

# Chapter 2

## IMPACT FEES

### 10-2-1: FINDINGS AND AUTHORITY:

The city council of the city of Whitefish (the "council") hereby finds and determines that new growth and development, including, but not limited to, new residential, commercial, retail, and office development in the city of Whitefish will create additional demand and need for public facilities in the city of Whitefish, and the council finds that new growth and development should pay a proportionate share of the cost of new facilities needed to serve the new growth and development. The city of Whitefish has conducted extensive studies documenting the procedures for measuring the impact of new development on public facilities, has prepared the "Impact Fees For The Water, Wastewater, And Stormwater Utility Systems" dated July 2007, and the "Rate Study For Impact Fees For Paved Trails, Park Maintenance Building, Emergency Services Building And City Hall" dated July 7, 2007, and hereby incorporates these studies into this chapter by reference. Therefore, pursuant to Montana Code Annotated sections 7-6-1601 through 7-6-1604, the council adopts this chapter to assess impact fees for water, wastewater, stormwater, paved trails, park maintenance building, emergency services building and city hall. The provisions of this chapter shall be liberally construed in order to carry out the purposes of the council in establishing the impact fee program. The city council further finds that it has fully complied with the procedure and the analysis required by Montana Code Annotated sections 7-6-1601 through 7-6-1604, and finds that the impact fees authorized by this chapter are reasonable, equitable, and in full compliance with the sections of state law referenced above. (Ord. 10-03, 9-20-2010)

### 10-2-2: ASSESSMENT OF IMPACT FEES:

- A. The city shall collect impact fees, based on the rates in section [10-2-12](#) of this chapter, or as subsequently adjusted by city council resolution, from any applicant seeking a development permit from the city for any development within the city, where such development requires the issuance of a building permit. This shall include, but is not limited to, the development of residential, commercial, retail, and office, land, parking lots and includes the expansion of existing uses that creates a demand for additional public facilities, as well as a change in existing use that creates a demand for additional public facilities.
- B. For any alteration, expansion, or replacement of an existing building or dwelling unit, or addition of a new accessory building, the impact fee shall be reduced by an amount equal to the current impact fee rate for the prior structure.

- C. For mixed use developments, impact fees shall be imposed for the proportionate share of each land use based on the applicable measurement in the impact fee rates set forth in section [10-2-12](#) of this chapter, or as subsequently adjusted by city council resolution.
- D. Impact fees shall be assessed at the time the complete application for a building permit is submitted for each unit in the development, using the impact fee rates then in effect. Impact fees shall be paid at the time the building permit is issued by the city.
- E. Applicants that have been awarded credits prior to the submittal of the complete building permit application pursuant to section [10-2-4](#) of this chapter, shall submit, along with the complete building permit application, a copy of the letter or certificate prepared by the city manager or his designee pursuant to section [10-2-4](#) of this chapter setting forth the dollar amount of the credit awarded. Impact fees, as determined after the application of appropriate credits, shall be collected from the fee payer at the time the building permit is issued for each unit in the development.
- F. Where the impact fees imposed are determined by the square footage of the development, a deposit shall be due from the fee payer at the same time that a complete application for a building permit is submitted. The deposit shall be based on an estimate, submitted by the fee payer, of the size and type of structure which will be constructed on the property. In the absence of an estimate provided by the fee payer, the city shall calculate a deposit amount based on the maximum allowable density/intensity permissible on the property. If the final square footage of the development is in excess of the initial estimate, any difference will be due prior to the issuance of a certificate of occupancy, using the rate in effect at that time. The fee payer shall pay any such difference plus interest, calculated at the interest rate which the city of Whitefish then earns. If the final square footage is less than the initial estimate, the city shall give a credit for the difference, plus interest at the interest rate which the city of Whitefish then earns.
- G. The city shall not issue the required building permit unless and until the impact fees set forth in section [10-2-12](#) of this chapter, or as subsequently adjusted by city council resolution, have been paid in the amount that the fees exceed exemptions or credits provided pursuant to section [10-2-3](#) or [10-2-4](#) of this chapter.
- H. The service area for impact fees shall be a single citywide service area. (Ord. 10-03, 9-20-2010)

### **10-2-3: EXEMPTIONS:**

- A. Except as provided in subsection B of this section, the following shall be exempted from the payment of impact fees:
1. Alteration of an existing nonresidential structure that does not expand the usable space or add any residential units;
  2. Miscellaneous improvements, including, but not limited to, fences, walls, swimming pools, and signs;
  3. Demolition or moving of a structure;
  4. Expansion of a residential structure provided the expansion does not result in the creation of an additional dwelling unit or accessory dwelling unit;
  5. Expansion of an existing structure that results in the addition of one hundred (100) square feet or less of gross floor area;
  6. Replacement of a residential structure with a new residential structure at the same site or lot when such replacement occurs within twelve (12) months of the demolition or destruction of the prior structure;
  7. Replacement of a nonresidential structure with a new nonresidential structure of the same size and use at the same site or lot when such replacement occurs within twelve (12) months of the demolition or destruction of the prior structure. Replacement of a nonresidential structure with a new nonresidential structure of the same size shall be interpreted to include any structure for which the gross square footage of the building will not be increased by more than one hundred (100) square feet;
  8. Any building permit application that has been submitted to the city before five o'clock (5:00) P.M. the business day before the initiation of the collection of impact fees and subsequently determined to be a complete application; or
  9. Any building permit application for development for which a plant investment fee pursuant to city resolution 92-9 has been paid in full prior to the effective date hereof shall be exempted from impact fees for the water and/or wastewater utility for which the plant investment fee has been paid in full.
- B. If any increase in impervious area occurs in connection with development described in subsection A1 or A7 of this section, such increase shall not be exempted from payment of a stormwater impact fee. If any increase occurs in the number of fixture units in connection with any development described in subsection A1, A4, A5, A6 or A7 of this section, such increase shall not be exempted from payment of a water or wastewater impact fee.

- C. The city manager or his designee shall be authorized to determine whether a particular development falls within an exemption identified in this section, in any other section, or under other applicable law. Determinations of the city manager or his designee shall be in writing and shall be subject to the appeals procedures set forth in section [10-2-6](#) of this chapter.
- D. Affordable housing dwelling units are not exempted from the payment of impact fees. The city may allow the deferral of certain impact fees otherwise applicable to affordable housing dwelling units, according to the method and procedure set forth in subsections [11-2S-3E](#) and [11-2S-6C3](#) of this code. (Ord. 10-03, 9-20-2010)

#### **10-2-4: CREDITS:**

- A. A fee payer can request that a credit or credits for impact fees be awarded to him/her for the total value of dedicated land, improvements, or construction provided by the fee payer. Credits will be given only if the land, improvements, and/or the facility constructed are:
1. For one or more of the system improvements from the capital improvements program, the need for which is clearly documented pursuant to Montana Code Annotated section 7-6-1602, by being included in the "Impact Fees For The Water, Wastewater, And Stormwater Utility Systems" dated July 2007, or the "Rate Study For Impact Fees For Paved Trails, Park Maintenance Building, Emergency Services Building And City Hall" dated July 7, 2007, as the basis of the impact fee; and
  2. The land proposed for dedication or the public facilities to be constructed is determined by the city to be appropriate for the proposed use at suitable sites and constructed at acceptable quality as determined by the city.
- B. The city manager or his designee shall determine if requests for credits meet the criteria in subsection A of this section.
- C. The value of a credit for structures, facilities or other improvements shall be established by original receipts provided by the applicant for one or more of the same system improvements for which the impact fee is being charged.
- D. The value of a credit for land, including right of way and easements, shall be established on a case by case basis by an appraiser selected by, or acceptable to the city manager or his

designee. The appraiser must be licensed in good standing by the state of Montana for the category of the property appraised. The appraiser shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised. The appraisal shall be in accord with the most recent version of the uniform standards of professional appraisal practice and shall be subject to review and acceptance by the city manager or his designee.

E. The fee payer shall pay for the cost of the appraisal.

F. After receiving the appraisal the city manager or his designee shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated where applicable, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate, and return such signed document to the city manager or his designee before the impact fee credit will be awarded. The failure of the applicant to sign, date, and return such document within sixty (60) calendar days shall nullify the credit.

G. Any claim for credit must be made no later than sixty (60) calendar days after the submission of an application for a building permit. The failure to timely file such a claim shall constitute a final bar to later request any such credit.

H. Determinations made by the city manager or his designee pursuant to this section shall be subject to the appeals procedures set forth in section [10-2-6](#) of this chapter. (Ord. 10-03, 9-20-2010)

## **10-2-5: ADJUSTMENTS FOR OTHER REVENUE:**

Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1602(7)(b)(ii), the "Impact Fees For The Water, Wastewater, And Stormwater Utility Systems" dated July 2007, and "Rate Study For Impact Fees For Paved Trails, Park Maintenance Building, Emergency Services Building And City Hall" dated July 7, 2007, provide consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvement which are earmarked or proratable to the same new public facilities which will serve the new development. The impact fee rates in section [10-2-12](#) of this

chapter, or as subsequently adjusted by city council resolution, have been reasonably adjusted for payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvement. (Ord. 10-03, 9-20-2010)

## **10-2-6: APPEALS:**

- A. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1603(8), any fee payer may appeal impact fee charges if the person believes an error has been made. No appeal shall be permitted until the impact fees at issue have been paid.
- B. Appeals regarding the impact fees imposed on any development may only be filed by the fee payer of the property where such development will occur.
- C. The fee payer must first file a request for review regarding impact fees with the city manager or his designee, as provided herein:
1. The request shall be in writing;
  2. The request for review by the city manager or his designee shall be filed within twenty one (21) calendar days of the fee payer's payment of the impact fees at issue. The failure to timely file such a request shall constitute a final bar to later seek such review;
  3. No administrative fee will be imposed for the request for review by the city manager or his designee; and
  4. The city manager or his designee shall issue his/her determination in writing.
- D. Determinations of the city manager or his designee with respect to the applicability of the impact fees to a given development, the availability or value of a credit, or the city manager or his designee's decision concerning the independent fee calculation which is authorized in section [10-2-14](#) of this chapter, or any other determination which the city manager or his designee is authorized to make pursuant to this chapter, can be appealed to the city council.
- E. Appeals shall be taken within twenty one (21) calendar days of the city manager's or his designee's issuance of a written determination by filing with the city a notice of appeal specifying the grounds thereof, and depositing the necessary fee, which is set forth in the

existing fee schedules for appeals of such decisions. The city manager or his designee shall transmit to the city council all papers constituting the record for the determination, including where appropriate, the independent fee calculation.

- F. The city council shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same as provided in this code. At the hearing, any party may appear in person or by agent or attorney.
- G. The city council is authorized to make findings of fact regarding the applicability of the impact fees to a given development, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. The decision of the city council shall be in writing and shall be final, except as provided in this section.
- H. The city council may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the city manager or his designee with respect to the amount of the impact fees imposed or the credit awarded.
- I. The fee payer may appeal a final decision of the city council by filing an appropriate action with the Flathead County district court within ninety (90) days of the city council's issuance of its written determination. (Ord. 10-03, 9-20-2010)

## **10-2-7: ESTABLISHMENT OF IMPACT FEE ACCOUNTS:**

- A. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1603(1)(a), impact fee receipts shall be earmarked specifically and deposited in a special revenue fund maintained by the city. Such special revenue fund shall constitute the "special proprietary fund" referred to in Montana Code Annotated section 7-6-1603(1)(a).
- B. There is hereby established the impact fee special revenue fund for the fees collected pursuant to this chapter. Separate accounts shall be maintained for each type of public facility. Funds withdrawn from these accounts must be used in accordance with the provisions of section [10-2-9](#) of this chapter and applicable state law. Interest earned on the fees shall be allocated to the account and expended for the purposes for which the impact fees were collected.

C. On an annual basis, the finance director shall provide a report to the council on the impact fee special revenue fund showing the source and amount of all monies collected, earned, or received, the public improvements that were financed in whole or in part by impact fees, and any administrative expenses incurred by the impact fee fund. (Ord. 10-03, 9-20-2010)

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

A. If the city fails to collect or spend the impact fees in accordance with this chapter, or in accordance with Montana Code Annotated section 7-6-1602, the city shall refund any impact fees collected to the current owner of the property on which impact fees have been paid. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first in, first out basis.

B. The city shall notify potential claimants by first class mail deposited with the United States postal service at the last known address of such claimants. A potential claimant or claimant must be the owner of the property.

C. Owners seeking a refund of impact fees must submit a written request for a refund of the fees to the city manager or his designee within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any impact fees for which no application for a refund has been made within this one year period shall be retained by the city and expended on the appropriate public facilities.

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by the city.

F. The city shall also refund to the current owner of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, if the development for which the impact fees were imposed did not occur; provided that, if the city has expended or encumbered the impact fees in good faith prior to the application for a refund, the city manager or his designee can decline to provide the refund. If within a period of three (3) years, the same or subsequent owner of the property proceeds with the same or substantially

similar development, the owner can petition the city manager or his designee for an offset. The petitioner must provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. The city manager or his designee shall determine in writing whether to grant an offset, and the determinations of the city manager or his designee may be appealed pursuant to the procedures in section [10-2-6](#) of this chapter. (Ord. 10-03, 9-20-2010)

## **10-2-9: USE OF FUNDS:**

A. Pursuant to this chapter, impact fees:

1. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1603(1), shall be used for public improvements that are reasonably related to the benefits accruing to the development;
2. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1602(7)(c), shall not be imposed to correct existing deficiencies in public facilities;
3. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1602(7)(e), shall not be used for operation or maintenance of public facilities;
4. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1603(5), shall not be used for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand, and the impact fees are used only for the net increase between the old and new demand; and
5. Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1601(1)(b), shall not be used for consumable supplies.

B. Impact fees may be spent for public improvements, including, but not limited to, planning, land acquisition, right of way acquisition, site improvements, necessary off site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and any other expenses which can be capitalized.

C. Impact fees may also be used to recoup public improvement costs previously incurred by the city to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of public improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the new development. (Ord. 10-03, 9-20-2010)

This section has been affected by a recently passed ordinance, 13-05 - Impact Fee Ordinance.  
[Go to new ordinance.](#)

## **10-2-10: COMPONENT OF BUDGET:**

A. Pursuant to and consistent with Montana Code Annotated section 7-6-1602(2)(k), the city's capital improvement program is the component of the city's budget that:

1. Schedules construction of public facility capital improvements to serve projected growth;
2. Projects costs of the capital improvements;
3. Allocates collected impact fees for construction of the capital improvements; and
4. Covers at least a five (5) year period and is reviewed and updated at least every two (2) years.

B. The annual update of the capital improvement program does not require an update of impact fee calculations unless a project is removed that was used as the basis for calculating impact fees. (Ord. 10-03, 9-20-2010)

This section has been affected by a recently passed ordinance, 13-05 - Impact Fee Ordinance.  
[Go to new ordinance.](#)

## **10-2-11: REVIEW:**

Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1602(4), the documentation and impact fee rates may be reviewed and adjusted by the council as it deems necessary and appropriate, but at least once every five (5) years. On an annual basis the city manager or his or her designee shall calculate and present to the city council for its consideration proposed changes in the amount of all impact fees set forth in section [10-2-12](#) of this chapter, based on the amount that the construction cost index published by "Engineering

News Record" has changed for the most recent twelve (12) month period prior to the date of the adjustment. The council may adopt new impact fee amounts by resolution, after a public hearing, according to Montana Code Annotated section 7-6-4013. (Ord. 10-03, 9-20-2010)

This section has been affected by a recently passed ordinance, 13-05 - Impact Fee Ordinance.  
[Go to new ordinance.](#)

## **10-2-12: IMPACT FEE RATES:**

- A. The impact fee rates in this section are generated from the formulas for calculating impact fees set forth in the "Impact Fees For The Water, Wastewater, And Stormwater Utility Systems" dated July 2007, and "Rate Study For Impact Fees For Paved Trails, Park Maintenance Building, Emergency Services Building And City Hall" dated July 7, 2007, which are incorporated herein by reference. Except as otherwise provided for, exemptions in section [10-2-3](#) of this chapter, credits in section [10-2-4](#) of this chapter, and independent fee calculations in section [10-2-14](#) of this chapter, all new development in the city will be charged the impact fee applicable to the type of development.
  
- B. The impact fee rate for paved trails shall initially be four hundred twenty one dollars (\$421.00) per dwelling unit. Future fee adjustments shall be by city council resolution.
  
- C. The impact fee rate for park maintenance building shall initially be twenty eight dollars (\$28.00) per dwelling unit. Future fee adjustments shall be by city council resolution.
  
- D. The impact fee rates for emergency services building shall initially be seven hundred seventy five dollars (\$775.00) per dwelling unit and thirty eight cents (\$0.38) per square foot of nonresidential development. Future fee adjustments shall be by city council resolution.
  
- E. The impact fee rates for city hall shall initially be seven hundred thirty four dollars (\$734.00) per dwelling unit and thirty six cents (\$0.36) per square foot of nonresidential development. Future fee adjustments shall be by city council resolution.
  
- F. The impact fee rate for water shall initially be:

<b>Meter Size (Inches)</b>	<b>Current Weighting Factor</b>	<b>Base Impact Fee</b>	<b>Base Number Of Fixture Units</b>	<b>Additional Cost Per Fixture Unit Above Base</b>
5/8	1 .00	\$ 1,563 .00	0	
3/4	1 .00	1,563 .00	21	\$52 .10
1	1 .50	2,345 .00	36	52 .10
1 1/2	2 .50	3,908 .00	66	33 .98
2	5 .00	7,815 .00	181	26 .05
3	8 .00	12,504 .00	361	24 .87
4	15 .00	23,445 .00	801	15 .63
6	25 .00	39,075 .00	1,801	13 .96

Future fee adjustments shall be by city council resolution.

G. The impact fee rate for wastewater (sewer) shall initially be:

<b>Meter Size (Inches)</b>	<b>Current Weighting Factor</b>	<b>Base Impact Fee</b>	<b>Base Number Of Fixture Units</b>	<b>Additional Cost Per Fixture Unit Above Base</b>
5/8	1 .00	\$ 1,575 .00	0	
3/4	1 .00	1,575 .00	21	\$52 .55

1	1 .50	2,363 .00	36	52 .52
1 1/2	2 .50	3,939 .00	66	34 .22
2	5 .00	7,874 .00	181	26 .26
3	8 .00	12,601 .00	361	25 .06
4	15 .00	23,628 .00	801	15 .75
6	25 .00	39,375 .00	1,801	14 .06

Future fee adjustments shall be by city council resolution.

H. The impact fee rate for stormwater shall initially be calculated and applied as follows:

Type Of Development	Number Of ERUs	Impact Fee
Single-family residential	1.0	\$200 .00
Condo (per unit)	1.0	200 .00
Duplex	1.8	360 .00
Other development	Divide impervious area by 2,400 to determine ERUs	

Future fee adjustments shall be by city council resolution. (Ord. 10-03, 9-20-2010)

This section has been affected by a recently passed ordinance, 13-05 - Impact Fee Ordinance.  
[Go to new ordinance.](#)

### 10-2-13: ADMINISTRATIVE FEES:

Pursuant to and consistent with the requirements of Montana Code Annotated section 7-6-1601(5)(a), all development permits subject to the impact fees pursuant to section [10-2-2](#) of this chapter, or as subsequently adjusted by city council resolution, shall pay an administrative fee

in addition to the impact fee rates in section [10-2-12](#) of this chapter, in an amount equal to five percent (5%) of the amount of the impact fees. (Ord. 10-03, 9-20-2010)

## **10-2-14: INDEPENDENT FEE CALCULATIONS:**

- A. If in the judgment of the city manager or his designee, none of the fee categories or fee amounts set forth in section [10-2-12](#) of this chapter, or as subsequently adjusted by city council resolution, accurately describe or capture the impacts of a new development on public facilities, the city may conduct independent fee calculations and the city manager or his designee may impose alternative fees on a specific development based on those calculations. The alternative fees and the calculations shall be set forth in writing and shall be mailed to the fee payer.
  
- B. If a fee payer opts not to have the impact fees determined according to section [10-2-12](#) of this chapter, then the fee payer shall prepare and submit to the city manager or his designee an independent fee calculation for the development for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made.
  
- C. Any fee payer submitting an independent fee calculation will be required to pay the city of Whitefish a fee to cover the cost of reviewing the independent fee calculation. The amount of the fee required by the city for conducting the review of the independent fee calculation shall be established by resolution by the city council and shall be paid by the fee payer prior to initiation of review.
  
- D. While there is a presumption that the calculations set forth in the "Impact Fees For The Water, Wastewater, And Stormwater Utility Systems" dated July 2007, and "Rate Study For Impact Fees For Paved Trails, Park Maintenance Building, Emergency Services Building And City Hall" dated July 7, 2007, are valid, the city manager or his designee shall consider the documentation submitted by the fee payer, but is not required to accept such documentation or analysis which the city manager or his designee reasonably deems to be inaccurate or not reliable, and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. The city manager or his designee is authorized to adjust the impact fees on a case by case basis based on the independent fee calculation, the specific characteristics of the development, and/or principles of fairness. The fees or alternative fees and the calculations shall be set forth in writing and shall be mailed to the fee payer.

E. Determinations made by the city manager or his designee pursuant to this section may be appealed pursuant to section [10-2-6](#) of this chapter. (Ord. 10-03, 9-20-2010)

### **10-2-15: MAJORITY APPROVAL FOR SPECIFIC IMPACT FEES:**

The impact fees for paved trails, park maintenance building and city hall shall be adopted and take effect only if this chapter is approved by at least a two-thirds ( $\frac{2}{3}$ ) majority of the city council. (Ord. 10-03, 9-20-2010)