

ORDINANCE 13-01

AN ORDINANCE ADOPTING AN IMPACT FEE ANALYSIS AND ADJUSTING IMPACT FEES FOR PARKS, CULINARY WATER AND SANITARY SEWER, PROVIDING FOR THE CALCULATION AND COLLECTION OF SUCH FEES, PROVIDING FOR APPEAL, ACCOUNTING AND SEVERABILITY OF THE SAME, AND OTHER RELATED MATTERS

WHEREAS, the Nibley Council (the "Council") met in regular session on February 7, 2013 to consider, among other things, adopting an impact fee analysis and adjusting impact fees for parks, culinary water and sanitary sewer system impact fees, providing for the calculation and collection of such fees, and providing for appeal, accounting and severability of the same, and other related matters; and

WHEREAS, Nibley City is a political subdivision of the State of Utah, authorized and organized under the provisions of Utah law and is authorized pursuant to the Impact Fee Act, Utah Code Ann. § 11-36a-101, et seq. to adopt impact fees; and

WHEREAS, Nibley City has caused an impact fee analysis to be prepared by Lewis, Young, Robertson & Burningham ("Consultant"), a copy of which is attached hereto as Exhibit A (the "Impact Fee Analysis"); and

WHEREAS, on January 4, 2013 a copy of the Impact Fee Analysis, together with a summary designed to be understood by a lay person, was made available to the public, and a copy was placed in the Nibley City Offices and posted on the Nibley City website (www.nibleycity.com); and

WHEREAS, on January 4, 2013, Nibley City posted notice of public hearings with respect to the Impact Fee Analysis on the Nibley City website, the Utah Public Meetings Notice website, and published notice of such public hearing in the Herald Journal; and

WHEREAS, on January 17, 2013, the Council held a public hearing regarding the Impact Fee Analysis; and

WHEREAS, on January 4, 2013, a copy of the impact fee enactment was made available to the public; and

WHEREAS, on January 4, 2013, Nibley City posted notice of public hearings on the Nibley City website, the Utah Public Meetings Notice website, and published notice of such public hearing in the Herald Journal respect to the impact fee enactment; and

WHEREAS, on January 17, 2013, the Council held a public hearing regarding the impact fee enactment; and

WHEREAS, after careful consideration and review of the comments at the public hearings, the Council has determined that it is in the best interest of the health, safety and welfare of the inhabitants of Nibley City to adopt the findings and recommendations of the Studies to address the impacts of development upon Nibley City, to approve the Impact Fee Analysis as proposed, to adopt park, culinary water and sanitary sewer impact fees, to provide for the calculation and collection of such fees, and to provide for appeal, accounting and severability of the same.

NOW, THEREFORE, BE IT ORDAINED by the Nibley City Council as follows:

Section 1. Findings. The Council finds and determines as follows:

- 1.1 All required notices have been given and made and public hearings conducted as requested by the Impact Fee Act with respect to the Impact Fee Analysis, and this impact fee enactment (this "Ordinance").
- 1.2 Growth and development activities in Nibley City will create additional demands on its park, culinary water and sanitary sewer systems. The capital facility improvement requirements which are analyzed in the Impact Fee Analysis are the direct result of additional facility needs caused by future development activities. The persons responsible for growth and development activities should pay a proportionate share of the costs of the park, culinary water and sanitary sewer systems needed to serve the growth and development activity.
- 1.3 Impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future, in comparison with the benefits already received and yet to be received.
- 1.4 In enacting and approving the Impact Fee Analysis and this Ordinance, the Council has taken into consideration, and in certain situations will consider on a case-by-case basis in the future, the future capital facilities and park, culinary water and sanitary sewer needs of Nibley City, the capital financial needs of Nibley City which are the result of the City's future facilities needs, the distribution of the burden of costs to different properties within the City based on the use of park, culinary water and sanitary sewer facilities of the City by such properties, the financial contribution of those properties and other properties similarly situated in Nibley City at the time of computation of the required fee and prior to the enactment of this Ordinance, all revenue sources available to Nibley City, and the impact on future park, culinary water and sanitary sewer facilities that will be required by growth and new development activities in Nibley City.
- 1.5 The provisions of this Ordinance shall be liberally construed in order to carry out the purpose and intent of the Council in establishing the impact fee program.
- 1.6 The existing impact fee ordinance of the city is superseded and amended to read as set forth in this chapter; provided, however, that this chapter shall be deemed a continuation of the previous ordinance, and not a new enactment, insofar as the substance of revisions of the previous ordinance is included, whether in the same or in different language; and this chapter shall be so interpreted upon all questions of construction.

Section 2. Definitions.

- 2.1 Except as provided below, words and phrases that are defined in the Impact Fee Act shall have the same meaning in this Ordinance.
- 2.2 "Service Area 1" shall mean that geographic area designated. It is determined to be the entire City
- 2.3 "Project Improvements" does not mean system improvements and includes, but is not limited to those projects listed in the Analysis.

Section 3. Adoption.

The Council hereby approves and adopts the Impact Fee Analysis, dated February 7, 2013, (Analysis) attached as Exhibit A and the analysis reflected therein. The Impact Fee Analysis is incorporated herein by reference as though fully set forth herein. Based on its approval and adoption of the Impact Fee Analysis, the Council hereby imposes the impact fees specified herein and enacts this Ordinance to require payment of the impact fees specified herein as a condition of building a house or residential living units, institutional or commercial building in Nibley City.

Section 4. Impact Fee Calculations.

- 4.1 Developer Credits/Developer Reimbursements.** A developer may be allowed a credit against or proportionate reimbursement of Impact fees if the developer dedicates land for a system improvement, builds and dedicates some or all of a system improvement, or dedicates a public facility that the City and the developer agree will reduce the need for a system improvement. A credit against impact fees shall be granted for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities are system improvements, or are dedicated to the public and offset the need for an identified system improvement.
- 4.2 Impact Fees Accounting.** Nibley City shall establish a separate interest-bearing ledger account for the cash impact fees collected pursuant to this Ordinance. Interest earned on such account shall be allocated to that account. 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, Nibley City shall prepare a report on such account generally showing the source and amount of all monies collected, earned and received by the fund or account and each expenditure from the fund or account. The report shall also identify impact fee funds by the year in which they were received, the project from which the funds were collected, the capital projects for which the funds were budgeted, and the projected schedule for expenditure and be provided in a format approved by the State Auditor and certified by the Nibley City Chief Financial Officer.
- (b) **Impact Fee Expenditures.** Nibley City may expend cash impact fees covered by this Ordinance only for systems improvements that are (i) public facilities identified in the Impact Fee Analysis; and (ii) of the specific public facilities type for which the fee was collected.
- (c) **Time of Expenditure.** Cash impact fees collected pursuant to this Ordinance are to be expended, dedicated or encumbered for a permissible use within six (6) years of receipt by Nibley City, unless the Council directs otherwise. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.
- (d) **Extension of Time.** Nibley City may hold previously dedicated or unencumbered fees for longer than six (6) years if it identifies in writing, before the expiration of the six year period, (i) an extraordinary and compelling reason why the fees should be held longer than six (6) years; and (ii) an absolute date by which the fees will be expended.

- 4.3 **Refunds.** Nibley City shall refund any impact fees paid by a builder or developer, plus interest actually earned when (i) the builder or developer does not proceed with the building activity and files a written request for a refund; (ii) the fees have not been spent or encumbered; (iii) the builder or developer has contributed in excess of its proportional costs; and (iv) no impact has resulted.
- 4.4 **Additional Fees and Costs.** The impact fees authorized hereby are separate from and in addition to user fees and other charges lawfully imposed by Nibley City, such as engineering and inspection fees, building permit fees, review fees, and other fees and costs that may not be included as itemized component parts of the impact fee.
- 4.5 **Fees Effective at Time of Payment.** Unless Nibley City is otherwise bound by a contractual requirement, the impact fee shall be determined from the impact fee schedule in effect at the time of payment in accordance with the provisions of Section 5 below.
- 4.6 **Imposition of Additional Fee.** 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 charge an additional impact fee to the developer or other appropriate person covering the density for which an impact fee was not previously paid.

Section 5. Impact Fee Imposed.

Impact fees are hereby imposed as a condition of and unless otherwise provided and approved by the City Council, shall be paid prior to the issuance of a building permit by Nibley City for any development activity which creates additional demand and need for public facilities or makes demands on the park, culinary water and sanitary sewers in Nibley City's system. The fees imposed are as follows:

5.1. Facilities Impact Fee.

Parks Impact Fee	\$4,500 per single-family unit \$4,500 per multi-family unit
Sanitary Sewer Impact Fee	\$1,725 (1-inch meter) \$3,450 (1 ½-inch meter) \$5,520 (2-inch meter) \$10,349 (3-inch meter) \$20,698 (4-inch meter) (Based on the size of the culinary water meter.)
Culinary Water Impact Fee	\$1,950 (1-inch meter) \$3,900 (1 ½-inch meter) \$6,241 (2-inch meter) \$11,701 (3-inch meter) \$23,403 (4-inch meter) (Based on the size of the culinary water meter.)

- 5.2 **Impact Fees for Other Forms of Development.** Other forms of development not readily related to those of the above chart shall be subject to an impact fee calculated by the City Manager using the formulas in the Analysis and the trip generation data (check with Lewis, Young—as there is no road impact fee being adopted, the use of trip generation data seems incorrect.) from the same source as used in the Analysis.

Section 6. Fee Exceptions and Adjustments.

- 6.1. **Waiver for “Public Purpose.”** The Council may, on a project by project basis, authorize exceptions or adjustments to the then impact fee rate structure for those projects the Council determines to be of such benefit to the community as a whole to justify the exception or adjustment. Such projects may include low income housing, and except for an exemption for low income housing, the City Council shall establish one or more sources of funds other than impact fees to pay for the exempted development activity.
- 6.2. **Adjustments.** The Council may adjust impact fees imposed pursuant to this Ordinance as necessary in order to respond to unusual circumstances in specific areas, ensure that impact fees are imposed fairly, permit the adjustments of the amount of the impact fees based upon studies and data submitted by an applicant in order to ensure that the impact fee represents the proportionate share of the cost of providing such public facilities which are reasonably related to and necessary in order to provide the services in question to anticipate future growth and development activities. This adjustment may result in a higher fee if the city determines that a user would create a greater than normal impact on the system. The city may also decrease the fee if the city is satisfied that the developer-provided documentation demonstrates that the proposed impact will be less than what could be expected given the type of user.

The City may adjust the standard impact fee at the time the fee is charged to respond to a request for a prompt and individualized impact fee review for the development activity of the state, a school district, or a charter school and an offset or credit for a public facility for which an impact fee has been or will be collected.

Section 7. Appeal Procedures.

- 7.1. **Application.** The appeal procedure applies both to challenges to the legality of impact fees, to similar and related fees of Nibley City and to the interpretation and/or application of those fees. It shall not apply to any decision of the City Council concerning a waiver for public purposes.
- 7.2. **Declaratory Judgment Action.** Any person or entity residing in or owning property within Nibley City, and any organization, association or corporation representing the interests of persons or entities owning property within Nibley City may file a declaratory judgment action challenging the validity of an impact fee only after having first exhausted their administrative remedies of this section.
- 7.3. **Request for Information Concerning the Fee.** Any person or entity required to pay an impact fee under this Ordinance may file a written request for information concerning the fee with Nibley City. Nibley City will provide the person or entity with Nibley City's written impact

fee analysis and other relevant information relating to the impact fee within fourteen (14) days after receipt of the request for information.

- 7.4. **Appeal to Nibley City Before Payment of the Impact Fee.** Any affected or potentially affected person or entity who wishes to challenge an impact fee under this Ordinance prior to payment thereof may file a written request for information concerning the fee and proceed under Nibley City's appeal procedure.
- 7.5. **Appeals to Nibley City.** Any developer, landowner or affected party desiring to challenge the legality of any impact fee or related fee, paid pursuant to this Ordinance, subject to UCA Section 11-36a-703(4), shall appeal directly to Nibley City by filing a written challenge with Nibley City, provided that the affected party does so in writing within the time limitations stated in UCA 11-36a-702(1). If no written challenge is filed with Nibley City within the said time limitations of UCA 11-36a-702(1), the affected party may neither file nor pursue an administrative appeal with Nibley City nor seek judicial relief.
- (a) **Hearing.** An informal hearing will be held not sooner than five (5) days nor more than twenty-five (25) days after the written appeal/challenge to the validity of Nibley City's impact fees is filed. The Hearing of the appeal shall be conducted by the City's Land Use Appeal Officer.
- (b) **Decision.** After the conclusion of the informal hearing, the Land Use Appeal Officer shall affirm, reverse, or take action with respect to the challenge or appeal as he/she may deem appropriate. The decision of the Land Use Appeal Officer will be issued within thirty (30) days after the date the written appeal/challenge was filed. In light of the statutorily mandated time restriction, Nibley City shall not be required to provide more than three (3) working days prior notice of the time, date and location of the informal hearing and the inconvenience of the hearing to the challenging party shall not serve as a basis of appeal of Nibley City's final determination.
- 7.6. **Denial Due to Passage of Time.** Should Nibley City, for any reason, fail to issue a final decision on a written appeal/challenge to an impact fee, its calculation or application, within thirty (30) days after the filing of that appeal/challenge with Nibley City, the challenge shall be deemed to have been denied and any affected party to the proceedings may seek appropriate judicial relief from such denial.
- 7.7. **Judicial Review.** Any party to the administrative action provided for herein, who is adversely affected by Nibley City's final decision may petition the district court for a review of the decision and shall file such petition within thirty (30) days after the day on which a final decision is rendered in the City's administrative appeals procedure. (UCA 11-36a-702(2).) After having been served with a copy of the pleadings initiating the court review, Nibley City shall submit to the court the record of the proceedings before Nibley City, including minutes, and if available, a true and correct transcript of any proceedings.

Section 8. Effective Date; Savings Clause.

Except as otherwise specifically provided herein, this impact fee ordinance shall not repeal, modify or affect any other impact fee of the city in existence as of the effective date hereof. All impact fees established, including amendments and modifications to previously existing impact

fees, after the effective date hereof shall comply with the requirements of this impact fee ordinance. This impact fee ordinance shall take effect ninety (90) days after the day on which this impact fee ordinance is approved and adopted by the City Council and this impact fee ordinance shall be posted, as provided by law, immediately after approval and adoption.

Section 9. Severability.

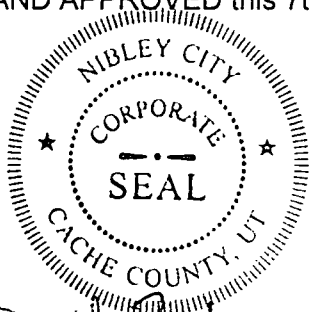
If any section, subsection, paragraph, clause or phrase of this ordinance shall be declared invalid for any reason, such decision shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect, and for this purpose, the provisions of this Ordinance are declared to be severable.

This Ordinance shall become effective on July 1, 2013.

PASSED AND APPROVED this 7th day of February, 2013.

ATTEST:

City Recorder



NIBLEY CITY COUNCIL

Gerald K. Knight, Mayor

VOTING:

Councilmember Cook	Yea ☒	Nay ☐	
Councilmember Platt	Yea ☐	Nay ☐	Not Present
Councilmember Jacobsen	Yea ☒	Nay ☐	
Councilmember Hansen	Yea ☒	Nay ☐	
Councilmember Mickelson	Yea ☐	Nay ☐	Not Present

CERTIFICATION OF POSTING ORDINANCE

I, David Zook, City Recorder of Nibley, Cache County, Utah, hereby certify that I, on the 4th day of January, 2013, in Nibley City, Cache County, Utah, posted the foregoing Ordinance 13-01 in a likely manner, a copy of which is hereto attached, in each of three (3) public places in the said Nibley City, to wit:

Nibley City Hall Elkhorn Park Heritage Park

WITNESS my hand this 7th day of February, 2013.

David Zook, City Recorder