

ORDINANCE NO. 2020-12

AN ORDINANCE AMENDING CHAPTER 4 OF THE KEENESBURG MUNICIPAL CODE TO ADD A NEW ARTICLE IX REGARDING EMERGENCY SERVICES IMPACT FEES.

WHEREAS, pursuant to state law, including but not limited to C.R.S. § 29-20-101 *et seq.*, and as a condition of issuance of a development permit, the Town has the authority to impose an impact fee or other similar development charge to fund expenditures by the Town on capital facilities needed to serve new development; and

WHEREAS, by Ordinance No. 2017-04 the Board of Trustees of the Town of Keenesburg amended the Keenesburg Municipal Code to add a new Article VII to Chapter 4 concerning Development Impact Fees and Funds, which fees are collected by the Town with each building permit so that new development bears a proportionate share of the cost of capital facilities related to such growth; and

WHEREAS, the Southeast Weld Fire Protection District provides fire protection, rescue, and emergency services (collectively, “Emergency Services”) to all property within the corporate limits of the Town; and

WHEREAS, the District has requested the Town enter into an Intergovernmental Agreement (“IGA”) for the assessment, collection, and remittance of an Emergency Services Impact Fee on new development within the Town to defray the capital costs of providing Emergency Services to such new development; and

WHEREAS, the Town Board of Trustees by this Ordinance desires to adopt a new Article IX in Chapter 4 of the Keenesburg Municipal Code to establish an Emergency Services Impact Fee, which will be collected and spent by the District in accordance with the terms of the IGA.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF KEENESBURG, COLORADO:

Section 1. **Legislative Findings:** The Board of Trustees of the Town of Keenesburg finds that:

1. The Town is authorized by state law, including but not limited to C.R.S. § 29-20-101 *et seq.*, to impose an impact fee or other similar development charge as a condition of the issuance of a development permit, in order to fund expenditures for capital facilities needed to serve new development.

2. The Town is experiencing new development and related population growth, and such development has placed and is projected to place an increased demand upon the District’s ability to provide Emergency Services to such new development.

3. The protection of the health, safety, and general welfare of the citizens of the Town requires that Emergency Services capital facilities be constructed, expanded or improved to accommodate and serve continuing development and growth within the Town.

4. The taxes and other revenues generated from new development do not generate sufficient funds to provide the necessary Emergency Services capital facilities to accommodate and serve new development.

5. The adoption of an equitable impact fee system consistent with the requirements of state law is one of the preferred methods of the Town for regulating land development to ensure new development pays a proportionate and fair share of the costs of the needed capital facilities, which will allow the District to make the necessary capital facility expenditures to serve the Town's new development.

6. The District has undertaken a review of its capital facility needs and fee programs and has analyzed and assessed growth and development projections and impacts for the District and the Town, in order to determine the capital facilities needed to serve the Town's new development and the proportional costs of such facilities that may be charged to proposed development through impact fees.

7. The District has retained the services of BBD to prepare a "Development Fees Study" dated May 12, 2020, and has prepared additional materials regarding the impact fees established under this Ordinance. (Such documents and materials are collectively referred to as the "*Impact Fee Study*"). Based on reasonable methodologies, analyses and assumptions for determining the impacts of new development on the District's capital facilities, the *Impact Fee Study* quantifies the reasonable impacts of new development within the Town on the District's capital facilities addressed therein, and establishes an impact fee no greater than is necessary to defray the projected impacts on these capital facilities directly related to proposed new development.

8. The impact fees charged to new development pursuant to this Ordinance are legislatively adopted, generally applicable to all development within the Town, and intended to defray the projected impacts on capital facilities caused by proposed development. The impact fees are no greater than necessary to defray the projected impacts directly related to proposed new development.

9. This Ordinance creates a system under which impact fees shall not be used to remedy any deficiency in capital facilities existing on the effective date of this Ordinance. The impact fees paid by new development will be used to finance or defray all or a portion of the costs incurred by the District to construct, improve or expand capital facilities to serve new development in ways that benefit the development that paid each fee within a reasonable period of time after the fee is paid.

10. This Ordinance includes provisions to ensure that no individual landowner is required to provide any site-specific dedication or improvement to meet the same need for capital facilities for which the impact fees are imposed.

11. The IGA between the Town and the District requires that Emergency Services impact fees collected pursuant to this Ordinance will be used solely for the capital facility needs for which the fees are charged.

Section 2. Chapter 4 of the Keenesburg Municipal Code is hereby amended by the addition of a new Article IX to read as follows:

CHAPTER 4

Revenue and Finance

Article IX Emergency Services Impact Fee

- Sec. 4-9-10 Short title, authority and applicability.
- Sec. 4-9-20 Intent.
- Sec. 4-9-30 Definitions.
- Sec. 4-9-40 Emergency Services Impact Fees imposed.
- Sec. 4-9-50 Exemptions.
- Sec. 4-9-60 Calculation of amount of Impact Fees.
- Sec. 4-9-70 Refund of Emergency Services Impact Fees Paid
- Sec. 4-9-80 Intergovernmental Agreement.

Sec. 4-9-10. Short title, authority and applicability.

(a) **Title.** This Article shall be known and may be cited as the “Emergency Services Impact Fee Ordinance.”

(b) **Authority.** The Town has the authority to adopt this Article pursuant to the Town’s general police powers, Colorado Revised Statutes §§ 29-20-101 *et seq.*, 31-23-101 *et seq.*, and 29-1-801 *et seq.*, and other relevant laws of the State of Colorado.

(c) **Application.** This Article shall apply to all new development within the territorial limits of the Town, except as exempted pursuant to the provisions hereof. This Article shall not apply to any development for which the applicant has submitted a complete building permit application prior to the effective date of the Ordinance enacting this Article.

Sec. 4-9-20. Intent.

(a) **Compliance with laws.** The intent of this Article is to comply with the provisions of applicable laws concerning the imposition of impact fees, including but not limited to C.R.S. § 29-20-104.5, and the provisions of this Article shall be construed and enforced in accordance with such laws.

(b) Development bears proportionate share of costs of Capital Facilities. The intent of this Article is to ensure that new development bears a proportionate share of the cost of Emergency Services Capital Facilities, as defined herein. It is the further intent of this Article that new development pay for its fair share of the costs of such Emergency Services Capital Facilities through the Impact Fees imposed in this Article.

(c) Fee no more than proportionate cost. It is the intent of this Article that the Emergency Services Impact Fees imposed on new development are no greater than necessary to defray the impacts directly related to proposed new development, such impact being the costs of Emergency Services Capital Facilities to accommodate new development.

(d) No intent to remedy existing deficiencies. It is not the intent of this Article that Emergency Services Impact Fees be used to remedy any deficiency in Emergency Services Capital Facilities existing on the effective date of the Ordinance enacting this Article.

(e) No intent to commingle funds. It is not the intent of this Article that any monies collected from any Emergency Services Impact Fee collected by the District ever be commingled with monies from a different Trust Account, or ever be used for Emergency Services Capital Facilities that are different from those for which the Fee was paid, or ever be used to maintain or operate existing Capital Facilities.

Sec. 4-9-30. Definitions.

For the purposes of this Article, unless the context clearly requires a different meaning, the definitions set forth in Section 4-7-30 shall apply, except that:

(a) Capital Facilities shall mean and be restricted to those Capital Facilities required by the District to provide Emergency Services to property located within the Town;

(b) District shall mean the Southeast Weld Fire Protection District;
and

(c) Emergency Services shall mean fire protection, rescue, emergency services, and other services including fire suppression, public education, hazardous materials, emergency medical, and ambulance services.

Sec. 4-9-40 Emergency Services Impact Fees imposed.

(a) **Obligation to pay and time of payment.** After the effective date of the Ordinance enacting this Article, any person who causes the

Commencement of Impact-Generating Development shall be obligated to pay an Emergency Services Impact Fee pursuant to the terms of this Article. The obligation to pay Emergency Services Impact Fees shall run with the land. The amount of the Impact Fees shall be determined in accordance with Section 4-9-60 and paid to the District prior to the time and as a condition of issuance of a Building Permit for the new Development.

(b) Fees Promptly Deposited into Accounts in Trust Fund. All monies paid by a Fee Payer pursuant to this Article shall be identified by the District as Emergency Services Impact Fees and shall be promptly deposited in an appropriate Impact Fee Trust Account established pursuant to Part 8 of Article 1 of Title 29, Colorado Revised Statutes.

(c) Extension of previously issued development permit. If the Fee Payer is applying for an extension of a Development Permit issued previously, the Emergency Services Impact Fee required to be paid shall be the net increase between the Emergency Services Impact Fee applicable at the time of the current permit extension application and any Emergency Services Impact Fee previously paid pursuant to this Article.

(d) Permit for change in use, expansion, redevelopment, modification. If the Fee Payer is applying for a Building Permit to allow for a change of use or for the expansion, redevelopment, or modification of an existing Development, the Emergency Services Impact Fee required to be paid shall be based on the net increase in the Emergency Services Impact Fee for the new use as compared to the previous use.

Sec. 4-9-50. Exemptions.

The following types of development shall be exempted from payment of Emergency Services Impact Fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first Building Permit. Any claim for exemption not made at or before that time shall be waived. The Town Manager or designee shall determine the validity of any claim for exemption pursuant to the standards set forth below.

(a) Replacing existing residential unit with new unit. Reconstruction, expansion, alteration or replacement of a previously existing residential unit that does not create any additional residential dwelling units.

(b) Rebuilding after fire or catastrophe. Rebuilding the same number of dwelling units that were destroyed by fire or other catastrophe.

(c) Accessory structures. Construction of unoccupied accessory structures related to a residential dwelling unit.

(d) **Previous payment of same amount of Emergency Services Impact Fees.** Impact-Generating Development for which an Emergency Services Impact Fee was previously paid in an amount that equals or exceeds the Emergency Services Impact Fee that would be required by this Article.

(e) **Government.** Development by the federal government, the State, or the Town.

(f) **Development for which complete application submitted prior to effective date.** Development for which a complete application for a Building Permit was submitted prior to the effective date of the Ordinance enacting this Article. The decision of the Town with respect to completeness is final.

(g) **Development without greater impact.** Development for which the Fee Payer can demonstrate will create no greater impact over and above that existing prior to the proposed Development.

Sec. 4-9-60. Calculation of amount of Emergency Services Impact Fees.

(a) **General.** Except for those electing to pay Impact Fees pursuant to subsection 4-9-60(c), the Emergency Services Impact Fees applicable to and payable for the Impact-Generating Development shall be as determined by the Fee Schedule set forth as Exhibit A at the end of this Article. The Impact Fee Schedule set forth in Exhibit A is based on the *Impact Fee Study*. It applies to all Development, and is intended to defray the projected impacts caused by proposed new Development on Emergency Services Capital Facilities.

(b) **Annual adjustment of fees to reflect effects of inflation.** The Impact Fees shown in the Impact Fee Schedule shall be adjusted annually to reflect the effects of inflation on those costs for Capital Facilities. Commencing on January 1, 2021 and on January 1 of each following year unless and until the Fees in Exhibit A are revised or replaced by the Board of Trustees, each Impact Fee amount set forth in Exhibit A shall be adjusted for inflation, based on the increase, if any, in the Denver-Boulder-Greeley Consumer Price Index for All Urban Consumers (CPI-U) over the preceding year. Such adjustments in the Impact Fees shall become effective immediately upon calculation by the Town, and shall not require additional action by the Town Board of Trustees to be effective.

(c) **Independent fee calculation study.** In lieu of calculating the amount(s) of Emergency Services Impact Fees by reference to the Impact Fee Schedule, a Fee Payer and the District may mutually determine whether an in-kind contribution will be made by the Fee Payer in lieu of paying the Emergency Services Impact Fee.

Sec. 4-9-70. Refund of Emergency Services Impact Fees paid.

Any Emergency Services Impact Fees collected by the District pursuant to this Article shall be returned to the Fee Payer or the Fee Payer's Successor-in-Interest if the Emergency Services Impact Fees have not been spent or encumbered within twenty (20) years from the date the Building Permit for the development was issued, along with actual interest earned on the Fees. Fees shall be deemed to be spent on the basis that the first Fee collected shall be the first Fee spent. Refund applications shall be made by the Fee Payer and submitted to the District.

Sec. 4-9-80. Intergovernmental Agreement.

The details of collection and remittance of Emergency Services Impact Fees, and other matters concerning such fees not inconsistent with this Ordinance, shall be established in an intergovernmental agreement between the Town and the District. No Emergency Services Impact Fee shall be payable for Development within the jurisdictional boundaries of the Town if, when the Building Permit would be issued but for the satisfaction of the Emergency Services Impact Fee, the intergovernmental agreement between the Town and the District has not been enacted or has been terminated.

Section 3. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The Town Board hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. The repeal or modification of any provision of the Municipal Code of the Town of Keenesburg by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED BY
TITLE ONLY this 18th day of May, 2020.

TOWN OF KEENESBURG, COLORADO

Kenneth Gfeller, Mayor

ATTEST:

Christina Fernandez, Town Clerk

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EXHIBIT A

SOUTHEAST WELD FIRE PROTECTION DISTRICT
EMERGENCY SERVICES IMPACT FEE SCHEDULE
Adopted May 14, 2020

Residential Units		Commercial Units	
<u>Unit Type</u>	<u>Fee Per Dwelling Unit</u>	<u>Land Use Type</u>	<u>Fee Per Square Foot of Floor Area</u>
Residential Dwelling	\$1,835.00	Commercial/Non-Residential Building	\$1.07