

ORDINANCE NO. 1233

AN ORDINANCE AUTHORIZING THE IMPOSITION OF DEVELOPMENT IMPACT FEES TO FUND CAPITAL IMPROVEMENTS IN THE CITY OF MILES CITY, AND ESTABLISHING THE PROCEDURE FOR ESTABLISHMENT OF SUCH FEES, ESTABLISHING PROCEDURES FOR APPEAL OF SUCH FEES, AND ESTABLISHING AN EFFECTIVE DATE THEREOF.

WHEREAS, §7-6-1601 through 7-6-1604 MCA, permit a municipality to establish development impact fees in accordance with the procedures and requirements set forth therein;

AND WHEREAS, the City Council has determined that it is advisable for the City of Miles City to establish charges upon development as part of the development approval process to fund the additional service capacity required by the development from which it is collected:

AND WHEREAS, the City Council desires to establish a process, in conformance with Title 7, Chapter 6, Part 16, MCA, to determine and establish such impact fees;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, as follows:

Section 1. Definitions. As used herein, the following definitions apply:

1. "*Capital improvements*" means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility. The term does not include consumable supplies.
2. "*City*" means the City of Miles City, Montana;
3. "*Connection charge*" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.
4. "*Development*" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.
5. "*Impact fee*" means any charge imposed upon development by the City of Miles City as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected. The term does not include:
 - (a) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;
 - (b) a connection charge;
 - (c) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or
 - (d) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the City of Miles City or another governmental entity.

6. "*Proportionate share*" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in Sections 3, 5 and 6 of this ordinance.
7. "*Public facilities*" means:
 - (a) a water supply production, treatment, storage, or distribution facility;
 - (b) a wastewater collection, treatment, or disposal facility;
 - (c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;
 - (d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;
 - (e) a police, emergency medical rescue, or fire protection facility; and
 - (f) other facilities for which documentation is prepared as provided in Section 3 of this ordinance that have been approved as part of an impact fee resolution by a two-thirds majority of the City Council of the City of Miles City.

Section 2. Establishment of a Standing Impact Fee Committee. There is hereby established an Impact Fee Advisory Committee to be appointed by the Mayor, subject to the approval of the City Council. The Impact Fee Advisory Committee shall consist of five (5) members, and shall include at least one representative of the development community and one certified public accountant. The committee shall review and monitor the process of calculating, assessing, and spending impact fees, and shall serve in an advisory capacity to the City Council.. The committee shall be provided with adequate financial reports on a semiannual basis, shall meet at least annually, and shall provide the City Council with a report of their findings and recommendations. The City shall provide the committee with the appropriate advice and counsel of City administrative staff and/or an appropriate professional consultant selected by the City.

Section 3. Preparation of Service Area Report.

1. For each public facility for which an impact fee is imposed, City administrative staff, shall prepare, and the City Council shall review, amend, and approve, a service area report.
2. The service area report must be in writing and must:
 - A. describe existing conditions of the facility;
 - B. establish level-of-service standards;
 - C. forecast future additional needs for service for a defined period of time;
 - D. identify capital improvements necessary to meet future needs for service;
 - E. identify those capital improvements needed for continued operation and maintenance of the facility;
 - F. make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
 - G. make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
 - H. establish the methodology and time period over which the City entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

- I. establish the methodology that the City will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;
 - J. establish the amount of the impact fee that will be imposed for each unit of increased service demand; and
 - K. have a component of the budget of the City 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 5-year period and is reviewed and updated at least every 2 years.
3. The service area report must contain documentation of sources and methodology used for purposes of subsection 2 and must document how each impact fee meets the requirements of Section 5 of this ordinance.
 4. The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.
 5. The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the City as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

Section 4. Impact fees to be Adopted by Resolution. Any impact fees imposed shall be adopted by resolution of the City Council. The resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2) of Section 3 of this ordinance. The resolution adopted by the governmental entity must include the following requirements:

1. Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.
2. The City of Miles City may impose impact fees on behalf of local districts.
3. If the impact fees are not collected or spent in accordance with the impact fee resolution or in accordance with §7-6-1602 MCA, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

Section 5. Requirements for Impact Fees. An impact fee must meet the following requirements:

1. The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.
2. It shall be the duty of the City Clerk to notify the developer, in writing, of the imposition of any impact fee upon the development and the dollar amount of such impact fee. Notice shall be given by certified mail, return receipt requested, addressed to the developer at the address provided by the developer to the City.
3. The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the City in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:
 - A. the need for public facilities capital improvements required to serve new development; and

- B. 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 improvements.
- 4. Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.
- 5. New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.
- 6. Impact fees may not include expenses for operations and maintenance of the facility.
- 7. The City Council shall not consider or adopt any impact fees that have not been calculated as provided for in this ordinance and that have not been first reviewed and considered by the Impact Fee Advisory Committee.

Section 6. Collection and Expenditure of Impact Fees; Issuance of Building Permit and Allowance of Connections Dependent Upon Deposit of Impact Fee.. The collection and expenditure of impact fees shall comply with the following requirements:

1. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees.
2. All impact fees imposed pursuant to the authority granted by this ordinance must be paid no earlier than the date of issuance of a building permit if a building permit is required, and a flood plain permit, if it is required, for the development or no earlier than the time of wastewater or water service connection or well or septic permitting. A building permit or a flood plain permit shall not be issued nor a wastewater or water service connection allowed, nor a well or septic permit be granted until all impact fees imposed upon the development have been deposited with the City Treasurer.
3. The City may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to Sections 3 and 5, and this Section, of this ordinance in a manner that demonstrates the need for the excess capacity. This provision does not prevent the City from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the City's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.
4. The City Council may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:
 - A. the need for the dedication or construction is clearly documented pursuant to this ordinance;
 - B. the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the City;

- C. formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee resolution; and
 - D. a means to establish credits against future impact fee revenue has been created as part of the adopting resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.
5. Impact fees may not be imposed 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 as described in Subsection 2(j) of Section 2 of this ordinance. If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.
 6. This part does not prevent the City Council from granting refunds or credits:
 - A. that it considers appropriate and that are consistent with the provisions of this ordinance; or
 - B. in accordance with a voluntary agreement, consistent with the provisions of this ordinance, between the City and the individual or entity being assessed the impact fees.
 7. An impact fee represents a fee for service payable by all users creating additional demand on the facility.
 8. All impact fees shall be deposited with the City Treasurer.

Section 7. Appeal Process. Any party upon whom an impact fee has been imposed has the right to appeal the imposition or amount of the impact fee.

1. Any appeal must be perfected by the Appellant within ten (10) business days of the date that the Appellant was first informed, in writing, of the imposition of the impact fee and the amount of such fee. Failure to timely perfect the appeal shall result in denial of the appeal.
2. The Appellant must perfect the appeal by giving written notice of the appeal to the City Clerk and shall, at the same time, deposit the full amount of the required impact fee, in cash or cash equivalent, with the City Treasurer as an appeal bond. An appeal is not deemed filed hereunder until both the written notice of appeal has been filed with the City Clerk and the bond is deposited with the City Treasurer.
3. The form of the written notice shall be sufficient if it identifies the name and address of the appellant and a short statement giving the reason why the impact fee is wrongly imposed or in the wrong amount.
4. Upon receiving the Notice of Appeal and verifying the deposit of the cash bond with the City Treasurer, the City Clerk shall place the matter upon the agenda before the City Council on its next regularly scheduled City Council meeting that is more than five (5) days following the filing of the appeal with the City Clerk.
5. At such meeting, the City Council shall hear evidence from the Appellant and City staff and shall make the determination whether the impact fee imposed upon the Appellant is compliant with state law and city ordinance and is in the correct amount. In the event that the City Council determines that the imposition of the impact fee is not compliant with either state law or the city ordinance, or is in the wrong amount, the City Treasurer shall return the cash bond paid by the appellant to the extent that it exceeds the amount of impact fee determined by the City Council to have been correctly imposed.

Section 8. Effective date. This Ordinance shall be effective thirty (30) days from and after the date of its final passage.

SAID ORDINANCE READ AND PUT UPON ITS PASSAGE THIS 13TH DAY OF MARCH, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk

FINALLY PASSED AND ADOPTED THIS 27TH DAY OF MARCH, 2012.

C.A. Grenz, Mayor

ATTEST:

Rebecca Stanton, City Clerk