

RESOLUTION 19-081821-01

**RESOLUTION ADOPTING THE MT OLYMPUS IMPROVEMENT DISTRICT
WASTEWATER COLLECTION SYSTEM MASTER PLAN, IMPACT FEE
FACILITIES PLAN, IMPACT FEE ANALYSIS, SETTING THE IMPACT FEE, AND
ADOPTION OF AN IMPACT FEE ENACTMENT ORDINANCE, A WASTEWATER
RATE STUDY, AND AUTHORIZING AMENDMENT OF THE WASTEWATER
CONTROL RULES AND REGULATIONS OF THE DISTRICT**

WHEREAS, Mt Olympus Improvement District (the “District”) owns and operates a sanitary sewer system and related facilities and improvements in the Salt Lake Valley;

WHEREAS, the District has determined that it is in the best interest of the District, its customers, and the general public, pursuant to the Utah Impact Fees Act, Utah Code §11-36a-101, et seq. (the “Act”) and other applicable laws and ordinances, to formulate and adopt a Wastewater Collection System Master Plan, an Impact Fee Facilities Plan, an Impact Fee Analysis, and a Wastewater Rate Study.

WHEREAS, on or about February 6, 2020 the District gave notice of the District’s intention to prepare and adopt an Impact Fee Enactment Ordinance;

WHEREAS, the District retained Hansen, Allen & Luce, Inc. and Zions Public Finance, Inc. (the “Consultants”) to analyze the method and manner of calculation of impact fees and the allocation of impact fees to the customers of the District and to prepare a Wastewater Collection System Master Plan, an Impact Fee Facilities Plan, an Impact Fee Analysis, and a Wastewater Rate Study;

WHEREAS, the District held several working sessions with the Consultants and held public meetings in order to analyze and review the proposed (i) Wastewater Collection System Master Plan (ii) Impact Fee Facilities Plan (iii) Impact Fee Analysis, and (iv) Wastewater Rate Study;

WHEREAS, in connection therewith, the District prepared a proposed Impact Fee Enactment Ordinance;

WHEREAS, the District has complied with all publication, posting, depositing, notice, and other requirements of the Act in connection therewith and, pursuant to the provisions of Utah Code §§11-36a-502 and 17B-1-111, held a public hearing on August 18, 2021 at 10:30 a.m. for the purpose of receiving public comment and input on the Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, the Impact Fee Enactment Ordinance, and the Wastewater Rate Study;

WHEREAS, the District held a public meeting immediately following the above-referenced public hearing in order to consider the adoption of the Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, the Impact Fee Enactment

Ordinance, and the Wastewater Rate Study; and

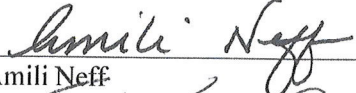
WHEREAS, upon completion of the above-referenced public hearing and before conclusion of the public meeting, the Board of Trustees of the District (the "Board") voted to adopt and implement the Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, the Impact Fee Enactment Ordinance in the form of said documents, all as made available to the public for consideration prior to the public hearing and presented to the public and the Board at the public hearing and public meeting;

NOW THEREFORE be it resolved by the Board as follows:

1. The Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, the Impact Fee Enactment Ordinance, and the Wastewater Rate Study, all of which were previously submitted to the public, are hereby approved and adopted by the District.
1. ~~The Board and the General Manager of the District (the "General Manager") are hereby authorized and directed to finalize the Impact Fee Enactment Ordinance for execution by the Board of Trustees of the District.~~
2. The Board and the General Manager are hereby authorized and directed to take any and all actions necessary or appropriate in order to implement the Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, the Impact Fee Enactment Ordinance, and the Wastewater Rate Study, to set the impact fees of the District at the amount of \$758.00 per residential equivalent unit, and to amend the Wastewater Control Rules and Regulations of the District (the "Regulations") by incorporating the Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, and the Wastewater Rate Study therein and making all other necessary and advisable amendments to the Regulations.
3. The Board and the General Manager are authorized, in the future, to supplement and amend, the Wastewater Collection System Master Plan, the Impact Fee Facilities Plan, the Impact Fee Analysis, the Impact Fee Enactment Ordinance, and the Wastewater Rate Study, as may be required by law or as may be necessary or advisable as determined by the Board and the General Manager after giving notice to the public, as may be required by law.
4. The Board and the General Manager are authorized to take any and all other actions necessary or advisable, consistent with the Act and other applicable laws and ordinances, currently existing and as amended from time to time in the future.

This Resolution has been adopted at a duly called and noticed meeting and after receiving input at a public hearing held by the Board on August 18, 2021 at 10:30 a.m.

AMILI NEFF: AYE
C. KIM BLAIR: AYE
GILES DEMKE: AYE



Amili Neff



C. Kim Blair



Giles Demke

This Resolution was posted on the District's website and on the Utah Public Notice Website on July 29, 2021.

IMPACT FEE ENACTMENT ORDINANCE

MT OLYMPUS IMPROVEMENT DISTRICT

ORDINANCE DATED AUGUST 18, 2021

ORDINANCE ADOPTING AN IMPACT FEE FACILITIES PLAN AND IMPACT FEE ANALYSIS AND IMPOSING SANITARY SEWER SYSTEM IMPACT FEES; PROVIDING FOR THE CALCULATION AND COLLECTION OF SUCH FEES; PROVIDING FOR APPEAL, ACCOUNTING AND SEVERABILITY OF THE SAME, AND OTHER RELATED MATTERS

RECITALS

A. On February 6, 2020, Mt Olympus Improvement District (the "*District*") posted notices on the Utah Public Notice Website (currently, Utah Code Annotated §63A-16-601) under the Utah Impact Fees Act, Utah Code Ann. §§ 11-36a-101 through 705 (the "*Act*") of the District's intention to prepare a sanitary sewer system impact fee facilities plan (the "*Impact Fee Facilities Plan*") and a sanitary sewer system impact fee analysis (the "*Impact Fee Analysis*"), attached a map of the "*Service Area*" (which includes the entire District), and invited all interested parties to participate in the impact fee preparation process, consistent with Section 11-36a-501 of the Act.

B. The District retained Hansen, Allen & Luce, Inc. and Zions Public Finance, Inc. as its impact fee consultants (collectively, the "*Consultants*").

C. No member of the general public participated in the several scheduled impact fees meetings with Consultant and members of District staff to provide perspective on the facilities, usage and assumptions included in the Impact Fee Facilities Plan and Impact Fee Analysis.

D. The District is a political subdivision of the State of Utah, authorized and organized under the provisions of Utah law and is authorized pursuant to the Act to adopt impact fees.

E. At least fourteen (14) days prior to the public hearing referred to herein, the District (i) made a copy of this Ordinance available to the public, (ii) posted notice of the District's intent to enact or modify the impact fee (specifying the type of impact fee being enacted or modified) on the Utah Public Notice Website, (iii) posted copies of the Impact Fee Facilities Plan, Impact Fee Analysis, and copies of the summaries of the Impact Fee Facilities Plan and Impact Fee Analysis on the District's website, and (iv) gave reasonable notice to the public of the public hearing to consider the assumptions and conclusions of the Impact Fee Facilities Plan and the Impact Fees Analysis by (a) posting the above-referenced notice on the Utah Public Notice Website and (b) posting notice of the public hearing in at least three public places within the District's boundaries.

F. On July 29, 2021 copies of the Impact Fee Facilities Plan, the Impact Fee Analysis, and the proposed impact fee enactment (the “*Enactment*,” “*Impact Fee Enactment*,” or “*Ordinance*”), along with summaries of the Impact Fee Facilities Plan, Impact Fee Analysis that were designed to be understood by a lay person were made available to the public and deposited at the Holladay Library, Millcreek Community Center, and Calvin S. Smith Library – public libraries in the District.

G. On July 29, 2021 the District posted notice on the Utah Public Notice Website of the date, time and place of the public hearing to consider the Enactment.

H. On July 29, 2021 the District posted notice of the date, time and place of the public hearing to consider the Enactment in three public places within the District’s boundaries and on the District’s official website.

I. The Board of Trustees of the District (the “*Board*”) met in regular session on July 21, 2021, to convene a public hearing and to consider adopting an Impact Fee Facilities Plan, Impact Fee Analysis, imposing impact fees (“*Impact Fees*”), providing for the calculation and collection of Impact Fees, and providing for an appeal process, accounting and reporting method, and other related matters.

J. On July 16, 2021 the Consultant certified its work with respect to the Impact Fee Facilities Plan under Section 11-36a-306(1) of the Act and certified its work with respect to the Impact Fee Analysis under Section 11-36a-306(2) of the Act.

K. On August 18, 2021, considering the input of the public and relying on the professional advice and certification of the Consultant, the District adopted the findings, conclusions, and recommendations contained in the Impact Fee Facilities Plan as prepared by the Consultant, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

L. Based on the input of the public and relying on the professional advice and certification of the Consultant, the District adopted the findings, conclusions, and recommendations contained in the Impact Fee Analysis as prepared by the Consultant, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

M. The District held a public meeting on July 21, 2021 in order to review and consider various aspects of the Impact Fee Facilities Plan, the Impact Fee Analysis, and the Enactment.

N. The District held a public hearing on August 18, 2021 regarding the Impact Fee Facilities Plan, the Impact Fee Analysis, and the Enactment.

O. After careful consideration and review of the comments at the public hearings, the Board has determined that it is in the best interest of the health, safety and welfare of the inhabitants of the District to: (i) adopt the findings and recommendations of the Impact Fee Facilities Plan, the Impact Fee Analysis, and the Enactment; (ii) adopt the Impact Fee Facilities Plan as proposed; (iii) adopt the Impact Fee Analysis as proposed; (iii) provide for the calculation and collection of such fees; (iv) provide for an appeal process; and (v) provide for an accounting and reporting method for Impact Fees.

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

1. **Findings.** The Board finds and determines as follows:

1.1. Notices, Public Meetings, and Public Hearing. All required notices have been given and made and public meetings and the public hearing were conducted as required by the Act with respect to the Impact Fee Facilities Plan, the Impact Fee Analysis, and the Impact Fee Enactment.

1.2. Service Area. Based upon sound planning and engineering principles, the public facilities of the District provide service to the entire District and thus the *Service Area* of the District includes the entire area within the District's boundaries.

1.3. Compliance with the Act. The Impact Fees as calculated and set forth in the Impact Fee Facilities Plan, the Impact Fee Analysis, and this Ordinance comply in all respects with the Act and do not: (i) cure deficiencies in the Public Facilities serving existing development; (ii) raise the established level of service of the Public Facilities serving existing development; (iii) recoup more than the District's costs actually incurred for excess capacity in existing System Improvements; (iv) include any expenses for overhead unless such expenses are calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; (v) delay the construction of a school or charter school because of a dispute with the school or charter school over Impact Fees; or (vi) impose or charge any other fees as a condition of development approval unless those fees are a reasonable charge for the service provided.

1.4. Additional Demands. Development Activities in the District will create additional demands on the System. The persons responsible for the Development Activities should pay a proportionate share of the costs of the System needed to serve the Development Activities.

1.5. District's Financing. The District's plan for financing System Improvements and the District's prior methods of financing System Improvements establish that Impact Fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future, in comparison to the benefits already received and yet to be received.

1.6. Construction of Ordinances. The provisions of this Ordinance shall be liberally construed in order to carry out the purpose and intent of the Board in revising and further implementing and adopting the Impact Fee Program.

2. **Definitions.**

2.1. Defined Terms. Except as provided below, words and phrases that are defined in the Impact Fee Act shall have the same meaning in this Ordinance. Terms appearing in initial capital letters in this Ordinance which are not defined as they appear, are defined below.

2.2. "AAP" or "Administrative Appeals Procedure" – defined in Section 10.2.

2.3. "Act" - Utah Code Ann. §§ 11-36a-101 through 705 (the "Act").

2.4. “Code” means the statutes of the State of Utah, collectively referred to as the Utah Code. The term Code includes the relevant provisions of the Act.

2.5. “Enactment,” “Impact Fee Enactment,” or “Ordinance” - defined in Recital F.

2.6. “Developer” means a person engaging in Development Activity in or affecting the District.

2.7. “Development,” “Development Activity,” or “New Development Activity” means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land that creates additional demand and need for Public Facilities.

2.8. “District” - defined in Recital A.

2.9. “District Court” means the District Court of the Third Judicial District, located in Salt Lake City, Utah

~~2.10. “Impact Fee” or “Impact Fees” means a payment of money imposed upon new development activity as a condition of Development approval to mitigate the impact of the New Development on public infrastructure. It does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.~~

2.11. “Impact Fee Analysis” - defined in Recital A.

2.12. “Impact Fee Facilities Plan” - defined in Recital A.

2.13. “Impact Fee Program” means the District’s programs and policies with respect to the calculation, assessment, and enforcement of Impact Fees.

2.14. “Impact Fee Schedules” or “Schedules” means the Impact Fee formulas and schedules which are contained in the Impact Fee Analysis. The Impact Fee Schedules contain the schedules and formulas the District will use to calculate each Impact Fee and are formulated and adopted pursuant to the Impact Fee Facilities Plan and Impact Fee Analysis.

2.15. “Project Improvements” means site improvements and facilities that are (i) planned and designed to provide service for Development resulting from a Development Activity (ii) necessary for the use and convenience of the occupants or users of Development resulting from a Development Activity and (iii) not identified or reimbursed as a System Improvement. “Project improvements” does not mean System Improvements.

2.16. “Proportionate Share” means the cost of public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any Development Activity.

2.17. “*Public Facility*” or “*Public Facilities*” means only wastewater collection and treatment facilities and all related facilities and improvements that have a life expectancy of 10 or more years and are owned or operated by or on behalf of the District.

2.18. “*Regulations*” means Mt Olympus Improvement District and Central Valley Water Reclamation Facility Wastewater Control Rules and Regulations, initially adopted July 22, 1981, as subsequently amended.

2.19. “*Request for Information*” defined in Subsection 9.2.

2.20. “*Service Area*” means the entire District and all of the area within the District's boundaries as shown in the Impact Fee Facilities Plan as the same may be expanded or changed in the future. The District may designate one or more new or different Service Areas from time to time hereafter.

2.21. “*Specified Public Agency*” means (i) the State (ii) a school district or (iii) a charter school.

2.22. “*State*” means the State of Utah

2.23. “*System*” means the sanitary sewer system and all related facilities and assets owned or operated by or in behalf of the District including, without limitation, the District's interest in the facilities, assets, and capacity of Central Valley Water Reclamation Facility.

2.24. “*System Improvement*” or “*System Improvements*” means existing Public Facilities, which are not Project Improvements, that are (i) identified in the Impact Fee Analysis; (ii) and designed to provide services to Service Areas within the District; and (iii) future Public Facilities identified in the Impact Fee Analysis that are intended to provide services to Service Areas within the District.

2.25. “*Utah Impact Fees Act*” or “*Act*” shall mean Title 11, Chapter 36a, Utah Code Annotated or its successor statute if that title and chapter is renumbered, re-codified, or amended.

3. **Adoption; Amendment of Regulations; Additional Fees and Costs.**

3.1. **Adoption.** The Board hereby approves and adopts the Impact Fee Facilities Plan and Impact Fee Analysis attached hereto as **Exhibit A** and **Exhibit B**. Based on the Board's approval and adoption of the Impact Fee Facility Plan and Impact Fee Analysis, the Board imposes a requirement that persons conducting Development Activity install Project Improvements which the District shall determine to be necessary or advisable as a condition to delivery of sanitary sewer and related services from the District. Based on its approval and adoption of the Impact Fee Facilities Plan, and the Impact Fee Analysis, the Board hereby imposes the Impact Fees specified and defined herein which shall be established, calculated, and charged pursuant to the Impact Fee Schedules and this Ordinance. The Board also enacts this Ordinance to require payment of the Impact Fees specified herein as a condition to Development Activity within or affecting the District, as it now exists or as it may be expanded or modified in the future, and the provision and delivery of sanitary sewer and related services by the District.

3.2. Additional Fees and Costs. The Impact Fees authorized hereby are separate from and in addition to other fees and charges imposed by the District, such as engineering and inspection fees, permit fees, review fees, and other fees and costs of the District.

3.3. Amendment of Regulations. The Board hereby authorizes adoption of this Ordinance and amendments to the Regulations consistent therewith.

4. Impact Fee Credits and Reimbursements.

4.1. Credits and Reimbursements for Dedications and Improvements. The District shall allow a Developer, including a school district or a charter school, to receive a credit against or proportionate reimbursement of an Impact Fee if the Developer (i) dedicates land for a System Improvement (ii) builds and dedicates some or all of a System Improvement or (iii) dedicates a Public Facility that the District and the Developer agree will reduce the need for a System Improvement.

4.2. Credit for System Improvements. The District shall allow a credit against Impact Fees for any dedication of land for, improvement to, or new construction of, any System Improvements provided by the Developer if the facilities are System Improvements or are dedicated to the public and offset the need for an identified System Improvement.

4.3. Maximum Credits/Adjustments. Notwithstanding the foregoing provisions of this Section 4, the maximum amount of the credits or adjustments allowed pursuant to this Section 4 shall not exceed the amount of the Impact Fees pertaining to the Development Activity to which the construction, improvements, or dedications relate.

5. Accounting of Impact Fees.

5.1. Accounts and Reports. The District shall:

5.1.1. establish a separate interest bearing ledger account for each type of Public Facility for which an Impact Fee is collected.

5.1.2. deposit a receipt for an Impact Fee in the appropriate ledger account established under Subsection 5.1.1.

5.1.3. retain the interest earned on each fund or ledger account in the fund or ledger account.

5.1.4. at the end of each fiscal year, prepare a report on each fund or ledger account showing:

5.1.4.1. the source and amount of all money collected, earned, and received by the fund or ledger account and each expenditure from the fund or ledger account.

5.1.5. produce a report that:

5.1.5.1. identifies Impact Fee funds by the year in which they were received, the project from which the funds were collected, the Impact Fee projects for which the funds were budgeted, and the projected schedule for expenditure;

5.1.5.2. is in a format developed by the State auditor;

5.1.5.3. is certified by the District's chief financial officer; and

5.1.5.4. is transmitted annually to the State auditor.

6. **Expenditure of Impact Fees.**

6.1. **Expenditures for System Improvements.** The District may expend Impact Fees only for a System Improvement that is (i) identified in the Impact Fee Facilities Plan and (ii) for the specific Public Facility type for which the fee was collected.

6.2. **Time Limitation for Expenditures.** Except as provided in Subsection 6.2.1, the District shall expend or encumber the Impact Fees for a permissible use within six years of their receipt.

6.2.1. Notwithstanding the foregoing provisions of Subsection 6.2, the District may hold the fees for longer than six years if it identifies, in writing (i) an extraordinary and compelling reason why the fees should be held longer than six years and (ii) an absolute date by which the fees will be expended.

7. **Refunds.**

7.1. **Conditions for Refund.** The District shall refund any Impact Fee paid by a Developer, plus interest earned, when (i) the Developer does not proceed with the Development Activity and has filed a written request for a refund; (ii) the fee has not been spent or encumbered; and (iii) no impact has resulted.

8. **Fee Exceptions and Adjustments.**

8.1. **Waiver for "Public Purpose."** The District may, in the District's sole discretion, but without obligation, on a project by project basis, authorize an exemption to the requirement for payment of Impact Fees for Development Activity pertaining to those properties or projects that the Board determines to be of such benefit to the community as a whole to justify the exemption if the Development Activity is attributable to:

8.1.1. low income housing;

8.1.2. the State of Utah;

8.1.3. subject to Subsection 8.1.7, a school district; or

8.1.4. subject to Subsection 8.1.7, a charter school; or

8.1.5. other Development Activity with a broad public purpose; and

8.1.6. except for an exemption under Subsection 8.1.1 establishes one or more sources of funds other than Impact Fees to pay for that Development Activity.

8.1.7. If an exemption is granted for Development Activity attributable to a school district or charter school being developed within the District, either a school district or a charter school shall have the right to qualify for the exemption on the same basis.

8.2. Adjustments; Unusual Circumstances.

8.2.1. The District is authorized to adjust the standard Impact Fee at the time the Impact Fee is charged to respond to:

8.2.1.1. unusual circumstances in specific cases; or

8.2.1.2. 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 and shall ensure that the Impact Fees are imposed fairly.

8.2.2. The calculation of the amount of the Impact Fee to be imposed on a particular Development that, in the opinion of the District's engineer, is not reasonably susceptible of being calculated pursuant to the Schedules, shall be subject to adjustment based upon studies and data submitted by the Developer, reasonably acceptable to the District's engineer.

9. Impact Fee Challenge.

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

9.2. Request for Information. A person or an entity required to pay an Impact Fee who believes the Impact Fee does not meet the requirements of law may file a written request for information (the "*Request for Information*") with the District.

9.2.1. Within two weeks after the receipt of the Request for Information under Subsection 9.2, the District shall provide the person or entity with the Impact Fee Analysis, the Impact Fee Facilities Plan, the Impact Fee Schedules, and any other relevant information relating to the Impact Fee.

9.3. Challenges. Subject to the time limitations described in Section 10 and procedures set forth in Section 11, a person or an entity that has paid an Impact Fee that was imposed by the District may challenge:

9.3.1. If the Impact Fee enactment was adopted on or after July 1, 2000, subject to Subsection 9.3.2 and except as provided in Subsection 9.3.3:

9.3.1.1. whether the District complied with the notice requirements of the Act with respect to the imposition of the Impact Fee; and

9.3.1.2. whether the District complied with other procedural requirements of the Act for imposing the Impact Fee; and

9.3.1.3. except as limited by Subsection 9.3.4, the Impact Fee.

9.3.2. The sole remedy for a challenge under Subsection 9.3.1.1 is the equitable remedy of requiring the District to correct the defective notice and repeat the process.

9.3.3. The protections given to a county under Code Section 17-27a-801 do not apply in a challenge under Subsections 9.3.1.1 through 9.3.1.3.

9.3.4. The sole remedy for a challenge under Subsection 9.3.1.3 is a refund of the difference between what the person or entity paid as an Impact Fee and the amount the Impact Fee should have been if it had been correctly calculated.

9.4. Advisory Opinion. Subject to Subsection 9.4.6, if an Impact Fee that is the subject of an advisory opinion under Section 13-43-205 of the Code is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action:

9.4.1. may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution; and

9.4.2. shall be refunded an Impact Fee held to be in violation of the Act, based on the difference between the Impact Fee paid and what the Impact Fee should have been if the District had correctly calculated the Impact Fee; and

9.4.3. in accordance with Section 13-43-206 of the Code, the District shall refund an Impact Fee held to be in violation of the Act to the person who was in record title of the property on the day on which the Impact Fee for the property was paid if:

9.4.3.1. the Impact Fee was paid on or after the day on which the advisory opinion on the Impact Fee was issued but before the day on which the final court ruling on the Impact Fee is issued; and

9.4.3.2. the person described in Subsection 9.3.1.3 requests the Impact Fee refund from the District within 30 days after the day on which the court issued the final ruling on the Impact Fee.

9.4.4. The District, if subject to Subsection 9.3.1.3, shall refund the Impact Fee based on the difference between the Impact Fee paid and what the Impact Fee should have been if the District had correctly calculated the Impact Fee.

9.4.5. Subsection 9.4 may not be construed to create a new cause of action under land use law.

9.4.6. Subsections 9.3 through 9.3.1.3 do not apply unless the resolution described in Subsections 9.3 through 9.3.1.3 is final.

10. **Time limitations.**

10.1. **Limitations.** A person or an entity that initiates a challenge under Subsection 9.3 may not initiate that challenge unless it is initiated within:

10.1.1. for a challenge under Subsection 9.3.1.1 (compliance with notice requirements), 30 days after the day on which the person or entity pays the Impact Fee;

~~10.1.2. for a challenge under Subsection 9.3.1.2 (other procedural requirements), 180 days after the day on which the person or entity pays the Impact Fee; or~~

10.1.3. for a challenge under Subsection 9.3.1.3 (the Impact Fee), one year after the day on which the person or entity pays the Impact Fee.

10.2. **Tolling.** The deadline to file an action in District Court is tolled from the date that a challenge is filed using an administrative appeals procedure described in Section 11 until 30 days after the day on which a final decision is rendered in the administrative appeals procedure (the "AAP"). The AAP is contained in the Regulations.

11. **Procedures for challenging an Impact Fee.**

11.1. **Administrative Appeals.** The District has established the AAP in order to consider and decide a challenge to an Impact Fee and for other purposes, as set forth in the Regulations.

11.2. **Initiation of Challenge.** A challenge under Subsection 9.3 is initiated by filing:

11.2.1. The necessary document, under the AAP, for initiating the administrative appeal;

11.2.2. A request for arbitration as provided in Section 13; or

11.2.3. An action in District Court.

11.3. **Remedy – Successful Challenge.** The sole remedy for a successful challenge under Subsection 9.1 (declaratory judgment action), which determines that an Impact Fee process was invalid, or an Impact Fee is in excess of the fee allowed under the Act, is a declaration that, until the District enacts a new impact fee study, from the date of the decision forward, the District may charge

an Impact Fee only as the court has determined would have been appropriate if it had been properly enacted.

11.4. Exhaustion of Administrative Remedies not Required. Subsections 11.2, 11.3, 9.3, and 10.1 may not be construed as requiring a person or an entity to exhaust administrative remedies with the District before filing an action in District Court under Subsections 11.2, 11.3, 9.3, and 10.1.

11.5. Attorney Fees. The judge may award reasonable attorney fees and costs to the prevailing party in an action brought under this Section.

11.6. Impact Fees before the Effective Date of the Act. If the District charged Impact Fees before the effective date of the Act, this Section 11 may not be construed as restricting or limiting any rights to challenge Impact Fees that were paid before the effective date of the Act, consistent with the laws and Regulations then in effect.

12. Mediation.

12.1. In addition to the methods of challenging an Impact Fee under Section 9, a Specified Public Agency may require the District to participate in mediation of any applicable Impact Fee.

12.2. To require mediation, the Specified Public Agency shall submit a written request for mediation to the District.

12.3. The Specified Public Agency may submit a request for mediation under this Section at any time, but no later than 30 days after the day on which an Impact Fee is paid.

12.4. Upon the submission of a request for mediation under this Section, the District shall:

12.4.1. cooperate with the Specified Public Agency to select a mediator; and

12.4.2. participate in the mediation process.

13. Arbitration.

13.1. Request for Arbitration. A person or entity intending to challenge an Impact Fee under Section 11.2.2 shall file a written request for arbitration with the District within the time limitation described in Section 10 for the applicable type of challenge.

13.2. Selection of Arbitration Panel. If a person or an entity files a written request for arbitration under Subsection 13.1, an arbitrator or arbitration panel shall be selected as follows:

13.2.1. the District and the person or entity filing the request may agree on a single arbitrator within 10 days after the day on which the request for arbitration is filed; or

13.2.2. if a single arbitrator is not agreed to in accordance with Subsection 13.2.1, an arbitration panel shall be created with the following members:

13.2.2.1. each party shall select an arbitrator within 20 days after the date the request is filed; and

13.2.2.2. the arbitrators selected under Subsection 13.2.2.1 shall select a third arbitrator.

13.3. Hearing. The arbitration panel shall hold a hearing on the challenge no later than 30 days after the day on which:

13.3.1. the single arbitrator is agreed on under Subsection 13.2.1; or

13.3.2. the two arbitrators are selected under Subsection 13.2.2.1.

13.4. Decision. The arbitrator or arbitration panel shall issue a decision in writing no later than 10 days after the day on which the hearing described in Subsection 13.3 is completed.

13.5. Governing Law. Except as provided in this section, each arbitration shall be governed by Title 78B, Chapter 11, of the Code (the Utah Uniform Arbitration Act).

13.6. Types of Arbitration. The parties may agree to:

13.6.1. binding arbitration;

13.6.2. formal, nonbinding arbitration; or

13.6.3. informal, nonbinding arbitration.

13.7. Binding Arbitration. If the parties agree in writing to binding arbitration:

13.7.1. the arbitration shall be binding;

13.7.2. the decision of the arbitration panel shall be final;

13.7.3. neither party may appeal the decision of the arbitration panel; and

13.7.4. notwithstanding Subsection 13.10, the person or entity challenging the Impact Fee may not also challenge the Impact Fee under Subsection 9.1, Subsection 11.2.1, or Subsection 11.2.3.

13.8. Administrative Procedures Act.

13.8.1. Except as provided in Subsection 13.8.2, if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63G, Chapter 4 of the Code, (the Administrative Procedures Act).

13.8.2. For purposes of applying Title 63G, Chapter 4 of the Code, to a formal, nonbinding arbitration under this section, notwithstanding Section 63G-4-502, "agency" means the District.

13.9. Appeals.

13.9.1. An appeal from a decision in an informal, nonbinding arbitration may be filed with the District Court.

13.9.2. An appeal under Subsection 13.9.1 shall be filed within 30 days after the day on which the arbitration panel issues a decision under Subsection 13.4.

13.9.3. The District Court shall consider de novo each appeal filed under this Subsection 13.9.

13.9.4. Notwithstanding Subsection 13.10.1, a person or entity that files an appeal under this Subsection 13.9 may not also challenge the Impact Fee under Subsection 9.1, Subsection 11.2.1, or Subsection 11.2.3.

13.10. Exception to Prohibition. Except as provided in Subsections 13.7.4 and 13.9.4, this Section may not be construed to prohibit a person or entity from challenging an Impact Fee as provided in Subsection 9.1, Subsection 11.2.1, or Subsection 11.2.3.

13.10.1. The filing of a written request for arbitration within the required time in accordance with Subsection 13.1 tolls all time limitations under Section 10 until the day on which the arbitration panel issues a decision.

13.11. Costs of Arbitration. The person or entity filing a request for arbitration and the District shall equally share all costs of an arbitration proceeding under this Section.

14. Coordination with the Act and the Code. If any term or provision of this Ordinance conflicts with any term or provision of the Act or the Code (to the extent that the relevant section of the Code is not contained within the Act), the relevant provision of the Act or the Code shall control. If any term or provision of the Code or the Act is amended in the future, and is in conflict with this Ordinance, the relevant term or provision of the Code or the Act shall control.

15. Severability. If any term or provision of this Ordinance or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Ordinance, or the application of such term or provision or persons or circumstances other than those to which it is invalid and unenforceable, shall not be affected thereby, and such term or provision of this Ordinance shall be valid and shall be enforced to the extent permitted by law.

16. Headings and Captions. The headings and captions of this Ordinance are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Ordinance, or the intent of any provision hereof.

17. Exhibits and Recitals. All Exhibits referred to in this Ordinance or which are attached hereto and the Recitals set forth above are specifically incorporated into this Ordinance by reference.

This Ordinance shall become effective on January 1, 2022. [90 days after approval.]

PASSED AND APPROVED this 18th day of August, 2021.

THE BOARD OF TRUSTEES OF MT OLYMPUS
IMPROVEMENT DISTRICT

By: *Amili Neff*
Amili Neff, Chairperson of the Board

ATTEST:

Tammy Gonzalez
Tammy Gonzalez, Board Clerk

Exhibit A
Impact Fee Facilities Plan

Exhibit B

Impact Fee Analysis