



**Ada County Highway District
Impact Fee
Ordinance No. 231A**

**Replacing the Ada County Highway District
Impact Fee Ordinance No. 231**

**By the Board of Highway District
Commissioners of Ada County, Idaho:
Baker, Arnold, Hansen, Goldthorpe, and Woods**

Effective Date: January 1, 2019

ADA COUNTY HIGHWAY DISTRICT
IMPACT FEE
ORDINANCE NO. 231A

BY THE BOARD OF HIGHWAY DISTRICT COMMISSIONERS
OF
ADA COUNTY, IDAHO:
BAKER, ARNOLD, HANSEN, GOLDTHORPE, AND WOODS

AN ORDINANCE AMENDING AND RESTATING
THE ADA COUNTY HIGHWAY DISTRICT IMPACT FEE ORDINANCE NO. 231 AND
THE CAPITAL IMPROVEMENT PLAN AND PROVIDING FOR PUBLICATION WITHIN
ONE MONTH OF ADOPTION AND PRIOR TO TAKING EFFECT.

WHEREAS, it is in the best interest of the citizens of Ada County, Idaho for the Board of Commissioners of the Ada County Highway District to enact Impact Fee Ordinance No. 231A to amend and restate the Impact Fee Ordinance No. 231; and

WHEREAS, it is in the best interest of the citizens of Ada County, Idaho for the Board of Commissioners of the Ada County Highway District to amend and restate the adopted Capital Improvement Plan. The Capital Improvements Plan was developed in accordance with Idaho Code § 67-8208 and in coordination with the Capital Investment Citizens Advisory Committee ("CICAC"), which is the development impact fee advisory committee established pursuant to Idaho Code § 67-8205. The CICAC approved the amendments to the Capital Improvements Plan on February 12, 2018 and May 21, 2018; and

WHEREAS, legal notice of the public hearing and the availability of the proposed Ordinance No. 231A was published on October 29, 2018 and October 30, 2018 in The Idaho Statesman; and

WHEREAS, a public hearing on the proposed Ordinance No. 231A and the adoption of Ordinance No. 231A was held before the Board of the Highway District Commissioners of Ada County, Idaho, on November 14, 2018; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Highway District Commissioners of Ada County, Idaho, that Capital Improvement Plan is amended and restated and Ordinance No. 231A is hereby amended and restated as set forth in Exhibit 1; and

BE IT FURTHER ORDAINED that Ordinance No. 231A (or a summary thereof) be published as provided by law within one (1) month after its adoption and before it takes effect.

Adopted and approved by the Board of Commissioners of the Ada County Highway District on the 14th day of November, 2018.

BOARD OF HIGHWAY DISTRICT COMMISSIONERS OF ADA COUNTY, IDAHO:

Sara M. Baker, President

Kent Goldthorpe, Commissioner

Rebecca W. Arnold, Vice President

Paul Woods, Commissioner

Jim D. Hansen, Commissioner

ATTESTS

Bruce S. Wong, Director

DRAFT

EXHIBIT 1
ORDINANCE NO. 231^A
REPLACING ACHD IMPACT FEE ORDINANCE NO. ~~222~~
231

7300 SHORT TITLE, AUTHORITY AND APPLICABILITY

This Ordinance shall be known and may be cited as the “Ada County Highway District Impact Fee Ordinance”.

The Board of Commissioners of the Ada County Highway District has the authority to adopt ordinances pursuant to the powers granted it under Section 40-1406, *Idaho Code* and to impose impact fees in conformance with the Idaho Development Impact Fee Act, Chapter 82, Title 67, *Idaho Code*.

This Ordinance shall apply in all areas under the control and jurisdiction of the Ada County Highway District.

7301 FINDINGS AND PURPOSE

In accordance with the Idaho Development Impact Fee Act, the Board of Commissioners of the Ada County Highway District finds that an equitable program for planning and financing those public facilities under its jurisdiction which are 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 Ada County, Idaho. It is the intent of the Commission by enactment of this Ordinance to:

- a. ensure that adequate roads, streets, bridges and associated public facilities are available to serve new growth and development;
- b. promote orderly growth and development by establishing uniform standards by which those who benefit from new growth and development pay a proportionate share of the cost of new public facilities under the jurisdiction of the Ada County Highway District which are needed to serve new growth and development; and
- c. ensure that those who benefit from new growth and development are required to pay no more than their Proportionate Share of the cost of new public facilities under the jurisdiction of the Ada County Highway District which are needed to serve new growth and development and to prevent duplicate and ad hoc development requirements. (Reference *Idaho Code*, Section 67-8202)

7302 DEFINITIONS

Following are definitions of certain terms used in this Ordinance. Definitions of terms used in the Impact Fee formula are set forth in Section 7306.2. Other terms which are not defined in this Ordinance shall have the meaning attributed to them in *Idaho Code*, Section 67-8203.

As used in this Ordinance the following terms shall have the following meanings:

“ACHD” means the Ada County Highway District.

“Available” and “Availability” when used in the context of revenue and funds available to pay for System Improvements shall mean revenue and funds that the Commission has determined are reasonably available, given statutory restrictions and other demands on ACHD resources, to lay out, construct, maintain, repair and improve the Highways under its jurisdiction and otherwise to perform the responsibilities imposed upon it by law.

“Capital Improvement” means an improvement with a useful life of ten (10) years or more, by new construction or other action, which increases the Service Capacity of the System. (Reference *Idaho Code*, Section 67-8203(3).)

“Capital Improvements Plan” means a plan adopted by the Commission pursuant to Section 7310 of this Ordinance that identifies Capital Improvements for which Impact Fees may be used as a funding source. (Reference *Idaho Code*, Section 67-8203(5).)

“Commission” means the Board of Commissioners of ACHD.

“COMPASS” means and refers to the Community Planning Association of Southwest Idaho, an Idaho nonprofit association designated by the Governor of the State of Idaho as the Transportation Management Area and the Metropolitan Planning Organization responsible for transportation planning in Ada County, of which ACHD is a member, and any successor organization responsible for transportation planning in Ada County, Idaho.

“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. (Reference *Idaho Code*, Section 67-8203(6).)

“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 the land, which creates additional demand and need for System Improvements or the subdivision of property that would permit any change in the use, character, or appearance of land. (Reference *Idaho Code*, Section 67-8203(7).)

“Development” shall also include the foregoing activities if conducted by a Taxing District except as provided by Section 7304.2 of this Ordinance. (Reference *Idaho Code*, Section 67-8203(7).)

“Development Approval” means written authorization which authorizes the commencement of a Development, from ACHD if the Development is a subdivision, otherwise from the general purpose government with jurisdiction over the Development.

“Development Unit” means a structure or a portion of a structure or a particular use of property that is listed on Exhibit “A”.

“Extraordinary Costs” means those costs incurred as a result of an Extraordinary Impact. (Reference *Idaho Code*, Section 67-8203(11).)

“Extraordinary Impact” means an impact to the System which will result from the Development which is reasonably determined by the Commission to: (i) result in the need for System Improvements, the cost of which will significantly exceed the sum of the Impact Fees to be generated from the proposed Development or the sum agreed to be paid pursuant to an agreement between ACHD and the Developer as allowed by Section 7324.2 of this Ordinance; or (ii) result in the need for System Improvements which are not identified in the most recent Capital Improvements Plan. (Reference *Idaho Code*, Section 67-8203(12).)

“Fee Payer” means that Person who pays or is required to pay an Impact Fee. (Reference *Idaho Code*, Section 67-8203(13).)

“Highway” means roads, streets, alleys and bridges laid out or established for the public or dedicated or abandoned to the public. Highways shall include necessary culverts, sluices, drains, ditches, waterways, embankments, retaining walls, bridges, tunnels, grade separation structures, roadside improvements, adjacent lands or interests lawfully acquired, pedestrian facilities, and any other structures, works or fixtures incidental to the preservation or improvement of the highways. (Reference *Idaho Code*, Section 40-109(5).) The terms “roads” and “streets” as used in this Ordinance have the same meaning as “Highway”.

“Impact Fee” or “Traffic 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. 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 (reference *Idaho Code*, Section 67-8203(9)(a));
- b. connection or hookup charges (reference *Idaho Code*, Section 67-8203(9)(b));
- c. availability charges for drainage, sewer, water, or transportation charges for services provided directly to the Development (reference *Idaho Code*, Section 67-8203(9)(c));
- d. amounts collected from a Developer in a transaction in which ACHD 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 7314 of this Ordinance for credit or reimbursement (reference *Idaho Code*, Section 67-8203(9)(d)); or
- e. an Overlay Fee imposed to cover Extraordinary Costs.

“Impact Fee Administrator” means the ACHD Director or the official designated by the Director to administer this Ordinance.

“Impact Fee Schedule” means that schedule of fees referenced in Section ~~7306-47307~~ of this Ordinance and set forth in the Fee Schedule attached to this Ordinance as Exhibit “A”.

“Individual Assessment Application” means the ACHD Individual Assessment Application

form as set forth in ACHD policies and procedures that notifies ACHD of the Developer or Fee Payer's intent to provide an Individual Assessment Submittal.

"Individual Assessment Submittal" means the documentation required for an Individual Assessment as provided in Section 7312 of this Ordinance.

"ITE Manual" means the ~~9th~~-10th edition of the manual entitled *Trip Generation* published by the Institute of Transportation Engineers.

"Level of Service E Planning Threshold" is as defined in the ~~ACHD~~Ada County Street Service Capacity Guidelines as set forth in Exhibit C.

"Overlay Fee" means a payment of money imposed by the Commission on the lots or parcels in an Overlay Zone in order to pay a Proportionate Share of the Extraordinary Costs incurred by a Developer to resolve an Extraordinary Impact resulting from a Development or multiple Developments.

"Overlay Zone" means the geographic area consisting of a Development or multiple Developments which collectively will cause an Extraordinary Impact to the System.

"Peak Hour" means the sixty (60) consecutive minutes of the work week (Monday through Friday, excluding holidays) when there is the highest volume of vehicles being operated on a particular Highway in the Regional Roadway Network.

"Person" means an individual, corporation, partnership, association, government agency, or other entity.

"Present Value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money. (Reference *Idaho Code*, Section 67-8203(20).)

"Project Improvements" means site improvements and facilities that are planned and designed to provide service for a particular Development and that are necessary for the use and convenience of the occupants or users of that Development. (Reference *Idaho Code*, Section 67-8203(22).)

"Proportionate Share" means that portion of System Improvement Costs determined pursuant to Section 7305 of this Ordinance, which reasonably relate to the service demands and needs of the Development. (Reference *Idaho Code*, Section 67-8203(23).)

"Regional Roadway Network" means all ITD highways, and all ACHD arterial and collector roads within Ada County.

"Service Area" means a defined geographic area identified in Section 7317.1 of this Ordinance in which the System provides service to Development within the area defined, on the basis of sound planning or engineering principles or both. (Reference *Idaho Code*, Section 67-8203(26).)

"Service Capacity" means the planning threshold number of vehicles ~~that can be accommodated~~ on any one segment of the ACHD System at Level of Service E Planning

Threshold for minor arterials and principal arterials, consistent with the *ACHD Street Service Capacity Guidelines (as found in Exhibit C)*.

“Service Unit” in general means a standardized measure of use attributable to a Development Unit calculated in accordance with generally accepted engineering or planning standards for a particular category of Capital Improvements, and, specifically as used in this Ordinance, means the number of vehicle miles traveled (VMT) on the System, generated by a particular type of land use of a Development Unit during the Peak Hour. (Reference *Idaho Code*, Section 67-8203(27).)

“System” means roadways under the jurisdiction of ACHD designated as arterials by COMPASS and ACHD.

“System Improvements,” in contrast to Project Improvements, means Capital Improvements to the System which are designed to provide service to a Service Area including, without limitation, the type of improvements described in *Idaho Code*, section 50-1703. (Reference *Idaho Code*, Section 67-8203(28).)

"System Improvement Costs" means costs incurred for construction or reconstruction of System Improvements, including costs of design, right-of-way acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in *Idaho Code*, section 50-1702(h), to provide additions to the System needed to serve new growth and Development. (Reference *Idaho Code*, Section 67-8203(29).)

“Taxing District” means any entity or unit with the statutory authority to levy a property tax. (Reference *Idaho Code*, Section 67-8203(7) and *Idaho Code*, Section 63-201).)

7303 RULES OF CONSTRUCTION

The provisions of this Ordinance shall be interpreted to be consistent with the mandatory provisions of the Idaho Development Impact Fee Act and liberally construed to effectively carry out its purpose.

7304 IMPOSITION OF IMPACT FEE

7304.1 General Application.

On the terms, and consistent with the purposes and provisions of this Ordinance and the Idaho Development Impact Fee Act, Chapter 82, Title 67, *Idaho Code*, ACHD hereby imposes an Impact Fee as a condition of Development Approval on all Developments in Ada County, Idaho. Unless otherwise agreed in writing by ACHD and the Developer, the Impact Fee shall be collected no earlier than:

- a. the commencement of construction of the Development; or
- b. the issuance of a building permit; or
- c. the issuance of a manufactured home installation permit.

(Reference *Idaho Code*, Section 67-8204(3).)

7304.2 Application to Taxing Districts.

Taxing Districts shall be subject to payment of Impact Fees on all Developments in Ada County, Idaho pursuant to the terms of this Ordinance unless ACHD and the Taxing District enter into a written agreement that provides otherwise. (Reference *Idaho Code*, Section 67-8203(7).)

7305 METHODOLOGY

7305.1 Basis for Formula.

The Idaho Development Impact Fee Act and subsequent analyses by ACHD provide the methodology for a reasonable and fair formula to ensure that those who benefit from Development pay their Proportionate Share of the cost of System Improvements needed to serve that Development. This methodology results in a formula for the calculation of the Impact Fee for each type of Development Unit within a given Service Area that is then used to create the Impact Fee Schedule. (Reference *Idaho Code*, Section 67-8207.)

7305.2 Minimum Standards

Under this formula the Impact Fee:

- a. shall not exceed a Proportionate Share of the costs incurred or to be incurred by ACHD in the provision of System Improvements to serve new Development (reference *Idaho Code*, Sections 67-8204(1) and 67-8207(1));
- b. is based on actual System Improvement Costs or reasonable estimates of such costs (reference *Idaho Code*, Section 67-8204(1));
- c. is calculated on the basis of Level of Service E Planning Threshold for minor arterials and principal arterials on the System as applicable to existing Development as well as new growth and Development. Level of Service E Planning Threshold for minor arterials and principal arterials is the acceptable level of service planning threshold for System Improvements under this Ordinance (reference *Idaho Code*, Section 67-8204, subsections (2) and (23)); and
- d. is imposed for System Improvements that are attributable to the demands on the Service Capacity of the System generated by the new Development. (Reference *Idaho Code*, Section 67-8204(2).)

7305.3 Considerations in Determining Proportionate Share

The Proportionate Share is the cost of System Improvements attributable to the new Development after ACHD considers and accounts for the following:

- a. any appropriate credit, offset or contribution of money, dedication of land, or construction of System Improvements;
- b. payments reasonably anticipated to be made by or as a result of a new Development in the form of user fees and debt service payments;
- c. that portion of general tax and other revenue allocated by ACHD to System Improvements; and
- d. all other Available sources of funding such System Improvements. (Reference *Idaho Code*, Section 67-8207(1).)

7305.4 Factors Considered in Determination of Proportionate Share

In determining the Proportionate Share of the cost of System Improvements to be paid by the Developer, the following factors shall be considered and accounted for by ACHD in the calculation of the Impact Fee:

- a. the cost of existing System Improvements within the Service Area;
- b. the means by which existing System Improvements have been financed;
- c. the extent to which the new Development will contribute to 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;
- d. the extent to which the new Development is required to contribute to the cost of existing System Improvements in the future;
- e. the extent to which the new Development should be credited for providing System Improvements, without charge to other properties within the Service Area;
- f. Extraordinary Costs, if any, incurred in serving the new Development;
- g. the time and price differential inherent in a fair comparison of Impact Fees paid at different times; and
- h. the availability of other sources of funding System Improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The Capital Improvements Plan shall include consideration of alternative sources of revenue. (Reference *Idaho Code*, Sections 67-8204 (1) and 67-8207(2).)

7306 FORMULA FOR CALCULATING THE IMPACT FEE

7306.1 Basic Purpose and Concept

The basic purpose of the Impact Fee and the principal concept of the formula is to charge each Development Unit in a new Development with its Proportionate Share of System Improvement Costs of new or expanding arterial roads under the jurisdiction of ACHD to handle the increased vehicular traffic that will eventually result from all the new Developments that can be expected to be built in a given geographic area of Ada County according to adopted land use plans.

The number and type of new Development Units that can be projected to be built in a geographic area, the vehicular use that can be expected from each new Development Unit, the costs of expanding the Service Capacity of arterials, the Proportionate Share, and the other factors that under the Idaho Development Impact Fee Act must be considered for inclusion in the Impact Fee formula are based on reasonable estimates and averages using the best available sources and applied in accordance with generally accepted accounting principles and engineering and planning criteria. (Reference *Idaho Code*, Section 67-8204(23).)

7306.2 Definitions of Terms in Formula

For purposes of defining the various components of the Impact Fee formula set forth in Section 7306.3, the following terms have the following meanings:

The term "Average Trip Length" means the average distance of each vehicle trip Generated by a Development Unit on the Regional Roadway Network within Ada County, Idaho.

The terms "Generated" and "Generation" as used in these definitions mean, collectively, attracted by and produced from.

The term "Network Adjustment Factor" means the Vehicle Miles Traveled projected to occur on the System from the Development Unit divided by the Vehicle Miles Traveled projected to occur on the Regional Roadway Network from the Development Unit.

The term "New Trip Factor" means the percentage of vehicle trips that are non-pass-by trips as defined in the ITE Trip Generation Handbook, Third Edition, August 2014. Non-pass-by trips include primary trips and diverted linked trips.

The term "Peak Hour Trip Rate (one-way)" means one-half (1/2) the number of vehicle trip ends Generated on the Regional Roadway Network during the Peak Hour by a Development Unit.

The term "Service Capacity" is defined in Section 7302.

The term "Vehicle Miles Traveled," or VMT, means the total number of vehicle trips multiplied by the trip length, in miles, on the Regional Roadway Network.

The term "Vehicle Miles Traveled Cost," or VMT Cost, means the total of all Traffic Impact Fee-eligible System costs divided by the System VMT generated by

Development Units during the Peak Hour for the Service Area within which the Development Unit is being constructed.

7306.3 Summary of Formula

For each Development Unit, the following formula more particularly expresses the concept set forth in Section 7306.1 and the methodology set forth in Section 7305 of this Ordinance:

Traffic Impact Fee per Development Unit = Peak Hour Trip Rate (one way) x New Trip Factor x Average Trip Length x Network Adjustment Factor x VMT Cost.

A further explanation of the terms and application of the formula is set forth on Exhibit "B" attached to this Ordinance.

~~7306.4 Impact Fee Schedule~~

~~Based on the formula set forth in this section of this Ordinance, the amount of the Impact Fee for a Development Unit at the specified land use is presumed to be the amount set forth in the Impact Fee Schedule and as adjusted annually for inflation as further described in Exhibit "B".~~

7307 IMPACT FEE SCHEDULE

~~Based on the formula set forth in Section 7306.3 of this Ordinance, the amount of the Impact Fee for a Development Unit at the specified land use is presumed to be the amount set forth in the Impact Fee Schedule and as adjusted annually for inflation as further described in Exhibit "B".~~

~~7307 PROPERTY TAX PROPORTIONATE SHARE CALCULATION~~

~~7307.1 Percentage of Impact Fee Eligible Costs Allocated~~

~~ACHD shall pay ten (10) percent of the Impact Fee eligible System Improvement Costs out of property tax revenue. The portion paid by property tax revenue, shall be used countywide.~~

~~7307.2 Summary of Formula~~

~~The following formula sets forth the calculation of the future property tax credit:~~

- ~~a. Amount of Property Tax Paid to ACHD = (Assessed Value of Property for Tax Purposes (both real & personal) — Homeowners Exemption for Residential) x ACHD Levy Rate.~~
- ~~b. Amount of Annual Property Taxes Allocated = (Impact Fee Eligible Costs (from adopted CIP) x Percentage of Impact Fee Eligible Costs Allocated) / Number of Years in CIP.~~
- ~~c. Percentage of Current Year Property Taxes Allocated = amount of Annual~~

~~Property Taxes Allocated / Current Year Property Taxes.~~

- ~~d. Total Amount of Future Property Tax Credit = (Percentage of Current Year Property Taxes Allocated x Amount of Property Tax Paid to AGHD) x Present Value Factor (for 20 Years).~~

~~7307.3 Procedures~~

~~The Developer or Fee Payer shall provide the assessed value of the property (real and personal) to the Impact Fee Administrator within two (2) years of payment of the Impact Fee. The Impact Fee Administrator will use the assessed value to calculate the total amount of future property tax credit. The future property tax credit will then be remitted to the Developer or Fee Payer or credited against the current Impact Fee certificate.~~

~~In lieu of the foregoing procedure, a Developer or Fee Payer may use 60% of the median assessed value of the residential property in Ada County as a substitute for assessed value for determining the future property tax credit.~~

7308 EXEMPTIONS

The following Development activities are exempt from the requirement to pay an Impact Fee:

- 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 and the land use of the rebuilt structure is similar to the land use before the 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;
- f. adding uses that are typically accessory to a residential use, such as a tennis courts, clubhouse or detached garage, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of System Improvements; (reference *Idaho Code*, Section 67-8204(20)); and
- g. placing a temporary stand, structure or similar facility for the sale or disbursement of seasonal farm produce, fireworks, election campaign material, or similar use, where the total period of use will not exceed ninety (90) days during any twelve (12) month period.

7309 IMPACT FEE ADVISORY COMMITTEE

7309.1 Continuation of Existing Committee

An Impact Fee Advisory Committee (named by ACHD the “Capital Investments Citizens Advisory Committee”) was first established in 1991 shortly after a predecessor to this Ordinance was initially adopted, and the Committee is still in place. It consists of a minimum of five (5) members appointed by the Commission and its actions and activities are hereby ratified and approved, and for the purposes of this Ordinance the Committee is hereby re-established and the members re-appointed to serve for the balance of their respective terms.

7309.2 Composition

The Impact Fee Advisory Committee shall be composed of not fewer than five (5) members appointed by the Commission. Two (2) or more members shall be active in the business of Development, building or real estate. (Reference *Idaho Code*, Section 67-8205(2).)

7309.3 Advisory Capacity

The Impact Fee Advisory Committee shall serve in an advisory capacity and is established to:

- a. assist ACHD in adopting land use assumptions made by the appropriate land use planning agencies;
- b. review the Capital Improvements Plan and proposed amendments utilizing the land use assumptions, 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 Commission any perceived inequities in implementing the Plan or imposing the Impact Fees; and
- e. advise the Commission of the need to update or revise the Capital Improvements Plan and Impact Fees. (Reference *Idaho Code*, section 67-8205 (3).)

7309.4 ACHD Support

ACHD shall make available to the Impact Fee Advisory Committee, upon request, all financial and accounting information, professional reports in relation to other Development and implementation of land use assumptions by appropriate land use planning agencies, the Capital Improvements Plan and periodic updates of the Capital Improvements Plan. (Reference *Idaho Code*, Section 67-8205 (4).)

7310 CAPITAL IMPROVEMENTS PLAN

7310.1 Adoption of Capital Improvements Plan

ACHD shall adopt and update the Capital Improvements Plan in accordance with *Idaho Code*, section 67-8208. The most recent update to the Capital Improvements Plan was adopted by the Commission on August 24, 2016.

7310.2 Contents

The Capital Improvements Plan, as referenced in Exhibit “C” and each update thereof which is adopted by the Commission shall contain all of the following:

- a. a general description of the System and its existing deficiencies within the Service Area and a reasonable estimate of all costs of, and a plan to develop the funding resources related to, curing such existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing the System to meet existing needs and usage;
- b. a commitment by ACHD to use other Available sources of revenue to cure existing System deficiencies where practical;
- c. an analysis of the total Service Capacity, the level of current usage, and commitments for usage of the Service 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;
- d. a description of the land use assumptions most recently adopted by the appropriate land use planning agencies;
- e. a definitive table establishing the specific level or quantity of use by a Development Unit 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, 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 not less than Level of Service E Planning Threshold for minor arterials and principal arterials;
- g. the total number of Service Units necessitated by and attributable to new Developments within the Service Area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;
- 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;
- i. identification of all sources and levels of funding Available to ACHD for the financing of the System Improvements; and

- j. a schedule setting forth estimated dates for commencing and completing construction of all System Improvements identified in the Capital Improvements Plan. (Reference *Idaho Code*, Section 67-8208(1).)

7310.3 Capital Improvement Plan Updates

a. ACHD shall update the Capital Improvements Plan at least once every four (4) years, each update to be prepared by the Impact Fee Administrator in consultation with the Impact Fee Advisory Committee, and submitted to the Commission for adoption in accordance with procedures set forth in *Idaho Code*, section 67-8206. (Reference *Idaho Code*, Section 67-8208(2).)

b. The Capital Improvements Plan shall be updated in conformance with the provisions of subsection a. of this section each time ACHD proposes the amendment, modification or adoption of a development impact fee ordinance. (Reference *Idaho Code*, Section 67-8208(4).)

7310.4 Annual Adoption of Capital Budget

The Commission must annually adopt a capital budget. (Reference *Idaho Code*, Section 67-8208(3).)

7311 FEE CERTIFICATION

A Developer shall receive upon request, a written certification of the Impact Fee or individual assessment for a particular Development. The Impact Fee Administrator shall provide the Developer with written certification of the Impact Fee for that Development, which shall establish the Impact Fee so long as there is no material change to the particular project as identified in the Individual Assessment Application, or change to the Impact Fee Schedule. The certification shall include an explanation of the calculation of the Impact Fee including an explanation of factors considered by the Commission under Section 7305.4 of this Ordinance. The certification shall also specify the System Improvement(s) for which the Impact Fee is intended to be used. (Reference *Idaho Code*, Section 67-8204(6).)

7312 INDIVIDUAL ASSESSMENTS

7312.1 Initiating an Individual Assessment

- a. A Developer or Fee Payer may provide a written individual assessment of the Proportionate Share of the Impact Fee for the proposed Development. (Reference *Idaho Code* Section 67-8204(5).)
- b. The individual assessment process allows the consideration of studies, data and any other relevant information submitted by the Developer or Fee Payer to adjust the amount of the Impact Fee. (Reference *Idaho Code* Section 67-8204(5).)
- c. To initiate an individual assessment, the Developer or Fee Payer shall

submit a written Individual Assessment Application to the Impact Fee Administrator no later than thirty (30) days after the date of payment of the Impact Fee. (Reference *Idaho Code* Section 67-8204(14).)

- d. The Individual Assessment Submittal shall consist of all the required supporting documentation and analysis in conformance with ACHD policies and procedures.
- e. An Individual Assessment Submittal of the Impact Fee for the proposed Development shall be permitted sufficiently in advance of the time the Developer or Fee Payer may seek a building permit or related permits so that the issuance of a building permit or related development permits will not be delayed. To be approved before a building permit or related development permits are issued, the Individual Assessment Submittal must be received by ACHD at such a time as to permit the Impact Fee Administrator to render a decision in conformance with Sections 7301, 7303, 7305, and 7312.3. (Reference *Idaho Code* Section 67-8204(14).)
- f. At the election of the Developer or Fee Payer, an Individual Assessment Submittal of the Impact Fee for the proposed Development may also be permitted any time after issuance of a building permit or related development permits within two (2) years from the date ACHD receives the Individual Assessment Application submitted in conformance with section 7312.1 (c). The Impact Fee Administrator may grant an extension of up to one (1) year upon showing of just cause. (Reference *Idaho Code* Section 67-8204(14).)
- g. The Developer or Fee Payer shall present, and pay for the cost of supporting documentation and analysis for the Individual Assessment Submittal. (Reference *Idaho Code*, Section 67-8204(5).)
- h. If there is a material change to the particular project, the Impact Fee Administrator shall determine if the change warrants an update to the individual assessment.
- i. The Impact Fee Administrator shall review the Individual Assessment Submittal and determine if it is complete. If the Impact Fee Administrator determines that the Individual Assessment Submittal is not complete, a written statement shall be sent to the Developer or Fee Payer submitting the individual assessment specifying the deficiencies. The Impact Fee Administrator shall take no further action on the Individual Assessment Submittal until the submittal is deemed complete. The Developer or Fee Payer shall have a minimum of thirty (30) days to respond and complete the Individual Assessment Submittal in the event the date of the written statement from the Impact Fee Administrator is dated within thirty (30) days of the end of the two (2) year period for the submission of the Individual Assessment Submittal.
- j. A Developer or Fee Payer submitting an individual assessment shall pay a review fee to ACHD to cover the cost of reviewing the Individual

Assessment Submittal. The review fee amount shall be in accordance with ACHD's current fee schedule.

7312.2 Assessment Procedures and Documentation

- a. The documentation and analysis supporting the Individual Assessment Submittal shall be signed by the Developer or Fee Payer and the individual preparing the Individual Assessment Submittal.
- b. The Individual Assessment Submittal, prepared by the Developer or Fee Payer, shall include a determination of each of the factors in the Impact Fee formula for the particular Development that is the subject of the individual assessment.
- c. The determination of the factors in the Impact Fee formula shall meet the following requirements below:
 - i. The Peak Hour Trip Rate should be determined by traffic counts at the Development site or at a similar land use's site(s) when possible. The use of the trip generation rates from the ITE Trip Generation Manual in lieu of traffic counts must be approved in writing by the Impact Fee Administrator prior to submitting the individual assessment.
 - ii. The New Trip Factor, Average Trip Length and the Network Adjustment Factor shall be determined through an origin/destination survey conducted at the Development site or at a similar land use's site(s).
 - iii. Such other information as the Impact Fee Administrator may reasonably request; and any studies, data, and any other relevant information submitted by the Developer or Fee Payer. (Reference *Idaho Code* Section 67-8204(5).)
- d. Alternative methods for determining the factors in the Impact Fee formula must be approved in writing by the Impact Fee Administrator prior to submitting the Individual Assessment Submittal.
- e. The Individual Assessment Submittal shall include a calculation of the Impact Fee based on the facts presented, utilizing the same methodology and formula used in developing the Impact Fee Schedule as set forth in Sections 7305 and 7306 and more thoroughly described in Exhibit "B".
- f. Multi-phase projects – An individual assessment may only be conducted and applied to the current phase of multi-phase projects. The individual assessment shall be updated for each phase of multi-phase projects. The trip generation and characteristics shall include the current phase as well as all phases to date.

7312.3 Decision

The Impact Fee Administrator may accept, accept with conditions or, reject the documentation and analysis or, require the Developer or Fee Payer to submit additional or different documentation.

No later than twenty (20) calendar days following the completion of the presentation of all documentation required by Section 7312.2, and after considering the same and making appropriate findings based thereon, the Impact Fee Administrator shall make a decision as to the Impact Fee to be charged for the particular Development. The decision shall be based upon the requirements of Section 67-8207, *Idaho Code*, and 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. (Reference *Idaho Code*, Section 67-8204(5).)

7312.4 Appeal from Decision

If the Developer or Fee Payer does not accept the decision of the Impact Fee Administrator, an appeal may be filed with the Commission under the provisions of Section 7321 of this Ordinance.

7313 EXTRAORDINARY IMPACTS; OVERLAY ZONES AND OVERLAY FEES

There will be situations where the anticipated impacts to the system of a proposed development will comprise an Extraordinary Impact. The Commission may ~~adopt an Extraordinary Impact Fee ordinance which~~ calculates a pro rata share per parcel of the Development of the Extraordinary Costs. The Commission may by resolution adopt an Overlay Fee equal to such pro rata share of the Extraordinary Costs in addition to the Impact Fee. The resolution must be considered at a public hearing, notice of which has been published in accordance with the provisions of Idaho Code, Section 40-206(2), and notice of the public hearing shall also be sent by U.S. Mail to all property owners within the Overlay District not less than 10 days prior to the public hearing.

7314 CREDIT OR REIMBURSEMENT

7314.1 For Construction, Contribution, Taxes and User Fees Generated

- a. In the calculation of Impact Fees for a particular project, credit or reimbursement shall be given for the Present Value of any construction of System Improvements or dedication of land or money required by ACHD from a Developer for System Improvements of the category for which the 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 Improvements. (Reference *Idaho Code*, Section 67-8209(1).)
- b. In calculation of 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 ACHD for System Improvements of the category for which the Impact Fee is being collected. If the amount of the 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. (Reference *Idaho Code*, Section 67-8209(2).)

- c. If a Developer is required to construct, fund or contribute System Improvements in excess of the Development'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 Impact Fees paid by future Development which impacts the System Improvements constructed, funded or contributed by the Developer or Fee Payer. (Reference *Idaho Code*, Section 67-8209(3).)

7314.2 Procedures and Documentation

- a. If credit or reimbursement is due the Developer pursuant to this section from the construction of System Improvements or dedication of land or money required by ACHD, ACHD shall enter into a written agreement with the Developer or 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. (Reference *Idaho Code*, Sections 67-8209(4).)
- b. To apply for credit 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 ACHD for System Improvements of the category for which the Impact Fee is being collected, the Developer shall submit an application for Impact Fee credit and all supporting documentation to the Impact Fee Administrator within thirty (30) calendar days of the date of payment of the Impact Fee to which the credit is being applied. The Impact Fee Administrator shall determine if the Developer is eligible for credit towards the Impact Fee and calculate the amount of the credit. If credit is due the Developer, the credit amount will be deducted from the Impact Fee.

7315 UNLISTED LAND USES; CHANGES IN UNITS OR SCOPE; MODULAR BUILDING, MANUFACTURED HOME OR RECREATIONAL VEHICLE

7315.1 Unlisted Land Uses

Land uses of a Development Unit not specified in the Fee Schedule shall be assigned the trip generation factors as set forth in the ITE Manual, based on the methodology set forth in Section 7305 of this Ordinance. A copy of the ITE Manual shall be available for inspection by any member of the public during ACHD's normal business hours. For specific uses not listed in the ITE Manual, the Impact Fee Administrator shall apply the category of use in the ITE Manual which is most similar to the proposed land use. A list

of Impact Fees so determined by the Impact Fee Administrator for land use categories not listed in the Fee Schedule shall be maintained by the Impact Fee Administrator and shall be available for public inspection.

7315.2 Change in Number of Units, Scope of Development.

After payment of the Impact Fees or execution of an agreement for payment of Impact Fees, additional Impact Fees or increases in fees may not be assessed unless the number of Development Units increases or the scope or schedule of the Development changes. In the event of an increase in the number of Development Units or the scope of the Development changes, the additional development Impact Fees to be imposed are limited to the amount attributable to the additional Development Units or change in scope of the Development. (Reference *Idaho Code*, Section 67-8204(18).)

7315.3 Modular Building, Manufactured Home or Recreational Vehicle

An 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 aerial photographs, 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 this Ordinance; or
- b. that an Impact Fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space. (Reference *Idaho Code*, Section 67-8204(21).)

7316 PAYMENT OF IMPACT FEE

7316.1 Place and Time of Payment

The payment of the Impact Fee and any extra fees for Extraordinary Impacts shall be made directly to ACHD or to a government entity authorized by ACHD to collect the same on its behalf. The Impact Fee shall be due at the time of the issuance of a building permit or a manufactured home installation permit or a similar permit, or, if no permit is required, at the time of the commencement of construction of the Development, or as may be otherwise agreed by the Developer and the Impact Fee Administrator. (Reference *Idaho Code*, Section 67-8204(3).)

7316.2 Election

A Developer has the right to elect to pay a Development's Proportionate Share of System Improvement Costs by payment of Impact Fees according to the Fee Schedule as full and complete payment of the Development's Proportionate Share of System Improvement Costs, except for any costs of Extraordinary Impact under Section 7313 of this Ordinance. (Reference *Idaho Code*, Section 67-8204(17).)

7317 SERVICE AREA

7317.1 Service Area

There is one (1) Service Area encompassing all of Ada County. The Impact Fees collected from a Development in a Service Area shall be spent on System Improvements in the same Service Area.

7318 USE OF FUNDS

7318.1 Separate Accounts

All Impact Fees shall be maintained in one (1) or more interest-bearing accounts within the capital projects fund. Accounting records shall be maintained for each Service Area in which the fees are collected. Interest earned on Impact Fees shall be considered funds of the account on which it is earned, and not funds subject to *Idaho Code*, section 57-127 and shall be subject to all restrictions placed on the use of Impact Fees under the provisions of this Ordinance. (Reference *Idaho Code*, Section 67-8210(1).)

7318.2 Expenditure Restricted

Expenditures of 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 Impact Fee was imposed as shown by the Capital Improvements Plan and as authorized in this Ordinance. Impact Fees shall not be used for any purpose other than to pay for System Improvement Costs to create additional System Improvements to serve new growth. (Reference *Idaho Code*, Sections 67-8204(11) and 67-8210(2).)

7318.3 Annual Report

ACHD shall prepare an annual report describing:

- a. the amount of all Impact Fees collected, appropriated, or spent during the preceding year by Service Area; and
- b. 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. (Reference *Idaho Code*, Section 67-8210(3).)

7318.4 Time to Spend Impact Fees Collected

Collected 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 Impact Fees collected for drainage facilities must be expended within twenty (20) years. Any funds not expended within the prescribed times shall be refunded pursuant to Section 7319 of this Ordinance. ACHD may hold the Impact Fees for longer than eight (8) years if the Commission identifies, in writing:

- a. a reasonable cause why the Impact Fees should be held longer than eight (8) years; and

- b. an anticipated date by which the Impact Fees will be expended but in no event greater than eleven (11) years from the date they were collected. (Reference *Idaho Code*, Section 67-8210(4).)

7319 REFUNDS

7319.1 Right to Request

A refund of an Impact Fee paid under this Ordinance shall be made upon the request of the current owner(s) of property on which the fee has been paid if:

- a. The request for a refund is received by ACHD no later than two (2) years from the date of payment of the Impact Fee; and
- b. service is available but never provided; or
- c. a building permit or permit for installation of a manufactured home or similar permit is denied or abandoned; or
- d. after collecting the fee when service is not available, ACHD has failed to appropriate and expend the collected Impact Fees pursuant to Section 7318.4 of this Ordinance (reference *Idaho Code*, Section 67-8211(1); or
- e. action by the Commission determines that the Impact Fee was calculated incorrectly in favor of ACHD or as a result of an appeal or mediation under Section 7321 a refund is due; or
- f. the Fee Payer pays the Impact Fee under protest, and a subsequent review of the Impact Fee paid or the completion of an individual assessment determines that the Impact Fee paid exceeded the Proportionate Share to which ACHD was entitled to receive. (Reference *Idaho Code*, Section 67-8211(d)).

7319.2 Time of Payment

When the right to a refund exists under this Section, the Impact Fee Administrator shall send the refund to the owner of record within ninety (90) days after the Impact Fee Administrator has determined that a refund is due. (Reference *Idaho Code*, Section 67-8211(2).)

7319.3 Interest

A refund shall include a refund of interest from the date of payment of the Impact Fee at one-half (1/2) the legal rate provided for in *Idaho Code*, section 28-22-104(1) from the date of which the fee was originally paid. (Reference *Idaho Code*, Section 67-8211(3).)

7319.4 Standing

Any Person entitled to a refund shall have standing to sue for a refund under the provisions of Idaho Development Impact Fee Act if there has not been a timely payment of a refund pursuant to Section 7319.2. (Reference *Idaho Code*, Section 67-8211(4)) (Reference *Idaho Code*, Section 67-8204(12).)

7320 LOANS TO SERVICE AREA FUND; EXTRAORDINARY IMPACT LOANS

7320.1 Loans to Service Area Fund

The Commission may loan funds held by it in its general accounts to a Service Area capital projects fund where the fund does not have sufficient balances to pay all of the System Improvement Costs to be incurred for the construction of a System Improvement in that Service Area. As Impact Fees are generated and collected in that Service Area, the loan will be repaid, without interest, by the transfer of funds from the capital projects fund for that Service Area to the general accounts of ACHD.

7320.2 Commission Resolution Required

The making of any such loan shall require the adoption of a resolution by the Commission at a regular or special meeting.

7321 ADMINISTRATIVE APPEALS

7321.1 Appeal to Commission; Grounds

The Commission shall hear and decide appeals by any Developer, Fee Payer or property owner aggrieved by a final decision made by the Impact Fee Administrator under this Ordinance where it is alleged that the Impact Fee Administrator did not properly apply this Ordinance, did not consider all relevant facts presented, abused discretion or acted arbitrarily and capriciously in the interpretation or enforcement of this Ordinance.

7321.2 Filing Fee

The fee for filing an appeal shall be in accordance with ACHD's current fee schedule.

7321.3 Initiation

An appeal is initiated by the filing of a written notice of appeal together with the filing fee with the Clerk of ACHD, which must be filed within thirty (30) calendar days from the date of the final decision that is the subject of the appeal. If the thirtieth day falls on a weekend or holiday, the notice of appeal may be filed the following business day. The notice of appeal shall refer to the decision being appealed, identify the appellant by name, address and telephone number and state the grounds for the appeal. The grounds shall include a written summary of the provisions of the Ordinance relevant to the appeal and/or the facts relied upon and shall include a written argument in support of the appeal. A notice of appeal that does not comply with the provisions of this

subparagraph shall not be considered by the Commission, and no further action with respect thereto shall be taken under this Section.

7321.4 Time to Reply

The Impact Fee Administrator shall have fourteen (14) calendar days to reply to the notice of appeal, and may during such time meet with the appellant to discuss the matter, and may also reconsider and/or amend the decision which is being appealed. A copy of the reply, and any amendments or supplements to the decision being appealed from will be provided to the appellant prior to the hearing on the appeal.

7321.5 Notice of Hearing

Unless otherwise agreed to by the appellant, the hearing on the appeal will be noticed and scheduled for a regular meeting of the Commission to be held within thirty (30) calendar days following the delivery to the appellant of the Impact Fee Administrator's reply to the notice of appeal. A copy of the decision being appealed, the notice of appeal and the reply shall be delivered to the Commission prior to the hearing.

7321.6 Action by Commission

At the conclusion of the hearing, the Commission may reverse or affirm, in whole or in part, or otherwise modify, amend or supplement the decision being appealed, as such action is adequately supported by the evidence and testimony presented at the hearing.

7321.7 Payment Under Protest

A Fee Payer may pay an Impact Fee under protest in order to obtain a Development Approval or a building permit. A Fee Payer making such payment shall not be estopped from exercising the right of appeal provided in this Section, nor shall such Fee Payer be estopped from receiving a refund of any amount deemed to have been improperly collected as a result of the appeal. (Reference *Idaho Code*, Section 67-8212(2).)

7321.8 Mediation

Upon voluntary agreement by the Fee Payer and the Impact Fee Administrator, ACHD shall address a disagreement related to the Impact Fee for a proposed Development through mediation by a qualified independent party. 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. Mediation costs will be shared equally by the Fee Payer and ACHD. (Reference *Idaho Code*, Sections 67-8204(15) and 67-8212(3).)

7322 COLLECTION

If a Fee Payer fails to pay an Impact Fee when due, in addition to such other remedies as are available to ACHD at law or in equity to collect the same, ACHD may do one or more of the following:

- a. withhold Development Approval until the Impact Fee is paid;

- b. charge the Developer interest on the Impact Fee at the legal rate set forth in *Idaho Code*, section 28-22-104 (1), from the date such payment was due until paid;
- c. charge a penalty for failure to pay an Impact Fee when due in an amount of five percent (5%) of the Impact Fee for each month elapsing after the date the fee was due until paid, such penalty not to exceed twenty-five percent (25%) of the fee;
- d. claim and impose a lien on the lot or parcel upon which the Development is occurring for failure to timely pay the Impact Fee in the amount of the Impact Fee and such costs, penalties and interest as are allowable, by following the procedures contained in Chapter 5, Title 45, *Idaho Code*. The lien must be claimed within ninety (90) calendar days from the date the Impact Fee was due under Section 7315.1.

Such interest and/or penalty shall be collected as part of and at the same time as the Impact Fee is paid. (Reference *Idaho Code*, Section 67-8213.)

7323 GUIDELINES

The Commission may adopt guidelines, interpretations and forms consistent with this Ordinance to implement its intent.

7324 OTHER POWERS AND RIGHTS NOT AFFECTED

7324.1 Project Improvements

Nothing in this Ordinance shall prevent ACHD from requiring a Developer to construct reasonable Project Improvements in conjunction with a Development. (Reference *Idaho Code*, Section 67-8214(1).)

7324.2 Private agreements Allowed

Nothing in this Ordinance shall be construed to prevent or prohibit private agreements between property owners or Developers, the Idaho Transportation Department and ACHD 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 inter-project transfers of credits or providing for reimbursement for Project Improvements which are used or shared by more than one (1) Development. 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. (Reference *Idaho Code*, Section 67-8214(2).)

7324.3 No Obligation to Approve Developments with Extraordinary Impacts

Nothing in this Ordinance shall obligate ACHD to approve Development which results in an Extraordinary Impact. (Reference *Idaho Code*, Section 67-8214(3).)

7324.4 No Obligation to Approve Below Acceptable Level of Service

Nothing in this Ordinance shall obligate ACHD to approve any request for Development Approval which may reasonably be expected to reduce levels of service below Level of Service E Planning Thresholds on ACHD minor arterials and ACHD principal arterials. (Reference *Idaho Code*, Section 67-8214 (4).)

7324.5 No Limitation on Power of Eminent Domain, Creation of Local Improvement Districts or Bond Issues

Nothing in this Ordinance shall work to limit the use by ACHD 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. (Reference *Idaho Code*, Section 67-8214(6).)

7325 REVIEW

In connection with each update of the Capital Improvement Plan, and more often at the discretion of the Commission, the Impact Fee Administrator shall review the Fee Schedule and the relevant factors on which it is based, in coordination with the Impact Fee Advisory Committee. Based upon this review, the Impact Fee Administrator may recommend to the Commission a revision of this Ordinance, including the Fee Schedule.

7326 ERRORS IN FORMULA

If ACHD discovers an error in the Impact Fee formula that results in assessment or payment of more than a Proportionate Share ACHD shall, at the time of assessment, on a case by case basis adjust the fee to collect no more than a Proportionate Share or ACHD shall discontinue the collection of any Impact Fees until the error is corrected by ordinance. (Reference *Idaho Code*, Section 67-8213.)

7327 SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable, and if any provision of this Ordinance or the application of the same to any Person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of the Ordinance. Any provision of this Ordinance that is inconsistent with the requirements of the Idaho Development Impact Fee Act, Chapter 82, Title 67, *Idaho Code* shall be null and void and that provision shall have no legal effect. (Reference *Idaho Code*, Section 67-8204(25).)

7328 EFFECTIVE DATE

This Ordinance shall be effective no less than thirty (30) calendar days from the date of its adoption, or ~~October 1, 2016~~ January 1, 2019 whichever is later. (Reference *Idaho Code*, Section 67-8206(6)).

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