

# Chapter 10

## ARTICLE C. WASTEWATER IMPACT FEES

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#### **2-10C-1: PURPOSE:**

The purpose of this article is to regulate the use and development of land through impact fees so as to assure that new development bears an equitable and proportionate share of the cost of increasing the wastewater facilities necessitated and generated by such development, and to assist in the implementation of the general plan of the town. The intent of this article is to comply with the impact fee act, the Utah constitution, and the United States constitution. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-2: DEFINITIONS:**

**BUILDING PERMIT:** A permit from the town for the construction of any structure or building.

**CAPITAL FACILITIES PLAN:** A plan required by Utah Code Annotated section [11-36-201](#), which is satisfied by adoption of the reports as a "reasonable plan" in lieu of a capital facilities plan as allowed because the town has a population of five thousand (5,000) or less based on the last census.

**DEVELOPMENT ACTIVITY:** Any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land that creates additional demand and need for water or wastewater facilities.

**FEE PAYER:** A person who seeks to develop land which uses water and requires the issuance of a building permit.

**PERSON:** An individual, a corporation, a partnership, an incorporated association, a limited liability company, or any other similar entity.

**PROPORTIONATE SHARE:** The cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity.

**PUBLIC WORKS DIRECTOR:** The Public Works Director of Brian Head Town, or his designee.

**TOWN MANAGER:** The Town Manager of Brian Head Town, or his designee.

**WASTEWATER FACILITIES:** The town wastewater infrastructure systems, including, but not limited to, water treatment facilities, sewer lines and pipes, storage facilities, ditches, easements and rights of way, and all associated real property, structures and equipment used in connection with the town wastewater systems. "Wastewater facilities" does not mean water rights.

**WASTEWATER IMPACT FEE:** A payment of money imposed upon development activity as a condition of development approval to be used for the purpose of constructing and upgrading wastewater facilities necessitated by development activity. "Wastewater impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other permits or application fee.

**WATER METER:** A device that measures the flow of water to a specific lot, parcel, structure, business or dwelling. "Water meter" does not mean a fire meter where the water passes through the meter only when there is a fire or immediate threat of fire to the structure or property serviced by the meter. (Ord. 04-006(B), 10-27-2004)

### **2-10C-3: IMPOSITION OF WASTEWATER IMPACT FEE:**

- A. Any person who, after the effective date hereof, seeks to develop land in the town by making improvements to the land which will generate additional water use is hereby required to pay a wastewater impact fee in the manner and amounts set forth in this article. The fees shall be paid at the time of the building permit application. The amount of the wastewater impact fee shall be as set forth in the town schedule of fees and charges. The amount of the wastewater impact fee may be modified at any time by resolution of the Town Council. The amount of the wastewater impact fee shall be no more than that justified by the capital facilities plan for wastewater. (Ord. 04-006(B), 10-27-2004; amd. 2010 Code)
- B. No building permit shall be issued by the town unless or until the wastewater impact fee required by this article has been paid.
- C. The following shall be exempted from payment of the wastewater impact fee:
  1. Alterations or expansion of an existing residential building where no additional residential units are created and where no additional wastewater demand is added.
  2. The construction of accessory buildings or structures where no additional wastewater demand is added.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure where no additional wastewater demand is added.
  4. Alterations or expansion of an existing commercial or manufacturing building not increasing the equivalent residential units of wastewater generated by such building.
- D. Any claim or exemption must be made no later than the time of application for a building permit or permit for mobile home installation. Any claim not so made shall be deemed waived. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-4: COMPUTATION OF AMOUNT OF WASTEWATER IMPACT FEE:**

- A. At the option of the fee payer, the amount of the wastewater impact fee shall be determined as established in section [2-10C-3](#) of this article, or as set forth in subsection B of this section.
- B. If a fee payer opts not to pay the wastewater impact fee as established in section [2-10C-3](#) of this article, the fee payer shall pay the wastewater impact fee as determined under this subsection. The fee payer shall prepare and submit to the Public Works Director an independent fee calculation study for the land development activity for which the building permit is sought. The cost of the independent fee calculation shall be borne by the fee payer. The independent fee calculation study shall follow accepted professional hydro-engineering methodologies as approved by the Public Works Director. The independent study submitted shall show the basis upon which the independent fee calculation was made. If the public works director determines that the independent fee calculation study provides a more accurate and equitable basis upon which to calculate the wastewater impact fee, then the amount of the fee set forth in the independent fee calculation study shall be the fee that the fee payer is required to pay under this article. Any fees imposed under this article which are modified pursuant to an independent fee calculation as provided herein shall apply only to the fee payer who prepared and submitted the independent fee calculation.
- C. If the fee payer opts to have the wastewater impact fee determined according to subsection B of this section, and the public works director has approved the fee as determined in the independent fee calculation, the fee payer may not then choose to pay the fee under subsection A of this section. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-5: USE OF FUNDS:**

- A. There is hereby established a separate interest bearing ledger account for the deposit of wastewater impact fees collected pursuant to this article.
- B. Funds collected pursuant to the wastewater impact fee shall be deposited in such account and shall only be used by the town to construct and upgrade wastewater facilities, which are identified in the capital facilities plan.

- C. Interest earned on such account shall be retained therein and annually the town shall prepare a report regarding it.
- D. Funds may be used to provide refunds as described in section [2-10C-8](#) of this article.
- E. A separate administrative charge may be established for impact assessment reviews for the purpose of recovering the governmental costs associated with preparing, reviewing, assessing, collecting and administering this article. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-6: SERVICE AREA:**

Based upon the geographic size and the interconnection of the wastewater service of the town, there is hereby established a single wastewater impact fee service area comprising the corporate limits of the town. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-7: ADJUSTMENT OF FEES:**

The Public Works Director may adjust either up or down the standard wastewater impact fee at the time the fee is charged in order to respond to the unusual circumstances in specific cases and to ensure that the fees are imposed fairly. The Public Works Director may also adjust the amount of the fees to be imposed upon a developer if the developer submits studies and data clearly showing that the payment of an adjusted wastewater impact fee is more consistent with the intent and purposes of the article as provided in subsection [2-10C-4B](#) of this article. If the Public Works Director makes an adjustment in the wastewater impact fee imposed, the Public Works Director shall make written findings that support the adjustment. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-8: REFUNDS:**

The town shall refund any wastewater impact fees paid by a fee payer when:

- A. The fee payer has not proceeded with the development activity;
- B. The fee pay has filed a written request with the public works director for a refund within two (2) years after the wastewater impact fee was paid;
- C. The fees have not been spent or encumbered; and
- D. No impact has resulted. (Ord. 04-006(B), 10-27-2004)

#### **2-10C-9: APPEALS:**

- A. Any person required to pay a wastewater impact fee who believes the fee does not meet the requirements of law may file a written request for information with the Town Clerk.
- B. Within two (2) weeks of the receipt of the request for information, the town shall provide the person or entity with a copy of the reports and with any other relevant information relating to the wastewater impact fee.
- C. Any person or entity required to pay an impact fee imposed under this article who believes the fee does not meet the requirements of law may request and be granted a full administrative appeal of that grievance. An appeal shall be made to the Town Manager within thirty (30) calendar days of the date of the action complained of, or of the date when the complaining person reasonably should have become aware of the action.
- D. The notice of the administrative appeal to the Town Manager shall be filed with the office of the Town Clerk and shall contain the following information:
  - 1. The person's name, mailing address, and daytime telephone number;
  - 2. A copy of the written request for information and a brief summary of the grounds for appeal;
  - 3. The relief sought.
- E. The Town Clerk shall schedule the appeal before the Town Manager no sooner than five (5) and not later than fifteen (15) days from the date of the filing of the appeal. The written decision of the Town Manager shall be made no later than thirty (30) days after the date the challenge to the fee is filed with the town and shall, when necessary, be forwarded to the appropriate town officials for corrective action.
- F. Any person who is adversely affected by the Town Manager's decision may appeal to the district court in accordance with Utah Code Annotated section 11-36-401.
- G. The provisions of this section notwithstanding, the town and persons participating in the proceeding may, by written stipulation, extend the time periods specified in this section.
- H. A person who has failed to comply with the administrative remedies established by this section may not file or join an action challenging the validity of any impact fee.
- I. The town shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, order and, if available, a true and correct transcript of its proceedings. (Ord. 04-006(B), 10-27-2004)