

CITY OF EVANS, COLORADO

ORDINANCE NO. 642-16

AN ORDINANCE AMENDING THE EVANS CITY CODE BY CONFIRMING AND RE-ENACTING IMPACT FEES FOR TRANSPORTATION, PARKS, RECREATION AND TRAILS, AND FIRE/RESCUE SERVICES; ENACTING AND APPROVING A POLICE PROTECTION SERVICES IMPACT FEE; ESTABLISHING AND UPDATING THE SCHEDULES OF SUCH FEES; ESTABLISHING AND RE-ESTABLISHING PROCEDURES FOR IMPOSITION AND COLLECTION OF IMPACT FEES FOR DEVELOPMENT ACTIVITIES THAT GENERATE AN INCREASED NEED FOR ADDITIONAL CAPITAL FACILITIES; AND REPEALING, RELOCATING, AND CONSOLIDATING THE PROVISIONS RELATING TO THE VARIOUS IMPACTS FEES IN A NEW CHAPTER 3.20 OF THE EVANS CITY CODE

**WHEREAS**, the City Council of the City of Evans, Colorado, pursuant to Colorado statute and the Evans City Charter, is vested with the authority of administering the affairs of the City of Evans, Colorado; and

**WHEREAS**, the construction of proposed developments within the City places significant additional demands on the City's capital facilities used in providing transportation, parks recreation and trails, fire/rescue services, and police protection services; and

**WHEREAS**, the demand for providing transportation, parks recreation and trails, fire/rescue services, and police protection services is immediate upon development of residential and non-residential property though funding from tax revenues accrues well after the demand for services has been created; and

**WHEREAS**, the Evans City Council finds and determines that one of the primary roles of building, subdivision and development review is to ensure essential public services and facilities, and that in order to promote and protect the convenience, order, prosperity and welfare of present and future inhabitants of the City, a rational system for identifying growth-related costs incurred in providing new and expanded transportation, parks recreation and trails, fire/rescue services, and police protection services made necessary by development activity is necessary, and a fee structure therefore directly related to such costs and a method for collection of such fees, should be adopted; and

**WHEREAS**, the adoption of a requirement that developers of residential and non-residential developments pay transportation, parks recreation and trails, fire/rescue services, and police protection services impact fees as established and re-established herein will ensure that new development defrays the projected impacts on these capital facilities caused by the proposed development; and

**WHEREAS**, the Local Government Land Use Control Enabling Act of 1974 (the “Land Use Act”), Sections 29-20-101 et seq., C.R.S.; Article 23 of Title 31, and other applicable laws grant broad authority to the City to plan for and regulate the development of land on the basis of the impacts thereof on the community and surrounding areas; and

**WHEREAS**, provisions of the Land Use Act, including but not limited to Section 29-20-104.5, C.R.S. authorize local governments to establish impact fees or similar development charges related to land development activities as a condition of the approval of development permits, if such fees or charges are intended to defray the projected impacts on capital facilities caused by proposed development; and

**WHEREAS**, the City is authorized by Colorado constitutional and statutory authority and case law, as well as its own Charter, to regulate the development and use of land, and impose mitigation measures, including impact fees, upon proponents of land development activities if impacts related to the service demands created by the development are not adequately mitigated; and

**WHEREAS**, the City’s authority to impose impact fees is conditioned upon criteria that establish the extent of the impact on capital facilities and the fees necessary to defray the projected impacts on capital facilities; and

**WHEREAS**, pursuant to the authority set forth above, and for the purposes set forth above, the City has previously enacted streets, park facilities, and fire/rescue impact fees; and

**WHEREAS**, the City Council has determined that it is in the interest of the public health and safety, and necessary in order to provide capital facilities for police protection services associated with new development to impose a police protection services impact fee; and

**WHEREAS**, the City Council previously determined the need to update the City’s existing impact fees and to determine the amount for the new police protection services impact fee, and to accomplish those purposes retained the services of TischlerBise to perform a Fiscal Impact Fee Study, and

**WHEREAS**, on September 15, 2015 the City Council, following consideration of the matter, accepted the impact fee study from July 2015 performed by TischlerBise, and

**WHEREAS**, TischlerBise subsequently made minor revisions resulting in a study dated November 16, 2015, and such study results, as revised, are reflected in this ordinance and the revised study is accepted by this ordinance; and

**WHEREAS**, the methodologies and analyses used by TischlerBise for determining the amount necessary to defray the projected impacts on capital facilities caused by the proposed development are reasonable and sound; and

**WHEREAS**, all of the Capital Facilities planned for and included in the Impact Fee Study are services directly related to services the City is authorized to provide, have an estimated useful life of five years or longer, and are required by the Charter or general policy of the City pursuant to resolution or ordinance; and

**WHEREAS**, the Impact Fees to be imposed on proposed development are legislatively imposed, generally applicable to a broad class of property and are no greater than necessary to defray the projected impacts on capital facilities caused by proposed new development; and

**WHEREAS**, the City Council finds and determines that the amendments to the Evans City Code as contained herein, are necessary and designed for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the City of Evans and are consistent with the City's goals, policies and plans, including the City's master plan documents; and

**WHEREAS**, the City Council finds that the legislative action of adopting the provisions set forth in this ordinance is necessary to protect the health, safety and welfare of the City's residents and visitors.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO AS FOLLOWS:**

PART 1: ACCEPTANCE OF IMPACT FEE STUDY RESULTS. The Impact Fee Study: City of Evans, Colorado prepared by TischlerBise and dated November 16, 2015 is hereby accepted. Copies of the report shall be made available to the public for inspection at the City Clerk's office and copies may be provided upon appropriate request.

PART 2: AMENDMENT TO CITY CODE. The City Code of the City of Evans, Colorado (herein sometimes referred to as the "City Code") is hereby amended as follows:

- 1.1 Repeal of existing City Code provisions. The following provisions of the existing City Code are hereby deleted, with such deletions to become effective simultaneously with the additions and other amendments as set forth below:
  - a. Chapter 15.50, regarding Fire Protection Impact Fees;
  - b. Chapter 15.52, regarding Park Impact Fees; and
  - c. Chapter 12.20, regarding Street Impact Fees.
- 1.2 Section 1.04.010 of the City Code is amended by adding the following definitions:
  - (A) "Building Permit" means the development permit issued by the City before any building or construction activity can be initiated on a parcel of land.

- (B) “Capital Facilities” includes:
- (1) Buildings and facilities used for transportation, parks recreation and trails, fire/rescue services, and police protection services.
  - (2) Apparatus and equipment, including communications equipment, with an average useful life of at least five years, for transportation, parks recreation and trails, fire/rescue services, and police protection services.
  - (3) Excludes periodic or routine maintenance of facilities and equipment, personnel costs or operational expenses.
- (C) “Developer” means a person or entity that commences a Development creating the need for additional transportation, parks recreation and trails, fire/rescue services, or police protection services.
- (D) “Development” means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, which creates or may create impacts on Capital Facilities for transportation, parks recreation and trails, fire/rescue services, or police protection services.
- (E) “Fire District” means the Evans Fire Protection District.
- (F) “Fiscal Impact Fee Study” means a study prepared by an outside engineer or consultant that mathematically calculates the fiscal impact of future demand for services on existing facilities of the City of Evans or within its boundaries.
- (G) “Impact Fee” means a fee established as provided in this Chapter that is intended to defray the projected impacts on Capital Facilities for streets, park recreation or trail facilities, fire/rescue services, or police protection services caused by proposed development within the City of Evans.
- (H) “TischlerBise Impact Fee Study” means the July 2015 Study accepted by the City Council on September 15, 2015.

1.3 The City Code is amended by adding a new Chapter 3.20 to the City Code entitled "Impact Fees", which shall provide as follows:

## Chapter 3.20

### IMPACT FEES

#### Sections:

- 3.20.010 - Title.
- 3.20.020 - Purpose and Intent.
- 3.20.030 - Imposition and Purpose of Specific Impact Fees.
- 3.20.040 - Impact Fee Amounts.
- 3.20.050 - Alternative Calculation Study.
- 3.20.060 - Time for Payment of Impact Fees, Entity to Whom Payment Shall be Made.
- 3.20.070 - Deposit and Use of Impact Fees.
- 3.20.080 - Credit for Improvements.
- 3.20.090 - Additional Guidelines for Park Credit Determinations.
- 3.20.100 - Additional Guidelines for Transportation Credit Determinations.
- 3.20.110 - Appeal of Credit Determinations.
- 3.20.120 - Unpaid Impact Fees.
- 3.20.130 - Prior Conditions and/or Agreements.
- 3.20.140 - Adjustment and Review of Impact Fees.
- 3.20.150 - Application.
- 3.20.160 - Judicial Review.

#### **3.20.010 – Title.**

The provisions of this Chapter shall be known and cited as the Evans Impact Fee Code.

#### **3.20.020 - Purpose and Intent.**

(A) The purpose of this Chapter is to:

- (1) Provide a rational system for identifying and mitigating growth-related costs associated with growth and development and the expansion of transportation, parks recreation and trails, fire/rescue services, and police protection services through Capital Facilities made necessary by development.
- (2) Ensure that the impact fees established by this Chapter are established at a level no greater than necessary to defray such impacts directly related to proposed development.

#### **3.20.030 - Imposition and Purpose of Specific Impact Fees.**

(A) Any Developer who seeks a approval for a Development which impacts or may impact Capital Facilities for transportation, parks recreation and trails, fire/rescue services, or police protection services, who has not already dedicated land or Capital Facilities to fully satisfy anticipated impacts of the proposed development, shall pay an impact fee in the manner and amount set forth in this Chapter.

(B) In order to provide or to assist in providing the financing required to develop, maintain, and provide Capital Facilities for transportation, parks recreation and trails, fire/rescue services, and police protection services, the impact fees in the amounts set forth below shall be paid to defray the projected impacts on Capital Facilities caused by the proposed development.

**3.20.040 – Impact Fee Amounts.**

(A) Transportation Impact Fees

Single Unit	\$4,328 per housing unit
2+ Unit	\$3,520 per housing unit
Manufactured Home	\$4,328 per housing unit
Commercial	\$5.62 per square foot of floor area
Office/Institutional	\$2.43 per square foot of floor area
Industrial/Flex	\$1.53 per square foot of floor area

(B) Park Facility Impact Fees

Single Unit	\$4,594 per housing unit
2+ Unit	\$3,587 per housing unit
Manufactured Home	\$3,569 per housing unit
Commercial	\$0.00 per square foot of floor area
Office/Institutional	\$0.00 per square foot of floor area
Industrial/Flex	\$0.00 per square foot of floor area

(C) Fire/Rescue Services Impact Fees

Single Unit	\$930 per housing unit
2+ Unit	\$726 per housing unit
Manufactured Home	\$723 per housing unit
Commercial	\$1.00 per square foot of floor area
Office/Institutional	\$0.39 per square foot of floor area
Industrial/Flex	\$0.25 per square foot of floor area

(D) Police Protection Services Impact Fees

Single Unit	\$274 per housing unit
2+ Unit	\$214 per housing unit
Manufactured Home	\$212 per housing unit
Commercial	\$0.28 per square foot of floor area
Office/Institutional	\$0.11 per square foot of floor area
Industrial/Flex	\$0.07 per square foot of floor area

**3.20.050 - Alternative Calculation Study.**

In lieu of computation of the Impact Fee in accordance with the schedules adopted pursuant to Section 3.20.040 above, the Developer may prepare and submit, to the Evans City Manager, a

site-specific Fiscal Impact Fee Study and calculation for the Development. The Fiscal Impact Fee Study submitted shall show the basis upon which the site-specific Impact Fee Study calculation was made, and such calculation shall reflect the same level of service and standards contemplated by the TischlerBise Fiscal Impact Fee Study. The site-specific Fiscal Impact Fee Study and calculation shall be prepared and presented by professionals qualified in their respective fields. The Evans City Manager or their designee shall consider the documentation submitted by the Developer. If the City Manager or their designee determines that an acceptable site-specific Fiscal Impact Fee Study and calculation has not been presented, the Developer shall pay the Impact Fee based upon the schedule set forth in Section 3.20.040 above. Determinations made by the City Manager or his designee pursuant to this section may be appealed to the City Council by filing a written request with the City Clerk within ten (10) days of the determination by the City Manager or their designee. Following the submittal of such request, the City Council shall hold a public hearing to determine prior to Development approval, the amount of the Impact Fee that shall be paid.

### **3.20.060 - Time for Payment of Impact Fees, Entity To Whom Payment Shall Be Made.**

The owner of property shall pay the Impact Fees at the time a building permit is issued. All Impact Fees shall be paid to the Evans City Treasurer.

### **3.20.070 - Deposit and Use of Impact Fees.**

All Impact Fees collected pursuant to this Chapter shall be deposited by the City or the Fire District in an interest-bearing account that clearly identifies the category, account, or fund of capital expenditure for which such charge was imposed. Each such category, account, or fund shall be accounted for separately. Any interest or other income earned on moneys deposited in said interest-bearing account shall be credited to the account. All Impact Fees shall be used exclusively for Capital Facilities for which they were collected. No Impact Fees shall be used for periodic or routine maintenance, personnel costs, or operational expenses. All Impact Fees will be collected and deposited in accordance with Part 8 of Article 1 of Title 29 of the Colorado Revised Statutes.

### **3.20.080 - Credit for Improvements.**

The City Manager shall calculate the amount of any credit that shall be granted to any Developer for the amounts due or to become due for Capital Facilities installed, purchased, and paid for by such Developer when such Capital Facilities offset the need or amount of the Impact Fee that would otherwise be required. Any credit granted shall not exceed the total amount the Developer would have had to pay under the existing fee schedule.

### **3.20.090 - Additional Guidelines For Park Credit Determinations.**

By way of illustration and not limitation, in making a determination of whether to grant credit for park facilities provided by a Developer, the City Manager may consider the following as non-binding guidelines:

- (A) Whether the park Capital Facilities utilize acceptable design and construction methods approved by the Director of Parks and Recreation.

- (B) Whether the park Capital Facilities adhere to the applicable sections of Chapter 16.42 of the Evans Municipal Code.
- (C) Whether the park Capital Facilities conform to the standards and criteria as outlined in the City of Evans Parks, Trails and Recreation Master Plan, as amended.

**3.20.100 - Additional Guidelines for Transportation Credit Determinations.**

By way of illustration and not limitation, in making a determination of whether to grant credit for transportation facilities provided by a Developer, the City Manager may consider the following as non-binding guidelines:

- (A) Whether the Developer has dedicated land for rights-of-way and the value of such dedication, which may be based on the most recent assessed value of the County Assessor or the fair market value of the property as established by an appraiser or by other reliable means.
- (B) Whether the Developer has constructed or agreed to construct transportation Capital Facilities and the value of such Capital Facilities based on complete engineering drawings, specifications, and construction costs estimates, or by other reliable means.
- (C) Whether the Developer has contributed to or agreed to contribute to the cost of transportation Capital Facilities and the value of such contribution based on actual construction costs or an estimate prepared by a professional engineer or other reliable means.
- (D) Whether the Developer has entered into an agreement with the City to construct off-site transportation Capital Facilities to the City's system and the value of such facilities.

**3.20.110 - Appeal of Credit Determinations.**

Determinations made by the City Manager or his designee pursuant to this section may be appealed to the City Council by filing a written request with the City Clerk within ten (10) days of the determination by the City Manager or their designee. Following the submittal of such request, the City Council shall hold a public hearing to determine prior to Development approval, the amount of credits to be granted.

**3.20.120 - Unpaid Impact Fees.**

The City reserves the right to withhold or revoke any permits, certificates, or other approvals for any land or building for which the payment of Impact Fees is delinquent.

**3.20.130 - Prior Conditions and/or Agreements.**

Any Developer who, prior to the effective date of this Chapter, agreed as a condition of development approval to pay Impact Fees shall be responsible for the payment of the fees under the terms of any such agreement, and the payment of such fees by the Developer will be offset against any Impact Fees due pursuant to the terms of this Chapter.

### **3.20.140 - Adjustment and Review of Impact Fees.**

The amount of all Impact Fees shall be reviewed and adjusted as follows:

- (A) Annually, the Impact fees for transportation, parks, recreation, and trails will be updated and adjusted, by resolution, to reflect inflation utilizing the most recent factor in the most recent period for which figures are available from the Consumer Price Index for the Denver-Boulder-Greeley area. Annually, the Impact fees for police protection services and fire/rescue services will be updated to reflect inflation, as reflected in the Engineering News Record *Construction Index*.
- (B) The City Council shall, annually, in conjunction with the presentation of Evans's proposed budget, consider any further adjustments to the Impact Fees.
- (C) City Council is encouraged to authorize and cause to be performed future Fiscal Impact Fee Studies on a regular basis to review the City's impact fees.

### **3.20.150 - Application.**

The requirements of this Chapter shall apply only within the jurisdiction and boundaries of the City of Evans. Only applicants who submit applications for development after adoption of the Impact Fee will be assessed such fee.

### **3.20.160 - Judicial Review.**

The Developer may seek a declaratory judgment to determine whether any Impact Fee assessed complies with state law requirements for the imposition of impact fees. The City shall allow the Developer, upon payment of the Impact Fee, to proceed with development of their property pursuant to the Development approval while the court reviews the validity of the Impact Fee.

PART 3: REPEAL. Any and all existing City Code provisions, ordinances or parts of City Code provisions or ordinances of the City of Evans covering the same matters as embraced in this Ordinance are hereby repealed and all City Code provisions, ordinances or parts of City Code provisions or ordinances inconsistent with the provisions of this Ordinance are hereby repealed; provided, however, that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any City Code provision or ordinance hereby repealed prior to the taking effect of this Ordinance.

PART 4: SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City of Evans hereby declares that it would have adopted this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared invalid or unconstitutional.

PART 5: EFFECTIVE DATE. The provisions of this Ordinance shall become effective as of February 15, 2016.

**INTRODUCED AND PASSED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF EVANS ON THIS 5<sup>TH</sup> DAY OF JANUARY, 2016.**

**ATTEST:**

**CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Raegan Robb, City Clerk

BY: \_\_\_\_\_  
John L. Morris, Mayor

**PASSED AND ADOPTED ON A SECOND READING THIS 19<sup>TH</sup> DAY OF JANUARY, 2016.**

**ATTEST:**

**CITY OF EVANS, COLORADO**

\_\_\_\_\_  
Raegan Robb, City Clerk

BY: \_\_\_\_\_  
John L. Morris, Mayor