment is a more accurate measure of demand for system improvements element(s) created by the proposed development, or the costs of those facilities, than the applicable fee shown in the fee schedule.

4. The county shall submit the assessment to the County Economist and issue a written decision within thirty (30) days following receipt of a completed request for individual assessment together with all supporting information from the fee payer, so as not to unreasonably delay the developer's (or fee payer's) subsequent applications to the county for building permits.

5. The decision by the county on an application for an individual assessment shall include an explanation of the calculation of the impact fee, shall specify the system improvement(s) for which the impact fee is intended to be used, and shall include an explanation of those factors identified in Idaho Code § 67-8207.

6. If an individual assessment is accepted or accepted with modifications by the county, the impact fee due under this chapter for such development shall be calculated according to such individual assessment.

12-1-7: DEVELOPER CREDITS AND REIMBURSEMENT:

A. When a developer or their predecessor in title or interest has constructed system improvements of the same category as a capital improvements element, or contributed or dedicated land or money towards the completion of system improvements of the same category as the capital improvements element, and the county has accepted such construction, contribution or dedication, the county shall issue a credit against the impact fees otherwise due for the same capital improvements element in connection with the proposed development, as set forth in this section, credit shall be issued regardless of whether the contribution or dedication to system improvements was required by the county as a condition of development approval or was offered by the developer and accepted by the county in writing, and regardless of whether the contribution or dedication was contributed by the developer or by a local improvement district controlled by the developer.

B. Credits against an Impact Fee shall not be given for:

1. Project Improvements; or

2. Any construction, contribution or dedication not agreed to in writing by the County prior to commencement of the construction, contribution, or dedication.

C. Credits issued for one capital improvements element may not be used to reduce impact fees due for a different capital improvement. No credits shall be

issued for system improvements contributed or dedicated prior to the effective date of this chapter.

D. Valuation of Credit at Present Value:

1. Land: Credit for qualifying land dedications shall, at the fee payer's option, be valued at the present value of one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the county assessor.

2. Improvements: Credit for qualifying acquisition or construction of system improvements shall be valued by the county at the present value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the fee payer to the county. The county shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the county as a more accurate measure of the value of the offered system improvements to the county.

E. Timing for Credits to be Effective:

1. Land: Approved credits for land dedications shall become effective when the land has been conveyed to the county in a form acceptable to the county, at no cost to the county, and has been accepted by the county. Upon request of the fee payer, the county shall issue a letter stating the amount of credit available.

2. Improvements: Approved credits for acquisition or construction of system improvements shall generally become effective when:

- a. All required construction has been completed and has been accepted by the county;
- b. A suitable maintenance and warranty bond has been received and approved by the county; and
- c. All design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the county and the State of Idaho. Upon request of the fee payer, the county shall issue a letter stating the amount of credit available.

F. Credit Request Process:

1. Request: In order to obtain a credit against an impact fee otherwise due, a fee payer shall submit to the county a written offer of request to dedicate to the county specific parcels of qualifying land or a written offer to contribute or construct specific system improvements to the capital facilities in accordance with all applicable state or county design and construction standards, and shall specifically request a credit against the

type of impact fee for which the land dedication or system improvements is offered.

2. Review: After receipt of the written offer of request for credit, the county shall review the request and determine whether the land or system improvements offered for credit will reduce the costs of providing capital facilities by an amount at least equal to the value of the credit. If the county determines that the offered credit satisfies that criteria and will be acceptable to the County Board of Commissioners, then the credit shall be issued. The county shall complete its review and determination of an application within thirty (30) days after receipt of an application for credit.

3. Credits Exceeding Fee Amounts Due: If the credit due to a fee payer pursuant to subsection C exceeds the impact fee that would otherwise be due from the fee payer pursuant to the chapter (whether calculated through the impact fee schedule in section 3 of this chapter or through an individual assessment), the fee payer may choose to receive such credit in the form of either:

- a. A credit against future impact fee due for the same system improvements; or
- b. A reimbursement from impact fees paid by future development that impacts the system improvements contributed or dedicated by the fee payer.

Unless otherwise stated in an agreement with the fee payer, the county shall be under no obligation to use any of the county funds - other than impact fees paid by other development for the same system improvements - to reimburse the fee payer for any credit in excess impact fees that are due.

4. Written Agreement Required: If credit or reimbursement is due to the fee payer pursuant to this section, the county shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the contribution, dedication, or funding of the system improvements giving rise to the credit. The agreement shall provide for the amount of credit or the amount, time, and form of reimbursement, and shall have a term not exceeding ten (10) years.

5. The county's determination on the written offer of request for credit shall be provided to the fee payer.

12-1-8: METHODOLOGY FOR THE CALCULATION OF IMPACT FEES:

A. General Provisions:

1. Accounting Principles: The calculation of the impact fee shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the fee payer.

2. Levels Of Service: The impact fee shall be calculated on the basis of levels of service for public facilities in the adopted capital improvement plan that are applicable to existing development as well as new growth and development. The construction, improvement, expansion, or enlargement of new or existing public facilities for which the impact fee is imposed must be attributable to the capacity demands generated by the new development.

B. Methodology; Proportionate Methodology: The impact fee shall not exceed a proportionate share of the cost of the system improvements determined in accordance with Idaho Code § 67-8207, as it may be amended. Impact fees shall be based on actual system improvements costs or reasonable estimates of such costs. The amount of the impact fee shall be calculated using the methodology contained in the adopted capital improvements plan.

C. Proportionate Share Determination:

1. The impact fee shall be based on a reasonable and fair formula or method under which the impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the county in the provision of system improvements to serve the new development. The proportionate share is the costs attributable to the new development after the county considers the following:

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

2. In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the county and accounted for in the calculation of the impact fee:

- a. The costs of existing system improvements within the service area;
- b. The means by which existing system improvements have been financed;
- c. The extent to which the new development will contribute to system improvements costs through taxation, assessments, or developer or landowner contributions, or has previously contributed to system improvements costs through developer or landowner

contributions;

d. The extent to which the new development is required to contribute to the cost of existing system improvements in the future;

e. The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area;

f. Extraordinary costs, if any, incurred in serving the new development;

g. The time and price differential inherent in a fair comparison of fees paid at different times; and

h. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation.

12-1-9: FEE PAYER REFUNDS:

A. Refund:

1. An impact fee shall be refunded to a fee payer, or successor in interest, or a property owner in the following circumstances:

a. Service is available but never provided;

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

c. The fee payer pays an impact fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the county was entitled to receive;

d. The county has collected an impact fee and the county has failed to appropriate or expend the collected fees pursuant to section 2 below; or

e. Failure of the county to commence construction or encumber the funds in the Capital Projects Fund.

1. Any impact fee paid shall be refunded if the county has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction, within eight (8) years after the date on which such fee was collected by the county. Any refund due shall be paid to the owner of record of the parcel for which the county's

impact fee was paid. The county may hold impact fees for longer than eight (8) years but in no event longer than eleven (11) years from the date collected if the county identifies in writing:

- a. A reasonable cause why the fees should be held longer than eight (8) years; and
- b. An anticipated date by which the fees will be expended.

If the county complies with the previous sentence, then any impact fees so identified shall be refunded to the fee payer if the county has failed to commence construction of system improvements in accordance with the written notice, or to appropriate funds for such construction on or before the date identified in such writing.

2. After an impact fee has been paid pursuant to this chapter and after a certificate of occupancy has been issued by the county, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the project or the number of units in the project.

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

B. Process: The county shall make a determination of whether a refund is due within thirty (30) days after receipt of a written request for a refund from the fee payer, successor in interest, or an owner of record of the property for which the fee was paid. When the right to a refund exists, the county shall send the refund within ninety (90) days after the county determines that a refund is due.

12-1-10: ESTABLISHMENT OF CAPITAL PROJECTS FUND; FUND ACCOUNTS:

A. Capital Projects Funds Established: The capital projects fund will be maintained by the county for the purpose of ensuring that all impact fees collected, pursuant to this chapter, are used to address impacts reasonably attributable to new development for which the impact fees are paid. The capital projects fund shall have its own interest-bearing account. The interest earned on the account pursuant to Idaho Code § 67-8210(1) shall not be governed by Idaho Code § 57-127, as it may be amended, but shall be considered funds of the capital projects fund and shall be subject to the same restrictions on uses of funds as the impact fees on which the interest is generated.

B. Deposit of Impact Fees: All monies paid by a fee payer, pursuant to this chapter, shall be identified as impact fees and upon receipt by the county shall be promptly deposited in the capital projects fund account.

1. Monies in the capital projects fund account shall be spent in the order collected, on a first- in/first-out basis.

2. The county shall maintain and keep accurate financial records for the account which records shall:
 - Show the source and disbursement of all revenues;
 - Account for all monies received;
 - Ensure that the disbursement of funds from the account shall be used solely and exclusively for the provisions of projects specified in the capital improvements plan; and
 - Provide an annual accounting for the impact fee capital projects fund account showing the source and amount of all funds collected and the projects that were funded, which annual accounting shall be provided to the county as part of the annual audit process of this chapter.

12-1-11: EXPENDITURE OF IMPACT FEES:

A. Expenditures: Expenditures of impact fees collected and deposited in the capital projects fund shall be made only for system improvements within the service area for which the impact fee was collected in accordance with the capital improvements plan.

B. Capital Improvements Plan Reimbursement; Surcharge: A portion of each impact fee collected may be designated as a surcharge for reimbursement for the cost of preparing the capital improvements plan in accordance with Idaho Code § 67- 8208. The surcharge shall not exceed the development's proportionate share of the cost of preparing the capital improvements plan.

12-1-12: APPEALS, PROTEST AND MEDIATION:

A. Appeals: Any fee payer that is or may be obligated to pay an impact fee, individual assessment or an extraordinary impact, or that claims a right to receive a refund, reimbursement, exemption or credit under this chapter, and who is dissatisfied with a decision made either by the county in applying this chapter, may appeal such decision. The fee payer shall have the burden on appeal of proving by clear and convincing evidence that the decision was in error.

B. Appeal Process: Appeals of denials of an exemption from impact fees under section 3 of this chapter.

1. A fee payer shall file a written notice of the appeal with the County Land Use and Building Department within thirty (30) days after the date of a denial of an exemption. Such notice of appeal shall include a statement describing why the fee payer believes that the appealed decision was in error, together with copies of any documents that the fee payer believes support the claim.

2. The Land Use and Building Department shall schedule a hearing in front of the County Board of Commissioners within thirty (30) days of receiving the appeal. The fee payer or its representative shall have a right to be present and to present evidence in support of the appeal. The county personnel who made the decision under appeal or their representatives shall likewise have the right to be present and to present evidence in support of the decision.

3. The County Board of Commissioners shall consider the decision denying the exemption and also consider any additional evidence that may be offered by the fee payer and county staff. The County Board of Commissioners may affirm, reverse, or modify in whole or in part the decision appealed from and issue a written decision within thirty (30) days.

4. A final decision of the County Board of Commissioners may be judicially reviewed pursuant to Idaho Code § 31- 1506.

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

1. The fee payer shall file a written notice of the appeal with the county within thirty (30) days after the date of the county's decision, or the date on which the fee payer submitted a payment of the impact fee under protest, whichever is later. Such written application shall include a statement describing why the fee payer believes that the appealed decision was in error, together with copies of any documents that the fee payer believes support the claim.

2. The County Board of Commissioners shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The fee payer or its representative shall have a right to be present and to present evidence in support of the appeal. The county personnel who made the decision under appeal or their representatives shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the County's Board of Commissioners in considering the appeal shall be whether:

- The decision or interpretation made by the county; or
- The alternative decision or interpretation offered by the fee payer, more accurately reflects the intent of this chapter that new development in the service area pay its proportionate share of the costs of system improvements to public facilities necessary to serve new development and whether the chapter has been correctly applied.

The County Board of Commissioners shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

D. Payment Under Protest: A fee payer may pay an impact fee under protest in order not to delay in the issuance of a building permit by the county. A fee payer making a payment under protest shall not be estopped from exercising the right to appeal provided herein, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

E. Mediation:

1. Any fee payer that has a disagreement with a decision made by the county regarding an impact fee determination that is or may be due for a proposed development pursuant to this chapter, may enter into a voluntary

agreement with the county as the case may be, to subject the disagreement to mediation by a qualified independent party acceptable to both parties to the mediation.

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

3. Participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this section.

4. If mediation is requested, any related mediation costs shall be shared equally by the parties to the mediation, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

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

12-1-13: PERIODIC REVIEWS; ANNUAL BUDGET:

A. Review and Modification of Capital Improvements Plan: Unless the County Board of Commissioners deems some other period is appropriate, the County shall, at least once every five (5) years, commencing from the date of the original adoption of the capital improvements plan, review the development potential and update the capital improvements plan in accordance with the procedures set forth in Idaho Code § 67-8206, as it may be amended. Each update shall be prepared by the county in consultation with the Advisory Committee.

B. Annual budget: The county shall annually adopt a capital budget.

12-1-14: AUDIT: As part of its annual audit process, the county shall prepare an annual report:

A. Describing the amount of all impact fees collected, appropriated, or spent during the preceding year; and

B. Describing the percentage of taxes and revenues from sources other than the impact fees collected, appropriated, or spent for system improvements during the preceding year.

12-1-15: ADVISORY COMMITTEE:

A. Establishment and Purpose: Pursuant to Idaho Code § 67-8205, there is hereby established Development Impact Fee Advisory Committee (Advisory Committee), whose purpose is to carry out the duties as set forth in Idaho Code § 67- 8205(3), as it may be amended.

B. Membership: The Advisory Committee shall be composed of not fewer than

five (5) members, all of whom must reside within the County. Two (2) or more members shall be active in the business of development, building or real estate. Two (2) or more members shall not be in the business of development, building or real estate.

C. Meetings: Meetings may be called by the Advisory Committee by giving reasonable notice of the time and place of the meeting in accordance with the Open Meetings Law, Idaho Code §§ 74-201 et seq., as may be amended. The Advisory Committee shall adopt reasonable rules as are necessary to carry out the duties and responsibilities of the committee subject to the approval of the County, and elect such officers as deemed necessary.

D. Continuation of existing Committees: Each development impact fee advisory committee established as part of the preparation of the respective capital improvements plans shall become the Joint Development Impact Fee Advisory Committee and shall continue in existence.

12-1-16: MISCELLANEOUS PROVISIONS:

A. Nothing in this chapter shall prevent the county from requiring a developer to construct reasonable project improvements, as are required by the fire codes and other rules that are adopted by the state fire marshal, in conjunction with a development.

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

C. Nothing in this chapter shall obligate the county to approve development which results in an extraordinary impact.

D. Nothing in this chapter shall obligate the county to approve any development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in this chapter.

E. Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the county in regulating the orderly development of real property within its boundaries

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

G. The county shall develop a plan for alternative sources of revenue, which shall include but not necessarily be limited to plans generated during the annual budget process, lobbying efforts, tax increment financing, and implementation of user fees, administrative and regulatory fees, and other forms of revenue.

H. Notwithstanding any other provision of this chapter, that portion of a project for which a complete application for a building permit has been received by the county, prior to the effective date of this chapter, shall not be subject to the impact fee imposed by this chapter. If the resulting building permit is later revised or replaced after the effective date of the ordinance codified in this chapter, and the new building permit(s) reflects a development density, intensity, development size or number of service units more than ten percent (10%) higher than that reflected in the original building permit, then the impact fee may be charged on the difference in density, intensity, development size or number of service units between the original and the revised or replacement building permit.

I. Any monies, including any accrued interest not assigned to specific system improvements within such capital improvements plan and not expended or refunded pursuant to this chapter shall be retained in the same account until the next fiscal year.

J. If the county discovers an error in the capital improvements plan that results in assessment or payment of more than a proportionate share of system improvement costs on any proposed development, the county shall:

K. Adjust the impact fee to collect no more than a proportionate share; or

L. Discontinue the collection of any impact fees until the error is corrected by ordinance.

M. If impact fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated. Any amounts overpaid by a fee payer shall be refunded by the county within thirty (30) days after the acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the fee was paid. Any amounts underpaid by the fee payer shall be paid to the county within thirty (30) days after the acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code § 28-22-104 from the date on which the fee was paid.

12-1-17: RULES OF CONSTRUCTION:

All provisions, terms, phrases, and expressions contained in this chapter shall be liberally construed in order that the true intent and meaning of the Act and the Elmore County Board of Commissioners may be fully carried out.