

## **ORDINANCE NO. 2013-12**

### **AN ORDINANCE OF IVINS CITY, UTAH, ADOPTING THE IVINS CITY CULINARY WATER MASTER PLAN AND IMPACT FEE FACILITIES PLAN; ADOPTING THE CULINARY WATER IMPACT FEE ANALYSIS; AND ENACTING CULINARY WATER IMPACT FEES**

**WHEREAS**, Ivins City (the “City”) is a political subdivision of the State of Utah, authorized and organized under the provisions of Utah law; and

**WHEREAS**, the City has legal authority pursuant to Title 11, Chapter 36a of the Utah Code known as the “Impact Fee Act” (hereinafter “the Act”) to impose development 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 of development approval in order to appropriately assign capital infrastructure costs to development in an equitable and proportionate manner; and

**WHEREAS**, the City has reviewed and evaluated the City’s Culinary Water Service Area attached hereto in Exhibit “A”: “Water System Service Areas” (“Service Area”), and has determined that it is in the City’s best interest to establish said Service Area for purposed of Culinary Water Impact Fees; and

**WHEREAS**, pursuant to the requirements of Sections 11-36a-301 and 11-36a-302 of the Act, the Ivins City Engineer has prepared the “Ivins City Culinary Water Master Plan and Impact Fee Facilities Plan” (“Culinary Water Impact Fee Facilities Plan”), attached hereto as Exhibit “B”, which he has properly certified pursuant to the requirements of Section 11-36a-306 of the Act; and

**WHEREAS**, pursuant to the requirements of Sections 11-36a-303 and 11-36a-304 of the Act, the Ivins City Director of Finance has prepared the “Ivins City Culinary Water Impact Fee Analysis” (“Culinary Water Impact Fee Analysis”), attached hereto as Exhibit “C”, which he has properly certified pursuant to the requirements of Section 11-36a-306 of the Act; and

**WHEREAS**, the Ivins City Director of Finance has also calculated for enactment Culinary Water Impact Fees as set forth in the Culinary Water Impact Fee Analysis and pursuant to the requirements of Sections 11-36a-305 of the Act; and

**WHEREAS**, after having given proper notice of intent to enact impact fees for culinary water and for the required public hearing to be held thereon, a copy of the Culinary Water Impact Fee Analysis and the proposed Culinary Water Impact Fee Enactment has been available for public inspection at least ten (10) days before the day on which the public hearing thereon has been scheduled; and

**WHEREAS**, the required public hearing for enacting Culinary Water Impact Fees was held on November 7, 2013, and the Ivins City Council does now desire to hereby approve and adopt the Ivins City Culinary Water Master Plan and Impact Fee Facilities Plan, as well as the Culinary Water Impact Fee Analysis, and to hereby formally enact Culinary Water Fees pursuant thereto and pursuant to the requirements of Sections 11-36a-401 through 11-36a-403 of the Act;

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

### **Section 1 PURPOSE**

This Culinary Water Impact Fee Enactment establishes the City's culinary water impact fee policies and procedures and is promulgated pursuant to the requirements of the Utah Impact Fees Act. This Ordinance establishes impact fees for culinary water facilities within the City's defined Service Area as set forth in Exhibit "A", describes certain capital improvements to be funded by impact fees, provides a schedule of impact fees for differing types of land use development, and sets forth direction for challenging, modifying and appealing said impact fees.

### **Section 2 DEFINITIONS**

Words and phrases that are defined in the Act shall have the same definition in this Impact Fee Ordinance/Enactment.

### **Section 3 IMPACT FEE FACILITIES PLAN**

The City has developed a Culinary Water Impact Fee Facilities Plan for the culinary water infrastructure within the Service Area set forth in Exhibit "A". The improvements required to maintain an adequate level of service are found in the Impact Fee Facilities Plan. The Impact Fee Facilities Plan has been prepared based on reasonable growth assumptions for the City and general demand characteristics of current and future users of the system. Further, the Impact Fee Facilities Plan identifies the impact on system improvements created by development activity and estimates the proportionate share of the costs of impacts on system improvements that are reasonably related to new development activity. The City Council hereby approves and adopts the Ivins City Culinary Water Master Plan and Impact Fee Facilities Plan (Exhibit "B").

### **Section 4 WRITTEN IMPACT FEE ANALYSIS**

1. Summary. Included within the Culinary Water Impact Fee Analysis is a summary of the findings of said analysis that is designed to be understood by a lay person and demonstrates the need for culinary water impact fees to be charged. Copies of the Culinary Water Impact Fee Analysis and Summary have been posted on the City's website as required by Section 11-63a-504 of the Act. The City Council hereby approves and adopts the Culinary Water Impact Fee Analysis (Exhibit "C").
2. Proportionate Share Analysis. Included in the Culinary Water Impact Fee Analysis is a proportion share analysis which estimates the proportionate share of the costs for existing capacity that will be recouped and the costs of impacts on system improvements that are reasonably related to the new development activity. In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to the new

development activity, the proportionate share analysis considered: a) the cost of each existing public facility that has excess capacity to serve the anticipated development resulting from the new development activity; b) the cost of system improvements for each public facility; c) other than impact fees, the manner of financing for each public facility, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants; 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 the development activity is entitled to a credit against 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) extraordinary costs, if any, in servicing the newly developed properties; and h) the time-price differential inherent in fair comparisons of amounts paid at different times.

## **Section 5 IMPACT FEE CALCULATIONS**

The City Council hereby approves and enacts the Culinary Water Impact Fees set forth in the written Culinary Water Impact Fee Analysis ( Exhibit “C”).

1. Elements. In calculating the impact fee, the City has included: a) the construction costs; b) land acquisition costs, including improvements, materials, and fixtures; c) costs for planning, surveying, and engineering services provided for and directly related to the construction of the system improvements; and d) debt service charges where impact fees might be used as a revenue stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the costs of the system improvements. In calculating the impact fee, the above amounts were calculated on realistic estimates and the assumptions underlying those estimates are disclosed in the impact fee analysis.
2. Adjustments. The standard impact fee may be adjusted at the time the fee is charged in response to unusual circumstances or to fairly allocate costs associated with impacts created by a development activity or project. The standard impact fee may also be adjusted to ensure that impact fees are imposed fairly for affordable housing projects, in accordance with the City’s affordable housing plan, and 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 information and/or data to the City showing a discrepancy between the fee being assessed and the actual impact on the system.
3. Previously Incurred Costs. To the extent that the new growth and development will be served by previously constructed improvements, the City’s impact fee may include public facility costs and outstanding bond costs related to the culinary water infrastructure improvements previously incurred by the City. These costs may include all projects included in the Impact Fee Facilities Plan 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 will also be included to offset the costs of future capital projects.

4. Developer Credits. A developer, including a school district or a charter school, shall be allowed a credit against or proportionate reimbursement of an impact fee 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. Also, a developer shall be allowed a credit against impact fees 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.

## Section 6 IMPACT FEE SCHEDULES AND FORMULAS

The proposed fees are based upon general demand characteristics and potential demand that can be created by each class of user. The City reserves the right under the Act to assess an adjust fee to respond to unusual circumstances to ensure that fees are equitably assessed. The following schedule of Culinary Water Impact Fees/Formulas specify the amount of impact fee to be imposed for each type of development activity and for each type of system improvement and/or the formula the the City will use to calculate each impact fee; the City Council hereby approves, adopts and enacts same.

**Exhibit “C”, Figure 3.4: Calculation of Proposed Culinary Water Impact Fee**

Culinary Water Projects	Total Costs	% Related to Growth	Growth Related Costs	Growth Related ERU	Cost per ERU
<b>Total Capital Projects Fee</b>					
Future Culinary Water Projects	5,100,000.00	99.17%	5,057,500.00	5264	960.77
Series 2028 Debt Service	4,746,000.00	100.00%	4,746,000.00	5264	901.60
Series 2028 Bond Proceeds	(2,400,000.00)	100.00%	(2,400,000.00)	5264	(455.93)
<b>Total Capital Projects Fee</b>	<b>7,446,000.00</b>		<b>7,403,500.00</b>		<b>1,406</b>
<b>Miscellaneous Fee</b>					
Impact Fee Analysis Update	378,116.55	100.00%	378,116.55	5264	71.83
Stabilization Fee/(Credit)	(2,063,799.00)	100.00%	(2,063,799.00)	5264	(392.06)
Miscellaneous Fee	(1,685,682.45)		(1,685,682.45)		(320.23)
<b>Totals</b>	<b>\$ 5,760,317.55</b>		<b>\$ 5,717,817.55</b>		<b>\$ 1,086.21</b>

Total Impact Fee per ERU

**\$ 1,086.21**

**Exhibit “C”, Figure 3.5: Recommended Culinary Water Impact Fees For Connections with Secondary Water**

Meter Size	Class	Equivalent Units	Culinary Cost Per ERU	Impact Fee With Secondary Water
3/4"	Displacement	0.46	\$ 1,086.21	\$ 499.66
1	Displacement	0.74	1,086.21	803.80
1 1/2	Displacement	0.92	1,086.21	999.31
2	Displacement	1.84	1,086.21	1,998.63
Multi-Unit Residential (Per Unit)		0.46	1,086.21	499.66

\* Meters of 3" or larger will be independently assessed and calculated according to the non-standard use formula included in the impact fee resolution.

**Exhibit “C”, Figure 3.6: Recommended Culinary Water Impact Fees For Connections without Secondary Water**

Meter Size	Class	Equivalent Units	Culinary Cost Per ERU	Impact Fee Without Secondary Water
3/4"	Displacement	1.00	\$ 1,086.21	\$ 1,086.21
1	Displacement	1.60	1,086.21	1,737.94
1 1/2	Displacement	2.00	1,086.21	2,172.42
2	Displacement	4.00	1,086.21	4,344.84
Multi-Unit Residential (Per Unit)		0.46	1,086.21	499.66

\* Meters of 3" or larger will be independently assessed and calculated according to the non-standard use formula included in the impact fee resolution.

**Exhibit “C”, Figure 3.7: Impact Fees For Non-Standard Water Use Characteristics**

	Impact Fee per ERU	Gallons per ERU	Fee Per 1,000 Gallons
All Land Uses	\$ 1,086.21	315,969	\$ 3.44

\* Impact fee calculation is based on ERU which is equated to .96 Af of annual use. The projected water demand of a user should be divided by .96 Af or gallons to determine the number of ERUs for a non-standard user.

**Section 7 IMPACT FEE ACCOUNTING**

Pursuant to the requirements of Section 11-36a-601 of the Act, the City shall:

1. establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected;
2. deposit a receipt for an impact fee in the appropriate ledger account;
3. retain the interest earned on each fund or ledger account in the fund or ledger account;
4. at the end of each fiscal year, prepare a report on each fund or ledger account showing the source and amount of all money collected, earned, and received by the fund or ledger account and each expenditure from the fund or ledger account; and
5. produce a report that: (a) identifies impact fee funds by the year in which they were received, the project from which the funds were collected, the impact fee projects for which the funds were budgeted, and the projected schedule for expenditure; (b) is in a format developed by the state auditor; (c) is certified by the City’s Director of Finance; and (d) is transmitted annually to the state auditor.

**Section 8 EXPENDITURE OF IMPACT FEES**

The City may expend impact fees only for a system improvement identified in the Impact Fee Facilities Plan and for the specific public facility type for which the fee was collected. Impact fees will be expended on a First-In First-Out (“FIFO”) basis. Impact fees collected pursuant to this enactment shall be expended or encumbered for a permissible use within six (6) years of their receipt. The City may hold the fees for longer than six (6) years if it 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.

## **Section 9 REFUNDS**

The City shall refund any impact fee paid by a developer, plus interest earned, when: (a) the developer does not proceed with the development activity and has filed a written request for a refund; (b) the fee has not been spent or encumbered; and (c) 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.

## **Section 10 IMPACT FEE CHALLENGES**

A person or entity residing in or owning property within the Service Area, or an organization, association, or a corporation representing the interests of persons or entities owning property within the Service Area, has standing to file a declaratory judgment action challenging the validity of an impact fee.

A person or entity required to pay an impact fee who believes the impact fee does not meet the requirements of law may file a written request for information with the City. Within two (2) weeks after the receipt of the request for information, the City shall provide the person or entity with the Impact Fee Analysis, the Impact Fee Facilities Plan and any other relevant information relating to the impact fee.

The procedures and time limitations for challenging an impact fee, including procedures for mediation and/or arbitration, shall be as set forth in Sections 11-36a-702 through 11-36a-705 of the Act. The applicable remedies for an impact fee challenge shall be limited to those set forth in Section 11-36a-701 of the Act.

## **Section 11 MISCELLANEOUS**

1. Severability. If any section, subsection, paragraph, clause or phrase of this Enactment shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Enactment which shall remain in full force and effect. For this purpose, the provisions of this Enactment are declared to be severable.
2. Interpretation. This Enactment has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Enactment shall not be affected by such division or by any heading contained herein.

**Effective Date: This Ordinance shall become effective 90 days after the day on which this impact fee ordinance/enactment is approved and published.**

**PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THE 7th DAY OF NOVEMBER, 2013, BY A UNANIMOUS VOTE. ALL COUNCIL MEMBERS WERE PRESENT AT THE MEETING AND VOTED IN FAVOR.**