

**APPENDIX A
JEFFERSON COUNTY
SHERIFF, ROAD & BRIDGE and PARKS & RECREATION
IMPACT FEE STUDY AND ORDINANCE
TECHNICAL APPENDIX**

APPENDIX A LISTS THE ENTIRE IDAHO DEVELOPMENT IMPACT FEE ACT (IDAHO CODE §67-8201, ET SEQ.). THE ACT IS BEING USED IN THIS APPENDIX AS A “CHECKLIST” TO SHOW THE READER HOW THE STUDY TEAM ADDRESSED EACH SECTION OF THE ACT. THE PURPOSE OF APPENDIX A IS ALSO TO REVIEW THE DEVELOPMENT IMPACT FEE ORDINANCE TEMPLATE (SEE APPENDIX C) IN THE CONTEXT OF THE IDAHO DEVELOPMENT IMPACT FEE STATUTE.

§ 67-8201. Short title

This chapter shall be known and may be cited as the "Idaho Development Impact Fee Act."

§ 67-8202. Purpose

The legislature finds that an equitable program for planning and financing Public Facilities needed to serve new growth and Development is necessary in order to promote and accommodate orderly growth and Development and to protect the public health, safety and general welfare of the citizens of the state of Idaho. It is the intent by enactment of this chapter to:

- (1) Ensure that adequate Public Facilities are available to serve new growth and Development;
- (2) Promote orderly growth and Development by establishing uniform standards by which local governments may require that those who benefit from new growth and Development pay a Proportionate Share of the cost of new Public Facilities needed to serve new growth and Development;
- (3) Establish minimum standards for the adoption of Development Impact Fee ordinances by governmental entities;
- (4) Ensure that those who benefit from new growth and Development are required to pay no more than their Proportionate Share of the cost of Public Facilities needed to serve new growth and Development and to prevent duplicate and ad hoc Development Requirements; and
- (5) Empower governmental entities which are authorized to adopt ordinances to impose Development Impact Fees.

§ 67-8203. Definitions

As used in this chapter:

- (1) "Affordable Housing" means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the Service Area or areas within the jurisdiction of the Governmental Entity.

(2) "Appropriate" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a Governmental Entity.

(3) "Capital Improvements" means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.

(4) "Capital Improvement Element" means a component of a comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a Capital Improvements Plan pursuant to this chapter.

(5) "Capital Improvements Plan" means a plan adopted pursuant to this chapter that identifies Capital Improvements for which Development Impact Fees may be used as a funding source.

(6) "Developer" means any person or legal entity undertaking Development, including a party that undertakes the subdivision of property pursuant to sections 50-1301 through 50-1334, Idaho Code.

(7) "Development" means 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 or the subdivision of property that would permit any change in the use, character or appearance of land. As used in this chapter, "development" shall not include activities that would otherwise be subject to payment of the Development Impact Fee if such activities are undertaken by a taxing district, as defined in section 63-201, Idaho Code, in the course of carrying out the taxing district's public responsibilities, unless the adopted Impact Fee ordinance expressly includes taxing districts as being subject to Development Impact Fees.

(8) "Development Approval" means any written authorization from a Governmental Entity which authorizes the commencement of a Development.

(9) "Development Impact Fee" means a payment of money imposed as a condition of Development Approval to pay for a Proportionate Share of the cost of System Improvements needed to serve Development. This term is also referred to as an Impact Fee in this chapter. The term does not include the following:

(a) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for Development;

(b) Connection or hookup charges;

(c) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the Development; or

(d) Amounts collected from a Developer in a transaction in which the Governmental Entity has incurred expenses in constructing Capital Improvements for the Development if the owner or Developer has agreed to be financially responsible for the construction or installation of the Capital Improvements, unless a written agreement is made pursuant to section 67-8209(3), Idaho Code, for credit or reimbursement.

(10) "Development Requirement" means a requirement attached to a developmental approval or other 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 a condition of approval.

- (11) "Extraordinary Costs" means those costs incurred as a result of an Extraordinary Impact.
- (12) "Extraordinary Impact" means an impact which is reasonably determined by the Governmental Entity to: (i) result in the need for System Improvements, the cost of which will significantly exceed the sum of the Development Impact Fees to be generated from the Project or the sum agreed to be paid pursuant to a Development agreement as allowed by section 67-8214(2), Idaho Code, or (ii) result in the need for System Improvements which are not identified in the Capital Improvements Plan.
- (13) "Fee Payer" means that person who pays or is required to pay a Development Impact Fee.
- (14) "Governmental Entity" means any unit of local government that is empowered in this enabling legislation to adopt a Development Impact Fee ordinance.
- (15) "Impact Fee." See Development Impact Fee.
- (16) "Land Use Assumptions" means a description of the Service Area and projections of land uses, densities, intensities, and population in the Service Area over at least a twenty (20) year period.
- (17) "Level of Service" means a measure of the relationship between service capacity and service demand for Public Facilities.
- (18) "Manufactured Home" means 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 the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, 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.
- (19) "Modular Building" is as defined in section 39-4301, Idaho Code.
- (20) "Present Value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.
- (21) "Project" means a particular Development on an identified parcel of land.
- (22) "Project improvements" means 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.
- (23) "Proportionate Share" means that portion of the cost of System Improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the Project.
- (24) "Public Facilities" means:
- (a) Water supply production, treatment, storage and distribution facilities;
 - (b) Wastewater collection, treatment and disposal facilities;

(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;

(d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(e) Parks, open space and recreation areas, and related Capital Improvements; and

(f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

(25) "Recreational Vehicle" means 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.

(26) "Service Area" means any defined geographic area identified by a Governmental Entity or by intergovernmental agreement in which specific Public Facilities provide service to Development within the area defined, on the basis of sound planning or engineering principles or both.

(27) "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 particular category of Capital Improvements.

(28) "System Improvements," in contrast to Project Improvements, means Capital Improvements to Public Facilities which are designed to provide service to a Service Area including, without limitation, the type of improvements described in section 50-1703, Idaho Code.

(29) "System Improvement Costs" means costs incurred for construction or reconstruction of System Improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in section 50-1702(h), Idaho Code, to provide additional Public Facilities needed to serve new growth and Development. For clarification, System Improvement Costs do not include:

(a) Construction, acquisition or expansion of Public Facilities other than Capital Improvements identified in the Capital Improvements Plan;

(b) Repair, operation or maintenance of existing or new Capital Improvements;

(c) Upgrading, updating, expanding or replacing existing Capital Improvements to serve existing Development in order to meet stricter safety, efficiency, environmental or regulatory standards;

(d) Upgrading, updating, expanding or replacing existing Capital Improvements to provide better service to existing Development;

(e) Administrative and operating costs of the Governmental Entity unless such costs are attributable to Development of the capital improvement plan, as provided in section 67-8208, Idaho Code; or

(f) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the Governmental Entity to finance Capital Improvements identified in the Capital Improvements Plan.

All of these definitions are listed in the template Ordinance (see Appendix C, Ordinance Template, Section _____04).

§ 67-8204. Minimum standards and requirements for Development Impact Fees ordinances

Governmental entities which comply with the requirements of this chapter may impose by ordinance Development Impact Fees as a condition of Development Approval on all Developments.

(1) A Development Impact Fee shall not exceed a Proportionate Share of the cost of System Improvements determined in accordance with section 67-8207, Idaho Code. Development Impact Fees shall be based on actual System Improvement Costs or reasonable estimates of such costs.

This statement is found in the template Ordinance (see Appendix C, Ordinance Template Section _____ - 12 (i)).

The Study Team and Impact Fee Advisory Committee have undertaken a rigorous review of the actual System Improvement Costs or reasonable estimates of such costs as provided by County staff. Discussion particulars can be found in the minutes of the Impact Fee Advisory Committee.

(2) A Development Impact Fee shall be calculated on the basis of levels of service for Public Facilities adopted in the Development Impact Fee ordinance of the Governmental Entity 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 a Development Impact Fee is imposed must be attributable to the capacity demands generated by the new Development.

See Appendix C, Ordinance Template Section _____-01 (h).

The Levels of Service found in the adopted Comprehensive Plan are also adopted as part of the Ordinance. The calculation of the capacity demands generated by new Development is found in the Impact Fee Study and is used to calculate the Impact Fees.

(3) A Development Impact Fee ordinance shall specify the point in the Development process at which the Development Impact Fee shall be collected. The Development Impact Fee may be collected no earlier than the commencement of construction of the Development, or the issuance of a building permit or a Manufactured Home installation permit, or as may be agreed by the Developer and the Governmental Entity.

See Appendix C, Ordinance Template Section _____-06 – Payment of Impact Fees.

The recommendation of the Study Team and the Impact Fee Advisory Committee is that the County's Fee Administrator collects Impact Fees from a Fee Payer following application for a Building Permit and prior to the issuance of any Building Permit for a Dwelling Unit, or nonresidential building.

(4) A Development Impact Fee ordinance shall be adopted in accordance with the procedural requirements of section 67-8206, Idaho Code.

See Appendix C, Ordinance Template “Whereas” clauses, which are drafted to ensure that the procedure undertaken is identified in the Ordinance.

See Appendix A, Section 67-8206, below, for particulars on compliance with this Section of the Act.

Note: The procedure identified in Section 67-8206(3) for the adoption of the Impact Fee Ordinance requires “at least one (1) public hearing.” The procedure in Section 67-8208 for the adoption of the Capital Improvements Plan is the same procedure as identified in the Local Land Use Planning Act, Idaho Code Section 67-6509. That Section requires the Planning & Zoning Commission to hold a public hearing to consider the recommendation of the Impact Fee Advisory Committee and to make its own recommendation to the governing board. Although Section 67-6509 states that the governing board “may” conduct at least one public hearing in addition to the Planning & Zoning Commission hearing(s), the Study Team recommends that both the Impact Fee Advisory Committee’s recommendation in connection with the Ordinance and the Capital Improvements Plan are reviewed by the Planning & Zoning Commission at a public hearing, the Planning & Zoning Commission makes its own recommendation to the governing board and the governing board then holds a public hearing to consider the recommendation.

(5) A Development Impact Fee ordinance shall include a process whereby the governmental agency shall allow the Developer, upon request by the Developer, to provide a written individual assessment of the Proportionate Share of Development Impact Fees under the guidelines established by this chapter which shall be set forth in the ordinance. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the Developer to adjust the amount of the fee. The decision by the governmental agency on an application for an individual assessment shall include an explanation of the calculation of the Impact Fee, including an explanation of factors considered under section 67-8207, Idaho Code, and shall specify the system improvement(s) for which the Impact Fee is intended to be used.

See Appendix C, Ordinance Template Section ____-05 (e) through (g) – Imposition and Computation of Impact Fees, which provides the process for an individual assessment according to the requirements of the Act.

(6) A Development Impact Fee ordinance shall provide a process whereby a Developer shall receive, upon request, a written certification of the Development Impact Fee schedule or individual assessment for a particular Project, which shall establish the Development Impact Fee so long as there is no material change to the particular Project as identified in the individual assessment application, or the Impact Fee schedule. The certification shall include an explanation of the calculation of the Impact Fee including an explanation of factors considered under section 67-8207, Idaho Code. The certification shall also specify the system improvement(s) for which the Impact Fee is intended to be used.

See Appendix C, Ordinance Template Section ____-05 (h) – Imposition and Computation of Impact Fees, which provides the process for an individual assessment according to the requirements of the Act. The fee schedule is contained in the Impact Fee Study and is attached to the Ordinance as Exhibit A.

(7) A Development Impact Fee ordinance shall include a provision for credits in accordance with the requirements of section 67-8209, Idaho Code.

See Appendix C, Ordinance Template Section ____-09 – Credits; Reimbursements, which is drafted to ensure that provision for credits is made as required by the Act.

See Appendix A, Section 67-8209, below, for particulars on compliance with this Section of the Act.

(8) A Development Impact Fee ordinance shall include a provision prohibiting the expenditure of Development Impact Fees except in accordance with the requirements of section 67-8210, Idaho Code.

See Appendix C, Ordinance Template Section ____-07 – Impact Fee Funds; Refunds of Impact Fees Paid, which is drafted to ensure that provision for the establishment of Impact Fee funds and their administration, and refund of Impact Fees is made as required by the Act.

See Appendix A, Section 67-8210, below, for particulars on compliance with this Section of the Act.

(9) A Development Impact Fee ordinance may provide for the imposition of a Development Impact Fee for System Improvement Costs incurred subsequent to adoption of the ordinance to the extent that new growth and Development will be served by the System Improvements.

Note: We believe that this concept is embodied in the Ordinance template and a separate statement has not been made.

(10) A Development Impact Fee ordinance may exempt all or part of a particular Development Project from Development Impact Fees provided that such Project is determined to create Affordable Housing, provided that the public policy which supports the exemption is contained in the Governmental Entity's comprehensive plan and provided that the exempt Development's Proportionate Share of System Improvements is funded through a revenue source other than Development Impact Fees.

See Appendix C, Ordinance Template Section ____-08.

(11) A Development Impact Fee ordinance shall provide that Development Impact Fees shall only be spent for the category of System Improvements for which the fees were collected and either within or for the benefit of the Service Area in which the Project is located.

See Appendix C, Ordinance Template Section ____-07(d) – Impact Fee Funds; Refunds of Impact Fees, which is drafted to contain this requirement of the Act.

(12) A Development Impact Fee Ordinance shall provide for a refund of Development Impact Fees in accordance with the requirements of section 67- 8211, Idaho Code.

See Appendix C, Ordinance Template Sections ____-07(g) – (h) – Impact Fee Funds; Refunds of Impact Fees Paid, which is drafted to ensure that provision for refunds is established in the Ordinance as required by the Act.

See Appendix A, Section 67-8211, below, for particulars on compliance with this Section of the Act.

(13) A Development Impact Fee ordinance shall establish for a procedure for timely processing of applications for determination by the Governmental Entity regarding Development Impact Fees applicable to a Project, individual assessment of Development Impact Fees, credits or reimbursements to be allowed or paid under section 67-8209, Idaho Code, and Extraordinary Impact.

See Appendix C, Ordinance Template Sections ____-05 Imposition and Computation of Impact Fees and -09 Credits, which address processing as required by the Act.

(14) A Development Impact Fee ordinance shall specify when an application for an individual assessment of Development Impact Fees shall be permitted to be made by a Developer or Fee Payer. An application for an individual assessment of Development Impact Fees shall be permitted sufficiently in advance of the time that the Developer or Fee Payer may seek a building permit or related permits so that the issuance of a building permit or related permits will not be delayed.

See Appendix C, Ordinance Template Section ____-05 (e) – (g) – Imposition and Computation of Impact Fees, which provides the process for an individual assessment according to the requirements of the Act. Section ____-05 (e) specifically allows a written application for individual assessment to be made at any time prior to receipt of a building permit.

(15) A Development Impact Fee ordinance shall provide for appeals regarding Development Impact Fees in accordance with the requirements of section 67- 8212, Idaho Code.

See Appendix C, Ordinance Template Section ____-10 -- Appeals, which is drafted to ensure that provision for appeals is made as required by the Act.

See Appendix A, Section 67-8212, below, for particulars on compliance with this Section of the Act.

(16) A Development Impact Fee ordinance must provide a detailed description of the methodology by which costs per Service Unit are determined. The Development Impact Fee per Service Unit may not

exceed the amount determined by dividing the costs of the Capital Improvements described in section 67-8208(1)(f), Idaho Code, by the total number of projected Service Units described in section 67-8208(1)(g), Idaho Code. If the number of new Service Units projected over a reasonable period of time is less than the total number of new Service Units shown by the approved Land Use Assumptions at full Development of the Service Area, the maximum Impact Fee per Service Unit shall be calculated by dividing the costs of the part of the Capital Improvements necessitated by and attributable to the projected new Service Units described in section 67-8208(1)(g), Idaho Code, by the total projected new Service Units described in that section.

The Impact Fee Study, which is described in the recitals of the Ordinance template, and which is incorporated by reference, contains a detailed description of the methodology employed.

(17) A Development Impact Fee ordinance shall include a schedule of Development Impact Fees for various land uses per unit of Development. The ordinance shall provide that a Developer shall have the right to elect to pay a Project's Proportionate Share of System Improvement Costs by payment of Development Impact Fees according to the fee schedule as full and complete payment of the development Project's Proportionate Share of System Improvement Costs, except as provided in section 67-8214(3), Idaho Code.

See Appendix C, Ordinance Template Section ____-05(d) Imposition and Computation of Impact Fees, which address this election in connection with payment as required by the Act.

(18) After payment of the Development Impact Fees or execution of an agreement for payment of development Impact Fees, additional Development Impact Fees or increases in fees may not be assessed unless the number of Service Units increases or the scope or schedule of the Development changes. In the event of an increase in the number of Service Units or schedule of the Development changes, the additional Development Impact Fees to be imposed are limited to the amount attributable to the additional Service Units or change in scope of the Development.

See Appendix C, Ordinance Template Section ____-05(c) Imposition and Computation of Impact Fees, which address this provision as required by the Act.

(19) No system for the calculation of Development Impact Fees shall be adopted which subjects any Development to double payment of Impact Fees.

See Appendix C, Ordinance Template Section ____:01 (p) -: Legislative Findings, which address this provision as required by the Act.

(20) A Development Impact Fee ordinance shall exempt from Development Impact Fees the following activities:

- (a) Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
- (b) Remodeling or repairing a structure which does not increase the number of Service Units;
- (c) Replacing a residential unit, including a Manufactured Home, with another residential unit on the same lot, provided that the number of Service Units does not increase;
- (d) Placing a temporary construction trailer or office on a lot;
- (e) Constructing an addition on a residential structure which does not increase the number of Service Units; and
- (f) Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of System Improvements.

See Appendix C, Ordinance Template Section ____-08 (a) – Exemptions from Impact Fees, which address this provision as required by the Act.

(21) A Development Impact Fee will be assessed for installation of a Modular Building, Manufactured Home or Recreational Vehicle unless the Fee Payer can demonstrate by documentation such as utility bills and tax records, either:

- (a) That a Modular Building, Manufactured Home or Recreational Vehicle was legally in place on the lot or space prior to the effective date of the Development Impact Fee ordinance; or
- (b) That a Development Impact Fee has been paid previously for the installation of a Modular Building, Manufactured Home or Recreational Vehicle on that same lot or space.

See Appendix C, Ordinance Template Section ____-08 (b) – Exemptions from Impact Fees, which address this provision as required by the Act.

(22) A Development Impact Fee ordinance shall include a process for dealing with a Project which has Extraordinary Impacts.

See Appendix C, Ordinance Template Section ____-05 (j)– Imposition and Computation of Impact Fee. The County recognizes that there may be circumstances where the anticipated fiscal impacts of a template Development are of such magnitude that the County may be unable to accommodate the Development without excessive or unscheduled public expenditures that exceed the amount of the anticipated Impact Fees from such Development. If the County determines that a proposed Development would create such an Extraordinary Impact on the County's Public Facilities, the County may refuse to approve the proposed Development. In the alternative, the County may calculate a pro rata share per Dwelling Unit, or square feet of nonresidential buildings, of the Extraordinary Impact and charge a reasonable Extraordinary Impact Fee that is greater than would ordinarily be charged.

(23) A Development Impact Fee ordinance shall provide for the calculation of a Development Impact Fee 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 person paying the fee.

See Appendix C, Ordinance Template Section _____01 (j) – Legislative Findings, which addresses this provision as required by the Act.

(24) A Development Impact Fee ordinance shall include a description of acceptable levels of service for System Improvements.

See Appendix C, Ordinance Template Recitals that incorporates by reference the Impact Fee Study. The Impact Fee Study identifies the Levels of Service adopted by the County prior to the drafting of the Impact Fee Study.

(25) Any provision of a Development Impact Fee ordinance that is inconsistent with the requirements of this chapter shall be null and void and that provision shall have no legal effect. A partial invalidity of a Development Impact Fee ordinance shall not affect the validity of the remaining portions of the ordinance that are consistent with the requirements of this chapter.

See Appendix C, Ordinance Template Section ____-12 (p) – Miscellaneous Provisions, which addresses this provision as required by the Act.

§ 67-8204A. Intergovernmental agreements

Governmental entities as defined in section 67-8203(14), Idaho Code, which are jointly affected by Development are authorized to enter into intergovernmental agreements with each other or with highway districts, fire districts, water districts, sewer districts, recreational water and sewer districts or irrigation districts for the purpose of developing joint plans for Capital Improvements or for the purpose of agreeing to collect and expend Development Impact Fees for System Improvements, or both, provided that such agreement complies with any applicable state laws. Governmental entities are also authorized to enter

into agreements with the Idaho Transportation Department for the expenditure of Development Impact Fees pursuant to a Developer's agreement under section 67-8214, Idaho Code.

See Appendix C, Ordinance Template Section ____-02(b) – Authority, Applicability, and Effective Date, which provides that the Ordinance will apply to all of the territory within the limits of the County and to any unincorporated areas of the County within the County's area of County impact if the County has executed an intergovernmental agreement with Jefferson County for purposes of collection or expenditure of Impact Fees.

§ 67-8205. Development Impact Fee advisory committee

(1) Any Governmental Entity which is considering or which has adopted a Development Impact Fee ordinance, shall establish a Development Impact Fee advisory committee.

See Appendix C, Ordinance Template Section ____-11 – Impact Fee Advisory Committee, which addresses this provision as required by the Act.

The Advisory Committee was appointed by the County Commission. The Impact Fee Advisory Committee is comprised of:

Michael Clark (Engineer and member of Planning and Zoning Commission)
Ed Mortensen (General Contractor and member of Planning and Zoning Commission)
Holly Hancock (Farmer and member of Planning and Zoning Commission)
Byron Evans (Farmer and member of Planning and Zoning Commission)
Jim Bernard (Developer and General Contractor)

(2) The Development Impact Fee advisory committee shall be composed of not fewer than five (5) members appointed by the governing authority of the Governmental Entity. Two (2) or more members shall be active in the business of Development, building or real estate. An existing planning or zoning commission may serve as the Development Impact Fee advisory committee if the commission includes two (2) or more members who are active in the business of Development, building or real estate; otherwise, two (2) such members who are not employees or officials of a Governmental Entity shall be appointed to the committee.

See Appendix C, Ordinance Template Section ____-11(a) – Impact Fee Advisory Committee, which addresses this provision as required by the Act.

See above. Two members of the Impact Fee Advisory Committee are active in the business of Development, building or real estate: Ed Mortensen, General Contractor and Jim Bernard, Developer and General Contractor.

(3) The Development Impact Fee advisory committee shall serve in an advisory capacity and is established to:

- (a) Assist the Governmental Entity in adopting Land Use Assumptions;
- (b) Review the Capital Improvements Plan, and proposed amendments, and file written comments;
- (c) Monitor and evaluate implementation of the Capital Improvements Plan;
- (d) File periodic reports, at least annually, with respect to the Capital Improvements Plan and report to the Governmental Entity any perceived inequities in implementing the plan or imposing the Development Impact Fees; and
- (e) Advise the Governmental Entity of the need to update or revise Land Use Assumptions, Capital Improvements Plan and Development Impact Fees.

See Appendix C, Ordinance Template Section ____-11(a) – Impact Fee Advisory Committee, which addresses this provision as required by the Act.

- (4) The Governmental Entity shall make available to the advisory committee, upon request, all financial and accounting information, professional reports in relation to other Development and implementation of Land Use Assumptions, the Capital Improvements Plan and periodic updates of the Capital Improvements Plan.

See Appendix C, Ordinance Template Section ____-11(b) – Impact Fee Advisory Committee, which addresses this provision as required by the Act.

§ 67-8206. Procedure for the imposition of Development Impact Fees

- (1) A Development Impact Fee shall be imposed by a Governmental Entity in compliance with the provisions set forth in this section.
- (2) A Capital Improvements Plan shall be developed in coordination with the Development Impact Fee advisory committee utilizing the Land Use Assumptions most recently adopted by the appropriate land use planning agency or agencies.

The Impact Fee Study contains the Capital Improvements Plans that have been developed in coordination with the Advisory Committee. A description of the Land Use Assumptions is contained in the Impact Fee Study. The County advised the Study Team to rely on two recent studies – known to the County – in developing growth projections: Jefferson County Comprehensive Plan adopted April 25, 2005 and the Jefferson County/City of Rigby Transportation Plan published November 19, 2007, both of which can be provided by County staff. These Land Use Assumptions project growth in the County through 2018.

- (3) A Governmental Entity that seeks to consider adoption, amendment, or repeal of a Capital Improvements Plan shall hold at least one (1) public hearing. The Governmental Entity shall publish a notice of the time, place and purpose of the hearing or hearings not fewer than fifteen (15) nor more than thirty (30) days before the scheduled date of the hearing, in a newspaper of general circulation within the jurisdiction of the Governmental Entity. Such notices shall also include a statement that the

Governmental Entity shall make available to the public, upon request, the following: proposed Land Use Assumptions, a copy of the proposed Capital Improvements Plan or amendments thereto, and a statement that any member of the public affected by the Capital Improvements Plan or amendments shall have the right to appear at the public hearing and present evidence regarding the proposed Capital Improvements Plan or amendments. The Governmental Entity shall send notice of the intent to hold a public hearing by mail to any person who has requested in writing notification of the hearing date at least fifteen (15) days prior to the hearing date, provided that the Governmental Entity may require that any person making such request renew the request for notification, not more frequently than once each year, in accordance with a schedule determined by the Governmental Entity, in order to continue receiving such notices.

See Appendix C, Ordinance Template Recitals which identify the progression of hearings.

Note: The procedure identified in Section 67-8206(3) for the adoption of the Impact Fee Ordinance requires “at least one (1) public hearing.” The procedure in Section 67-8208 for the adoption of the Capital Improvements Plan is the same procedure as identified in the Local Land Use Planning Act, Idaho Code Section 67-6509. That Section requires the Planning & Zoning Commission to hold a public hearing to consider the recommendation of the Impact Fee Advisory Committee and to make its own recommendation to the governing board. Although Section 67-6509 states that the governing board “may” conduct at least one public hearing in addition to the Planning & Zoning Commission hearing(s), the Study Team recommends that both the Impact Fee Advisory Committee’s recommendation in connection with the Ordinance and the Capital Improvements Plan are reviewed by the Planning & Zoning Commission at a public hearing, the Planning & Zoning Commission makes its own recommendation to the governing board and the governing board then holds a public hearing to consider the recommendation.

The Study Team recommends that the Advisory Committee review all notices for compliance with the Act.

(4) If the Governmental Entity makes a material change in the Capital Improvements Plan or amendment, further notice and hearing may be provided before the Governmental Entity adopts the revision if the Governmental Entity makes a finding that further notice and hearing are required in the public interest.

(5) Either following or concurrently with adoption of the initial or amended Capital Improvements Plan, a Governmental Entity shall conduct a public hearing to consider adoption of an ordinance authorizing the imposition of Development Impact Fees or any amendment thereof. Notice of the hearing shall be provided in the same manner as set forth in subsection (3) of this section for adoption of a Capital Improvements Plan, and such hearing, at the option of the Governmental Entity, may be combined with the public hearing held to adopt, amend or repeal the Capital Improvements Plan.

Please refer to the comments below subsection (3) above.

(6) Nothing contained in this section shall be construed to alter the procedures for adoption of an ordinance by the Governmental Entity. Provided, however, a Development Impact Fee ordinance shall not be adopted as an emergency measure but may be read for the first and second times on successive days prior to the public hearing to consider its adoption and shall not take effect sooner than thirty (30) days following its adoption.

See Appendix C, Ordinance Template Section ____-12 (q) – Miscellaneous Provisions, which addresses this provision as required by the Act.

§ 67-8207. Proportionate Share determination

(1) All Development Impact Fees shall be based on a reasonable and fair formula or method under which the development Impact Fee imposed does not exceed a Proportionate Share of the costs incurred or to be incurred by the Governmental Entity in the provision of System Improvements to serve the new Development.

Each of the subparagraphs of the statute are specifically considered and addressed by the Study Team during their calculation of Proportionate Share. The Study Team considers the general conditions of projected new Development in the aggregate. The Impact Fee ordinance provides that any specific Development may conduct an Individual Assessment analysis should they believe that their specific Development has unusual or extenuating circumstances or that perhaps the Development will not generate the impacts assumed by the Impact Fee report and thus the fees required should be reduced for this particular Project.

The Proportionate Share is the cost attributable to the new Development after the Governmental Entity considers the following:

(i) any appropriate credit, offset or contribution of money, dedication of land, or construction of System Improvements;

The Study Team includes credits in its fee analysis for anticipated contributions, dedications, or construction by Developers of growth-related System Improvements included in the CIP. Where entire classes of eligible improvements are anticipated to be contributed or built by Developers, these improvements are left entirely out of the Impact Fee calculation. To ensure that credit is given against Impact Fees for individual Developers who negotiate to contribute, dedicate or construct System Improvements previously included in the CIP and calculated into the Impact Fees, the Impact Fee ordinance adopted by the County includes a section requiring the County to credit or reduce the assessed Impact Fee in the amount of the contribution, dedication or construction.

(ii) 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;

User fees – If a county were to have a policy and current practice of routinely dedicating a portion of Development fees (i.e., permitting fees) toward Capital Improvements, that portion of revenue would be accounted for within the Impact Fee calculation. In Jefferson County, there is no such policy, user fee revenues do not currently ever contribute to growth-related Capital Improvements, and are not anticipated to in the future.

Debt Service – During the study process, the Study Team discussed each Project with County staff to ensure that Impact Fees are not inappropriately calculated to finance the cost of System Improvements

that are expected to be 100 percent debt financed and therefore paid for by general tax revenues. If future infrastructure in the County were anticipated to be debt financed by the County, the amount financed would be net of Impact Fee revenues. Alternatively, the County could debt finance the entire System Improvement, and dedicate Impact Fee revenues toward debt service for the growth-related share of the improvement. Impact Fees would not be calculated in a manner that would “double charge” Development (i.e., a system improvement that was 100 percent financed by debt service, which all property owners would pay for in taxes, plus a portion of the same improvement being funded by Impact Fees).

The Advisory Committee should monitor the County’s use of user fees and debt financing to over time to determine if changes necessitate a review of the existing Impact Fee structure.

(iii) that portion of general tax and other revenues allocated by the jurisdiction to System Improvements;
and

The Study Team asked County staff if any tax revenues were dedicated to funding Capital Improvements, and was prepared to reduce the Impact Fee calculation by this amount, if applicable. Jefferson County has had insufficient general tax revenues to fund capital on a regular or required basis, and does not project having the revenues to fund the System Improvements necessitated by growth. Therefore, no tax revenue streams were calculated as offsets the Impact Fees. If the financial situation changes for the County to allow regular, budgeted capital contributions toward System Improvements from general tax revenues, then the Impact Fees should be reduced accordingly.

The Advisory Committee should monitor the County’s financial situation over time to determine if changes in the financial situation necessitate a review of the existing Impact Fee structure.

(iv) all other available sources of funding such System Improvements.

The Study Team routinely analyzes all other available sources of funding for System Improvements when it calculates Impact Fees. When applicable sources are available or anticipated for System Improvements, such as ITD, other State of Idaho, Homeland Security, or other Federal grants or intergovernmental agreements for funding transportation projects, parks projects, and/or fire dispatch or emergency communications centers, these improvements are removed in whole or in part from the Impact Fee calculation. The County does not expect any grant revenue to be available for the growth-related capital projects listed throughout the Impact Fee Study. However, the County is committed to routinely applying for grants and has the ability to modify these CIPs in the future to reflect any success.

The Advisory Committee should monitor the County’s success in obtaining grants over time to determine if the receipt of grant monies necessitates a review of the existing Impact Fee structure.

(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 Governmental Entity imposing the Development Impact Fee and accounted for in the calculation of the Impact Fee:

(a) The cost of existing System Improvements within the Service Area or areas;

This analysis is included in the Impact Fee Study. Please see discussion under 67-8208(c) below for specific exhibit citations. We have denominated the cost of existing improvements as the replacement value to facilitate comparisons with the calculated Impact Fees to ensure proportionality.

(b) The means by which existing System Improvements have been financed;

The Study Team routinely analyzes the means by which current assets were financed. In Jefferson County, all capital facilities are currently owned outright. Land, equipment and vehicles have been funded over time through general tax revenues, dedications and grants, if and when the budgets allowed.

(c) The extent to which the new Development will contribute to the cost of System Improvements through taxation, assessment, or Developer or landowner contributions, or has previously contributed to the cost of System Improvements through Developer or landowner contributions.

The County does not anticipate having sufficient general tax revenues to finance the System Improvements required by growth. General tax revenues from new Development will be required to support the operations and maintenance expenditures necessitated in the service of new Development. Therefore, no tax revenue streams have been included as offsets to the Impact Fee calculation. If tax revenue streams were anticipated to finance growth-related capital, the Impact Fee would be calculated net of these anticipated revenues.

If contributions of growth-related infrastructure listed on the County's CIP occur or are negotiated, the Developer would be credited the amount of the contribution against their Impact Fee.

Previous contributions to the cost of the System Improvements are not included in the Impact Fee calculations because the cost of those prior improvements is not listed in the CIPs. In other words, no Impact Fee credit is due for Projects which were not funded with Impact Fees.

(d) The extent to which the new Development is required to contribute to the cost of existing System Improvements in the future.

The Study Team considers the County's practices with regard to future contributions for System Improvements. Jefferson County is utilizing Impact Fees as one means for funding future growth-related System Improvements; contributions other than grants, exactions and negotiated agreements are not anticipated. In the event that additional contributions are required for System Improvements specifically included in the County's growth-related CIP, the value of the contribution would be credited against the Developer's Impact Fee. In this case, the County could choose to reimburse Impact Fees already paid or offer credits to be used against future Impact Fee liability.

(e) The extent to which the new Development should be credited for providing System Improvements, without charge to other properties within the Service Area or areas;

The value of any System Improvements specifically included in the County's growth-related CIP would be credited against the Developer's Impact Fee or reimbursed to the Developer.

(f) Extraordinary Costs, if any, incurred in serving the new Development;

See Appendix C, Ordinance Template Section _____05 (j) – Imposition and Computation of Impact Fees. The County recognizes that there may be circumstances where the anticipated fiscal impacts of a proposed Development are of such magnitude that the County may be unable to accommodate the Development without excessive or unscheduled public expenditures that exceed the amount of the anticipated Impact Fees from such Development. If the County determines that a proposed Development would create such an Extraordinary Impact on the County's Public Facilities, the County may refuse to approve the proposed Development. In the alternative, the County may calculate a pro rata share per Dwelling Unit, or square feet of nonresidential buildings, of the Extraordinary Impact and charge a reasonable Extraordinary Impact Fee that is greater than would ordinarily be charged.

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

Jefferson County's Impact Fee ordinance template includes provisions for the fee to be adjusted periodically to account for inflation in infrastructure prices. See Appendix C, Exhibit A. In order for the fees to be adjusted, the Advisory Committee would first have to make a recommendation to County Commission that would then hold a public hearing before voting.

(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. The Governmental Entity shall develop a plan for alternative sources of revenue.

No other revenue sources are anticipated to be available for growth-related Capital Improvements. Jefferson County will use all of the revenue sources listed above (as available) for non-growth related capital projects including repair and replacement of existing infrastructure, correcting existing deficiencies and/or improving current Levels of Service.

§ 67-8208. Capital Improvements Plan

(1) Each Governmental Entity intending to impose a Development Impact Fee shall prepare a Capital Improvements Plan. That portion of the cost of preparing a Capital Improvements Plan which is attributable to determining the Development Impact Fee may be funded by a one (1) time ad valorem levy which does not exceed two one-hundredths percent (.02%) of market value or by a surcharge imposed by ordinance on the collection of a Development Impact Fee which surcharge does not exceed the Development's Proportionate Share of the cost of preparing the plan. For governmental entities required to undertake comprehensive planning pursuant to chapter 65, title 67, Idaho Code, such Capital Improvements Plan shall be prepared and adopted according to the requirements contained in the local planning act, section 67-6509, Idaho Code, and shall be included as an element of the comprehensive plan. The Capital Improvements Plan shall be prepared by qualified professionals in fields relating to

finance, engineering, planning and transportation. The persons preparing the plan shall consult with the Development Impact Fee advisory committee.

A Capital Improvement Plan for the County Sheriff is found in Exhibit III-2; a Capital Improvement Plan for Road & Bridge is found in Exhibit IV-2; and a Capital Improvement Plan for Parks and Recreation is found in Exhibit V-2 of the Impact Fee Study. The following people assisted the Study Team in the Development of these plans: Naysha Foster, Jefferson County Planning and Zoning Administrator, and the members of the Advisory Committee.

The Capital Improvements Plan shall contain all of the following:

- (a) A general description of all existing Public Facilities and their existing deficiencies within the Service Area or areas of the Governmental Entity and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing of such facilities to meet existing needs and usage;

Please refer to the current asset inventories contained in Exhibits III-1; IV-1; and V-1 in the body of the Impact Fee Study. Deficiencies are addressed in the Growth Portion columns and are indicated by the less than 100 percent growth-related designations therein. Please see "GRUM" text on pages 9 and 10. The potential funding plan to cure these deficiencies is addressed in text following each CIP. Actual local government expenditures to address these deficiencies will result from year-by-year funding availability as determined in the County's annual budget process.

- (b) A commitment by the Governmental Entity to use other available sources of revenue to cure existing system deficiencies where practical;

Please refer to the explanatory text discussing the County's non-Impact Fee funding responsibility located underneath the CIP exhibits in the body of the Impact Fee Study. Other revenues considered are discussed earlier in this appendix under Section 67-8207. Jefferson County has said it commits to use other available sources of revenue to cure existing system deficiencies where practical.

- (c) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing Capital Improvements, which shall be prepared by a qualified professional planner or by a qualified engineer licensed to perform engineering services in this state;

Please refer to the current investment calculations contained in the body of the Impact Fee Study. Based on analysis performed by County staff and contract engineers, it is our understanding that current infrastructure has no excess capacity that could be utilized without resulting in a drop in Level of Service.

- (d) A description of the Land Use Assumptions by the government entity;

Please refer to Exhibit II-2 in the body of the Impact Fee Study. The Impact Fee Study contains the Capital Improvements Plans that have been developed in coordination with the Advisory Committee. A description of the Land Use Assumptions is contained in the Impact Fee Study. The County advised the Study Team to rely on two recent studies – known to the County – in developing growth projections: Jefferson County Comprehensive Plan adopted April 25, 2005 and Jefferson County/City of Rigby Transportation Plan published November 19, 2007; each of these studies can be provided by County staff.

- (e) A definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a Service Unit for each category of System Improvements and an equivalency or conversion table establishing the ratio of a Service Unit to various types of land uses, including residential, commercial, agricultural and industrial;

Please refer to the Impact Fee calculation exhibits in the body of the Impact Fee Study. Fees are assessed at the residential and the detailed non-residential level (i.e., commercial, agricultural and industrial).

- (f) A description of all System Improvements and their costs necessitated by and attributable to new Development in the Service Area based on the approved Land Use Assumptions, to provide a Level of Service (LOS) not to exceed the Level of Service adopted in the Development Impact Fee ordinance;

Please refer to the Capital Improvement Plan (CIP) exhibits in Sections III, IV and V of the Impact Fee Study. The Sheriff LOS (see Exhibit III-1) is 0.75 sworn officers per 1,000 population. The Road & Bridge LOS (see Exhibit IV-1) is 720 miles of roadway and 78 bridges in excess of 20 feet in length all under County maintenance. The Parks & Recreation LOS (see Exhibit V-1) is 3.4 acres of developed parkland per 1,000 population. These Levels of Service are adopted by reference in the Impact Fee ordinance (Section 01 – Legislative Findings), and now included in the amended Comprehensive Plan.

- (g) The total number of Service Units necessitated by and attributable to new Development within the Service Area based on the approved Land Use Assumptions and calculated in accordance with generally accepted engineering or planning criteria;

Please refer to Exhibit II-2 in the body of the Impact Fee Study.

- (h) The projected demand for System Improvements required by new Service Units projected over a reasonable period of time not to exceed twenty (20) years;

Please refer to the last column in the Sheriff CIP (Exhibit III-2), Road & Bridge CIP (Exhibit IV-2) and Parks & Recreation CIP (Exhibit V-2) entitled “Amount to Include in Fees.” These figures tie directly to

the Impact Fee calculations in the immediately subsequent exhibits of the report. We use a 10-year planning horizon believing that it is easier to project over 10 years (as opposed to 20 years), and the 10-year planning horizon comports with the CIP time frame.

(i) Identification of all sources and levels of funding available to the Governmental Entity for the financing of the System Improvements;

Please refer to the detailed analysis of non-Impact Fee funding sources contained earlier in this Appendix under "Section 67-8207. Proportionate Share Determination."

(j) If the proposed System Improvements include the improvement of Public Facilities under the jurisdiction of the state of Idaho or another Governmental Entity, then an agreement between governmental entities shall specify the reasonable share of funding by each unit, provided the Governmental Entity authorized to impose Development Impact Fees shall not assume more than its reasonable share of funding joint improvements, nor shall the agreement permit expenditure of Development Impact Fees by a Governmental Entity which is not authorized to impose Development Impact Fees unless such expenditure is pursuant to a Developer agreement under section 67-8214, Idaho Code; and

The Jefferson County permit office will collect fees on all unincorporated area-permits. The County will need to establish IGAs with the County's municipalities to collect fees on the County's behalf.

(k) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the Capital Improvements Plan.

The capital improvement plans detailed in the report encompasses a 10-year construction and acquisition time period lasting through 2018. As is common practice in Idaho municipalities and districts with Impact Fees, annual decision prioritizing capital projects within each CIP will occur during Jefferson County's budget process. These internal County decisions will be based on a variety of factors including the pace and location of growth, the availability of matching funds, and the County's Project management capacity.

(2) The Governmental Entity imposing a Development Impact Fee shall update the Capital Improvements Plan at least once every five (5) years. The five (5) year period shall commence from the date of the original adoption of the Capital Improvements Plan. The updating of the Capital Improvements Plan shall be made in accordance with procedures set forth in section 67-8206, Idaho Code.

The burden of this requirement is placed on the County. The Advisory Committee should work closely with the County to ensure that this provision is carried out.

(3) The Governmental Entity must annually adopt a capital budget.

The burden of this requirement is placed on the County. The Advisory Committee should work closely with the County to ensure that this provision is carried out.

(4) The Capital Improvements Plan shall be updated in conformance with the provisions of subsection (2) of this section each time a Governmental Entity proposes the amendment, modification or adoption of a Development Impact Fee ordinance.

The burden of this requirement is placed on the County. The Advisory Committee should work closely with the County to ensure that this provision is carried out.

§ 67-8209. Credits

(1) In the calculation of Development Impact Fees for a particular Project, credit or reimbursement shall be given for the Present Value of any construction of System Improvements or contribution or dedication of land or money required by a Governmental Entity from a Developer for System Improvements of the category for which the Development Impact Fee is being collected, including such System Improvements paid for pursuant to a local improvement district. Credit or reimbursement shall not be given for Project improvement.

See Appendix C, Ordinance Template Section ____-09(c) Credits; Reimbursements, which addresses this requirement of the Act.

(2) In the calculation of Development Impact Fees for a particular Project, credit shall be given for the Present Value of all tax and user fee revenue generated by the Developer, within the Service Area where the Impact Fee is being assessed and used by the governmental agency for System Improvements of the category for which the Development Impact Fee is being collected. If the amount of credit exceeds the Proportionate Share for the particular Project, the Developer shall receive a credit on future Impact Fees for the amount in excess of the Proportionate Share. The credit may be applied by the Developer as an offset against future Impact Fees only in the Service Area where the credit was generated.

See Appendix C, Ordinance Template Section ____-09 (b): Credits; Reimbursements, which addresses this requirement of the Act.

(3) If a Developer is required to construct, fund or contribute System Improvements in excess of the Development Project's Proportionate Share of System Improvement Costs, including such System Improvements paid for pursuant to a local improvement district, the Developer shall receive a credit on future Impact Fees or be reimbursed at the Developer's choice for such excess construction, funding or contribution from Development Impact Fees paid by future development which impacts the System Improvements constructed, funded or contributed by the Developer(s) or Fee Payer.

See Appendix C, Ordinance Template Section ____-09(a) – Credits; Reimbursements, which addresses this requirement of the Act.

(4) If credit or reimbursement is due to the Developer pursuant to this section, the Governmental Entity shall enter into a written agreement with the Fee Payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

See Appendix C, Ordinance Template Section ____-09 (d) – Credits; Reimbursements, which addresses this requirement of the Act.

§ 67-8210. Earmarking and expenditure of collected Development Impact Fees

(1) An ordinance imposing Development Impact Fees shall provide that all Development Impact Fee funds shall be maintained in one (1) or more interest-bearing accounts within the capital projects fund. Accounting records shall be maintained for each category of System Improvements and the Service Area in which the fees are collected. Interest earned on Development Impact Fees shall be considered funds of the account on which it is earned, and not funds subject to section 57-127, Idaho Code, and shall be subject to all restrictions placed on the use of Development Impact Fees under the provisions of this chapter.

See Appendix C, Ordinance Template Section ____-07(a) – (d) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(2) Expenditures of Development Impact Fees shall be made only for the category of System Improvements and within or for the benefit of the Service Area for which the Development Impact Fee was imposed as shown by the Capital Improvements Plan and as authorized in this chapter. Development Impact Fees shall not be used for any purpose other than System Improvement Costs to create additional improvements to serve new growth.

See Appendix C, Ordinance Template Section ____-07(d) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(3) As part of its annual audit process, a Governmental Entity shall prepare an annual report:

- (a) Describing the amount of all Development Impact Fees collected, Appropriated, or spent during the preceding year by category of public facility and Service Area; and
- (b) Describing the percentage of tax and revenues other than Impact Fees collected, Appropriated or spent for System Improvements during the preceding year by category of public facility and Service Area.

See Appendix C, Ordinance Template Section ____-07(f) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(4) Collected Development Impact Fees must be expended within eight (8) years from the date they were collected, on a first-in, first-out (FIFO) basis, except that the Development Impact Fees collected for wastewater collection, treatment and disposal and drainage facilities must be expended within twenty (20) years. Any funds not expended within the prescribed times shall be refunded pursuant to section 67-8211, Idaho Code. A Governmental Entity may hold the fees for longer than eight (8) years if it identifies, in writing:

(a) A reasonable cause why the fees should be held longer than eight (8) years; and

See Appendix C, Ordinance Template Section ____-07(e) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(b) An anticipated date by which the fees will be expended but in no event greater than eleven (11) years from the date they were collected.

See Appendix C, Ordinance Template Section ____-07(e) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

§ 67-8211. Refunds

(1) Any Governmental Entity which adopts a Development Impact Fee ordinance shall provide for refunds upon the request of an owner of property on which a Development Impact Fee has been paid if:

(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 Governmental Entity, after collecting the fee when service is not available, has failed to appropriate and expend the collected Development Impact Fees pursuant to section 67-8210(4), Idaho Code; or

(d) The Fee Payer pays a 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 Governmental Entity was entitled to receive.

See Appendix C, Ordinance Template Section ____-07(g) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(2) When the right to a refund exists, the Governmental Entity is required to send a refund to the owner of record within ninety (90) days after it is determined by the Governmental Entity that a refund is due.

See Appendix C, Ordinance Template Section ____-07(h) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(3) A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was originally paid.

See Appendix C, Ordinance Template Section ____-07(i) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

(4) Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsection (2) of this section.

See Appendix C, Ordinance Template Section ____-07(k) – Impact Fee Funds; Refunds of Impact Fees Paid, which addresses this requirement of the Act.

§ 67-8212. Appeals

(1) A Governmental Entity which adopts a Development Impact Fee ordinance shall provide for administrative appeals by the Developer or Fee Payer from any discretionary action or inaction by or on behalf of the Governmental Entity.

See Appendix C, Ordinance Template Section ____-10 -- Appeals, which addresses this requirement of the Act.

(2) A Fee Payer may pay a Development Impact Fee under protest in order to obtain a Development Approval or building permit. A Fee Payer making such payment shall not be estopped from exercising the right of appeal provided in this chapter, nor shall such Fee Payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

See Appendix C, Ordinance Template Section ____-10(a) -- Appeals, which addresses this requirement of the Act.

(3) A Governmental Entity which adopts a Development Impact Fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by the Fee Payer and the Governmental Entity, to address a disagreement related to the Impact Fee for proposed Development. The ordinance shall provide that mediation may take place at any time during the appeals process and participation in mediation does not preclude the Fee Payer from pursuing other remedies provided for in this section. The ordinance shall provide that mediation costs will be shared equally by the Fee Payer and the Governmental Entity.

See Appendix C, Ordinance Template Section ____-10 (e)-- Appeals, which addresses this requirement of the Act.

§ 67-8213. Collection

A Governmental Entity may provide in a Development Impact Fee ordinance the means for collection of Development Impact Fees, including, but not limited to:

- (1) Additions to the fee for reasonable interest and penalties for non-payment or late payment;
- (2) Withholding of the building permit or other governmental approval until the Development Impact Fee is paid;
- (3) Withholding of utility services until the Development Impact Fee is paid; and
- (4) Imposing liens for failure to timely pay a Development Impact Fee following procedures contained in chapter 5, title 45, Idaho Code.

A Governmental Entity that discovers an error in its Impact Fee formula that results in assessment or payment of more than a Proportionate Share shall, at the time of assessment on a case by case basis, adjust the fee to collect no more than a Proportionate Share or discontinue the collection of any Impact Fees until the error is corrected by ordinance.

See Appendix C, Ordinance Template Section: ____-05 (b) – Imposition and Computation of Impact Fees, which addresses this requirement of the Act.

§ 67-8214. Other powers and rights not affected

- (1) Nothing in this chapter shall prevent a Governmental Entity from requiring a Developer to construct reasonable Project improvements in conjunction with a Development Project.

See Appendix C, Ordinance Template Section: ____-12(d) – Miscellaneous Provisions, which addresses this requirement of the Act.

- (2) 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 Improvement Costs incurred by a Developer including interproject transfers of credits or providing for reimbursement for Project improvements which are used or shared by more than one (1) Development Project. If it can be shown that a proposed Development has a direct impact on a public facility under the jurisdiction of the Idaho Transportation Department, then the agreement shall include a provision for the allocation of Impact Fees collected from the Developer for the improvement of the public facility by the Idaho Transportation Department.

See Appendix C, Ordinance Template Section: _____-12(k) – Miscellaneous Provisions, which addresses this requirement of the Act.

(3) Nothing in this chapter shall obligate a Governmental Entity to approve Development which results in an Extraordinary Impact.

See Appendix C, Ordinance Template Section: _____-05(j) Imposition and Computation of Impact Fees, which address this election in connection with payment as required by the Act.

(4) Nothing in this chapter shall obligate a Governmental Entity to approve any Development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in the Development Impact Fee ordinance.

See Appendix C, Ordinance Template Section: _____-12(f) – Miscellaneous Provisions, which addresses this requirement of the Act.

(5) Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of counties or cities in regulating the orderly Development of real property within their boundaries.

See Appendix C, Ordinance Template Section: _____-12(b) – Miscellaneous Provisions, which addresses this requirement of the Act.

(6) Nothing in this chapter shall work to limit the use by governmental entities of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.

See Appendix C, Ordinance Template Section: _____-12(i) – Miscellaneous Provisions, which addresses this requirement of the Act.

(7) Nothing herein shall restrict or diminish the power of a Governmental Entity to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a Developer or owner, or to impose reasonable conditions thereon, including the recovery of Project or System Improvement Costs required as a result of such voluntary annexation.

See Appendix C, Ordinance Template Section: _____-12(l) – Miscellaneous Provisions, which addresses this requirement of the Act.

§ 67-8215. Transition

(1) The provisions of this chapter shall not be construed to repeal any existing laws authorizing a Governmental Entity to impose fees or require contributions or property dedications for Capital Improvements. All ordinances imposing Development Impact Fees shall be brought into conformance with the provisions of this chapter within one (1) year after the effective date of this chapter. Impact fees collected and Developer agreements entered into prior to the expiration of the one (1) year period shall not be invalid by reason of this chapter. After adoption of a Development Impact Fee ordinance, in accordance with the provisions of this chapter, notwithstanding any other provision of law, Development Requirements for System Improvements shall be imposed by governmental entities only by way of Development Impact Fees imposed pursuant to and in accordance with the provisions of this chapter.

N/A

(2) Notwithstanding any other provisions of this chapter, that portion of a Project for which a valid building permit has been issued or construction has commenced prior to the effective date of a Development Impact Fee ordinance shall not be subject to additional Development Impact Fees so long as the building permit remains valid or construction is commenced and is pursued according to the terms of the permit or Development Approval.

See Appendix C, Ordinance Template Section ____-02(d) – Authority, Applicability, and Effective Date, which addresses this requirement of the Act.

§ 67-8216. Severability

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

See Appendix C, Ordinance Template Section ____-12(p) – Miscellaneous Provisions, which addresses this requirement of the Act.