

# ORDINANCE 165

## AN ORDINANCE ESTABLISHING AND ADOPTING IMPACT FEES ON DEVELOPMENT ACTIVITIES WITHIN THE SERVICE AREA OF ELSINORE TOWN, UTAH.

WHEREAS, THE LEGISLATURE OF THE STATE OF UTAH HAS HERETOFORE ADOPTED THE IMPACT FEES ACT (THE "ACT ") PROVIDING FOR AND AUTHORIZING THE IMPOSITION OF IMPACT FEES IN ACCORDANCE WITH THE PROVISIONS OF THE ACT; AND

WHEREAS, ELSINORE TOWN IS EXPERIENCING MODERATE GROWTH AND DEVELOPMENT WITHIN THE SERVICE AREA OF THE TOWN ALL OF WHICH CREATES A DEMAND FOR MUNICIPAL SERVICES AND INFRASTRUCTURE IN ORDER TO SERVICE THE NEW GROWTH; AND

WHEREAS, ELSINORE TOWN HAS REVIEWED AND STUDIED ITS EXISTING IMPACT FEES AS WELL AS PROPOSED FEES AND HAS COMPLETED AN ANALYSIS AS REQUIRED BY THE ACT AND DESIRES, BASED UPON THE FOREGOING, TO ESTABLISH AND ADOPT IMPACT FEES WITHIN THE SERVICE AREA OF THE TOWN AS PROVIDED HEREIN.

BE IT ORDAINED BY THE TOWN COUNCIL OF ELSINORE TOWN, STATE OF UTAH:

SECTION 1- ADOPTION. THE IMPACT FEE ORDINANCE IS HEREBY ADOPTED TO READ IN ITS ENTIRETY AS FOLLOWS:

### 1-1 DEFINITIONS

- A. "DEVELOPMENT ACTIVITY" MEANS ANY CONSTRUCTION OR EXPANSION OF A BUILDING, STRUCTURE, OR USE, ANY CHANGE IN USE OF A BUILDING OR STRUCTURE, OR ANY CHANGES IN THE USES OF LAND THAT CREATES ADDITIONAL DEMAND AND NEED FOR PUBLIC FACILITIES.
- B. "DEVELOPMENT APPROVAL" MEANS ANY WRITTEN AUTHORIZATION FROM THE TOWN THAT AUTHORIZES THE COMMENCEMENT OF DEVELOPMENT ACTIVITY.
- C. "IMPACT FEE" MEANS THE PAYMENT OF MONEY IMPOSED UPON DEVELOPMENT ACTIVITY AS A CONDITION OF DEVELOPMENT APPROVAL.
- D. "SERVICE AREA" MEANS THE GEOGRAPHIC AREA DESIGNATED BY THE TOWN TO WHICH A DEFINED SET OF PUBLIC FACILITIES PROVIDES SERVICE WITHIN THE AREA.
- E. "TOWN" MEANS ELSINORE TOWN, A MUNICIPAL CORPORATION.

### 1-2 FINDINGS AND PURPOSE

THE TOWN COUNCIL HEREBY FINDS AND DETERMINES:

- A. THERE IS A NEED FOR PUBLIC FACILITIES FOR NEW DEVELOPMENT WHICH HAVE NOT BEEN CONSTRUCTED AND ARE REQUIRED TO PROTECT THE PUBLIC'S HEALTH, SAFETY AND WELFARE.
- B. THE CONTINUING AND ANTICIPATED GROWTH OF ELSINORE TOWN NECESSITATES THE IMPOSITION AND COLLECTION OF IMPACT FEES PURSUANT TO LAW THAT REQUIRE DEVELOPMENT TO PAY ITS FAIR SHARE OF THE COST OF PROVIDING PUBLIC FACILITIES OCCASIONED BY THE DEMANDS AND NEEDS OF THE DEVELOPMENT PROJECT AT SERVICE LEVELS NECESSARY TO PROMOTE AND PRESERVE THE PUBLIC HEALTH, SAFETY, AND WELFARE.

- C. THE TOWN COUNCIL HEREBY ADOPTS THE REPORT FROM WALL ENGINEERING DATED JUNE 1997 ENTITLED "DEVELOPMENT IMPACT FEE CALCULATION, ELSINORE TOWN," INCLUDING THE RELATED EXHIBITS WHICH, ESTABLISHES THE COSTS FOR PROVIDING PUBLIC FACILITIES OCCASIONED BY DEVELOPMENT PROJECTS WITHIN THE SERVICE AREA. NEED FOR NEW FACILITIES AND OTHER CAPITAL ACQUISITION COSTS REQUIRED, INCREMENTALLY, BY NEW DEVELOPMENT WITHIN THE SERVICE AREA.
- D. THE IMPACT FEES ESTABLISHED BY THIS ORDINANCE ARE BASED UPON THE COSTS WHICH ARE GENERATED THROUGH THE NEED FOR NEW FACILITIES AND OTHER CAPITAL ACQUISITION COSTS REQUIRED, INCREMENTALLY, BY NEW DEVELOPMENT WITHIN THE SERVICE AREA.
- E. THE IMPACT FEES ESTABLISHED BY THIS ORDINANCE DO NOT EXCEED THE REASONABLE COST OF PROVIDING PUBLIC FACILITIES OCCASIONED BY DEVELOPMENT PROJECTS WITHIN THE SERVICE AREA

1-3 SERVICE AREAS ESTABLISHED

THE FOLLOWING SERVICE AREAS ARE HEREBY ESTABLISHED BY THE TOWN.

- A. AREA 1. THE EXISTING SERVICE AREA WITHIN THE TOWN BOUNDARIES.
- B. AREA 2. THE ELSINORE ADDITION AND BROOKLYN TAP SERVICE AREAS.
- C. AREA 3. AREAS TO WHICH THERE ARE NO WATER DISTRIBUTION LINES OR STREETS.

1-4 IMPACT FEES LEVIED

- A. FOR AREA 1, THE IMPACT FEES FOR THIS SERVICE AREA ARE CONTAINED IN TABLE 1 ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.
- B. FOR AREA 2, THE IMPACT FEES FOR THIS SERVICE AREA ARE CONTAINED IN TABLE 2 ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.
- C. FOR AREA 3, THE IMPACT FEES FOR THIS SERVICE AREA ARE CONTAINED IN TABLE 3 ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

1-5 TIME OF COLLECTION

UNLESS OTHERWISE PROVIDED BY THE TOWN COUNCIL, IMPACT FEES SHALL BE PAYABLE PRIOR TO THE ISSUANCE OF A BUILDING PERMIT BY THE TOWN

1-6 USE OF FEES

THE FEES SHALL BE USED SOLELY TO:

- A. PAY FOR DESCRIBED PUBLIC FACILITIES TO BE CONSTRUCTED BY THE TOWN;
- B. REIMBURSE THE TOWN FOR THE DEVELOPMENT'S SHARE OF THOSE CAPITAL IMPROVEMENTS ALREADY CONSTRUCTED BY THE TOWN; OR
- C. REIMBURSE DEVELOPERS WHO HAVE CONSTRUCTED PUBLIC FACILITIES WHERE THOSE FACILITIES WERE REQUIRED BY ELSINORE TOWN AS A CONDITION OF APPROVING DEVELOPMENT ACTIVITY, AND THE FACILITIES WERE BEYOND THAT NEEDED TO MITIGATE THE IMPACTS OF THE DEVELOPERS PROJECT(S).

1-7 ADJUSTMENTS

THE TOWN MAY, UPON A PROPER SHOWING, ADJUST THE STANDARD IMPACT FEE AT THE TIME THE FEE IS CHARGED TO:

- A. RESPOND TO UNUSUAL CIRCUMSTANCES IN SPECIFIC CASES; AND
- B. INSURE THAT THE IMPACT FEES ARE IMPOSED FAIRLY; AND

- C. ADJUST THE AMOUNT OF THE FEE BASED UPON STUDIES AND DATA SUBMITTED BY THE DEVELOPER WHICH ARE APPROVED BY THE TOWN AFTER REVIEW OF THE SAME; AND
- D. ALLOW CREDITS AS APPROVED BY THE TOWN FOR DEDICATION OF LAND FOR, IMPROVEMENT TO, OR NEW CONSTRUCTION OF, PUBLIC FACILITIES PROVIDING SERVICES TO THE COMMUNITY AT LARGE, PROVIDED SUCH FACILITIES ARE REQUIRED BY THE TOWN AS A CONDITION OF APPROVING THE DEVELOPMENT ACTIVITY. NO CREDIT SHALL BE GIVEN FOR PROJECT IMPROVEMENTS AS DEFINED IN THE ACT.

1-8 ACCOUNTING, EXPENDITURE, AND REFUND

THE TOWN SHALL ACCOUNT FOR, EXPEND AND REFUND IMPACT FEES IN ACCORDANCE WITH THE PROVISIONS OF THE ACT.

1-9 IMPACT FEE CHALLENGES AND APPEALS

- A. ANY PERSON OR ENTITY RESIDING IN OR OWNING PROPERTY WITHIN A SERVICE AREA, AND ANY ORGANIZATION, ASSOCIATION, OR CORPORATION REPRESENTING THE INTERESTS OF PERSONS OR ENTITIES OWNING PROPERTY WITHIN A SERVICE AREA, MAY FILE A DECLARATORY JUDGMENT ACTION CHALLENGING THE VALIDITY OF THE FEE.
- B. ANY PERSON OR ENTITY REQUIRED TO PAY AN IMPACT FEE IMPOSED BY THE TOWN WHO BELIEVES THE FEE DOES NOT MEET THE REQUIREMENTS OF LAW MAY FILE A WRITTEN REQUEST FOR INFORMATION WITH THE TOWN AS PROVIDED BY LAW.
- C. WITHIN TWO WEEKS OF THE RECEIPT OF THE REQUEST FOR INFORMATION, THE TOWN SHALL PROVIDE THE PERSON OR ENTITY WITH THE WRITTEN ANALYSIS REQUIRED BY THE ACT AND WITH ANY OTHER RELEVANT INFORMATION RELATING TO THE IMPACT FEE.
- D. WITHIN 30 DAYS AFTER PAYING AN IMPACT FEE, ANY PERSON OR ENTITY WHO HAS PAID THE FEE AND WISHES TO CHALLENGE THE FEE SHALL:
  - 1. FILE A WRITTEN APPEAL WITH THE ELSINORE TOWN COUNCIL BY DELIVERING A COPY OF SUCH APPEAL, TO THE ELSINORE TOWN CLERK SETTING FORTH IN DETAIL **ALL** GROUNDS FOR THE APPEAL AND ALL FACTS RELIED UPON BY THE APPEALING PARTY WITH RESPECT TO THE FEES APPEALED. UPON RECEIPT OF APPEAL THE TOWN COUNCIL SHALL THEREAFTER SCHEDULE A PUBLIC HEARING ON THE APPEAL AT WHICH TIME ALL INTERESTED PERSONS WILL BE GIVEN AN OPPORTUNITY TO BE HEARD. THE TOWN COUNCIL SHALL SCHEDULE THE APPEAL HEARING AND THEREAFTER RENDER ITS DECISION ON THE APPEAL NO LATER THAN THIRTY (30) DAYS AFTER THE CHALLENGE TO THE IMPACT FEE IS FILED. ANY PERSON OR ENTITY WHO HAS FAILED TO COMPLY WITH THE ADMINISTRATIVE APPEAL REMEDIES ESTABLISHED BY THIS SECTION MAY NOT FILE OR JOIN AN ACTION CHALLENGING THE VALIDITY OF ANY IMPACT FEE.
  - 2. WITHIN NINETY (90) DAYS OF A DECISION UPHOLDING AN IMPACT FEE BY THE TOWN OR WITHIN 120 DAYS AFTER THE DATE OF THE CHALLENGE TO THE IMPACT FEE WAS FILED, WHICHEVER IS EARLIER, ANY PARTY TO THE APPEAL THAT IS ADVERSELY AFFECTED BY THE TOWN COUNCIL'S DECISION MAY PETITION THE JUDICIAL DISTRICT COURT IN AND FOR SEVIER COUNTY FOR REVIEW OF THE DECISION.
  - 3. IN THE EVENT OF A PETITION TO THE JUDICIAL DISTRICT COURT, THE TOWN SHALL TRANSMIT TO THE REVIEWING COURT THE RECORD OF ITS PROCEEDINGS INCLUDING ITS MINUTES, FINDINGS, ORDERS AND, IF AVAILABLE, A TRUE AND CORRECT TRANSCRIPT OF ITS PROCEEDINGS.

4. IF THE PROCEEDING WAS TAPE RECORDED, A TRANSCRIPT OF THAT TAPE RECORDING IS A TRUE AND CORRECT TRANSCRIPT FOR PURPOSES OF SUBSECTION 3. ABOVE.
  
5. IF THERE IS A RECORD:
  - I. THE DISTRICT COURT'S REVIEW IS LIMITED TO THE RECORD PROVIDED BY THE TOWN;  
AND
  - II. THE DISTRICT COURT MAY NOT ACCEPT OR CONSIDER ANY EVIDENCE OUTSIDE THE TOWN'S RECORD UNLESS THAT EVIDENCE WAS OFFERED TO THE TOWN AND THE COURT DETERMINES THAT IT WAS IMPROPERLY EXCLUDED BY THE TOWN.
  
6. IF THERE IS AN INADEQUATE RECORD, THE DISTRICT COURT MAY CALL WITNESSES AND TAKE EVIDENCE.
  
7. THE DISTRICT COURT SHALL AFFIRM THE DECISION OF THE TOWN IF THE DECISION IS SUPPORTED BY SUBSTANTIAL, EVIDENCE IN THE RECORD.
  
8. THE JUDGE MAY AWARD REASONABLE ATTORNEY'S FEES AND COSTS TO THE PREVAILING PARTY IN ANY ACTION BROUGHT UNDER THIS SECTION.

SECTION 2 - SEVERABILITY. IF ANY SECTION, CLAUSE OR PORTION OF THIS ORDINANCE IS DECLARED INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINDER SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN IN FULL FORCE AND EFFECT.

SECTION 3 - EFFECTIVE DATE. THIS ORDINANCE SHALL BECOME EFFECTIVE UPON PUBLICATION OR POSTING, OR THIRTY (30) DAYS AFTER PASSAGE, WHICHEVER COMES FIRST.  
PASSED AND ADOPTED BY THE TOWN COUNCIL OF ELSINORE TOWN, STATE OF UTAH, ON THIS 30<sup>TH</sup> DAY OF JUNE 1997.

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**ELSINORE TOWN  
IMPACT FEE ORDINANCE  
TABLE 1**

AREA 1 THIS IS THE EXISTING SERVICE AREA INSIDE OF THE TOWN BOUNDARIES AS OF JUNE 1997		
1	WATER FACILITIES	1636
2	CREDIT FOR FUTURE BOND PMTS	-636
3	ROADWAYS	0
4	FIRE FACILITIES	121
5	PARKS AND OPEN SPACES	79
6	TOTAL IMPACT FEE	1200

WATER FACILITIES, ASSESSED AT GREENBELT RATES	0.00
WATER FACILITIES, NOT ASSESSED AT GREENBELT	0.00
ROAD FACILITIES, ASSESSED AT GREENBELT RATES	3.29
ROAD FACILITIES, NOT ASSESSED AT GREENBELT RATES	168.79
FIRE FACILITIES, ASSESSED AT GREENBELT RATES	0.51
FIRE FACILITIES, NOT ASSESSED AT GREENBELT RATES	22.55
PARK FACILITIES, ASSESSED AT GREENBELT RATES	0.05
PARK FACILITIES, NOT ASSESSED AT GREENBELT RATES	3.21

AREA 2 THIS IS THE ELSINORE ADDITION AND BROOKLYN TAP SERVICE AREA		
10	WATER FACILITIES	2215
11	CREDIT FOR FUTURE BOND PMTS	-636
12	FIRE FACILITIES	121
13	TOTAL IMPACT FEE	1700

CREDITS, PER ACRE

WATER FACILITIES, ASSESSED AT GREENBELT RATES	0.00
WATER FACILITIES, NOT ASSESSED AT GREENBELT	0.00
FIRE FACILITIES, ASSESSED AT GREENBELT RATES	0.51
FIRE FACILITIES, NOT ASSESSED AT GREENBELT RATES	22.55

