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TRUSTEE'S BILL

ORDINANCE NO.

NO. 08-13
Series of 2008

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TITLE: A BILL FOR AN ORDINANCE OF THE TOWN OF HUDSON, COLORADO, AMENDING THE HUDSON MUNICIPAL CODE TO PROVIDE FOR THE IMPOSITION, COMPUTATION AND PAYMENT OF A PARKS IMPACT FEE, A PUBLIC FACILITIES IMPACT FEE, AND A STREET IMPACT FEE ON ALL FUTURE RESIDENTIAL AND NON-RESIDENTIAL DEVELOPMENT; PROVIDING AUTHORITY, INTENT AND DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT OF SEPARATE IMPACT FEE FUNDS FOR SUCH FEES; PROVIDING FOR EXEMPTIONS, REFUNDS, CREDITS AND WAIVERS RESPECTING SUCH IMPACT FEES; PROVIDING GENERAL PROVISIONS, APPLICABILITY AND APPEALS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, pursuant to the authority granted in C.R.S. § 29-20-101, *et seq.*, and as a condition of issuance of a development permit, the Town of Hudson may impose an impact fee or other similar development charge to fund expenditures by the Town on capital facilities needed to serve new development;

WHEREAS, the Town of Hudson, Colorado retained BBC Research and Consulting (“BBC”) to analyze and assess growth and development projections to determine the demand for capital facilities and improvements anticipated to be placed upon the Town infrastructure to accommodate new growth in the Town;

WHEREAS, BBC has prepared an Impact Fee Study, dated October 29, 2008 (the “Impact Fee Study”), concerning the demand anticipated to be placed by new growth upon the Town’s park facilities, public facilities, and streets and related appurtenances;

WHEREAS, based on reasonable methodologies and analyses for determining the impacts of new development on the Town’s park facilities, public facilities, and streets and related appurtenances, the Impact Fee Study quantifies the reasonable impacts of new development on these capital facilities, and establishes impact fees no greater than is necessary to defray the projected impacts on these capital facilities directly related to proposed new development;

WHEREAS, in considering the impact fees to help fund new and expanded capital facilities and improvements, BBC reasonably determined how and if both residential and non-residential development generated demand for a new capital facilities and improvements and what percentage of

the total cost projection was attributable to new growth;

WHEREAS, the parks, public facilities, and streets impact fees to be imposed on new development will be and are hereby legislatively adopted, will be generally applicable to a broad class of property, and are intended to defray the projected impacts on such facilities and improvements caused by proposed development as required by law;

WHEREAS, the Impact Fee Study quantifies the reasonable impacts of proposed development on existing park facilities, public facilities, and streets and related appurtenances and the reasonable costs of infrastructure that would be necessary to construct and expand the Town's capital facilities to accommodate the additional demands and impacts of proposed developments in the Town, and based upon the Study, the testimony at the public hearing and a review of all of the facts and circumstances, in the reasonable judgment of the Board, the impact fees hereby established are at levels no greater than necessary to defray the impacts directly related to the categories of land development listed;

WHEREAS, the Impact Fee Study has been presented to and reviewed by the Board of Trustees;

WHEREAS, in adopting the parks, public facilities, and streets impact fees, the Board intends and has determined that such fees are designed to and do address capital facilities needs which are brought about by development generally, which facilities are separate and distinct from the impacts and needs addressed by other requirements of the Town Code, and in no circumstance do the impact fees set forth herein address the same subjects as other requirements of the Town Code for site specific dedications or improvements;

WHEREAS, the impact fees hereby adopted do not remedy any deficiency in existing capital facilities without regard to the proposed development;

WHEREAS, provisions are included herein to ensure that no individual landowner/applicant is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fees or other similar development fee is charged;

WHEREAS, provisions are included herein to provide for an offset or credit against the impact fees payable by a particular applicant where a site specific dedication or improvement is required from the same applicant for the same capital need;

WHEREAS, the impact fees adopted hereby shall be collected and accounted for in accordance with C.R.S. § 29-1-801, *et seq.*, and each of the three categories of impact adopted herein shall be accounted for separately;

WHEREAS, no impact fees set forth herein will be imposed on any development permit for which the applicant has submitted a complete application before the adoption of the impact fees pursuant to this Ordinance;

WHEREAS, the Board of Trustees held a public hearing to discuss, review and hear public comments on the proposed impact fees set forth herein;

WHEREAS, based upon the testimony at the Public Hearing, in the reasonable judgment of the Board, it finds that: (1) new development upon which the impact fees are charged creates a need for the capital facilities being funded by the fees; (2) new development will benefit from the construction of the facilities and improvements to be funded by the impact fees; and (3) the amounts of the facilities and improvements funded by the impact fees are directly related to that required by new development; and

WHEREAS, the impact fees adopted hereby are fair and rational, charge new development according to its impact on the Town's capital facilities and benefits the developers who pay them in a tangible way.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. The Town of Hudson Municipal Code is amended by the addition thereto of a new Article 7 to Chapter 4 to read as follows:

Article 7.

DEVELOPMENT IMPACT FEES.

Division 1. Impact Fees Created.

Sec. 4-110. Legislative findings.

The Board of Trustees finds that:

- (a) The protection of the health, safety and general welfare of the citizens of the Town requires that the Town's park facilities, public facilities, and streets and related appurtenances be expanded and improved to accommodate continuing growth within the Town.
- (b) New residential and non-residential development imposes increasing demands upon the Town-wide park facilities; the Town's public capital facilities; and existing Town streets and related appurtenances, and often overburdens such facilities and systems.
- (c) The tax revenues currently generated from new development do not generate sufficient funds to provide the Town-wide park facilities, public facilities, and streets and related appurtenances expansions necessary to serve the new development.
- (d) New development is expected to continue and will place ever-increasing demands on the Town to provide such capital facilities to serve new development.
- (e) All types of development that are not expressly exempt from the provisions of this

Article will generate demand for Town-wide park facilities, public capital facilities, and streets and related appurtenances.

(f) The *Impact Fee Study*, prepared by BBC, dated October 29, 2008, sets forth a reasonable methodology and analysis for determining and quantifying the reasonable impacts of various types of proposed residential and non-residential development on the Town's capital facilities and streets system; quantified the reasonable impact of proposed development on the capital facilities addressed therein; determined the costs necessary to meet the demands created by new development; and determined impact fees as set forth in this Article that are at a level no greater than necessary to defray such impacts of proposed new development on the Town's existing capital facilities. The Town hereby establishes as Town standards the assumptions and level of service standards referenced in the *Impact Fee Study* as part of its current plans for future expansions to the Town's capital facilities addressed in such Study.

(g) The impact fees set forth in this Article are based on the *Impact Fee Study* and are intended to defray the projected impacts on the Town's park capital facilities, public capital facilities, and streets and related appurtenances directly related to and caused by proposed development.

(h) All capital facilities and improvements financed with the impact fees set forth herein will benefit all development in the Town, and it is therefore appropriate to treat the entire Town as a single service area for purposes of calculating, collecting and spending the impact fees provided for in this Article.

(i) The impact fees set forth in this Article are based on the *Impact Fee Study* and do not and will not be used to remedy any deficiencies in capital facilities or improvements that exist without regard to the proposed development.

(j) This Article 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 or improvements for which an impact fee is imposed.

(k) Except as described in Section 4-114(i) concerning optional independent fee calculation studies, each category of impact fee created by this Article is a standardized fee to be applied uniformly to a broad class of property and is not a discretionary fee to be determined on a case-by-case basis, except as provided in Section 4-122(f).

Sec. 4-111. Authority, applicability, and effective date.

(a) This Article is enacted pursuant to the Town's general police powers pursuant to the authority granted to the Town by C.R.S. § 31-15-101, *et seq.*, and pursuant to the authority granted to the Town by C.R.S. § 29-20-101, *et seq.*

(b) The provisions of this Article shall apply to all of the territory within the limits of the Town.

- (c) This Article shall be effective January 1, 2009.
- (d) The provisions of this Article shall not apply to any development for which the applicant has submitted a “complete application” prior to the effective date of this Article, as the term “complete application” is defined in Section 4-113 below.

Sec. 4-112. Intent.

- (a) The intent of this Article is to comply with the provisions set forth in C.R.S. § 29-20-101, *et seq.*, and the provisions of this Article shall be interpreted, construed and enforced in accordance with the provisions set forth in C.R.S. § 29-20-101, *et seq.*
- (b) The intent of this Article is to ensure that new development bears a proportionate share of the cost of capital facilities and improvements, to ensure that such proportionate share does not exceed the cost of the capital facilities and improvements required to serve such new development and to ensure that the funds collected from new developments are used to construct capital facilities and improvements that benefit such new developments.
- (c) It is the further intent of this Article that new development pay for its proportionate share of Town-wide parks, public facilities, and streets and related appurtenances and improvements through the imposition of an impact fee for each of such categories of capital needs, which fees will be used to finance, defray or reimburse all or a portion of the costs incurred by the Town to construct or acquire the capital facilities and improvements that will serve or benefit such new development.
- (d) It is the intent of this Article to collect from new development only that amount of money directly related to the impacts of new development and necessary to offset new demand for capital facilities and improvements generated by that new development.
- (e) It is not the intent of this Article that the impact fees be used to remedy any deficiency in capital facilities or improvements existing on the effective date of this Article.
- (f) It is not the intent of this Article that any monies collected from any impact fee deposited in an impact fee fund ever be commingled with monies from a different impact fee fund, or ever be used for capital facilities that are different from that for which the fee was paid.

Sec. 4-113. Definitions.

- (a) "Applicant" means any person or entity who files an application with the Town for a building permit for land development or for a building permit for the installation of a mobile home.
- (b) "Capital facility" means any improvement or facility that (1) is directly related to any service that the Town is authorized to provide; (2) has an estimated useful life of five years or longer; and (3) is required by the general policy of the Town pursuant to a resolution or ordinance.
- (c) "Complete application" means an application for development for which (1) all of the required information and submittal material, in the amount and dimensions required by Town, have been submitted to and received by the Town, and (2) the Town Planner in writing has certified the application as complete. The decision of the Town Planner with respect to completeness and applicability of submittal requirements shall be final;
- (d) "Impact Fee Study" means the *Impact Fee Study*, prepared by BBC, dated October 29, 2008.
- (e) "Independent fee calculation study" means a study prepared by an applicant for a permit or extension calculating the cost of expansions or improvements to one or more of the Town's capital facilities required to serve the applicant's proposed development, that is performed on the same methodology, uses the same units, unit costs, staffing, building sizes, improvements and construction costs stated in the Impact Fee Study and is performed in compliance with any criteria for such studies established by this Article or by the Town.
- (f) "Land development" means any construction, reconstruction, expansion or conversion of a building, structure or use, or any change in the use of any land, building or structure, which creates additional demand for public services.
- (g) "Parks impact fee" means the parks impact fee established by this Article.
- (h) "Parks Impact Fee Fund" means the Parks Impact Fee Fund established by this Article.
- (i) "Parks facilities and improvements" means planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction and park equipment purchases associated with new or expanded park capital facilities or equipment that expand the capacity of the Town's parks system and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including neighborhood parks and related improvements. The costs of parks improvements shall include any financing costs associated with such improvements.

(j) "Public facilities impact fee" means the public facilities impact fee established by this Article.

(k) "Public Facilities Impact Fee Fund" means the Public Facilities Impact Fee Fund established by this Article.

(l) "Public facilities and improvements" means planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction and public capital facility purchases associated with new or expanded public facilities, including but not limited to, additional municipal office space, municipal office equipment, municipal office space parking, public works building and storage space and other municipal capital facilities that expand the capacity of the Town's public facilities and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including site specific dedications or improvements to meet the same need for public capital facilities for which the public facilities impact fee is imposed. The costs of public facility improvements shall include any financing costs associated with such improvements.

(m) "Site-related or site specific improvements" include, without limitation:

(1) with respect to the parks fee set forth herein, all neighborhood and local park facilities and equipment located within the boundaries of the proposed development and designed and intended to provide neighborhood and local park facilities and equipment only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide connections from existing parks facilities to only the applicant's development;

(2) with respect to the public facilities impact fees set forth herein, respectively, all public facilities located within the boundaries of the proposed development and designed and intended to provide such facilities only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide such facilities to only the applicant's development;

(3) with respect to the streets impact fee, all access streets adjacent to the proposed development and/or leading only to the proposed development; all roads and driveways within the development; all acceleration, deceleration, right or left turn lanes leading to any streets and driveways within the development; and all traffic control devices and signals for streets and driveways within the development.

(n) "Streets impact fee" means the streets impact fee established by this Article.

(o) "Streets Impact Fee Fund" means the Streets Impact Fee Fund established by this Article.

(p) “Streets and related appurtenances” means those capital improvements needed to construct and expand arterial and collector streets, excluding local street portions of such streets. Streets and related appurtenances shall include, without limitation, right-of-way acquisition, planning, land acquisition, engineering design, construction inspection, on-site construction, and off-site construction associated with new or expanded streets, traffic control devices and signals; medians and median landscaping, curbs, gutters and other drainage structures that expand the capacity of the Town’s street system and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including site specific dedications or street improvements to meet the same need for streets and related appurtenances for which the streets impact fee is imposed. The costs of the new for streets and related appurtenances shall include any financing costs associated with such improvements.

Sec. 4-114. Imposition and computation of impact fees.

(a) There is hereby established a parks impact fee, a public facilities impact fee, and a streets impact fee which shall be imposed in the amounts and pursuant to the provisions of this Article.

(b) Each such fee shall be required as a condition of approval of all development in the Town for which a building permit is required pursuant to subsection (c) of this Section 4-114 and payable prior to the issuance of any building permit for a residential or non-residential structure.

(c) Each such fee shall be imposed and calculated in accordance with this Section 4-114 upon approval of the following type of development applications:

(1) Subdivision approval, whether such subdivision approval is a final plat approval, a minor development plat approval or the approval of a replat;

(2) Approval of a rezoning, including approval of a planned unit development, only in the event the Board of Trustees determines that the rezoning approval generates demand for a new capital facilities and improvements in excess of what the previous entitlements had allowed for on an application for which approval of a subdivision is not necessary.

(d) Except for such fee as may be calculated, paid and accepted pursuant to an independent fee calculation study, the amount of each fee shall be as is set forth in the schedule attached hereto and incorporated herein as **Exhibit A**.

(e) After the effective date of this Article, no building permit shall be issued until the impact fees described in this Article have been paid, unless the development for which the permit is sought is exempted by Section 4-118 or approved credits are used to cover the impact fee, as set forth in Section 4-120. The obligation to pay impact fees shall run with the land.

(f) The impact fees shall be in addition to any public land dedication and school site dedication requirements imposed by the Town Code.

(g) An applicant required by this Article to pay an impact fee may choose to have the amount of such fee determined pursuant to either subsection (h) or (i) below. Regardless of whether the applicant calculates the amount of the fee pursuant to subsection (h) or (i), such fee shall be subject to the adjustment described in Section 4-120, if applicable.

(h) Unless an applicant requests that the Town determine the amount of such fee pursuant to subsection (i) below, the Town shall determine the amount of the required impact fee pursuant to the schedule set forth in **Exhibit A**.

(1) If the applicant's development is of a type not listed in subsection (b), then the Town shall use the fee applicable to the most nearly comparable type of land use in subsection (b).

(2) If the applicant's development includes a mix of those uses listed in subsection (b), then the fee shall be determined by adding up the fees that would be payable for each use if it was a freestanding use pursuant to subsection (b).

(3) If the applicant is applying for a permit to allow (1) a change of use, or (2) the expansion or modification of an existing non-residential building by more than one thousand (1,000) square feet, the fee shall be based on the net positive increase in the fee for the new use or structure as compared to the impact fee, if any, that would have been due under this Article for the previous use or structure, whether or not such fee was actually paid.

The provisions of sub-subsection (1)-(3) of this subsection (h) shall not apply to the parks impact fee.

(i) An applicant may request that the Town determine the amount of the required impact fee by reference to an independent fee calculation study for the applicant's development prepared at the applicant's cost by qualified professional engineers and/or economists and submitted to the Town's Engineer or its designee. Any such study shall be based on the same methodology and the same levels of service standards, service standards, units, unit costs, staffing, building sizes, improvements and construction costs used in the *Impact Fee Study* for the capital facilities fee category at issue, and must document the economic methodologies and assumptions used. The Town may hire professional engineers or other consultants to review any independent fee calculation study on behalf of the Town, and may charge the costs of such review to the applicant. Any independent fee calculation study submitted by an applicant may be accepted, rejected or accepted with modifications by the Town as the basis for calculating impact fees. The Town shall not be required to accept any such study or documentation the Town deems to be inaccurate or unreliable, and shall have the authority to request that the applicant submit additional or different documentation for consideration in connection with review of any study. If such study is accepted or accepted with modifications as a more accurate measure of the demand for capital facilities created by the applicant's

proposed development than the applicable fee set forth in **Exhibit A**, then the impact fee due under this Article may be calculated according to such study.

(1) With respect to any independent fee calculation for streets or related appurtenances, such study shall show all traffic engineering and economic methodologies and assumptions used, including but not limited to, those forms of documentation listed in subparagraphs (A) and (B) below, and must be acceptable to the Town pursuant to subparagraph (g) above.

(A) Traffic engineering studies shall include documentation for trip generation rates, trip lengths, and percentage of trips from the site that represent net additions to current trips from the site, the percentage of trips that are new trips as opposed to pass-by or divert-link trips and any other trip data for the proposed land use.

(B) Economic studies shall include documentation of any special factors that the applicant believes will reduce the traffic volumes otherwise attributable to the proposed land use.

Sec. 4-115. Payment of impact fees.

(a) After the effective date of this Article, all applicants shall pay the impact fees required by this Article to the Town prior to the issuance of any building permit for a residential or non-residential structure.

(b) All monies paid by an applicant pursuant to this Article shall be identified as a fee paid under the applicable fee category and shall be promptly deposited in the applicable Impact Fee Fund described in Section 4-116.

Sec. 4-116. Impact fee funds.

(a) There are hereby established the following funds for the purpose of ensuring impact fees collected pursuant to this Article are designated for the accommodation of capital facility impacts reasonably attributable to new development that paid the fee:

(1) A Parks Impact Fee Fund, into which shall be deposited all park impact fees;

(2) A Public Facilities Impact Fee Fund, into which shall be deposited all public facilities impact fees; and

(3) A Streets Impact Fee Fund, into which shall be deposited all streets impact fees.

(b) Each Fund shall be an interest-bearing account which shall be accounted for separately from other Funds. Any interest or other income earned on monies deposited in each such Fund shall be credited to such Fund.

(c) Each Fund shall contain only those impact fees collected pursuant to this Article which are to be deposited in accordance with subsection (a), and any interest which may accrue from time to time on such Fund.

Sec. 4-117. Use of Impact Fees.

(a) The monies in the Parks Impact Fee Fund shall be used only (1) to acquire land for and/or acquire, develop or construct parks and recreation facilities and improvements; or (2) as described in Section 4-119.

(b) The monies in the Public Facilities Impact Fee Fund shall be used only (1) to acquire land for and/or acquire, develop and/or construct public facility improvements; or (2) as described in Section 4-119.

(c) The monies in the Streets Impact Fee Fund shall be used only: (1) to acquire land for and/or acquire, develop or construct streets and related appurtenances or (2) as described in Section 4-119.

(d) No monies from the Impact Fee Funds shall be spent for periodic or routine maintenance, rehabilitation, or replacement of any Town capital facilities.

(e) No monies from the Impact Fee Funds shall be spent to remedy deficiencies in capital facilities existing on the effective date of this Article. The expansion of an existing street or capital facility or improvement to provide additional capacity shall not be considered to be curing a deficiency in that improvement.

Sec. 4-118. Exemptions from impact fees.

(a) Except where expressly stated for a particular impact fee, the following types of land development shall be exempted from payment of the impact fees imposed by this Article:

(1) Reconstruction, expansion or replacement of a residential unit existing on the effective date of this Article, provided that the reconstructed, expanded or replacement residential unit is within the same residential size category as the current residential unit.

- (2) Reconstruction, expansion or replacement of a non-residential building existing on the effective date of this Article, provided that no more than one thousand (1,000) square feet of additional usable non-residential space is created.
 - (3) Construction of an unoccupied, detached accessory structure, related to a residential unit; provided, however, that with respect to the streets impact fee, this exemption may be applied to construction of any unoccupied, detached accessory structure, provided such structure will not produce additional vehicle trips over and above those produced by the primary building or land use.
 - (4) The replacement of a destroyed or partially destroyed non-residential building or structure with a new non-residential building or structure of the same size as the original structure and which does not exceed the size of the original structure by more than one thousand (1,000) square feet of usable non-residential space.
 - (5) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, where no additional vehicle trips will be produced over and above those produced by the original building or structure.
 - (6) The installation or replacement of a mobile home on a lot or a mobile home site when an impact fee for such lot or site has previously been paid pursuant to this Article or where a mobile home legally existed on such site on or prior to the effective date of this Article.
 - (7) Any type of development for which an impact fee is not otherwise due and payable pursuant to Section 4-114, subsection (c).
 - (8) Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no greater demand for the capital facility for which the fee is imposed, or produce no more vehicle trips from such site over and above the trips from such site prior to the proposed development, or for which the applicant can show that an impact fee for such site has previously been paid in an amount that equals or exceeds the impact fee that would be required by this Article. The burden shall be on the applicant to demonstrate that such a fee was previously paid.
- (b) Any such claim for exemption must be made no later than the time when the applicant applies for the first building permit for the proposed development that creates the obligation to pay the impact fee, and any claim for exemption not made at or before that time shall have been waived.
- (c) The Town Administrator or the Town Administrator's designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection (a) above.
- (d) The Board of Trustees may, pursuant to C.R.S. § 29-20-104.5(5), exempt from payment or reduce the amount of the payment of the impact fees imposed by this Article for

any portion of a development which includes low or moderate income housing or affordable employee housing as the same may be defined by the Board of Trustees.

Sec. 4-119. Refunds of impact fees paid.

(a) Fees deposited in each Fund shall be appropriated and expended within ten (10) years from the date on which such fee was paid. Any fees not so appropriated or expended shall be refunded, upon application to the Town, to the record owner of the property for which the impact fee was paid, together with interest calculated at the two-year treasury rate adjusted annually on the last business day of the year for each year from the date of collection to the date of refund; provided, however, that the Town shall retain an additional two percent (2%) of the fee to offset the cost of the refund.

(b) Any application for a refund under the provisions of this Article shall be required to be made to the Town Treasurer within six (6) months of the expiration of such ten-year period following the date of payment of such fee. If a refund is due hereunder, the amount of such refund shall be divided proportionately among all applicants for refunds who have filed applications during said six (6) month period; provided, however, that in no event shall the amount of any refund exceed the amount of the fee paid on behalf of the property for which the refund is sought, plus interest as calculated above.

(c) After an impact fee has been paid pursuant to this Article, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished or destroyed or is altered, reconstructed or reconfigured so as to reduce the size of the project, the number of units in the project or the use of any building or structure.

Sec. 4-120. Credits against impact fees.

(a) No applicant shall be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed. Therefore, after the effective date of this Article, all land dedications and improvements for a capital need for which an impact fee is imposed, over and above those required by the Town in connection with a proposed development, shall result in a credit against the impact fee otherwise due for such development. However, no credit shall be awarded for: (1) any land dedications for or acquisition or construction of site-related or site-specific improvements; (2) any land dedications not accepted by the Town; (3) any acquisition or construction of facilities and improvements not approved in writing by the Town prior to commencement of the acquisition, development or construction; or (4) any dedication, construction or acquisition of a type of facilities or improvements not included in the calculation of the applicable capital facilities impact fee in the *Impact Fee Study*. No credit shall exceed the amount of the applicable impact fee due from the applicant or property owner; provided, however, that if the amount of the credit due from the dedication or construction of a capital facility or improvement is calculated to be greater than the amount of the fee due, nothing herein shall be construed as preventing the Town from entering into a reimbursement agreement with the applicant under other applicable provisions of the Town Code, whereby said applicant may be reimbursed by subsequent property owners benefiting from the dedication or construction.

(b) In order to obtain a credit against impact fees otherwise due, an applicant must submit a written offer to dedicate to the Town specific parcels of land over and above those regularly required by the Town or to acquire or construct specific facilities and improvements in accordance with all applicable state or Town codes, ordinance and design and construction standards, and must specifically request a credit against the applicable impact fee. Such written request must be made on a form provided by the Town, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied by documents evidencing those facts and must be filed not later than the time when an applicant applies for the first building permit that includes the obligation to pay the impact fee against which the credit is requested. Failure by the applicant to follow the above procedures waives the claim for credit.

(c) The credit due to an applicant shall be calculated and documented as follows:

(1) Credit for qualifying land dedications shall, at the applicant's option, be valued at (a) one hundred percent (100%) of the most recent estimated actual value for such land as shown in the records of the County Assessor, or (b) that fair market value established by an MAI or Colorado Certified General Real Estate Appraiser acceptable to the Town in an appraisal paid for by the applicant.

(2) In order to receive credit for qualifying acquisition or construction of capital facility improvements, the applicant shall submit completed engineering drawings, specifications and construction cost estimates to the Town. The Town shall determine the amount of credit due based on the information submitted or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the Town.

(d) Approved credits shall become effective at the following times:

(1) Approved credits for land dedications shall become effective when the land has been conveyed to the Town in a form acceptable to the Town at no cost to the Town, and accepted by the Town. When such conditions have been met, the Town shall note that fact in its records. Upon written request from the applicant, the Town shall issue a letter stating the amount of credit available.

(2) Approved credits for the acquisition or construction of capital facilities and improvements shall generally become effective when: (a) all required construction has been completed and has been accepted by the Town; (b) a suitable maintenance and warranty bond has been received and approved by the Town; and (c) all design, construction, inspection, testing, bonding and acceptance procedures have been completed in compliance with all applicable Town and state procedures. However, approved credits for the construction of capital facilities and improvements may become effective at an earlier date if the applicant posts security in the form of a performance bond, irrevocable letter of credit or escrow agreement and the amount and terms of such security are accepted by the Town. At a minimum, such security

must be in the amount of one hundred twenty-five percent (125%) of the approved credit or one hundred twenty-five percent (125%) of the amount determined to be adequate to allow the Town to construct the capital facilities and improvements for which the credit was given, whichever is higher. When such conditions have been met, the Town shall note that fact in its records. Upon request of the applicant, the Town shall issue a letter stating the amount of credit available.

(e) Approved credits may be used to reduce the amount of impact fees due from any proposed development until the amount of the credit is exhausted. A credit may only be applied to the same category of impact fee for which the credit was obtained. Each time a request to use approved credits is presented to the Town, the Town shall reduce the amount of the applicable impact fee otherwise due from the applicant and shall note in the Town records the amount of credit remaining, if any. Upon request of the applicant, the Town shall send the applicant a letter stating the number of credits available.

(f) Approved credits shall only be used to reduce the amount of the impact fee otherwise due under this Article and shall not be paid to the applicant in cash or in credits against any other monies due from the applicant to the Town. If the credit has not been exhausted within ten (10) years of the date of issuance of the first building permit for which a fee was due and payable under the provisions of this Article, or within such other period as may be designated in writing by the Town, such credit shall lapse.

Sec. 4-121. Appeals.

(a) Any property owner or applicant may appeal the following decisions to the Town Administrator pursuant to such administrative hearing process as may be established by the Town Administrator:

- (1) The applicability of an impact fee to the development;
- (2) The amount of an impact fee to be paid for the development;
- (3) The availability, amount or application of any credit; or
- (4) The amount of any refund, as determined by the Town.

(b) The burden of proof in any such hearing shall be on the applicant to demonstrate that the amount of the impact fee, credit or refund was not properly calculated by the Town. In the event of an appeal of the amount of the impact fee, the fee payer shall, at his or her expense, prepare and submit to the Town Administrator an independent fee calculation study for the impact fee in question. The independent fee calculation study shall follow the methodologies used in the Impact Fee Study and the applicable provisions set forth in Section 4-114(g). The independent fee calculation study shall be conducted by a professional in impact fee analysis. The burden shall be on the fee payer to provide the Town Administrator all relevant data, analysis and reports which would assist the Town Administrator in determining whether the impact fee should be adjusted.

(c) All appeals must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely. The Town Administrator, as applicable, shall notify the applicant of the hearing date on the application, which notice shall be given no less than fifteen (15) working days prior to the date of the hearing. At the hearing, the Town Administrator shall provide the applicant and Town staff an opportunity to present testimony and evidence regarding the fee, credit or refund being appealed. The Town Administrator shall modify said amount only if there is substantial competent evidence in the record that the Town erred, based upon the methodologies contained in the *Impact Fee Study*. The decision of the Town Administrator shall be final.

(d) The Town Administrator is hereby authorized to delegate any of the functions or authorities in this Section 4-121 to the Administrator's designee.

Sec. 4-122. Miscellaneous provisions.

(a) Interest earned on monies in each of the Impact Fee Funds shall be considered part of each such Fund and shall be subject to the same restrictions on use applicable to the impact fees deposited in such Fund.

(b) Monies in each of the Impact Fee Funds shall be considered to be spent in the order collected, on a first-in/first-out basis.

(c) Nothing in this Article shall restrict the Town from requiring an applicant to construct improvements required to serve the applicant's project and otherwise permitted under applicable law, whether or not such improvements are of a type for which credits are available under Section 4-120.

(d) Any monies, including any accrued interest, not assigned to specific projects in any year and not expended pursuant to Section 4-117 shall be retained in the Impact Fee Fund until the next fiscal year.

(e) If an impact fee has been calculated and incurred based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the Town to the applicant within thirty (30) days after the Town's acceptance of the recalculated amount or the date of a final decision in any appeal for the recalculation pursuant to Section 4-121, whichever is later, with interest at the rate of two percent (2%) per annum since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the Town within thirty (30) days after the Town's acceptance of the recalculated amount, from the date of a final decision in any appeal of the recalculation pursuant to Section 4-121, whichever is later, with interest at the rate of two percent (2%) per annum since the date of such underpayment. In the case of an underpayment to the Town, the Town shall not issue any additional permits or approvals for the project for which the impact fee was previously paid until such underpayment is corrected.

(f) The Board of Trustees may agree to pay some or all of an impact fee imposed on a

proposed development by this Article from other funds of the Town that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the Board of Trustees and shall be made pursuant to goals and objectives previously adopted by the Board of Trustees to promote any legally permitted purpose.

(g) The impact fees described in this Article and the administrative procedures of this Article shall be reviewed at least once every five (5) years to ensure that: (1) the demand and cost assumptions and other assumptions underlying such fees are still valid; (2) the resulting fees do not exceed the actual costs of constructing capital facilities and improvements required to serve new development; (3) the monies collected in the Impact Fee Funds have been and are expected to be spent for capital facilities and improvements; and (4) such capital facilities and improvements will benefit those developments for which the fees were paid. Failure to perform such review within such time shall not invalidate any portion of this Article or restrict the Town from collecting the fees described in this Article.

(h) Violation of this Article shall be subject to those remedies provided in this Code. Knowingly furnishing false information to any official of the Town charged with the administration of this Article on any matter relating to the administration of this Article, including without limitation the furnishing of false information regarding the expected size or use of a proposed development, shall be a violation of this Article.

(i) The subsection titles used in this Article are for convenience only and shall not affect the interpretation of any portion of the text of this Article.

(j) On January 1, 2010, and on January 1st of each year thereafter in which an impact fee is in effect, the amount of the impact fee per dwelling unit for residential development and the per square footage of gross floor area for non-residential development shall be automatically adjusted to account for inflation increases in the cost of providing capital facilities, utilizing the most recent data from the Engineering News Record construction cost index for the Denver metropolitan area. In lieu of this automatic annual adjustment, the Town may, at its option, determine the appropriate annual inflation factor. Moreover, nothing herein shall prevent the Town from electing to maintain a then-existing capital facilities impact fee or from electing to waive the inflation adjustment for any given fiscal year, or years. Any such action to determine an inflation factor other than that set forth above shall be by Board resolution.

(k) Authority is hereby granted for each of the Impact Fee Funds established hereby to borrow funds from and lends funds to each of the other Impact Fee Funds established hereby, to the extent permissible by law and in compliance with C.R.S. § 29-1-801, *et seq.*, and C.R.S. § 29-20-101, *et seq.*, and provided that all funds so borrowed or lent are repaid accordingly.

Section 2. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for

the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ IN FULL, AND ADOPTED this ____ day of _____, 2008.

TOWN OF HUDSON, COLORADO

Neal Pontius, Mayor

ATTEST:

Judith A. McGill, Town Clerk Pro Tem

PASSED ON SECOND AND FINAL READING this ____ day of _____, 2008,
AND ORDERED PUBLISHED ONCE IN FULL.

TOWN OF HUDSON, COLORADO

Neal Pontius, Mayor

ATTEST:

Judith A. McGill, Town Clerk Pro Tem

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney

**Exhibit A
Impact Fee Schedule**

Fees in effect from January 1, 2009 through December 31, 2009:

| | Parks | Facilities | Streets | Total |
|--------------------------|-------|------------|----------|--------------------|
| Residential (per unit) | 74.00 | 312.00 | 1,278.90 | \$ 1,471.90 |
| Commercial (per sq. ft.) | 0.0 | .15 | 1.76 | \$ 1.91 |
| Industrial (per sq. ft.) | 0.0 | .15 | 0.46 | \$ 0.61 |

Fees in effect after December 31, 2009, subject to annual adjustment per Section 4-122(j):

| | Parks | Facilities | Streets | Total |
|--------------------------|-------|------------|----------|--------------------|
| Residential (per unit) | 74.00 | 312.00 | 2,557.80 | \$ 2,943.80 |
| Commercial (per sq. ft.) | 0.0 | .15 | 3.52 | \$ 3.67 |
| Industrial (per sq. ft.) | 0.0 | .15 | 0.92 | \$ 1.07 |