

TOQUERVILLE CITY
ORDINANCE NO. #ORD2016.02
Impact Fees and Capital Facilities Plan

AN ORDINANCE ADOPTING CHAPTER 4, OF TITLE 8 (UTILITIES) OF THE TOQUERVILLE CITY CODE, AMENDING AND UPDATING THE CITY'S IMPACT FEE FACILITIES PLAN AND IMPACT FEE ANALYSIS FOR CULINARY WATER, STREETS/DRAINAGE AND PARKS/TRAILS IMPACT FEES; ADOPTING AMENDED AND UPDATED IMPACT FEES FOR SAID FACILITIES; ESTABLISHING CERTAIN POLICIES RELATED TO IMPACT FEES; ESTABLISHING A SERVICE AREA; AND/OR OTHER RELATED MATTERS

RECITALS

WHEREAS, Toquerville City (the "City") is a political subdivision of the State of Utah, authorized and organized under the laws and constitution of said state; and

WHEREAS, the City has legal authority, pursuant to Title 11, Chapter 36a Utah Code Annotated, as amended ("Impact Fees Act" or "Act"), to impose Impact Fees as a condition of development approval, which impact fees are used to defray capital infrastructure costs attributable to growth activity; and

WHEREAS, the City has historically assessed Impact Fees as a condition precedent to development approval in order to assign capital infrastructure costs to development in an equitable and proportionate manner; and

WHEREAS, the City properly noticed its intent to prepare an Impact Fee Facilities Plan ("IFFP") and an Impact Fee Analysis ("IFA") for Culinary Water, Streets/Drainage and Parks/Trails; and

WHEREAS, the City has completed the IFFP and IFA for Culinary Water, Streets/Drainage and Parks/Trails which meet the requirements of Utah law and City ordinance; and

WHEREAS, the City and consultants retained by the City have reviewed and evaluated the land within the City boundaries and have determined the service area to be as follows: The "Service Area" for Culinary Water, Streets/Drainage and Parks/Trails shall include all areas within the City's municipal boundaries.



ORDINANCE

I. NOW THEREFORE, be it ordained by the City Council of Toquerville City, State of Utah, that the following shall be included as Chapter 5 of Title 8 (Utilities) of the Toquerville City Code:

Chapter 5
IMPACT FEES

8-5-1 PURPOSE:

This Ordinance establishes the City's Impact Fee policies and procedures and conforms to the requirements of the Utah Impact Fees Act, U.C.A § 11-36a ("the Act"). This Ordinance supersedes any prior Ordinances related to Culinary Water, Streets/Drainage and Parks/Trails within the respective Service Area; provides a schedule of Impact Fees for differing types of land-use development, and sets forth direction for challenging, modifying and appealing Impact Fees.

8-5-2 DEFINITIONS:

Words and phrases that are defined in the Act shall have the same definition in this Ordinance. For purposes of this Ordinance, the following words and phrases shall have the following meanings:

A. "Impact Fee Facilities Plan" or "IFFP" means the City's Impact Fee Facilities Plan (entitled "City of Toquerville Water/Streets/Parks & Trails Impact Fee Facility Plan and Analysis", pages 1-16 and Appendices A, B, C, D & G) required by Section 11-36a-301 of the Act, which have been prepared in accordance with the Act and are to be adopted by passage of this Ordinance. The Impact Fee Facilities Plans are attached hereto as a part of Exhibit A and incorporated into this Ordinance by this reference.

B. "Development Activity" means any construction or expansion of a building, structure or use, any change in use of building or structure, or any change in the use of land located within the Service Area that creates additional demand and need for Public Facilities.

C. "Development Approval" means any written authorization from the City that authorizes the commencement of Development Activity.

D. "City" means Toquerville City, a political subdivision of the State of Utah.

E. "Impact Fee" means a payment of money imposed upon Development Activity as a condition of development approval to mitigate the impact of the development on public infrastructure. "Impact Fee" includes development Impact Fees, but is not a tax, a special assessment, a hookup fee, a building permit fee, a fee for project improvements, or other reasonable permit or application fees.

F. "Impact Fee Analysis" or "IFA" means the City's written analysis (entitled "City of Toquerville Water/Streets/Parks & Trails Impact Fee Facility Plan and Analysis" pages 17-26 and Appendices A, E & F) required by Section 11-36a-303 of the Act. The Impact Fee Analyses are attached hereto as a part of Exhibit B and incorporated into this Ordinance by this reference.



G. "Project Improvements" includes but is not limited to site improvements and facilities that are planned and designed to provide service for development resulting from a Development Activity and are necessary for the use and convenience of the occupants or users of said Development Activity. "Project Improvements" do not include "System Improvements" as defined below.

H. "Proportionate Share" means the cost of public facility improvements that is roughly proportionate and reasonably related to the service demands and needs of a Development Activity.

I. "Public Facilities" means Culinary Water, Streets/Drainage and Parks/Trails infrastructure improvements of the City for the citywide Service Area.

J. "Service Area" refers to a geographic area designated by the City based on sound planning and engineering principles in which a defined set of the City's public facilities provides service. The Service Area for Culinary Water, Streets/Drainage and Parks/Trails shall be the entire municipal boundaries of the City.

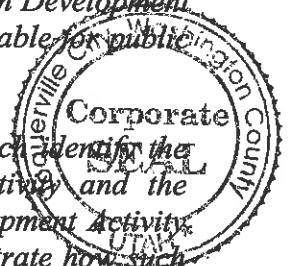
K. "System Improvements" means both existing Public Facilities designed to provide services within the Service Area and to future Public Facilities identified in the IFFP that are intended to provide service to the Service Area. "System Improvements" do not include "Project Improvements" as defined above.

8-5-3 WRITTEN IMPACT FEE ANALYSIS

A. *Executive Summary.* A summary of the IFA designed to be understood by a lay person (the "Executive Summary") is included in the attached Exhibit A (IFFP/IFA conclusion page #26 and Appendix E) and demonstrates the need for Impact Fees to be assessed on Development Activity. The IFFP/IFA and its embedded Executive Summary has been available for public inspection at least ten (10) days prior to the adoption of this Ordinance.

B. *Impact Fee Analysis.* The City has commissioned the IFFP and IFA which identify the impacts upon Public Facilities required by anticipated Development Activity and the anticipated impacts on System Improvements required by anticipated Development Activity. to maintain the established level of service for each Public Facility, demonstrate how such anticipated impacts are reasonably related to the anticipated Development Activity, estimate the proportionate share of the costs of impacts on System Improvements that are reasonably related to the Development Activity, and identify how the Impact Fees are calculated. Copies of the IFFP and IFA, as presented in Exhibit A hereto, have been available for public inspection at least ten (10) days prior to the adoption of this Ordinance.

C. *Proportionate Share Analysis.* In connection with the IFFP and IFA, the City has prepared a Proportionate Share analysis which analyzes whether or not the proportionate share of the costs of Public Facilities is reasonably related to new Development Activity. The Proportionate Share analysis identifies, as applicable: (a) the costs of each existing Public Facility that has excess capacity to serve the anticipated development resulting from new



Development Activity; (b) the cost of System Improvements for each Public Facility; (c) the manner of financing for each Public Facility (such as user charges, special assessments, bonded indebtedness, general taxes or funded grants) other than impact fees; (d) the relative extent to which Development Activity will contribute to financing the excess capacity of and System Improvements for each existing Public Facility by such means as user charges, special assessments or payment from the proceeds of general taxes; (e) the relative extent to which Development Activity will contribute to the cost of existing Public Facilities and System Improvements in the future; (f) the extent to which Development Activity is entitled to a credit against the Impact Fees because the Development Activity will dedicate System Improvements or Public Facilities that will offset the demand for System Improvements, inside or outside the proposed development; (g) any extraordinary costs in servicing the newly developed properties; and (h) the timeprice differential inherent in fair comparisons of amounts paid at different times. A copy of the Proportionate Share analysis is included in the IFA, which is included in Exhibit A and has been available for public inspection at least ten (10) days prior to the adoption of this Ordinance.

8-5-4 IMPACT FEE FACILITIES PLAN:

Impact Fee Facilities Plan. The City has developed the IFFP which identifies the existing levels of service, establishes proposed levels of service, identifies excess capacity to accommodate future growth at the proposed levels of service, identifies demands placed upon existing Public Facilities by new development activity at the proposed levels of service, and identifies the means by which the City will meet those growth demands. The City has chosen to use a planning horizon of twenty four (24) years (thru 2040) in preparing the IFFP. The City has considered all revenue sources to finance the impacts on System Improvements, including grants, bonds, interfund loans, Impact Fees and anticipated dedication of System Improvements. The City's plan for financing System Improvements establishes that Impact Fees are necessary to maintain a proposed level of service that complies with Subsection 11-36a-302(1)(b) or 11-36a-302(1)(c) of the Act. The IFFP has been prepared based on reasonable growth assumptions for the Service Area, and analyze the general demand characteristics of current and future users of the systems. Furthermore, the IFFP identifies the impact on System Improvements created by Development Activity and estimate the Proportionate Share of the costs of impacts on System Improvements that are reasonably related to new Development Activity. Said IFFP is included as part of Exhibit A and is incorporated into this Ordinance by this reference.

8-5-5 IMPACT FEE CALCULATIONS:

A. Ordinance Enacting Impact Fees. The City Council will, by this Ordinance, approve Impact Fees in accordance with the IFFP and IFA.

1. Elements. In calculating the Impact Fees, the City has included the construction costs, land acquisition costs, costs of improvements, fees for planning, surveying, and engineering services provided for and directly related to the construction of System Improvements, and outstanding or future debt service charges if the City might use Impact Fees as a revenue stream to pay principal and interest on bonds or other obligations to finance the cost of System Improvements.



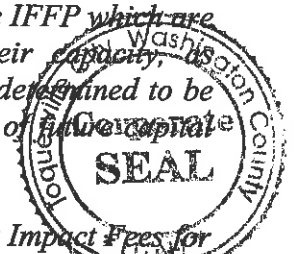
2. *Notice and Hearing.* In conjunction with the approval of this Ordinance, the City held a public hearing on April 14, 2016, gave public notice of the IFFP, said hearing and the City's intent to adopt this Ordinance at least ten (10) days before the date of said hearing by posting notice in at least three public places within the City, publishing notice in newspapers of general circulation in the City and on the Utah Public Notice Website, made a copy of this Ordinance, the IFFP, the IFA and the embedded Executive Summary available to the public on the City's website and at the City's offices, and placed copies of the IFFP, IFA at three frequented public places within the City, all in conformity with the requirements of Utah Code Annotated 11-36a-502 and 17B-1-111. After the public hearing, the City Council adopted this Impact Fee Ordinance as presented herein.

3. *Contents of the Ordinance.* The Ordinance adopting or modifying an Impact Fee contains such detail and elements as deemed appropriate by the City Council, including designation of the Service Area within which the Impact Fee is to be calculated and imposed. The Ordinance herein includes (i) a schedule of Impact Fees to be imposed, and (ii) the formula to be used by the City in calculating Impact Fees.

4. *Adjustments.* The standard Impact Fee may be adjusted at the time the fee is assessed due to inflation and/or in response to unusual circumstances, to fairly allocate costs associated with impacts created by a Development Activity or project, or due to a request for a prompt and individualized impact fee review for the development activity of the state or a school district or charter school and an offset or credit for Public Facilities for which an impact fee has been or will be collected. The standard Impact Fee may also be adjusted to ensure that Impact Fees are imposed fairly for Development Activities attributable to low income housing or other development activities with broad public purposes. The Impact Fee assessed to a particular development may also be adjusted should the developer supply sufficient written studies and data to the City showing a discrepancy between the fee being assessed and the actual impact on the system.

5. *Previously Incurred Costs.* To the extent that new growth and Development Activity will be served by previously constructed improvements, the Impact Fee may include Public Facility costs and outstanding bond costs related to improvements previously incurred by the City. These costs may include all projects included in the IFFP which are under construction or completed but have not been utilized to their capacity, as evidenced by outstanding debt obligations. Any future debt obligations determined to be necessitated by growth activity may also be included to offset the costs of such projects.

B. *Developer Credits.* Development Activity may be allowed a credit against Impact Fees for any dedication of land for a System Improvement, any building and dedication of some or all of a System Improvement, any dedication of a Public Facility that the City and the developer agree will reduce the need for a System Improvement, or a dedication of land for, improvement to or new construction of any System Improvement by the developer if the facilities are System Improvements or are dedicated to the public and offset the need for an identified System Improvement.



C. Impact Fees Accounting. The City will establish a separate interest-bearing ledger account for each type of Public Facility for which an Impact Fee is collected, deposit all Impact Fees in the appropriate ledger account, retain the interest earned on each account in the ledger account, and otherwise conform to the accounting requirements provided in the Impact Fees Act. Impact Fees collected prior to the effective date of this Ordinance need not meet the requirements of this section. a. Reporting. At the end of each fiscal year, the City shall prepare a report pursuant to Utah Code Ann. §11-36a-601.

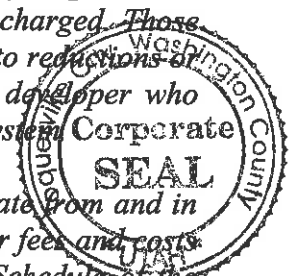
D. Impact Fee Expenditures. The City may expend Impact Fees pursuant to Utah Code Ann. §11-36-602 only for System Improvements that are (i) identified in the IFFP and (ii) for the specific public facility type for which the fee was collected.

E. Time of Expenditure. Impact Fees collected pursuant to the requirements of this Ordinance are to be expended, dedicated or encumbered for a permissible use within six years of the receipt of those funds by the City, unless the City identifies in writing an extraordinary and compelling reason why the fees should be held longer than six (6) years and an absolute date by which the fees will be expended. Impact Fees will be expended on a First-In First-Out ("FIFO") basis, with the first funds received deemed to be the first funds expended.

F. Refunds. The City shall refund any Impact Fees paid by a developer, plus interest actually earned, when (i) the developer does not proceed with the Development Activity and files a written request for a refund; (ii) the fees have not been spent or encumbered within the "Time of Expenditure" as defined herein; and (iii) no impact has resulted. An impact that would preclude a developer from a refund from the City may include any impact reasonably identified by the City, including, but not limited to, the City having sized facilities and/or paid for, installed and/or caused the installation of facilities based in whole or in part upon the developer's planned Development Activity even though that capacity may, at some future time, be utilized by another development.

G. Other Impact Fees. To the extent allowed by law, the City Council may negotiate or otherwise impose Impact Fees and other fees different from those currently charged. Those charges may, at the discretion of the City Council, include but not be limited to reductions or increases in Impact Fees, all or part of which may be reimbursed to the developer who installed improvements that service the land to be connected with the City's system.

H. Additional Fees and Costs. The Impact Fees authorized hereby are separate from and in addition to user fees and other charges lawfully imposed by the City and other fees and costs that may not be included as itemized component parts of the Impact Fee Schedule of the City's Uniform Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.



I. Fees Effective at Time of Payment. Unless the City is otherwise bound by a contractual requirement, the Impact Fee shall be determined from the fee schedule in effect at the time of payment in accordance with the provisions of Section 6 below.

J. Imposition of Additional Fee or Refund after Development. Should any developer undertake Development Activities such that the ultimate density or other impact of the Development Activity is not revealed to the City either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the Impact Fee is not initially charged against all units or the total density within the development, the City shall be entitled to recover the total Impact Fee pursuant the IFFP and IFA from the developer or other appropriate person covering the density for which an Impact Fee was not previously paid.

k. Commercial or Industrial Development Activity/Equivalent Residential Units ("ERUs").

8-5-6 IMPACT FEE SCHEDULES:

A. The City hereby adopts the following as the Impact Fees in the Service Area:

1. Water Impact Fees

<i>WATER IMPACT FEE SCHEDULE</i>	
<i>Size of Meter</i>	<i>Impact Fee Charged</i>
<i>¾' Diameter Meter</i>	<i>\$1,795.00</i>
<i>1" Diameter Meter</i>	<i>\$3,195.00</i>
<i>1.5 Diameter Meter</i>	<i>\$7,1953.22</i>
<i>2" Diameter Meter</i>	<i>\$12,790.00</i>

2. Street/Drainage Impact Fees

<i>STREET/DRAINAGE IMPACT FEE SCHEDULE</i>	
<i>Unit of Measure</i>	<i>Impact Fee Charged</i>
<i>Per Equivalent Residential Unit (ERU)</i>	<i>\$2,450.00</i>

3. Park/Trails Impact Fees

<i>PARK/TRAILS IMPACT FEE SCHEDULE</i>	
<i>Type</i>	<i>Impact Fee Charged</i>



<i>Park System Impact Fee per ERU</i>	\$2,210.00
<i>Trail System Impact Fee per ERU</i>	\$2,165.00

B. Maximum Supportable Impact Fees. The fee schedules included in the IFFP and IFA indicates the maximum Impact Fee which the City may impose on development within the defined Service Area and is based upon general demand characteristics and potential demand that can be created by each class of user. The City reserves the right under the Impact Fees Act to assess an adjusted fee to respond to unusual circumstances to ensure that fees are equitably assessed. Formulas that can be used to calculate this adjusted fee are set forth in Exhibit B.

8-5-7 FEE EXCEPTIONS AND ADJUSTMENTS:

A. Waiver for "Public Purpose". The City Council may, on a project by project basis, authorize exceptions or adjustments to the Impact Fees due from development for those projects the City Council determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include facilities being funded by the state, school districts, charter schools, low income housing projects, or facilities of a temporary nature. The City Council may elect to waive or adjust Impact Fees in consideration of economic benefits to be received from the Development Activity.

B. Procedures. Applications for exceptions or adjustments are to be filed in writing with the City at the time the applicant first requests the extension of service to the applicant's development or property.

8-5-8 APPEAL PROCEDURE:

Subject to the time limitations as provided in Utah Code Ann. § 11-36a-702, any person or entity that has paid an Impact Fee pursuant to this Ordinance may challenge the Impact Fee as provided in Utah Code Ann. §11-36a-701 et seq., by filing:

A. A written administrative appeal to the City, setting forth the name of the person or entity challenging the impact fee or fees, the specific impact fee or fees challenged, evidence that the impact fee or fees challenged have been paid by the person or entity, and alleged grounds for such challenge. A written administrative appeal containing the information set forth herein and filed with the City Recorder shall constitute the necessary document for filing an administrative appeal as provided in Utah Code Ann. § 11-36a-703(2)(a). An administrative appeal shall be considered and decided by the City Council within thirty (30) days after the day on which the appeal is filed;

B. A request for arbitration as provided in Utah Code Ann. § 11-36a-705; or

C. An action in 5th District Court in and for Washington County, State of Utah



II. SEVERABILITY. If any section, subsection, paragraph, clause or phrase of this Impact Fee Ordinance shall be declared invalid for any reason, such decision shall not affect the

remaining portions of this Impact Fee Ordinance, which shall remain in full force and effect, and for this purpose, the provisions of this Impact Fee Ordinance are declared to be severable.

III. INTERPRETATION. This Impact Fee Ordinance has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Impact Fee Ordinance shall not be affected by such division or by any heading contained herein.

IV. EFFECTIVE DATE. Except as otherwise specifically provided herein, this Impact Fee Ordinance shall not repeal, modify or affect any Impact Fee of the City in existence as of the effective date of this Ordinance, other than those expressly referenced in Section 1 above. All Impact Fees established, including amendments and modifications to previously existing Impact Fees, after the effective date of this Ordinance shall comply with the requirements of this Ordinance. This Ordinance shall take effect ninety (90) days after the day on which it is approved by the City Council.

Adopted and approved this ____ day of May, 2016.

Roll Call Vote:

Keen Ellsworth	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Brad Langston	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Ty Bringhurst	Aye <input type="checkbox"/>	Nay <u>absent</u>
Paul Heideman	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Mark Fahrenkamp	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

TOQUERVILLE CITY
a Utah municipal corporation

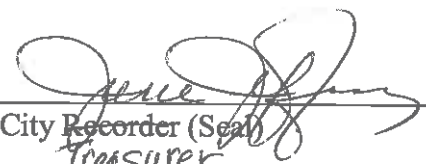




M. Darrin LeFevre, Mayor

May 12, 2016

Attest:



City Recorder (Seal)
Treasurer

EXHIBIT A