

Chapter 5

IMPACT FEES AND FUNDS

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2-5-1: PURPOSE AND INTENT:

The purpose and intent of these impact fee procedures are:

- A. To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new land development.
- B. To implement the goals, objectives and policies of the town comprehensive plan to assure that new land development contributes its fair share toward the costs of capital improvements reasonably necessitated by such new land development.
- C. To ensure that new land development is reasonably benefited by the provision of the capital improvements provided with the proceeds of impact fees.
- D. To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.
- E. To ensure that all applicable procedures and requirements of Colorado Revised Statutes sections 29-1-801 through 29-1-804 and 29-20-101 through 29-20-108 have been met.
- F. The impact fee study, prepared by TischlerBise, dated October 4, 2016, set forth a reasonable methodology and analysis for determining and quantifying the reasonable impacts of various types of proposed residential and nonresidential development on the town's capital facilities and

streets system; quantified the reasonable impact of proposed development on the capital facilities addressed therein; determined the costs necessary to meet the demands created by new development; and determined impact fees as set forth in ~~this~~ Article A that are at a level no greater than necessary to defray such impacts of proposed new development on the town's existing capital facilities. The town hereby establishes as town standards the assumptions and level of service standards referenced in the impact fee study as part of its current plans for future expansions to the town's capital facilities addressed in such study.

G. The impact fees set forth in this chapter are based on the impact fee study and are intended to defray the projected impacts on the town's park capital facilities, storm drainage systems, public capital facilities and streets and related appurtenances directly related to and caused by proposed development.

H. The impact fees set forth in this chapter are based on the impact fee study and do not and will not be used to remedy any deficiencies in capital facilities or improvements that exist without regard to the proposed development. (Ord. 47-2016, 12-13-2016)

2-5-2: DEFINITIONS:

The words or phrases used herein shall have the meanings prescribed in section 1-3-2 of this code except as otherwise indicated herein:

APPLICANT: Any person who files an application with the town for a building permit for new land development.

APPROPRIATION OR TO APPROPRIATE: An action by the town to identify specific capital improvements for which impact fee funds may be utilized. "Appropriation" shall include, but shall not necessarily be limited to: inclusion of a capital improvement in the adopted town budget or capital improvements program; execution of a contract or other legal encumbrance for construction of a capital improvement using impact fee funds in whole or in part; and/or actual expenditure of impact fee funds through payments made from an impact fee account.

CAPITAL EXPENDITURE: Any expenditure for an improvement, facility or equipment necessitated by new land development which has an estimated useful life of five (5) years or longer, and which is required pursuant to a town resolution. "Capital expenditures" may be for any or all of the following: ~~water resources; water facilities; sewer facilities;~~ storm drainage and flood control facilities; transportation; law enforcement; ~~fire and emergency medical services;~~ municipal facilities; solid waste disposal; ~~utilities; trees;~~ and parks, recreation, open space and trails.

CAPITAL IMPROVEMENTS EXPENDITURES: Include amounts appropriated in connection with the planning, design, engineering and construction of capital improvements; planning, legal, appraisal and other costs related to the acquisition of land, financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the capital improvement.

~~COMMERCIAL OR INDUSTRIAL USE: Any use or establishment not defined as a "dwelling unit".~~

CONNECTION: The physical tie in of a land developer's water, effluent or sewer service to the town water, effluent or sewer main.

DEVELOPER: The individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for creating a demand for town facilities and capital improvements by seeking approval of a new land development.

DIRECTOR: The director of community development or his designee.

DWELLING UNIT: One or more rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy or for rental or lease on a monthly or longer basis, physically separated from any other rooms or dwelling units which may be in the same structure. "Dwelling unit" shall not include those units designed primarily for transient occupant purposes, nor shall they include rooms in hospitals or nursing homes.

Single-Family Detached Dwelling Unit: A residential building containing not more than one dwelling unit entirely surrounded by open space on the same lot.

All Other Dwelling Units: A single-family attached dwelling, a duplex, or multi-family dwelling or other dwelling unit not defined as a "single-family detached dwelling unit".

~~FUND: A special fund, for accounting purposes, created by this section for the purpose of efficiently collecting and expending any impact fees collected.~~

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GOVERNING BODY: The board of trustees of the town of Erie, Colorado.

IMPACT FEE: A fee adopted pursuant to Colorado Revised Statutes section 29-1-802 which is imposed on new land development on a pro rata basis in connection with and as a condition of the issuance of a building permit or land development approval and which is calculated to defray all or a portion of the costs of the capital improvements required to accommodate new land development at town designated level of service (LOS) standards and which reasonably benefits the new land development. See definition of Land Development Charge (Or Impact Fee).

IMPACT FEE ADOPTION AND IMPOSITION: This chapter establishes procedures and requirements for all impact fees which may be adopted by the town.

LAND DEVELOPMENT: The issuance of a building permit or a connection permit for the construction, reconstruction, redevelopment or conversion of a use of land or any structural alteration, relocation or enlargement which results in an increase in the number of "service units" required, or the extension of a use or a new use of land which results in an increase in the number of "service units".

LAND DEVELOPMENT CHARGE (OR IMPACT FEE): A fee relating to a capital expenditure or service provided by the town which is imposed on land development as a condition of approval of such land development as a prerequisite to obtaining a permit (building permit) or service (connection permit).

MULTIPLE USES: A new development consisting of both residential and nonresidential uses, or one or more different types of nonresidential use, on the same site or part of the same new land development.

MUNICIPAL PLANNING AREA: An area outside of the present town limits, but in which the town will provide public facilities and capital improvements.

~~COMMERCIAL OR INDUSTRIAL USE~~ NONRESIDENTIAL DEVELOPMENT: Any use or establishment not defined as a "dwelling unit".

~~PRIVATE SCHOOL~~ RESIDENTIAL DEVELOPMENT: Any use or establishment defined as a "dwelling unit". A nonpublic school serving children from the grades of kindergarten through twelfth grade, or some portion thereof.

SERVICE UNIT: A standard unit of measurement of consumption, use, generation or discharge of a capital improvement or service provided by the town.

SITE SPECIFIC DEDICATION OR IMPROVEMENT: Includes, without limitation:

A. With respect to the parks impact fee set forth herein, all park facilities and improvements located within the boundaries of the proposed development and designed and intended to provide park facilities and improvements only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide connections from existing parks facilities to only the applicant's development;

B. With respect to the public facilities impact fees set forth herein, respectively, all public facilities located within the boundaries of the proposed development and designed and intended to provide such facilities only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide such facilities to only the applicant's development;

C. With respect to the ~~streets-transportation~~ impact fee, all access streets adjacent to the proposed development and/or leading only to the proposed development; all roads and driveways within the development; all acceleration, deceleration, right or left turn lanes leading to any streets and driveways within the development; and all traffic control devices and signals for streets and driveways within the development. The foregoing street improvements include all improvements within the right of way, including, but not limited to, all road preparation and surfacing, curbs and gutters, medians, entryways, underground utilities, sidewalks, bicycle paths, bridges, street lighting, landscaping and drainage improvements.

SQUARE FEET/SQUARE FOOTAGE: Gross floor area of non-residential development.

TRANSIENT OCCUPANCY: Occupancy by any one person or group of persons for a period of less than thirty (30) days at a time. (Ord. 47-2016, 12-13-2016)

2-5-3: APPLICATION OF PROVISIONS:

A. Affected Area:

1. Impact Fee District: Impact fees shall be imposed on new land development in the town.
2. Municipal Planning Areas: Impact fees imposed by the town shall, if necessary and appropriate, be collected by other municipalities or by the county on new land development within the town's municipal planning area, but outside of the town limits, pursuant to an intergovernmental agreement which provides that the impact fees collected be transferred to the appropriate town fund for expenditure in accordance with the terms of this chapter.

B. Type Of Land Development Affected: This chapter shall apply to all "land development" as defined in section 2-5-2 of this chapter and as may be further defined in the individual impact fee setting ordinances for particular public facilities or categories of capital improvements, but excluding land developments described in subsection 2-5-4A of this chapter. (Ord. 47-2016, 12-13-2016)

2-5-4: EXEMPTIONS/WAIVERS FROM PROVISIONS:

A. Exemptions Enumerated:

1. Previously Issued Building Permits: No new impact fee shall be imposed on land development for which a building permit has been issued prior to the effective date hereof.
2. Previous Payment Of Impact Fees: Subject to the requirements of section 2-5-8 of this chapter, no impact fees shall be due at a later stage of the development permit or approval process if impact fees have been paid for such category of capital improvements at an earlier stage in the development permit or approval process.
3. No Net Increase In Dwelling Units: No impact fee shall be imposed on any new residential development which does not add a new dwelling unit (service unit).
4. No Net Increase In Nonresidential Square Footage: No impact fee shall be imposed on any new nonresidential development which does not add square footage, unless the new nonresidential development increases the demand for capital improvements (service units) for which impact fees are being imposed.
5. Other Uses: No impact fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in the demand for capital improvements (service units).

6. Annexation And Development Agreements: This chapter shall not apply to new land developments which are the subject of an annexation or development agreement containing provisions in conflict with this chapter, but only to the extent of the conflict or inconsistency.

B. Application For Exemption Or Waiver: Petitions for exemptions to the application of the provisions of this chapter or waivers from specific impact fees shall be filed with the board of trustees on forms provided by the town.

C. Effect Of Grant Of Exemption/Waiver: If the board of trustees grants an exemption or waiver in whole or in part of impact fees otherwise due, the amount of the impact fees exempted or waived shall be provided by the town from nonimpact fee funds, as may be provided in the particular impact fee ordinances establishing such fees for particular capital improvements, and such funds shall be deposited to the appropriate impact fee account within a reasonable period of time consistent with the applicable town capital improvements program.

D. Annexation And Development Agreements: Nothing herein shall be deemed to limit the town's authority or ability to enter into annexation and development agreements with applicants for new land development which may provide for dedication of land, payments in lieu of impact fees, or actual infrastructure improvements. Such agreements may allow offsets against impact fees for contributions made or to be made in the future in cash, or by taxes or assessments or dedication of land or by actual construction of all or part of a capital improvement by the affected property owner. (Ord. 47-2016, 12-13-2016)

2-5-5: LIMITATIONS OF IMPACT FEE PAYMENTS:

A. The payment of impact fees shall not entitle the applicant to a building permit unless all other applicable land use, zoning, planning, platting, subdivision or other related requirements, standards and conditions have been met. Such other requirements, standards and conditions are independent of the requirement for payment of an impact fee.

B. Neither this chapter nor the specific impact fee ordinances for particular categories of capital improvements shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the town land development regulations, which shall be operative and remain in full force and effect without limitation. (Ord. 47-2016, 12-13-2016)

2-5-6: PERIOD OF EFFECT:

This chapter and the procedures established herein shall remain in effect unless and until repealed, amended or modified by the board of trustees in accordance with applicable state law and this code, and town ordinances and resolutions. (Ord. 47-2016, 12-13-2016)

2-5-7: ANNUAL REPORT:

A. Annual Report Required: At least once every year, not later than October 15 of each year, beginning October 15, 2017, and prior to the board of trustees' adoption of the annual budget and capital improvements program, the town administrator or his designee shall coordinate the preparation and submission of an annual report to the board of trustees on the subject of impact fees. Such annual report may be incorporated into the annual submission of the town's budget and/or capital improvement program.

B. Contents:

1. The annual report may include any or all of the following:

- a. Recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting impact fees for particular capital improvements.
- b. Proposed changes to the comprehensive plan or plan elements and/or an applicable capital improvements program, including the identification of additional capital improvement projects anticipated to be funded wholly or partially with impact fees.
- c. Proposed changes to impact fee schedules as set forth in the ordinances imposing and setting impact fees for particular capital improvements.
- d. Proposed changes to level of service standards for particular categories of capital improvements.
- e. Proposed changes to any impact fee calculation methodology.
- f. Proposed changes to the population, housing, land use, persons per household or nonresidential development projections included in the impact fee report and upon which the impact fee amounts have been determined.
- g. Other data, analyses or recommendations as the town administrator or his designee may deem appropriate, or as may be requested by the board of trustees.

2. The annual report may additionally include any or all of the following on an annual basis:

- a. Number of building permits issued by type of residential or nonresidential development;
- b. Square footage (gross floor area) of nonresidential development, by type;
- c. Total amount of impact fees collected, by category of capital improvement and by land use type;
- d. The amount of expenditures made from the impact fee account and the purpose for which the expenditure was made, i.e., the description, type and location of the capital improvement project;
- e. When the capital improvement project was initiated and when it was (or will be) completed;
- f. Whether additional impact fee funds will be appropriated for the same project in the future;
- g. Whether supplemental nonimpact fee funds have been used for the project and, if so, how much and what percentage;

- h. The service area of the capital improvement project;
- i. The total estimated cost of the capital improvement project and the portion funded with impact fees;
- j. Whether the capital improvement project is in the town's current annual budget or capital improvements program;
- k. The estimated useful life of the capital improvement project;
- l. The extent to which the capital improvement project is needed to serve new land development;
- m. The extent to which the capital improvement project is needed to maintain the existing level of service (LOS) standard; and
- n. Such other facts as may be deemed relevant by the board of trustees.

C. Submission Of Report; Board Of Trustees Action: The town administrator or his designee shall submit the impact fee annual report to the board of trustees, which shall receive the annual report and which may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

D. The town administrator or his designee shall publish annually the information required pursuant to Colorado Revised Statutes section 29-1-803.

(Ord. 47-2016, 12-13-2016)

2-5-8: IMPOSITION, CALCULATION AND COLLECTION PROCEDURES:

A. Generally: An applicant may request notification by the town of the applicable impact fee requirements at the time of application for a building permit. At such time, an impact fee calculation form shall be prepared and a copy shall be given to the applicant. Impact fees shall be calculated by the town at the time of application for a building permit and shall be paid by the applicant prior to the issuance of a building permit.

B. Calculation:

1. Upon receipt of an application for a building permit or an application for a business license, the town shall determine: a) whether it is a residential or nonresidential use; b) the specific category (type) of residential or nonresidential development, if applicable; c) if residential, the number of new dwelling units; and d) if nonresidential, the number of new or additional square feet of gross floor area (rounded up to the nearest square foot) and the proposed use.
2. Upon receipt of an application for a building permit, the town shall determine whether it is for a change in use. In such cases, the impact fee due shall be based only on the incremental increase in the fee for the additional service units added by the change in use.

3. After making these determinations, the town shall calculate the demand for the capital improvements (service units) added by the new land development for each capital improvements category for which an impact fee is being imposed and calculate the applicable impact fee by multiplying the demand (service units) added by the new development by the amount of the applicable impact fee per service unit, incorporating any applicable offset if set forth in the particular impact fee calculation methodology.

4. If the type of land use proposed for land development is not expressly listed in the particular impact fee ordinance and schedule, the town shall:

a. Identify the most similar land use type listed and calculate the impact fee based on that land use; or

b. Identify the broader land use category within which the specified land use would fit and calculate the impact fee based on that land use category; or

c. At the option of the applicant, or the director, determine the basis used to calculate the fee pursuant to an independent impact analysis of service units added. This option shall be available only for transportation impact fees and shall be requested by the applicant on a form provided by the town for such purpose. If this option is chosen, the following shall apply:

(1) The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the director and, if appropriate, the director of ~~public works~~ streets and utilities or other town staff or officials, prior to payment of the fee.

(2) The independent impact analysis shall measure the impact (in service units) that the proposed development will have on the particular category of capital improvements at issue, and shall be based on the same methodologies used in the impact fee calculation methodology report, and shall be supported by professionally acceptable data and assumptions.

(3) After review of the independent impact analysis submitted by the applicant, the director shall accept or reject the analysis and provide written notice to the applicant of his decision on a form provided for such purpose within thirty (30) days. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.

(4) The final decision of the director may be appealed pursuant to section 2-5-10 of this chapter.

5. An applicant may request a nonbinding estimate of impact fees due for a particular land development at any time by filing a request on a form provided for such purpose by the town; provided, however, that such estimate may be subject to change when a formal application for a building permit for land development is made. Such nonbinding estimate is solely for the benefit of the prospective applicant and shall in no way bind the town nor preclude it from making amendments or revisions to any provisions of this chapter, the specific impact fee implementing ordinances or the impact fee schedules.

6. The calculation of impact fees due from a multiple use land development shall be based upon the aggregated demand (in service units) for each category of capital improvements generated by each land use type in the land development.

7. The calculation of impact fees due from a phased land development shall be based upon the demand (in service units) generated by each specific land use within the phase of development for which a separate building permit is requested.

8. Impact fees shall be calculated based on the impact fee amount in effect at the time of a complete application for a building permit. An application shall be complete as determined by the town of Erie.

C. Offsets And Credits:

1. Not Required To Meet Same Need; Award Restrictions: No party shall be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed. Therefore, after the effective date hereof, all land dedications and improvements for a capital need for which an impact fee is imposed, over and above those required by the town in connection with a proposed development, shall result in a credit against the impact fee otherwise due for such development. However, no credit shall be awarded for: a) any land dedications for or acquisition or construction of site related or site specific improvements; b) any land dedications not accepted by the town; c) any acquisition or construction of facilities and improvements not approved in writing by the town prior to commencement of the acquisition, development or construction; d) any dedication, construction or acquisition of a type of facility or improvement not included in the calculation of the applicable capital facilities impact fee in the impact fee study.

2. Examples Of Offsets: Offsets against the amount of an impact fee due from a land development shall be provided for, among other things, contributions made or to be made in the future in cash, or by dedication of land or by actual construction of all or part of a capital improvement by the affected property owner for capital improvements meeting or exceeding the demand generated by the land development and the contribution is determined by the town to be an acceptable substitute for the cost of capital improvements which are included in the particular impact fee calculation methodology.

3. Valuation Of Credits: The credit due to an applicant shall be calculated and documented as follows:

a. Credit for qualifying land dedications shall, at the applicant's option, be valued at: 1) one hundred percent (100%) of the most recent estimated actual value for such land as shown in the records of the county assessor, or 2) that fair market value established by an MAI or Colorado certified general real estate appraiser acceptable to the town in an appraisal paid for by the applicant.

b. In order to receive credit for qualifying acquisition or construction of capital facility improvements, the applicant shall submit completed engineering drawings, specifications and construction cost estimates to the town. The town 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 town.

4. Effective Date Of Credits:

a. Approved credits for land dedications shall become effective when the land has been conveyed to the town in a form acceptable to the town at no cost to the town, and accepted by the town. When such conditions have been met, the town shall note that fact in its records. Upon written request from the applicant, the town shall issue a letter stating the amount of credit available.

b. Approved credits for the acquisition or construction of capital facilities and improvements shall generally become effective when: 1) all required construction has been completed and has been accepted by the town; 2) a suitable maintenance and warranty bond has been received and approved by the town; and 3) all design, construction, inspection, testing, bonding and acceptance procedures have been completed in compliance with all applicable town and state procedures.

c. Approved credits may be used to reduce the amount of impact fees due from any proposed development until the amount of the credit is exhausted. A credit may only be applied to the same category of impact fee for which the credit was obtained. Each time a request to use approved credits is presented to the town, the town shall reduce the amount of the applicable impact fee otherwise due from the applicant and shall note in the town records the amount of credit remaining, if any. Upon request of the applicant, the town shall send the applicant a letter stating the number of credits available.

d. Approved credits shall only be used to reduce the amount of the impact fee otherwise due under this chapter and shall not be paid to the applicant in cash or in credits against any other monies due from the applicant to the town. If the credit has not been exhausted within ten (10) years of the date of issuance of the first building permit for which a fee was due and payable under the provisions of this chapter, or within such other period as may be designated in writing by the town, such credit shall lapse.

5. Transferability Of Credits: Credits for contributions, construction or dedication of land shall be transferable within the same development and for the same capital facility for which the credit is provided, but shall not be transferable outside the development or used as credit against fees for other capital facilities. Credit may be transferred pursuant to these terms and conditions by any written instrument that clearly identifies which credits issued under this chapter are to be transferred. The instrument shall be signed by both the transferor and transferee, and the document shall be delivered to the town planning director or designee for registration of the change in ownership. If there are outstanding obligations under such agreement, the town may require that the transferor or transferee, or both (as appropriate) enter into an amendment to the credit agreement to assure the performance of such obligations.

6. Contributions Or Payments: Contributions for capital facilities shall be based on the value of the contribution or payment at the time it is made to the town.

7. Determination: The amount of the excess contribution, if any, shall be determined by the town upon receipt of an application form requesting an offset; provided, however, that: a) the town will make no reimbursement for excess contributions unless and until the particular ~~capital improvements~~ ~~impact fee~~ fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the town's capital improvements program; and b) the excess

contribution may not be transferred or credited to any other type of impact fees calculated to be due from that development for other types of capital improvements. The determination of the eligibility for and the amount of the credit shall be made by the town on a form provided for such purposes. The discretion of the town shall not be abused. If the applicant contends that any aspect of the town's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to section 2-5-10 of this chapter.

8. Preapproval Of Town: No offset or credit shall be allowed unless the town has approved the contribution or payment before it is made.

D. Collection:

1. The town shall collect all applicable impact fees at the time of issuance of a building permit and shall issue a receipt to the applicant for such payment unless:

- a. The applicant is determined to be entitled to a full offset or credit; or
- b. The applicant has been determined to be not subject to the payment of an impact fee; or
- c. The applicant has filed an appeal, and a bond or other surety in the amount of the impact fee, as calculated by the town and approved by the town attorney and finance director, has been posted with the town.

2. The town shall collect an impact fee at the time of issuance of a building permit even if impact fees were paid by the applicant at an earlier time in the development permit or approval process if the amount of the impact fees have increased since such prior approval. Except as provided for in subsection 2-5-4A of this chapter, the applicant shall only be liable for the difference between the impact fees paid earlier and those in effect at the time of issuance of the subsequent building permit. (Ord. 47-2016, 12-13-2016)

2-5-9: ACCOUNTSING, FUNDS APPROPRIATIONS AND REFUNDS:

A. Impact Fee Accountsing: An impact fee ~~account-fund~~ shall be established by the town for each category of capital improvements for which impact fees are imposed. ~~Such account shall clearly identify the category, account, or fund for which the impact fee has been imposed.~~ All impact fees collected by the town shall be deposited into the appropriate impact fee ~~account-fund~~, ~~which and~~ shall be invested in interest bearing instruments. All interest earned on monies deposited to such ~~account-fund~~ shall be credited to and shall be considered funds-resources of the ~~account-fund~~. ~~The funds of each such account shall be capable of being accounted for separately from all other town funds, over time.~~ The town shall establish and implement necessary accounting controls to ensure that ~~the~~ impact fee funds-monies are properly deposited, accounted for and appropriated in accordance with this chapter and any other applicable legal requirements.

B. Appropriation Of Impact Fees ~~Funds~~:

1. In General: Impact fees ~~funds~~ may be appropriated for capital improvements and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other

obligations issued by or on behalf of the town or other applicable local governmental entities to finance such capital improvements. All appropriations from impact fee ~~accounts-funds~~ shall be detailed on a form provided for such purposes and filed within the finance department.

2. Restrictions On Appropriations: Impact fees shall be appropriated only: a) for the particular category of capital improvements for which they were imposed, calculated and collected; and b) within six (6) years of the beginning of the fiscal year immediately succeeding the date of collection, unless such time period is extended as provided herein. Impact fees shall not be appropriated for funding maintenance or repair of capital improvements nor for operational or personnel expenses associated with the provision of the capital improvements.

3. Appropriation Of Impact Fees ~~Funds~~ ~~Funds~~ Beyond Six Years Of Collection: Notwithstanding subsection B2 of this section, impact fees ~~funds~~ may be appropriated beyond six (6) years from the beginning of the fiscal year immediately succeeding the date of collection if the appropriation is for a capital improvement which requires more than six (6) years to plan, design and construct, and the demand for the capital improvement is generated in whole or in part by the new land development, or if the capital improvement will actually serve the new land development. Such appropriations shall be fully documented on forms provided by the town for such purposes.

C. Procedure For Appropriation Of Impact Fees ~~Funds~~:

1. The town shall each year identify capital improvement projects anticipated to be funded in whole or in part with impact fees. The capital improvement recommendations shall be based upon the impact fee annual review set forth in section 2-5-7 of this chapter and such other information as may be relevant, and may be part of the town's annual budget and capital improvements programming process.

2. The recommendations shall be consistent with the provisions of this chapter, the particular impact fee ordinances, or other applicable legal requirements and any guidelines adopted by the board of trustees.

3. The board of trustees may include impact fee funded capital improvements in the town's annual budget and capital improvements program. If included, the description of the capital improvement shall specify the nature, location, capacity to be added, service area, need/demand for, and the anticipated timing of completion of the capital improvement.

4. The board of trustees may authorize impact fee funded capital improvements at such other times as may be deemed necessary and appropriate by the board of trustees.

5. The board of trustees shall verify that adequate impact fees ~~funds~~ are or will be available from the appropriate impact fee ~~account-fund~~ for the particular category of capital improvements.

D. Refunds:

1. Eligibility For Refund:

a. Expiration Or Revocation Of Building Permit: An applicant who has paid an impact fee for a land development for which the necessary building permit has expired or for which the building

permit has been revoked prior to construction shall be eligible to apply for a refund of impact fees paid on a form provided by the town for such purposes.

b. Failure Of Town To Appropriate Impact Fees ~~Funds~~ Within Time Limit: The current property owner may apply for a refund of impact fees paid by an applicant if the town has failed to appropriate the impact fees collected from the applicant within the time limit established in subsections B2 and B3 of this section. The refund application shall be made on a form provided by the town for such purposes.

c. Abandonment Of Development After Initiation Of Construction: An applicant who has paid an impact fee for a new land development for which a building permit has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.

d. Administrative Fee: A ten percent (10%) administrative fee, but not to exceed five hundred dollars (\$500.00), shall be deducted from the amount of any refund granted and shall be retained by the town in the appropriate impact fee account to defray the administrative expenses associated with the processing of a refund application.

2. Refund Recipient: Except as provided in subsections D1a, D1c and D4 of this section, refunds shall be made only to the current owner of property on which the new land development was proposed or occurred.

3. Processing Of Refund Applications:

a. Applications for a refund shall be made on a form provided by the town for such purposes and shall include all information reasonably required by the town. Upon receipt of a complete application for a refund, the town shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the town.

b. Applications for refunds due to abandonment of a new land development prior to completion shall be made on forms provided by the town and shall be made within sixty (60) days following expiration or revocation of the building permit. The applicant shall submit: 1) evidence that the applicant is the property owner or the duly designated agent of the property owner; 2) the amount of the impact fees paid by capital improvements category and receipts evidencing such payments; and 3) documentation evidencing the expiration or revocation of the building permit or approval of demolition of the structure pursuant to a valid town issued demolition permit. Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or approval of demolition of the structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the town in calculating the amount of the refunds.

c. Applications for refunds due to the failure of the town to appropriate impact fees collected from the applicant within the time limits established in subsection B2 of this section shall be made on forms provided by the town and shall be made within one year following the expiration

of such time limit. The applicant shall submit: 1) evidence that the applicant is the property owner or the duly designated agent of the property owner; 2) the amount of the impact fees paid by capital improvements category and receipts evidencing such payments; and 3) description and documentation of the town's failure to appropriate impact fee funds for relevant capital improvements.

4. Method Of Making Refunds: The town may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same category of capital improvements for new land development on the same property, or by other means subject to agreement with the property owner. (Ord. 47-2016, 12-13-2016)

2-5-10: APPEALS:

A. Filing Appeal: An appeal from any decision of a town official pursuant to this chapter shall be made to the board of trustees by filing a written appeal pursuant to the appropriate town form with the town clerk within thirty (30) days following the decision which is being appealed; provided, however, that if the notice of appeal is accompanied by a letter of credit in a form satisfactory to the town attorney and the finance director in an amount equal to the impact fee calculated to be due, a building permit may be issued to the new land development. The filing of an appeal shall not stay the imposition or the collection of the impact fee as calculated by the town unless a bond or other sufficient surety has been provided.

B. Burden Of Proof: The burden of proof shall be on the appellant to demonstrate that the decision of the town is erroneous.

C. Contents Of Appeal: All appeals shall detail the specific grounds therefor and all other relevant information and shall be filed on a form provided by the town for such purposes. (Ord. 47-2016, 12-13-2016)

2-5-11: AMENDMENTS:

A. This chapter, and any ordinance adopting impact fees for any particular category of capital improvements pursuant to this chapter, may be amended from time to time by the board of trustees; provided, however, that no such amendment shall be adopted without a written report detailing the reasons and need for the amendment.

B. At least every five (5) years, the town will have a professional impact fee study completed. Failure to complete such a study will not invalidate the existing impact fee schedules in this Chapter.
(Ord. 47-2016, 12-13-2016)

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2-5-12: CONFLICTING PROVISIONS:

To the extent of any conflict between other town ordinances and this chapter, this chapter shall be deemed to be controlling; provided, however, that this chapter is not intended to amend or repeal any existing town ordinance, resolution or regulation. (Ord. 47-2016, 12-13-2016)

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ARTICLE A. IMPACT FEES ESTABLISHED

2-5A-1: ~~STREET TREE AND STORM DRAINAGE SYSTEM~~ PARKS/OPEN SPACE

IMPACT FEES:

2-5A-2: PUBLIC FACILITIES ~~DEVELOPMENT IMPACT~~ FEE:

2-5A-3: ~~PARKS/OPEN SPACE~~ STORM DRAINAGE SYSTEM ~~DEVELOPMENT IMPACT~~ FEE:

2-5A-4: TRANSPORTATION FACILITIES ~~DEVELOPMENT IMPACT~~ FEE:

2-5A-5: TREE IMPACT FEE

2-5A-1: ~~STREET TREE AND STORM DRAINAGE SYSTEM~~ PARKS/OPEN SPACE IMPACT FEES:

A. Fee Established: All future residential development in the town shall be subject to the payment of a parks, recreation facilities, open space and trails impact fee at the time of building permit issuance, pursuant to this section and sections 2-5-1 through 2-5-12 of this chapter, as follows:

Residential Development by Type	Impact Fee Per Dwelling Unit
Single-family detached	\$3,889.00
All other dwelling units	2,826.00

B. Adjustment For Inflation: There shall be an annual impact fee adjustment for inflation, as follows:

1. On January 1, 2018, and on January 1 of each year thereafter in which the parks, recreation facilities, open space and trails impact fee is in effect, the amount of the impact fee per dwelling unit shall be automatically adjusted to account for inflationary increases in the cost of providing parks, recreation facilities, open space and trails utilizing the most recent data from the "Engineering News Record" construction cost index for the Denver metropolitan area.

2. In lieu of this automatic annual adjustment, the town may, at its option, determine the appropriate annual inflation factor pursuant to the annual review process as set forth in section 2-5-7 of this chapter.

3. Provided, however, that nothing herein shall prevent the governing body of the town from electing to maintain the existing parks, recreation facilities, open space and trails impact fee or from electing to waive the inflation adjustment for any given fiscal year.

A. Definitions: For the purpose of this section, the following shall apply:

ACCESSORY STRUCTURE: A structure incidental or subordinate to the main use of the

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property including, but not limited to, garages, patios, and sheds.

CONTRACTOR: Any person, firm, partnership, joint venture, or corporation required to obtain a building permit from the town.

FEE: A fee collected for the purpose of funding new capital construction within the town of Erie, primarily made necessary due to the impact of additional demands for services and mitigating the impact upon existing service to and for the town of Erie. Such impacts include, but are not limited to, administrative impacts, construction of new public facilities, alterations or additions to existing structures and the construction of new regional storm drainage facilities, transportation facilities, park facilities, and recreation facilities.

~~**FUND:** A special fund, for accounting purposes, created by this section for the purpose of efficiently collecting and expending any impact fees collected.~~

NEW CONSTRUCTION: All new construction, but specifically excluding renovations and additions to existing structures.

NONRESIDENTIAL DEVELOPMENT: All development other than residential unit development.

RESIDENTIAL UNIT: "Dwelling unit" as that term is defined herein.

STORM DRAINAGE SYSTEM: The aggregate collection of pipes, channels, easements, structures, and other related improvements which are necessary for the collection, retention, and conveyance of waters resulting from snowmelt, rain and hail storm runoff, or any other source of surface flows.

STREET TREE FEE: A fee collected into the street tree fund for the purpose of providing trees at new residential sites and in public areas.

TREASURER: The duly appointed treasurer for the town of Erie.

B. Application Of Provisions; Exemptions: Impact fees shall be assessed to all new construction. Impact fees shall not apply to demolition, repair, additions, alterations, or accessory buildings used as tool and storage sheds, playhouses and similar uses. No fee shall be charged under this section when the new construction replaces existing construction on the site, and no change to existing drainage requirements is created by the new construction. The use of the impact fee shall be governed by the provisions contained in subsection E of this section.

C. Fees Established: Any person applying for a building permit for new construction in the town of Erie shall, as a condition of obtaining such building permit, pay to the town at the time the permit is issued, all impact fees as required herein, as follows:

1. **Street Tree Fee:** A street tree fee shall be paid to the town in the amount of three hundred dollars (\$300.00) per residential unit.

2. Storm Drainage System Fee:

a. Residential Units: A storm drainage system fee shall be paid to the town in the amount of one thousand five hundred forty three dollars (\$1,543.00) per single family residential unit and eight hundred fifty six dollars (\$856.00) per multi family residential unit.

b. Nonresidential Development: A storm drainage system fee shall be paid to the town in the amount of five thousand four hundred forty dollars (\$5,440.00) per acre per nonresidential development.

c. Adjustment For Inflation: There shall be an annual storm drainage system fee adjustment for inflation.

D. Utilization Of Fee: In adopting this schedule of fees, the town board intends and determines that they are designed to and do address needs for capital facilities brought about by development generally, which capital facilities are separate and distinct from the impacts addressed by other requirements of the town's ordinances, and in no circumstances do these fees address the same subjects as other requirements of the town's ordinances for site specific dedications or improvements.

E. Payment Of Fees: The impact fees shall all be payable in full at the time that the building permit is issued. Under no circumstance shall the building permit be issued until and unless the fees as calculated have been paid in full.

F. Impact Funds:

1. Funds Created: The street tree and storm drainage system funds¹ are hereby created for the town. All impact fees collected in accordance with this section shall be paid into these special and segregated funds. The town treasurer shall account separately for all receipts and disbursements to and from the funds and shall not commingle any part of such funds with other funds of the town.

2. Use Of Funds: Any and all disbursements from the various funds shall be limited to the following:

a. Street Tree Fees: The purchase and planting of trees within the town.

b. Storm Drainage Fees:

(1) Planning, design, construction and inspection of storm drainage collection, pipes, structures, channels, ditches, and any other infrastructure essential to the town's surface water drainage system.

(2) Acquisition of necessary easements, real property, or legal rights of way required for storm system components including legal and other costs associated with such acquisition. (Ord. 47-2016, 12-13-2016)

2-5A-2: PUBLIC FACILITIES ~~DEVELOPMENT IMPACT~~ FEE:

A. Fees Established: All future residential and nonresidential development in the town shall be subject to the payment of a public facilities ~~development impact~~ fee at the time of building permit issuance, pursuant to this section and sections [2-5-1](#) through [2-5-12](#) of this chapter, as follows:

Residential Development By Type	Development Fee Per Dwelling Unit
Single family detached	\$1,821 .00
All other dwelling units	1,323 .00

Nonresidential Development By Type	Development Fee Per 1,000 Sq. Ft.
Commercial/shopping center:	-
- 25,000 sq. ft. or less	\$2,302 .00
- 25,001 – 50,000 sq. ft.	1,977 .00
- 50,001 – 100,000 sq. ft.	1,728 .00
- 100,001 – 200,000 sq. ft.	1,535 .00
- Over 200,000 sq. ft.	1,382 .00
Office/institutional:	-
- 10,000 sq. ft. or less	3,036 .00
- 10,001 – 25,000 sq. ft.	2,793 .00
- 25,001 – 50,000 sq. ft.	2,620 .00
- 50,001 – 100,000 sq. ft.	2,469 .00
- Over 100,000 sq. ft.	2,316 .00
Business park	2,185 .00
Light industrial	1,597 .00

Warehousing	884.00
Manufacturing	1,258.00
Private school	486.00

Residential Development by Type	Impact Fee Per Dwelling Unit
Single-family detached	\$1,821.00
All other dwelling units	1,323.00

Nonresidential Development by Type	Impact Fee Per 1,000 Sq. Ft. Floor Area
Commercial/retail/shopping center	\$424.00
Office/institutional	699.00
Industrial/manufacturing/warehousing	381.00

B. Adjustment For Inflation: There shall be an annual ~~development-impact~~ fee adjustment for inflation, as follows:

1. On January 1, 2017~~8~~, and on January 1 of each year thereafter in which the public facilities ~~development-impact~~ fee is in effect, the amount of the ~~development-impact~~ fee per dwelling unit for residential development and per one thousand (1,000) square feet of gross floor area for nonresidential development shall be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent data from the "Engineering News Record" construction cost index for the Denver metropolitan area.

2. In lieu of this automatic annual adjustment, the town may, at its option, determine the appropriate annual inflation factor pursuant to the annual review process as set forth in section [2-5-7](#) of this chapter.

3. Provided, however, that nothing herein shall prevent the governing body of the town from electing to maintain the existing public facilities ~~development-impact~~ fee or from electing to waive the inflation adjustment for any given fiscal year. (Ord. 47-2016, 12-13-2016)

**2-5A-3: PARKS/OPEN SPACE DEVELOPMENTSTORM DRAINAGE SYSTEM
IMPACT FEE:**

A. Fee Established: All future residential ~~and nonresidential~~ development in the town shall be subject to the payment of a ~~parks, recreation facilities, open space and trails development~~ storm drainage system development impact fee at the time of building permit issuance, pursuant to this section and sections 2-5-1 through 2-5-12 of this chapter, as follows:

Residential Development By Type	Development Fee Per Dwelling Unit
Single-family detached	\$3,889.00
All other dwelling units	2,826.00

Residential Development by Type	Impact Fee Per Dwelling Unit
Single-family detached	\$1,543.00
All other dwelling units	856.00

Nonresidential Development by Type	Impact Fee Per 1,000 Sq. Ft. Floor Area
Commercial/retail/shopping center	\$1,342.00
Office/institutional	1,202.00
Industrial/manufacturing/warehousing	1,202.00

B. Adjustment For Inflation: There shall be an annual ~~development impact~~ fee adjustment for inflation, as follows:

1. On January 1, 2018, and on January 1 of each year thereafter in which the ~~parks, recreation facilities, open space and trails development~~ storm drainage system impact fee is in effect, the amount of the development fee per dwelling unit for residential development and per one thousand (1,000) square feet of gross floor area for nonresidential development shall be automatically adjusted to account for inflationary increases in the cost of providing ~~parks, recreation facilities, open space and trails~~ storm drainage system facilities utilizing the most recent data from the "Engineering News Record" construction cost index for the Denver metropolitan area.

2. In lieu of this automatic annual adjustment, the town may, at its option, determine the appropriate annual inflation factor pursuant to the annual review process as set forth in section 2-5-7 of this chapter.

3. Provided, however, that nothing herein shall prevent the governing body of the town from electing to maintain the existing ~~parks, recreation facilities, open space and trails development~~ storm drainage system impact fee or from electing to waive the inflation adjustment for any given fiscal year. (Ord. 47-2016, 12-13-2016)

2-5A-4: TRANSPORTATION FACILITIES ~~DEVELOPMENT~~ IMPACT FEE:

A. Fee Established: All future residential and nonresidential ~~development~~ development in the town shall be subject to the payment of a transportation facilities ~~development~~ impact fee at the time of building permit issuance, pursuant to this section and sections [2-5-1](#) through [2-5-12](#) of this chapter, as follows:

Residential Development by Type	Impact Fee Per Dwelling Unit
Single-family detached	\$5,908.00
All other dwelling units	4,763.00

Residential Development By Type	Development Fee Per Dwelling Unit
Single-family detached	\$5,908 .00
All other dwelling units	4,763 .00

Nonresidential Development By Type	Development Fee Per 1,000 Sq. Ft.
Commercial/shopping center:	-
- 25,000 sq. ft. or less	\$4,192 .00
- 25,001 - 50,000 sq. ft.	3,610 .00
- 50,001 - 100,000 sq. ft.	2,712 .00
- 100,001 - 200,000 sq. ft.	1,873 .00
- Over 200,000 sq. ft.	1,113 .00
Office/institutional:	-
- 10,000 sq. ft. or less	3,465 .00

-	10,001-25,000 sq. ft.	2,803.00
-	25,001-50,000 sq. ft.	2,386.00
-	50,001-100,000 sq. ft.	2,031.00
-	Over 100,000 sq. ft.	1,729.00
	Business park	1,953.00
	Light industrial	1,067.00
	Warehousing	759.00
	Manufacturing	584.00
	Private school	1,403.00

Nonresidential Development by Type	Demand Unit	Impact Fee Per Demand Unit
Commercial/retail/shopping center	1,000 Sq. Ft. Floor Area	\$7,129.00
General office	1,000 Sq. Ft. Floor Area	3,086.00
Business park	1,000 Sq. Ft. Floor Area	3,480.00
Research and development center	1,000 Sq. Ft. Floor Area	2,269.00
Light industrial	1,000 Sq. Ft. Floor Area	1,950.00
Industrial park	1,000 Sq. Ft. Floor Area	1,911.00
Manufacturing	1,000 Sq. Ft. Floor Area	1,068.00
Warehousing	1,000 Sq. Ft. Floor Area	996.00
Motel	Room	1,575.00
Hospital	1,000 Sq. Ft. Floor Area	3,699.00
Assisted living	Bed	744.00
Nursing home	1,000 Sq. Ft. Floor Area	2,126.00
Day care	Student	1,225.00
Elementary school	1,000 Sq. Ft. Floor Area	4,317.00
High school	1,000 Sq. Ft. Floor Area	3,606.00
Community college	Student	344.00
University/college	Student	478.00

B. Adjustment For Inflation: There shall be an annual development fee adjustment for inflation, as follows:

1. On January 1, 2018, and on January 1 of each year thereafter in which the transportation facilities ~~development-impact~~ fee is in effect, the amount of the development fee per dwelling unit for residential development and per ~~one thousand (1,000) square feet of gross floor area~~ ~~demand unit~~ for nonresidential development shall be automatically adjusted to account for inflationary increases in the cost of providing transportation facilities utilizing the most recent data from the "Engineering News Record" construction cost index for the Denver metropolitan area.

2. In lieu of this automatic annual adjustment, the town may, at its option, determine the appropriate annual inflation factor pursuant to the annual review process as set forth in section [2-5-7](#) of this chapter.

3. Provided, however, that nothing herein shall prevent the governing body of the town from electing to maintain the existing transportation facilities ~~development impact~~ fee or from electing to waive the inflation adjustment for any given fiscal year. (Ord. 47-2016, 12-13-2016)

2-5A-5: TREE IMPACT FEE:

A. Fee Established: All future residential development in the town shall be subject to the payment of a tree impact fee in the amount of \$300.00 per dwelling unit at the time of building permit issuance. (Ord. 650, 8-10-1999)