

**ORDINANCE NO. 2019-15**

AN ORDINANCE ADOPTING AN AMENDED AND UPDATED IMPACT FEE FOR PUBLIC SAFETY; ESTABLISHING CERTAIN POLICIES RELATED TO IMPACT FEES FOR PUBLIC SAFETY FACILITIES; ESTABLISHING CERTAIN POLICIES RELATED TO IMPACT FEES FOR PUBLIC SAFETY FACILITIES; ESTABLISHING SERVICE AREA; AND/OR OTHER RELATED MATTERS.

**WHEREAS**, the City of South Jordan (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 Utah Code Annotated, as amended (“Impact Fees Act” or “Act”), to impose 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 precedent to development approval in order to assign capital infrastructure costs to development in an equitable and proportionate manner; and

**WHEREAS**, the City has traditionally provided a high level of service in its public safety infrastructure, which has been a factor in the City’s growth, and high property values due to the unique aesthetics which City residents enjoy; and

**WHEREAS**, in the exercise of its legislative discretion the City Council desires to take a conservative approach in preparing the Impact Fee Facilities Plan (“IFFP”) and Impact Fee Analysis (“IFA”) and in the assessment of an impact fee which may be less than might otherwise be justified by the IFA and IFFP in order to promote economic development, expand the tax base, allow for more job creation, and respond to current economic realities; and

**WHEREAS**, the City properly noticed its intent to prepare the IFFP and IFA on November 14, 2018 and the City held the required hearing on November 19, 2019; and

**WHEREAS**, the City has completed a Public Safety IFFP and IFA which meets the requirements of State Law and City Ordinance; and

**WHEREAS**, the City Council has directed Lewis Young Robertson & Burningham, Inc. (“Consultants”) to prepare a Written Impact Fee Analysis including the Executive Summary of the Impact Fee Analysis consistent and in compliance with the Act specifically 11-36a-303; and

**WHEREAS**, the City and Consultants retained by the City have reviewed and evaluated the land within the City boundaries and have determined there shall be one service area; and

**WHEREAS**, the South Jordan City Council has reviewed the Public Safety IFFP and IFA, and find it in the best interest of the welfare of the residents of the City to adopt the Public Safety IFFP and IFA and enact a new Public Safety Impact Fee based on the IFFP and IFA.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL (the “Council”) OF SOUTH JORDAN CITY, UTAH AS FOLLOWS:**

***SECTION 1     PURPOSE***

This Impact Fee Ordinance establishes the City’s Public Safety Impact Fee policies and procedures and repeals certain provisions of prior ordinances related to Public Safety Impact Fees and conforms to the requirements of the Utah Impact Fees Act (§ 11-36a, the Act). This Ordinance repeals any prior ordinances related to Public Safety facilities within the Service Area, provides a schedule of Impact Fees for differing types of land-use development, and sets forth direction for challenging, modifying and appealing Impact Fees.

***SECTION 2     DEFINITIONS***

Words and phrases that are defined in the Act shall have the same definition in this Impact Fee Ordinance. The following words and phrases shall have the following meanings:

1.     “City” means a political subdivision of the State of Utah and is referred to herein as City of South Jordan.
2.     “Development Activity” means any construction or expansion of building, structure or use, any change in use of building or structure, or any change in the use of land located within the Service Area that creates additional demand and need for Public Safety Facilities.
3.     “Development Approval” means any written authorization from the City that authorizes the commencement of Development Activity and vests the property owner with the right to commence Development Activity, whether or not a specific building permit has been issued.
4.     “Impact Fee” means a payment of money imposed upon Development Activity as a condition of development approval. “Impact Fee” includes development Impact Fees, but is not a tax, a special assessment, a hookup fee, a building permit fee, a fee for project improvements, or other reasonable permit or application fees.
5.     “Impact Fee Analysis” or (“IFA”) means the written analysis required by Section 11-36a-201 of the Act and is included in this ordinance by this reference and attached in Exhibit A.
6.     “Impact Fee Facilities Plan” or (“IFFP”) means the plan required by Section 11-36a-301 of the Act. In Section 11-36a-301 (3) (a) there is an exception for cities of

5,000 or less in population, based on the latest census. “The City of South caused to be prepared an Impact Fee Facilities Plan in accordance with the Impact Fees Act. The IFFP is to be adopted by passage of this Ordinance, and is included by this reference and attached hereto in Exhibit A.”

7. “Project Improvements” includes but is not limited to site improvements and facilities that are planned and designed to provide service for development resulting from a Development Activity and are necessary solely for the use and convenience of the occupants or users of said Development Activity. “Project Improvements” do not include “System Improvements” as defined below.
8. “Proportionate Share” of the cost of Public Safety Facility improvements means an amount that is roughly proportionate and reasonably related to the service demands and needs of a Development Activity.
9. “Public Safety Facilities” means a police facility, fire facility, and/or fire apparatus valued at five hundred thousand dollars (\$500,000) or greater.
10. “Service Area” refers to a geographic area designated by the City based on sound planning and engineering principles in which a defined set of the City’s Public Safety Facilities provides service. For purposes of this Ordinance, there will be one service area. A map of the Service Area is included in Exhibit A attached hereto.
11. “System Improvements” refer both to existing Public Safety Facilities designed to provide services within the Service Areas and to future Public Safety Facilities identified in the Public Safety IFFP adopted by the City that are intended to provide service to the Service Area. “System Improvements” do not include “Project Improvements” as defined above.

### ***SECTION 3 WRITTEN IMPACT FEE ANALYSIS***

1. Executive Summary. A summary of the findings of the written impact fee analysis that is designed to be understood by a lay person is included in the attached Public Safety IFFP and IFA and demonstrates the need for Impact Fees to be assessed on Development Activity. The Executive Summary has been available for public inspection at least ten (10) days prior to the adoption of this Ordinance.
2. Impact Fee Analysis. The City has commissioned the IFFP and IFA for the Public Safety Impact Fees which identifies the impacts upon Public Safety Facilities required by the Development Activity, demonstrates how those impact the City and the facilities required by Development Activity, demonstrates how those impacts on System Improvements are reasonably related to Development Activity, estimates the proportionate share of the costs of impacts on System Improvements that are reasonably related to the Development Activity and identifies how the Impact Fees are calculated. A copy of the Public Safety IFFP and IFA has been

available for public inspection at least ten (10) days prior to the adoption of this Ordinance.

3. Proportionate Share Analysis. In connection with the IFFP and IFA, the City has prepared a Proportionate Share analysis which analyzes whether or not the proportionate share of the costs of future Public Safety Facilities is reasonably related to new Development Activity. The Proportionate Share analysis identifies the costs of existing Public Safety Facilities, the manner of financing existing Public Safety Facilities, the relative extent to which new development will contribute to the cost of existing facilities and the extent to which new development is entitled to a credit for payment towards the costs of new facilities from general taxation or other means apart from user charges in other parts of the City. A copy of the Proportionate Share analysis is included in the written Public Safety Impact Fee Analysis and has been available for public inspection at least ten (10) days prior to the adoption of this Ordinance.

#### ***SECTION 4    IMPACT FEE CALCULATIONS***

1. Ordinance Enacting Impact Fees. The City Council does, by this Ordinance, approve Impact Fees in accordance with the Public Safety IFFP and IFA.
  - a. Elements. In calculating the Impact Fee, the City has included the construction costs, land acquisition costs, costs of improvements, fees for planning, surveying, and engineering services provided for and directly related to the construction of System Improvements, and outstanding or future debt service charges if the City might use Impact Fees as a revenue stream to pay principal and interest on bonds or other obligations to finance the cost of System Improvements.
  - b. Notice and Hearing. In conjunction with the approval of this, the City held a public hearing on November 19, 2019, and made a copy of the Ordinance available to the public in the South Jordan City Library, at least ten (10) days before the date of the hearing, all in conformity with the requirements of Utah Code Annotated 11-36a-502 (1). After the public hearing, the Council adopted this Impact Fee Ordinance as presented herein.
  - c. Contents of the Ordinance. The Ordinance adopting or modifying an Impact Fee contains such detail and elements as deemed appropriate by the Council, including a designation of the Service Area within which the Impact Fees are to be calculated and imposed. The South Jordan Service Area is the only service area, with a map defining its boundaries included in the Public Safety IFFP and IFA. The Ordinance herein includes (i) a schedule of Impact Fees to be imposed for Public Safety and (ii) the formula to be used by the City in calculating the Impact Fee.

- d. Adjustments. The standard Impact Fee may be adjusted at the time the fee is assessed:
    - i. in response to unusual circumstances in specific cases;
    - ii. in response 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;
    - iii. to ensure that the impact fees are imposed fairly; or
    - iv. to a particular development should the developer supply sufficient studies and data to the City showing a discrepancy between the fee being assessed and the actual impact on the system.
  - e. Previously Incurred Costs. To the extent that new growth and Development Activity will be served by previously constructed improvements, the City's Impact Fees may include Public Safety Facility costs and outstanding bond costs related to the Public Safety 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 may also be included to offset the costs of future capital projects.
2. Developer Credits. Development Activity may be allowed a credit against Impact Fees for any dedication or improvement to land or new construction of System Improvements provided by the Development Activity provided that the Development Activity is (i) identified in the City's Impact Fee Facilities Plans and (ii) required by the City as a condition of Development Approval. Otherwise, no credit may be given.
3. Impact Fees Accounting. The City will establish a separate interest-bearing ledger account for the Impact Fees collected pursuant to this Ordinance and will conform to the accounting requirements provided in the Impact Fees Act. All interest earned on the collection of Public Safety Impact Fees shall accrue to the benefit of the segregated 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, the City shall prepare a report pursuant to Utah Code Ann, 11-36a-601.
  - b. Impact Fee Expenditures. The City may expend Impact Fees pursuant to Utah Code Ann.§ 11-36-602 the Impact Fees Policy only for System Improvements that are (i) Public Safety Facilities identified in the City's

Impact Fee Facilities Plans and (ii) of the specific Public Safety Facility type for which the fee was collected. Impact Fees will be expended on a First-In First-Out (“FIFO”) basis.

- c. Time of Expenditure. Impact fees collected pursuant to the requirements of this Impact Fees Ordinance are to be expended, dedicated or encumbered for a permissible use within six years of the receipt of those funds by the City, unless the City meets other conditions outlined in the Act. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.
  - d. Refunds. The City shall refund any Impact Fees paid by a developer plus interest actually earned when (i) the developer does not proceed with the Development Activity and files a written request for a refund; (ii) the fees have not been spent or encumbered; and (iii) 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.
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 the City and other fees and costs that may not be included as itemized component parts of the Impact Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.
  5. Fees Effective at Time of Payment. Unless the City is otherwise bound by a contractual requirement, the Impact Fee shall be determined from the fee schedule in effect at the time of Development Approval and paid in accordance with the provisions of Section 6 below.
  6. Imposition of Additional Fee or Refund After Development. 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 recover the total Impact Fee pursuant the IFFP and IFA from the developer or other appropriate person covering the density for which an Impact Fee was not previously paid.

**SECTION 5 IMPACT FEE FACILITIES PLAN**

1. Impact Fee Facilities Plan. The City has developed a Public Safety IFFP for the City’s public safety system. The Public Safety IFFP has been prepared based on reasonable growth assumptions for the Service Area, and analyzes the general demand characteristics of current and future users of the system. Furthermore, the IFFP 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.

**SECTION 6 IMPACT FEE SCHEDULES AND FORMULAS.**

1. Fee Adoption. The City hereby adopts as the Impact Fee per unit for Public Safety as found in the South Jordan Public Safety IFFP & IFA and detailed below.

RECOMMENDED PUBLIC SAFETY IMPACT FEE SCHEDULE

<b>Land Use</b>	<b>Unit</b>	<b>Proposed Fee</b>
Single Family	per unit	\$567.31
Multi-Family	per unit	\$192.92
Commercial	per 1,000 SF	\$795.15
Office	per 1,000 SF	\$339.05
Industrial	per 1,000 SF	\$163.31
School	per 1,000 SF	\$224.45
Church	per 1,000 SF	\$218.20
Nursing Home	per 1,000 SF	\$2,672.21

1. Maximum Supportable Impact Fees. The fee schedule included in the Public Safety IFFP and IFA indicates the maximum Impact Fees which the City may impose on development within the defined Service Area and 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 Impact Fees Act (Utah Code § 11-36a-402(1)(c)) to assess an adjusted fee to respond to unusual circumstances to ensure that fees are equitably assessed. The City may also decrease the Impact Fee if the developer can provide documentation that the proposed impact will be less than what could be expected given the type of user (Utah Code § 11-36a-402(1)(d)).

**SECTION 7 FEE EXCEPTIONS AND WAIVERS**

1. Waiver for “Public Purpose”. The City Council may, on a project by project basis, authorize exceptions or waivers to the Impact Fees due from development 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 facilities being funded by tax-supported agencies, affordable housing projects, or facilities of a

temporary nature. The City Council may elect to waive or adjust Impact Fees in consideration of economic benefits to be received from the Development Activity.

- a. Procedures. Applications for exceptions are to be filed with the City at the time the developer first requests the extension of service to the respective development or property.

## ***SECTION 8 APPEAL PROCEDURE***

1. Any person or entity that has paid an Impact Fee pursuant to this Ordinance may challenge the Impact Fee by filing:
  - a. An appeal to the City pursuant to South Jordan Municipal Code § 16.32.090. If no decision is issued pursuant to South Jordan Municipal Code §16.32.090 within 30 days of a timely filed appeal the appeal will be deemed denied.
  - b. A request for arbitration as provided in Utah Code Ann. § 11-36a-705 as amended; or
  - c. An action in district court.

## ***SECTION 9 MISCELLANEOUS***

1. Severability. If any section, subsection, paragraph, clause or phrase of this Impact Fee Policy shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Impact Fee Policy, which shall remain in full force and effect, and for this purpose, the provisions of this Impact Fee Ordinance are declared to be severable.
2. Interpretation. This Impact Fee Ordinance has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Impact Fee Ordinance shall not be affected by such division or by any heading contained herein.
3. Effective Date. This Impact Fee Ordinance shall become effective 90 days after the day which this Impact Fee Ordinance is passed and adopted by the South Jordan City Council. Except as otherwise specifically provided herein and according to law, this Impact Fee Ordinance shall not repeal, modify or affect any Impact Fee of the City in existence as of the effective date of this Ordinance, other than those expressly referenced in Section 1 above. All Impact Fees established, including amendments and modifications to previously existing Impact Fees, after the effective date of this Ordinance shall comply with the requirements of this Impact Fee Ordinance.

[SIGNATURE PAGE FOLLOWS]

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019 BY THE FOLLOWING VOTE:**

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	_____	_____	_____	_____
Bradley Marlor	_____	_____	_____	_____
Donald Shelton	_____	_____	_____	_____
Tamara Zander	_____	_____	_____	_____
Jason McGuire	_____	_____	_____	_____

Mayor: \_\_\_\_\_  
Dawn R. Ramsey

Attest: \_\_\_\_\_  
City Recorder

Approved as to form:

\_\_\_\_\_  
Office of the City Attorney

**Exhibit A**

Public Safety Impact Fee Facilities Plan

Public Safety Impact Fee Analysis

Public Safety Impact Fee Service Area Map