

Chapter 24

DEVELOPMENT IMPACT FEE

Sec. 24-1. Title and purpose.

The provisions of this Chapter shall be known as the City of Livingston development impact fee ordinance. The purpose of these regulations is to prescribe the procedure whereby those who cause an increase in service demand shall pay an impact fee as set forth in this Chapter for the purpose of providing the public facilities and system improvements needed to serve such demand. It is further the purpose of this Chapter to:

- A. Ensure that adequate facilities are available to serve new growth and development;
- B. Promote orderly growth and development by establishing uniform standards by which the City may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;
- C. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements;
- D. Collect and expend development impact fees pursuant to the enabling powers granted by the provision of the Montana Development Impact Fee Act, Title 7, Chapter 6, Montana Code Annotated (MCA);
- E. Provide the legal and procedural basis for the implementation of development impact fees within the City; and
- F. Ensure that any capital improvement funded wholly or in part with impact fee revenue shall first be included in an approved capital improvements plan that lists the capital improvements that may be funded with impact fee revenues as well as the estimated costs and projected timing for each improvement. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-2. Definitions.

As used in this Title, the following words and terms shall have the following meanings, unless another meaning is plainly intended:

“Building Official” means Director of the Building Department, who shall be the City staff person having responsibility for administration and enforcement of this Chapter.

“Building permit” means the permit required for new construction and additions pursuant to this Code.

“Capital improvements” means improvements, land and equipment with a useful life of ten (10) years or more that increase or improve the service capacity of a public facility. The term does not include consumable supplies.

“Capital improvements plan” means the plan adopted and amended by the City pursuant to the provision of the Development Impact Fee Act, Sections 7-6-1601 to 7-6-1604, MCA that identifies capital improvements for which development impact fees may be used as a funding source.

“City” means the City of Livingston, a municipal corporation duly organized pursuant to the laws of the State of Montana.

“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.

“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.

“Development approval” means any written duly authorized document from the City which authorizes the commencement of a development.

“Development impact fee” means 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. This term is also referred to as an impact fee in this Chapter. The term does not include the following:

1. A charge or fee to pay the plan review, or inspection cost associated with permits required for development;
2. Connection or hookup charges;
3. Charges for drainage, sewer, water or transportation facilities provided directly to the development;
4. Amounts collected from a developer in a transaction in which the City has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to Section 7-6-1603, MCA, for credit or reimbursement; or
5. Charges made for extraordinary impacts as provided herein.

Development Impact Fee Advisory Committee or DIFAC. The City Commission has appointed the Livingston Development Impact Fee Committee to perform all statutory responsibilities of this Committee pursuant to SB 185 and Title 7, Chapter 6, MCA.

“Development requirement” means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project, which requirement compels the payment, dedication or contribution of goods, services, land or money as a condition of approval.

Director. See definition of “Building Official.”

“Fee payer” means that person who pays or is required to pay a developmental impact fee.

“Finance Officer” means the Head of the City’s Finance Department, or his or her designated agent.

“Governmental entity” means a County, City, town or consolidated government.

“Gross floor area” means the sum of the areas of the several floors of the building or structure, including areas used for human occupancy or required for the conduct of business or use, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics when not used for human occupancy, nor any floor space in an accessory building intended or designed for the parking of motor vehicles in order to meet any City parking requirements, nor nonresidential facilities; arcades, porticoes, and similar open areas which are located at or near street level,

which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

Impact Fee. See definition of “Development Impact Fee.”

Inflation Adjustment. The effects of capital project cost inflation are managed by two (2) methods: (1) escalate costs in the capital improvement program annually to account for inflation; and (2) adjust impact fees annually using a nationally recognized standard.

“Land use assumptions” means a description of the projections of land usage, densities, intensities and population within the City over at least a ten (10) year period.

“Level of service” means a measure of the relationship between service capacity and service demand for public facilities.

“Present value” means the total current monetary value of past, present, or future payments, contributions, or dedications of goods, services, materials, construction or money.

“Project” means a particular development on an identified parcel of land.

Project Improvements. In contrast to system improvements, project improvements are site improvements and facilities that are planned and designed to provide service for a particular development project and are necessary for the use and the convenience of the occupants or users of the project.

“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 Section 7-6-1602, MCA.

“Public facilities” means those types of improvements described in Section 7-6-1601(7), MCA, including the following:

1. Water supply production, treatment, storage or distribution facility;
2. A wastewater collection, treatment or disposal facility;
3. A transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, landscaping; and any local component of a State or Federal highway;
4. A stormwater collection, retention, detention, treatment or disposal facility or a flood control facility;
5. A police, emergency medical rescue or fire protection facility;
6. Parks, open space and recreation areas and related capital improvements; and
7. Other facilities for which documentation is prepared as provided by Section 7-6-1602, Montana Code, that have been approved as part of an impact fee ordinance or resolution by a two-thirds (2/3) majority of the governing body.

“Report” means the report entitled “Impact Fee Study, City of Livingston, Montana,” dated March, 2006, and addendums to the report.

Service Areas. Unless otherwise identified by an adopted study by the City, the impact service areas are established as the incorporated area of the City. Impact fees shall be assessed only on development located within the service area.

“Service unit” means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

“System improvements,” in contrast to project improvements, means capital improvements to public facilities which are designed to provide service to an area.

“System improvements costs” means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in Section 7-6-1601 et seq., MCA, to provide additional public facilities needed to service new growth and development. For clarification, system improvements costs do not include:

1. Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;
2. Repair, operation or maintenance of existing or new capital improvements;
3. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
4. Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
5. Administrative and operating costs of the City unless such costs are attributable to development of the capital improvements plan, as provided in Section 7-6-1601(5)(a), MCA; or
6. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the City to finance capital improvements identified in the capital improvements plan.

“Units of development” means a quantifiable increment of development activity measured in terms of dwelling units, square footage or other appropriate measurements contained in the impact fee schedule or incorporated in the “Report.” (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-3. Application.

A. The provisions of this Chapter shall apply uniformly to those who benefit from new growth and development except as provided below.

B. The provisions of this Chapter shall not apply to the following:

1. Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
2. Remodeling or repairing a structure which does not increase the number of service units;
3. Replacing a residential unit, including a modular building or manufactured/mobile home, with another residential unit on the same lot, provided that the number of service units does not increase;
4. Placing a temporary construction trailer or office on a lot;
5. Constructing an addition on a residential structure which does not increase the number of service units;
6. Adding uses that are typically accessory to residential uses, such as tennis courts, a private clubhouse, or accessory buildings in a residential zone, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements;
7. Upon demonstration by fee payer by documentation such as utility bills and tax records, the installation of a modular building, manufactured/mobile home or recreational vehicle on that same lot

or space for which a development impact fee has been paid previously, and as long as there is no increase in service units.

C. The City may impose impact fees on behalf of local districts (Section 7-6-1603(b), MCA).

D. The City may recoup cost 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 Section 7-6-1602, MCA, in a manner that demonstrates the need for the excess capacity (Section 7-6-1603(3), MCA).

E. The City may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if they are documented in accordance with Section 7-6-1603(4), MCA. Such acceptance of dedication in lieu of impact fee payment shall be at the sole discretion of the City Commission.

F. The City may impose impact fees for remodeling, rehabilitation, rebuilding, or other improvements to an existing structure if there is an increase in service unit demand. Only the net increase between the old and new demand may be imposed (Section 7-6-1603(5), MCA). (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-4. Collection of impact fee.

A. The development impact fee shall be paid and collected at the time of issuance of a building permit, or at such time as there is a change of use to a different use which requires a larger impact fee (under such circumstance, the difference in the impact fees will be collected).

B. No building permit or other equivalent City approval shall be issued for "development" as herein defined unless the impact fee is paid pursuant to this Chapter.

C. In the case of mobile home parks or any other development, which constitutes multiple parcels for lease (subdivision by rent or lease), all development impact fees for the entire project will be paid prior to any of the lease sites being occupied. This does not relieve the owner of a mobile home from the requirement of obtaining permits for the placement and moving of the home.

D. In the event payment is dishonored, the City shall have all lawful remedies, including, but not necessarily limited to, the withholding of utility services, the imposition of liens pursuant to law, the withholding of other City approvals required for the development of other properties owned by the fee payer, and the issuance of "stop work" orders, and the revocation or suspension of the building permit. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-5. Capital/system improvement projects.

The capital/system improvement projects to be financed by the impact fees are those as listed in the "Report," incorporated herein by reference along with all footnotes, exhibits, appendices, and other attachments referenced therein, including, but not limited to, the City of Livingston capital improvements plan. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-6. Calculation of impact fee—documentation required.

A. Existing Condition of Facilities. The existing condition of facilities will be described in the City’s planning studies, annual budget or capital improvement program. If included as an impact fee-funded facility.

B. Level of Service Standards. Level of service descriptions and standards vary among the categories of public services included in impact fees. In general, “level of service” means a qualitative measure describing operational conditions within a public service category. Current levels of service are the collective product of historical practices, government regulations, the “Report,” operating budgets and planning studies. New development will be provided the same level of service as existing users within each of the following categories:

1. Police/911;
2. Fire/EMS;
3. Parks and recreation;
4. Transportation;
5. Water system;
6. Sewer system;
7. Other categories as necessary.

C. Forecasts future additional needs for service. Forecasts for additional needs will be described in the City’s planning studies, annual budget or capital improvement program for a defined period.

D. Capital Improvements Needed for Continued Operation and Maintenance of the Facility. Capital improvements necessary to meet operation and maintenance requirements will be presented as part of the City’s annual budget process.

E. Multiple Service Areas. Where justified, the City will make a determination whether one (1) or more service areas are necessary to correlate impact fees to benefits.

F. Impact Fee Methodology. The report entitled “Impact Fee Study, City of Livingston, Montana,” dated March, 2006, establishes the methodology and time period over which the City will assign the proportionate share of capital costs for expansion of a facility to provide service to new development within each service area.

G. Exclusion of Operations and Maintenance Costs. The annual City operating budget establishes the methodology that the City will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee.

H. Impact Fee Imposed. The City shall establish the amount of the impact fee that will be imposed for each unit of increased service demand by resolution adopted pursuant to this Chapter. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-7. Calculation of impact fee.

A. Procedure. The City shall calculate the amount of the impact fee due for each building permit, or change in use, by the procedure set forth in the “Report” within thirty (30) days of submittal of complete permit plans for residential development and within sixty (60) days of submittal of complete permit plans for commercial development.

B. **Validity.** The calculation of a development impact fee shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in incidental benefit to owners or developers within the City, other than the person paying the fee.

C. **Basis, Public Facilities.** A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in this Chapter and in the "Report" that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

D. **Mixed Uses.** If the development for which a building permit is sought contains a mix of uses, the impact fee will be calculated for each type of development or use.

E. **Individual Assessment.** Individual assessment of impact fees is permitted in situations where the fee payer can demonstrate by clear and convincing evidence that the established fee is inappropriate.

1. **Application.** Individual assessments of development impact fees may be made by application to the Director of the Building Department, prior to receiving building permits, site development permits, manufactured/mobile home installation permits, or other necessary approvals from the City. The Director shall evaluate such individual assessments under the guidelines provided for in subsection (E)(4) of this Section. If the guidelines are met, the individual assessments shall be approved by the Director and forwarded to the City Commission for their information.

2. **Late Applications.** Late applications for individual assessments may be submitted within thirty (30) days after the receipt of a building permit only if the fee payer makes a showing that the facts supporting such application were not known or discoverable prior to receipt of a building permit and that the undue hardship would result if said application is not considered.

3. **Decision.** The Director shall render a written decision regarding the individual assessment and forward it to the City Commission within thirty (30) days of the date a complete application is submitted. The decision of the Director, or his or her duly designated agent, shall establish the impact fee for the project in question for a period of one (1) year from the date said decision becomes final.

4. **Conditions to be Met.** The Director, or his or her duly designated agent, shall evaluate an application for individual assessment and may approve the same if the fee payer has shown by clear and convincing evidence that the established impact fee is inappropriate and that the following facts and conditions exist:

a. Exceptional or extraordinary circumstances or conditions apply to the development that do not apply generally to other properties in the vicinity of the development.

b. An individual assessment is necessary for the reasonable and acceptable development of the property.

c. The approval of the individual assessment will not be materially detrimental to the public welfare or injurious to property in the vicinity in which the development is located.

d. The approval of the individual assessment will not adversely affect the capital improvements plan of the City.

5. **Appeals of the Director's Decisions.** Determination of individual assessment shall be appealed to the DIFAC by the filing of a written appeal with the Building Department within thirty (30)

days of the date of mailing, faxing or personal delivery of written notice of the decision of the Director. Final determination regarding individual assessments shall be made by the DIFAC.

F. Modification. The City Commission may modify the impact fee schedule by resolution as allowed by law. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-8. General methodology for calculation.

A. Methodology. The amount of the impact fee shall be calculated using the methodology contained in the report entitled the "Impact Fee Study, City of Livingston, Montana," dated March, 2006.

B. Basis, System Improvements Costs. A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with Section 7-6-1602, MCA. Development impact fees shall be based on actual system improvements costs or reasonable estimates of such costs.

C. Fee Schedule. A developer shall have the right to elect to pay a project's proportionate share of system improvements costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvements costs, except as provided in Section 7-6-1603, MCA. The schedule of development impact fees for various land users per unit of development shall be as set forth in the "Report" as a table entitled "Development Fee Schedule" for each area of study, or per addenda to that report.

D. Proportionate Share Determination.

1. All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the City in the provision of system improvements to serve the new development. The formula for assessment of impact fees is set forth in the "Report." The proportionate share is the costs attributable to the new development after the City considers the following:

a. Any appropriate credit, offset or contribution of money, dedication of land or construction of system improvements;

b. Payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes which are dedicated for system improvements for which development impact fees would otherwise be imposed; and

c. All other available sources of funding such system improvements.

2. In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the City:

a. The cost of existing system improvements within the City;

b. The means by which existing system improvements have been financed;

c. The extent to which the new development will contribute to the cost of system improvements through taxation, assessments, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions;

d. The extent to which the new development is required to contribute to the cost of existing system improvements in the future;

e. The extent to which the new development should be credited for providing system improvements, without charge to other properties within the City;

f. The time and price differential inherent in a fair comparison of fees paid at different times; and

g. The availability of other sources of funding system improvements, including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The City shall develop a plan for alternative sources of revenue, which shall include, but not necessarily be limited to, plans generated during the City's annual budget process, lobbying efforts, tax increment financing and implementation of user fees.

E. On or before July 1st of the second year in which impact fees are in effect, the Director shall calculate and present to the City Commission an inflation adjustment factor for specific public facilities identified in the "Report." The "Report" cites those public facilities where inflation factors were not included in the capital improvement program schedule. The inflationary adjustment factor is defined as the United States Department of Labor's Consumer Price Index for all Urban Customers, West Urban Region, All Goods. On each adjustment date of each year thereafter, the impact fee amounts shall be automatically adjusted to account for the inflationary impacts by multiplying the then existing impact fees by the inflationary adjustment factor. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-9. Administration of impact fee.

A. Transfer of Funds to Finance Officer. Upon receipt of impact fees, the Finance Officer shall be responsible for placement of such funds into separate accounts as hereinafter specified. All such funds shall be deposited in interest-bearing accounts, within the capital project fund, in a bank authorized to receive deposits of City funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.

B. Establishment and Maintenance of Accounts. The Finance Officer shall establish separate accounts and maintain records for each such account.

C. Maintenance of Records. The Finance Officer shall maintain and keep accurate financial records for each such account that shall show the source and disbursement of all revenues; that shall account for all monies received; that shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements plan; and that shall provide an annual accounting for each impact fee account showing the source and amount of all funds collected and the projects that were funded.

D. Spending. Development impact fees shall only be spent for the category of system improvements for which the fees are collected.

E. Review and Modification. Unless the City Commission deems some other time period is appropriate, the City shall at least once every two (2) years commencing from the date of the original adoption of the capital improvements plan, review the development potential of the City and update the capital improvements plan in accordance with the procedures set forth in Section 7-6-1602, MCA. The City may make any updates as are deemed necessary as a result of: (1) development occurring in the prior year; (2) capital improvements actually constructed; (3) changing facility needs; (4) inflation; (5) revised cost estimates for capital improvements; (6) changes in the availability of other funding sources; and (7) such other factors as may be relevant.

F. Capital Budget. The City shall annually adopt a capital budget.

G. Annual Report. As part of its annual audit process, the City shall prepare an annual report describing the amount of all development impact fees collected, appropriated or spent during the preceding year by category of public facility and service area.

H. Earmarking and Expenditure. All other requirements of Section 7-6-1603, MCA, regarding earmarking and expenditure of collected development impact fees, shall apply.

I. Construction or development by the City shall be exempt from payment of the development impact fees provided for herein. Political subdivisions of the State which are legally eligible to receive the proceeds of development impact fees and which have entered into an agreement with the City to do so may be exempt from payment of development impact fees upon determination by the Director that the development or construction for which the fee would be charged is a system improvement within the capital improvement plan. Political subdivisions which are not legally eligible to receive development impact fee proceeds or which, although legally eligible, have not executed a cooperative agreement with the City regarding the use, collection and expenditure of development impact fee proceeds shall not be eligible for a development impact fee waiver unless they present a request for waiver to the Director which demonstrates that the development contemplated would not produce material impacts upon the public infrastructure for which development impact fees are to be collected and expended. Nonprofit charitable organizations may be exempt from payment of development impact fees upon showing that the construction or development activities undertaken by the charitable organization are for purposes of providing direct public benefit through construction of facilities or improvements to be used by the general public. Any request for waiver shall follow the procedures for appeal set forth in this Chapter. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-10. Development Impact Fee Advisory Committee (Section 7-6-1604, MCA).

A. The City shall establish a Development Impact Fee Advisory Committee (DIFAC). This Committee shall be composed of three (3) citizens of the City of Livingston with the following qualifications: one (1) certified public accountant; one (1) member of the development community (i.e., real estate professional, land developer, professional surveyor, appraiser, etc.); one (1) person, who may be a City employee, who is qualified to the satisfaction of the City Commission.

B. The Development Impact Fee Advisory Committee shall serve in an advisory capacity to the City Commission and shall serve four (4) year terms concurrent with the City Commission. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-11. Credits and exemptions.

The City Commission may by resolution grant a credit for or exemption from all or any part of the impact fees upon such finding that such credit or waiver is in the best interests of the public by encouraging activities that provide significant social, economic or cultural benefits. Whenever any capital related fee is waived, the City Commission shall direct that the waived fee be paid by the general fund or another appropriate fund. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-12. Refunds.

A. The current owner of record of property on which an impact fee has been paid may request a refund of such fee if:

1. The project for which a building permit has been issued within one (1) year has been lawfully altered resulting in a decrease in the amount of the impact fee due;
 2. The City, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to Section 7-6-1603, MCA; or
 3. A building permit is denied or abandoned prior to construction.
- B. The request for refund must be in writing and submitted to the Director on a form provided by the City for such purpose. The owner shall provide such documentation as the Director may require proving such satisfaction, reconveyance, or releases from contract sellers, mortgagees, lien holders, and/or others having an interest in the real property for which an impact fee has been paid.
- C. A request for refund must be filed within the time allowed by law.
- D. Within ninety (90) days of the date of receipt of a request for refund, the Director must provide the owner, in writing, with a decision on the refund request, including the reasons for the decision. If a right to a refund exists, the City is required to send a refund to the owner of record within ninety (90) days after it is determined that a refund is due. A refund shall not include a refund of interest.
- E. Owner may appeal the determination of the Director to the DIFAC pursuant to the provisions in Section 24-13 of this Chapter. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-13. Appeals.

- A. A fee payer may appeal the written determination of the applicability and amount of the development impact fee, or refund, or any discretionary action or inaction by or on behalf of the City to the DIFAC.
- B. The fee payer must file a notice of appeal with the Director within thirty (30) days following the written determination, discretionary action or inaction. When filing an appeal, the fee payer shall submit a letter providing a full explanation of the request, the reason for the appeal, as well as all supporting documentation.
- C. The decision of the DIFAC shall be final unless appealed to the City Commission within ten (10) days after the filing of the written decision of the DIFAC. Such appeal shall be based on the record before the DIFAC and on such other written argument which appellant has filed with the appeal and the staff response to such argument. No oral argument or other evidence shall be before the City Commission.
- D. The filing of an appeal shall not stay required payment of the impact fee; however, a fee payer can pay a development impact fee under protest in order to obtain development approval or building permit.
- E. The burden of proof shall be on the appellant to demonstrate that the decision of the City is erroneous. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-14. Impact fee study.

The report entitled the "Impact Fee Study, City of Livingston, Montana," dated March, 2006, along with all footnotes, exhibits, appendices, addenda, and other attachments referenced therein, including, but not limited to, the capital improvements plan, all of which are by this reference incorporated herein as if set forth fully. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-15. Bonding.

Funds pledged toward retirement of bonds, revenue certificates, or other obligations of indebtedness for such projects may include impact fees and other City revenues as may be allocated by the City Commission. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-16. Effect of impact fee on zoning and subdivision regulations.

This Chapter shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)

Sec. 24-17. Other powers and rights not affected.

A. Nothing in this Chapter shall prevent the City from requiring a developer to construct reasonable project improvements in conjunction with a development project.

B. Nothing in this Chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Montana Transportation Department, the City, and other governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvements or providing for credits or reimbursements for system improvements costs incurred by a developer, including inter-project transfers of credits or providing for reimbursement for project improvements which are used or shared by more than one (1) development project.

C. Nothing in this Chapter shall obligate the City to approve a development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee ordinance. To this end, the City may impose a development impact fee for system improvements costs incurred subsequent to adoption of the ordinance codified in this Chapter to the extent that new growth and development will be served by the system improvements.

D. Nothing in this Chapter shall be construed to create any additional right to develop real property or diminish the power of the City in regulating the orderly development of real property.

E. Nothing in this Chapter shall work to limit the use by the City of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Montana Code for local improvement districts or general obligation bond issues.

F. Nothing herein shall restrict or diminish the power of the City to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a developer or owner, or to impose reasonable conditions thereon, including the recovery of project or system improvements costs required as a result of such voluntary annexation. (Ord. 1968, 4/3/06; Ord. 1972, 7/17/06)