

# COUNTYWIDE IMPACT FEES

Navigating statutory requirements  
and Intergovernmental agreements  
and evaluating their effectiveness

PREPARED FOR  
IDAHO ASSOCIATION OF COUNTIES  
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# INTRO

- What are impact fees?
- What kinds of growth is your County facing?
- What kinds of infrastructure is the County currently lacking or deficient in?
- What kinds of infrastructure will the County need to support additional growth?
- What is the County's current capacity? Roadway concerns?
- How much new growth will occur, and in what areas?
- What specific project(s) will you be able to build or buy within 8 years (11 with a good excuse) that is necessary to serve the new development paying the fees?

# IDAHO CODE 67-8201, et. seq.

- Idaho Development Impact Fee Act
- Implemented as one of many tools to make sure growth pays its own way, that the costs of preserving a current level of service are not borne solely by existing residents, and that the county cannot shift the cost of improving existing service level *deficiencies* to new growth
- [67-6513](#), subdivision code, allows for mitigation of impact on subdivision approval, BUT *mandates* compliance with IDFA for setting mitigation fees
- Statute is heavily laden with specifically-defined terms that must be kept in mind when interpreting requirements for implementation
- Improperly adopted or noncompliant impact fee codes or provisions are “null and void and of no legal effect” ([67-8204\(25\)](#)).
- Prior and current litigation can highlight strengths and weaknesses of using impact fees.

# OTHER REVENUE SOURCES

- Development agreements
- Voluntary exactions
- Local Improvement Districts (LID, 50-1701 et. seq.)
- Community Infrastructure districts (CID, Idaho code 50-3101 et. seq.)
- Eminent domain actions for acquisition of real property (still requires just compensation)
- Judicial confirmation/Lease purchase/Certificates of participation
- Revenue bonds
- General obligation bonds

# LEGISLATIVE UPDATE

- IMPACT FEES FOR FIRE PROTECTION AND AMBULANCE SERVICE DISTRICTS: HB 766
  - Fire Protection and Ambulance Service Districts now (actually, July 1, 2026) will now have ordinance authority to enact development impact fees
  - This changes the prior method requiring intergovernmental agreements with entities having ordinance authority
  - May still need to have intergovernmental agreement for sharing information regarding building permits, development applications, ect.
  - Relieves cities and counties of the requirement to adopt mirroring ordinances and appointing joint impact fee advisory committees and the associated administrative tasks of jointly approving and updating CIPs

# LEGISLATIVE UPDATE

- IMPACT FEES FOR COUNTY JAILS AND COURTHOUSES ([HB 626](#))
- Purportedly, would require a city to collect county impact fees for courthouses and jails
- Would have inserted language into 67-8204, but ignored 67-8204A, and 67-8203, 8213, 8212, and 8211.
- It does not, and cannot, work that way. Because it is an exercise of police power the agreements are between separate sovereigns under Article XII, section 2, and a county has no authority to order a city to deny a building permit and a city may only withhold a building permit for fees under *its* ordinance.
- Fruitless litigation would certainly have ensued
- Needs way more work

# Definitions from Impact fee Act (I.C. [67-8203](#))

- “Development impact fee”

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*

# Definitions from Impact fee Act (I.C. [67-8203](#))

- “Development”

- Any construction or installation of a building or structure, or any change in the use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities or
- The subdivision of property that would permit any change in the use, character or appearance of land.
- Development shall not include activities undertaken by a taxing district or school in the course of carrying out its statutory responsibilities, unless the ordinance expressly includes taxing districts or schools.

# Definitions from Impact fee Act (I.C. [67-8203](#))

- “system improvements”
- Capital improvements to public facilities designed to provide service to a service area, including the type of improvements described in 50-1703 [LID statute]
  - “project improvements”
- Site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of occupants or users of the project.
  - “Project”
- Particular development on an identified parcel of land

What they can be used for

## CAPITAL IMPROVEMENTS

“Improvements with a useful life of ten years or more, by new construction or other action, which increase the service capacity of public facility”

What they can be used for  
CAPITAL IMPROVEMENTS  
On “Public facilities”

- water, wastewater
- roads, streets, bridges, rights-of-way, traffic signals, landscaping,
- stormwater collection

Parks, open space

Public safety facilities law enforcement, fire stations and apparatus, emergency medical, and street lighting

# What they can NOT be used for

Ongoing operational costs

Wages

Things with a useful life of less than ten years

Improvements to increase a level of service or to correct a service level deficiency

# STEPS TO IMPLEMENT

- Identify growth rates and land use assumptions, need for capital improvements to support growth, service levels, project and
- **Appoint development impact fee advisory committee**
- **Begin developing capital improvements plan-** department heads, county staff, engineering and planning professionals, impact fee advisory committee
- Review proposed plan, land use assumptions, proposed improvements, costs, estimated start and completion dates for improvements.
- Prepare draft CAPITAL IMPROVEMENTS PLAN and fee schedules for various public facilities to be paid for using impact fee funds
- Prepare development impact fee code amendment ordinance, fee schedule for various types of developments required to offset potential detrimental impacts; resolution amending comprehensive plan to add capital improvements plan; prepare new fee resolution; schedule public hearings

# STEPS TO IMPLEMENT

- Identify existing levels of service and potential for detrimental impact on those levels of service brought about by new development
  - i.e. LE officers per 1,000 population, acres of parks per 1,000 population, fire department response times, lane-miles, traffic signaling requirements, water and wastewater system capacities
- Identify CAPITAL IMPROVEMENTS required to offset potential detrimental impacts
  - i.e. new police substation, new parks, fire station and apparatus, new street lanes, new signals, new water treatment plant, new wastewater lift station, etc.

# STEPS TO IMPLEMENT

- Identify estimated COSTS of capital improvements required to offset potential detrimental impacts levels of service
  - i.e. fire truck is \$500,000, new police substation is \$275000, wastewater lift station is \_\_\_\_\_, traffic signal is \$180,000, etc.
- Estimate or predict the RATE OF GROWTH which will trigger the need for these CAPITAL IMPROVEMENTS
  - i.e. new police substation, new parks, fire station and apparatus, new street lanes, new signals, new water treatment plant, new wastewater lift station, etc.
- Figure out WHEN the new improvements will be needed to support the new growth

# STEPS TO IMPLEMENT

- Identify no fewer than 5 persons to serve on a Development Impact Fee Advisory Committee ([67-8205](#))
  - Two must be active in the business of development, building, or real estate.
  - Must reside within the service area (county boundaries)
  - At least two must not be employees or officials of a governmental entity
- DIFAC serves in an advisory capacity and:
  - Assists in adopting land use assumptions
  - Reviews capital improvements plan
  - Monitors and reviews implementation of capital improvements plan
  - Files periodic reports, at least annually, and report any perceived inequities in the CIP
  - Advise governmental entity of the need to update or revise land use assumptions, the CIP, and the fees

# STEPS TO IMPLEMENT

- Development Impact Advisory Committee will work in coordination with the County's consultant in developing the capital improvements plan ([67-8206\(2\)](#))
- Governmental entity shall prepare a capital improvements plan, the cost of which may be paid by a surcharge imposed by ordinance on the collection of a development impact fee\*\*\* (OR a one-time levy)
- Governmental entity shall ensure the CIP is prepared by qualified professionals in fields related to finance, engineering, planning, and transportation
- Persons preparing the plan shall consult with the Advisory committee

# STEPS TO IMPLEMENT- CIP CONTENTS AND STANDARDS ([67-8208](#))

- General description of all existing public facilities and their deficiencies and a reasonable estimate of the cost and a plan to develop funding for curing the existing deficiencies
- Commitment of the entity to use other available sources of revenue to cure existing deficiencies
- Analysis of total capacity, level of current usage, and commitments for usage of capacity of existing capital improvements, which shall be prepared by a qualified professional planner or by a qualified engineer
- Description of land use assumptions (TWENTY year period)

# INTERGOVERNMENTAL AGREEMENT TIME

- If your contemplated Impact Fee arrangement requires participation of Cities, the time to involve those governing bodies in the formation of the Impact Fee advisory committees and the consultants who must develop the Capital Improvements Plan is NOW, at the BEGINNING.
- This allows you and those entities to cultivate the buy-in needed from them and their constituents that:
  - The project is necessary and the costs of it are reasonable
  - The growth necessary to pay for the improvements is actually occurring
  - The proportionate shares are correctly calculated
  - There will be sufficient revenue from collected fees to execute the improvements within 8/11 years of when first collected

# INTERGOVERNMENTAL AGREEMENT TIME

- Early involvement of cities allows you to leverage those cities' existing impact fee ordinance procedures and experiences (If those cities have them)
- Early involvement allows your governing body to take a hard look at your assumptions from a second set of policymaker and legal eyes
- Early involvement allows legal problem solving and clearance of procedural hurdles and statutory notice and hearing requirements
- Early involvement allows self-correction of statutory flaws in proposals before they ripen into expensive litigation

# INTERGOVERNMENTAL AGREEMENT TIME

- The process, whether in just a county, or with intergovernmental agreements, is:
  - Cumbersome, complicated, burdensome, procedure-laden, technically expensive, and of dubious merit in areas with less than extraordinary growth.
- These are features, not bugs. This is by design.
- If it gives you pause, it should- after you get through the first set of meetings with the new impact fee advisory committee, and paying the consultant's first bill, take another look at the revenue source list
- Ask yourself- is the juice worth the squeeze?

# OTHER REVENUE SOURCES

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# INTERGOVERNMENTAL AGREEMENT TIME

- Legal counsel from both entities (do/Can/Should/might) have unique working knowledge of the intricacies of LLUPA and Impact fee statutes
- Legal counsel working together with other entity legal counsel can help work through some policy or political disputes to provide sound guidance on legal ramifications of and legal options for pending litigation during executive sessions
- **Since comp plan amendments (required for adoption of CIP) are legislative and not quasi-judicial, joint meetings of governing bodies, PZ commissions, and impact fee committees can streamline the process**

# STEPS TO IMPLEMENT- CIP CONTENTS AND STANDARDS (67-8208)

- Definitive table establishing specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses
- A description of all system improvements and their costs necessitated by and attributable to new development in the service area based upon approved land use assumptions, to provide a level of service not to exceed the level of service adopted
- Total number of service units necessitated by and attributable to new development within the service area based upon the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria
- Projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed 20 years
- Identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements
- Schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the Plan

# STEPS TO IMPLEMENT- CIP CONTENTS AND STANDARDS (67-8208)

- Shall be updated at least once every five years
- Requires adoption of a capital budget by the governmental entity
- Adoption and updates require public hearing and published notice
- Adoption of CIP requires amendment to Comprehensive plan adding the CIP as an element of that Plan

# STEPS TO IMPLEMENT- ORDINANCE REQUIREMENTS ([67-8204](#) 1-25)

- Fee shall not exceed proportionate share of cost of system improvements
- Fee shall be calculated on basis of levels of service for public facilities applicable to existing development as well new growth and development, and the cost of improvement or construction **must be attributable to capacity demands generated by the new development**
- Shall specify the point in the development process at which the fees shall be collected, no earlier than start of construction, issuance of building permit, or as agreed by developer and county

# ORDINANCE REQUIREMENTS

- Adopted in accordance with notice and hearing requirements in [67-8206](#) and 67-6509 (LLUPA)
- Shall allow process for developer to provide written individual assessment of proportionate share of fees as set forth
- Shall provide a process for the developer to receive written certification of fee schedule or individual assessment for a particular project, provided there is no material change to the project as identified in the fee schedule
- Shall provide a provision for credits
- Shall prohibit expenditure of funds except in accordance with [67-8210](#)
- May exempt all or part of fees for affordable housing if the county makes up the difference with another revenue source

# ORDINANCE REQUIREMENTS

- Shall provide for refunds in accordance with [67-8211](#)
- Shall establish procedure for timely processing applications for determination of fees, individual assessments, credits or reimbursements, and extraordinary impact
- Shall specify when an individual assessment application shall be permitted to be made and shall be early enough that the builder may seek permit without delay
- Shall provide a provision for appeals
- Shall provide detailed description of methodology by which costs per service unit are calculated
- Shall include a schedule of impact fees for various land uses per unit of development, and a right of developer to pay a project's proportionate share as full and complete payment of the project's proportionate share

# ORDINANCE REQUIREMENTS

- Shall not impose additional fees or increases in fees for development for which fees have been paid, unless the number of service units increases
- Shall not subject any development to double payment of impact fees
- Shall exempt the following activities:
  - Rebuilding the same amount of floor space of a destroyed structure within two years of its destruction
  - Remodeling or repairing a structure which does not increase the number of service units
  - Replacing a residential unit with another residential unit on the same lot provided the number of service units does not increase
  - Emplacement of temporary construction trailer or office
  - Constructing an addition on a residential structure which does not increase the number of service units
  - Adding typical accessory uses to residential uses, such as tennis courts or a clubhouse

# ORDINANCE REQUIREMENTS

- Shall apply to installation of modular building unless fee payer can demonstrate that the modular building was in place prior to fee enactment or the fee was already paid
- Shall include a process for dealing with a project which has extraordinary impacts
- Shall provide for the calculation of a fee in accordance with generally accepted accounting principles
- Shall include a description of acceptable levels of service for system improvements

# NOW YOU'VE DONE IT- WHAT'S NEXT: ADMINISTRATION

- Provision for credits for present value of system improvements or dedication of land or money (but not for *project* improvements)
- Earmarking and expenditure: ([67-8210](#))
  - All funds shall be maintained in one or more interest-bearing accounts within the capital projects fund
  - Accounting records shall be maintained for each category of system improvements (i.e., water, wastewater, parks, streets, fire, police, etc) and the service area in which fees are collected
  - Expenditures shall be made only for the category of system improvements and within or for the benefit of the service area for which the fees were imposed as shown by the CIP; shall NOT be used for any other purpose

# NOW YOU'VE DONE IT-

## WHAT'S NEXT: ADMINISTRATION

- Prepare annual report ([67-8210\(3\)](#)):
  - Describing the amount of all impact fees collected, appropriated, or spent during the preceding year by category of public service facility
  - Describing the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements
- Collected impact fees must be expended within eight years from the date they were collected on a first-in, first-out basis, except that fees for wastewater must be expended within 20 years.
- Funds not expended within 8 years must be refunded. However, they may be held longer than 8 years if there is identified a reasonable cause why and an anticipated date of expenditure not greater than 11 years is specified

# NOW YOU'VE DONE IT-

## WHAT'S NEXT: ADMINISTRATION

- **Refunds** ([67-8211](#)) shall be made upon request of owner of property upon which a development impact fee has been paid if:
  - Service is available but never provided
  - Building permit for a manufactured home is denied or abandoned
  - The governmental entity after collecting a fee fails to appropriate and expend within the time periods (8, 11, or 20 years)
  - The fee payer pays under protest and subsequent review determines the fee exceeded the proportionate share
- Must be made within 90 days
- Shall include refund of interest at one-half the legal rate

# NOW YOU'VE DONE IT-

## WHAT'S NEXT: ADMINISTRATION

- **Appeals:** ([67-8212](#)) County shall provide for administrative appeals by developer or fee payer from any discretionary action
- Fee payer may pay under protest to obtain a building permit or development approval, in order to preserve the right to appeal and be entitled to refund should the appeal be successful
- County shall provide for mediation by a qualified independent party upon voluntary agreement by the fee payer and the governmental entity, to address a disagreement related to the impact fee for the proposed development. The ordinance shall provide that mediation costs shall be shared equally by fee payer and city

# NOW YOU'VE DONE IT-

## WHAT'S NEXT: ADMINISTRATION

- **Collection:** ([67-8213](#)) County shall provide for means for collection of development impact fees which may include:
- Additions to fee for reasonable interest and penalties for non- or late payments;
- Withholding of building permit or other approval until the fee is paid;
- Withholding of utility services until the fee is paid;
- Imposing liens for failure to pay, following procedures in chapter 5, title 45
- If an error is discovered in the formula amounting to an overcharge the entity shall adjust on a case-by-case basis, or shall discontinue collecting until the error is corrected by ordinance.

# OTHER RIGHTS NOT AFFECTED

- Private agreements are still allowed and protected
- Nothing obligates an entity to approve developments that create an extraordinary impact
- Nothing obligates an entity to approve a development request that may reduce levels of service below minimum levels in the ordinance
- Nothing creates an additional right to develop or to diminish the power of a county to regulate the orderly development of property
- Eminent domain and annexation regulations are also not affected