

ORDINANCE NO. 870

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
RED LODGE, MONTANA ADOPTING IMPACT FEES FOR
WATER AND SEWER**

PREAMBLE

WHEREAS, the City Council has determined that it is appropriate to adopt impact fees for water and sewer to be used to fund growth related system improvements to promote health, safety, and welfare of the citizens of Red Lodge.

IT IS HEREBY ORDAINED by the City Council of the City of Red Lodge, Montana that the City of Red Lodge Municipal Code is hereby amended and adopted as follows:

Chapter 9

Sections:

10-9-4	Legislative findings
10-9-6	Authority and applicability
10-9-7	Intent
10-9-8	Definitions
10-9-9	Change in Use and Multiple Meters
10-9-10	Water Impact fees
10-9-11	Sewer Impact fees
10-9-12	Administrative fees
10-9-13	Refunds or credits for impact fees
10-9-14	Donation of capital improvements in lieu of impact fees
10-9-15	Appeal
10-9-16	Miscellaneous provisions

10-9-4 Legislative Findings

The city council of the City of Red Lodge, Montana finds that:

- A. Capital improvements to water and sewer systems are necessary to accommodate continued growth within the city to protect the health, safety and general welfare of the citizens of the city.
- B. New residential and nonresidential development imposes increased and excessive demands upon existing city facilities.

- C. New development often overburdens existing public facilities and the tax revenues generated from new development often do not generate sufficient funds to provide public facilities to serve the new development.
- D. New development is expected to continue, and will place ever-increasing demands on the city to provide water and sewer facilities to serve new development.
- E. The creation of an equitable impact fee system would enable the city to impose a proportionate share of the costs that are reasonably related to the capital improvement demands of the new development.
- F. The impact fee study dated May, 2007, prepared by HKM Engineering set forth reasonable methodologies and analysis for determining the impacts of various types of development on the city's water and sewer systems.
- G. The city establishes as city standards the assumptions and service standards referenced in the impact fee studies as part of its current plans for the city's water and sewer systems.
- H. The impact fees described in this chapter are based on the impact fee study and do not exceed the maximum impact fee determined by the impact fee study.
- I. The impact fees adopted in this chapter are reasonably related to and reasonably attributable to the development's share of the cost of water and sewer improvements made necessary by the new development.
- J. After the consideration of capital improvements required as a result of new development and after consideration of the payments for capital improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes and other available sources of funding the capital improvements, the city council determined that the impact fees adopted in this chapter do not exceed a proportionate share of the costs incurred or to be incurred by the city in accommodating the development and are reasonably related to the benefits accruing to the development paying the impact fees.
- K. The types of water and sewer system improvements included in the impact fee study all have citywide service areas. Therefore, impact fees will be imposed on a citywide basis with one benefit district to all land served by said district.
- L. This chapter creates a system by which impact fees will be used to expand or improve the water and sewer systems that benefit the development within a reasonable period of time after the fees are paid.

- M. This chapter creates a system under which development impact fees shall not be used to cure existing deficiencies in the water and sewer systems.
- N. This chapter does not hold new development to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.
- O. It is in the best interest of the city and new development to include an administrative fee as allowed by Montana State Law, not to exceed five percent of the total impact fee.
- P. The capital improvement plan for growth related projects adopted by the city must cover at least a five year period and must be reviewed and updated at least every two years in accordance with Montana State Law.

10-9-6

Authority and applicability

- A. This chapter is enacted pursuant to the city's general police power, the authority granted to the city by the Montana State Constitution and, Section 7-1-101, and Title 7, Chapter 6, Part 16 of Montana Code Annotated (MCA).
- B. The provisions of this chapter shall apply to all of the territory within the limits of the city.
- C. The provisions of this chapter related to water impact fees shall also apply to all properties located outside the city that are connected to the city water system.
- D. The provisions of this chapter related to sewer impact fees shall also apply to all properties located outside the city that are connected to the city sewer system.

10-9-7

Intent

- A. It is the intent of this chapter to adopt impact fees that are reasonably related to and reasonably attributable to the development's share of the cost of water and sewer system improvements made necessary by the new development.
- B. It is the intent of this chapter to adopt impact fees that do not exceed a proportionate share of the costs incurred or to be incurred by the city in accommodating the development.

- C. It is the intent of this chapter that impact fees collected under the provisions of this chapter not be used to correct existing deficiencies in the water and sewer systems.
- D. It is the intent of this chapter that a new development not be held to a higher level of services than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.
- E. It is the intent of this chapter that any monies collected from any impact fee and deposited in an impact fee fund shall not be co-mingled with monies from a different impact fee fund or be used for a type of facility or equipment different from that for which the fee was paid.

10-9-8 Definitions

As used in this chapter, the following definitions apply:

- A. Capital Improvements
 - (1) "Capital Improvements" means improvements, land and equipment with a useful life of 10 years or more that increases or improves the service capacity of a public facility.
 - (2) The term does not include consumable supplies.
- B. "Connection charge" means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead required to make connections and to install meters.
- C. "Development" means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in use of land when the construction, installation, or other action creates additional demand for public facilities.
- D. "Governmental entity" means the City of Red Lodge, Montana.
- E. Impact fee
 - (1) "Impact fee" means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee.
 - (2) The term does not include:

- (a) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;
 - (b) a connection charge;
 - (c) any other fee authorized by law, including but not limited to user fee, special improvement district assessments, fees authorized under Title 7 of MCA for county, municipal, and consolidated government sewer water districts and systems, and costs of ongoing maintenance; or
 - (d) on-site or off-site improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.
- F. "Proportionate share" means that portion of the cost of water and sewer system improvements that reasonably relate to the service demands and needs of the project. A proportionate share must take into account the limitations provided in of MCA, Section 7-6-1602.
- G. "Public facilities" means:
- (1) water supply production, treatment, storage, or distribution system; and
 - (2) wastewater collection, treatment, or disposal facilities.
- H. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, agency, public corporation, or any other legal or commercial entity, other than the City of Red Lodge, Montana.

10-9-9 Change In Use, Meter Size Increase and Multiple Meters

A. Change in Use

- (1) The city has the right to collect the difference in water and sewer impact fees amounts if an existing property changes use and installs a larger water meter.

B. Meter Size Increase

- (1) The city has the right to collect the difference in water and sewer impact fee amounts if an existing property installs a larger water meter.

C. Sub Meters

- (1) Persons desiring one or more sub meters for various tenants shall furnish, install, maintain, and read such meters at their own expense. The city shall not furnish, install, maintain, read, or bill on such meters. Further, all municipal water/wastewater charges for a single water service line shall be

billed to and shall be paid by the person named on the water service application for the property involved.

- (2) Fire service meters used for fire protection shall not be subject to the water and sewer impact fees.

D. Arrangement and Location.

- (1) A separate and independent water service line shall be provided for each individual building or living unit under separate ownership. Water service lines, firelines, or combinations thereof shall be connected to the public water main located within the public right-of-way or described easement abutting or fronting the property to be served within the limits of said property's frontage on the right-of-way involved. In addition, whenever possible the water service line, fireline, or combination thereof shall be installed perpendicular to the public right-of-way containing the public water to be connected with. In any case, the location and arrangement of water service lines, firelines, or combinations thereof shall be approved by the city prior to construction of such facilities.
- (2) If a parcel of land does not front a public water main, then prior to the city's granting a water service line installation permit to the owner of such property, said property owner shall at his expense extend the public water main the required distance.

E. Multiple Building Service Agreements

- (1) In the event it is determined by the city that it is impractical to construct an independent and separate water service line, fireline, or combination thereof to serve each building of a group of buildings, such as mobile home courts, planned unit developments, and large commercial or industrial establishments, which are located on a single parcel of land under ownership by a single entity, then in that event the city may allow more than one separate building to be served by a single water service line, fireline, or combination thereof. However, the city's approval shall not be given in such circumstances until the property owner:
 - (a) Provides the city with a copy of appropriate title memorandums and properly executes a multiple building service covenant, records same with the county clerk and recorder, Carbon County, and subsequently provides the city with a copy of the recorded document; and
 - (b) Pay to the city the appropriate special agreement fee adopted under Section .

10-9-10 Water Impact Fees

A. Imposition of Water Impact Fees.

- (1) On or after the effective date of this ordinance, any person who applies for a building permit, or for the extension of a building permit that was issued prior to the effective date of this chapter, or seeks to obtain a water service connection, is required to pay a water impact fee in the amount specified in this chapter.
- (2) No building permit shall be issued, or extension granted, or water service connection allowed, until the water impact fee has been paid unless the person is exempted by subsection F of this section.

B. Amount of Water Impact Fee

- (1) The amount of the water impact fee shall be determined based on the following Water Impact Fee Schedule:

Water Impact Fee Schedule

Residential (based on meter size)

Meter Size (inches)	
¾	\$3,700
1	\$5,300
1½	\$9,000
2	\$19,500
3	\$43,000
4	\$77,800
6	\$160,000

Commercial (based on meter size)

Meter Size (inches)	
¾	\$7,400
1	\$10,600
1½	\$18,000
2	\$39,000
3	\$86,000
4	\$155,600
6	\$320,000

Fees for meters larger than 6 inches will be based on a special review.

C. Payment of Water Impact Fees.

- (1) Any person who applies for a building permit or applies for the extension of a building permit issued prior to the effective date of this chapter, or applies for a water connection shall pay the water impact fee required by this chapter to the city prior to the issuance or extension of any such permit. Construction shall commence within 6 months of the payment of fees or the city has the right to void the permit and assess the developer

the difference in the impact fees, if any, at the time construction commences.

- (2) All funds paid by a person pursuant to this subchapter shall be identified as water impact fees and shall be promptly deposited in the water impact fee fund described in subsection D of this section.

D. Water Impact Fee Funds.

- (1) Single water impact fee fund is created and the fund shall be maintained in an interest bearing account.
- (2) Such fund shall contain only those water impact fees collected pursuant to this chapter and any interest which may accrue.

E. Use of Water Impact Fees.

- (1) The monies in the water impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for water.
- (2) Water impact fees may be used to reimburse the city for costs of excess capacity in existing facilities when the excess capacity has been provided in anticipation of the needs of new development for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been demonstrated pursuant to MCA, Section 7-6-1602, in a manner that demonstrates the need for the excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Water impact fees used to reimburse the city for costs to provide the excess capacity must be based on the actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions from Water Impact Fees.

- (1) The following types of development shall be exempted from payment of water impact fees:
 - (a) Reconstruction or replacement of a previously existing residential or commercial unit that does not increase the size or number of existing meters.
 - (b) Construction of unoccupied accessory units related to a residential unit.
 - (c) 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 increase in meter size or number will result.
 - (d) Projects for which a water impact fee has previously been paid in an amount that equals or exceeds the water impact fee that would be required by this chapter.

- (e) City owned building projects.
- (2) Any claim for an exemption must be made no later than the time when the developer applies for the building permit or for the extension of a building permit issued prior to the effective date of this chapter, or for a water connection for the proposed development, and any claim for exemption not made at or before that time shall have been waived.
- (3) The city shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection (F)(1) of this section.

G. Site-Specific Credits and Developer Reimbursements

- (1) The city council may adopt policies related to site-specific credits or developer reimbursements for water impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees.

10-9-11 Sewer Impact Fees

A. Imposition of Sewer Impact Fees.

- (1) On or after the effective date of this ordinance, any person who applies for a building permit, or for the extension of a building permit that was issued prior to the effective date of this chapter, or seeks to obtain a sewer service connection, is required to pay a sewer impact fee in the amount specified in this chapter.
- (2) No building permit shall be issued, or extension granted, or sewer service connection allowed, until the sewer impact fee has been paid unless the person is exempted by subsection F of this section.

B. Amount of Sewer Impact Fee

- (1) The amount of the water impact fee shall be determined based on the following Sewer Impact Fee Schedule:

Sewer Impact Fee Schedule

Residential (based on meter size)

Meter Size (inches)

¾	\$2,800
1	\$4,700
1½	\$9,000
2	\$15,000
3	\$33,000
4	\$60,000
6	\$124,000

Commercial (based on meter size)
Meter Size (inches)

$\frac{3}{4}$	\$5,600
1	\$9,400
1½	\$18,000
2	\$30,000
3	\$66,000
4	\$120,000
6	\$248,000

Fees for meters larger than 6 inches will be based on a special review.

C. Payment of Sewer Impact Fees.

- (1) Any person who applies for a building permit or applies for the extension of a building permit issued prior to the effective date of this chapter, or applies for a sewer connection shall pay the sewer impact fee required by this chapter to the city prior to the issuance or extension of any such permit. Construction shall commence within 6 months of the payment of fees or the city has the right to void the permit and assess the person the difference in the impact fees, if any, at the time construction commences.
- (2) All funds paid by a developer pursuant to this subchapter shall be identified as sewer impact fees and shall be promptly deposited in the sewer impact fee fund described in subsection D of this section.

D. Sewer Impact Fee Funds.

- (1) A single sewer impact fee fund is created and the fund shall be maintained in an interest bearing account.
- (2) Such fund shall contain only those sewer impact fees collected pursuant to this chapter and any interest which may accrue.

E. Use of Sewer Impact Fees.

- (1) The monies in the sewer impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for sewer.
- (2) Sewer impact fees may be used to reimburse the city for costs of excess capacity in existing facilities when the excess capacity has been provided in anticipation of the needs of new development for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been demonstrated pursuant to MCA, Section 7-6-1602, in a manner that demonstrates the need for the excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Sewer impact fees used to reimburse the city for costs to provide the excess capacity must be based on the actual

cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions from Sewer Impact Fees.

- (1) The following types of development shall be exempted from payment of sewer impact fees:
 - (a) Reconstruction or replacement of a previously existing residential or commercial unit that does not increase the size or number of existing meters.
 - (b) Construction of unoccupied accessory units related to a residential unit.
 - (c) 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 increase in meter size or number will result.
 - (d) Projects for which a sewer impact fee has previously been paid in an amount that equals or exceeds the water impact fee that would be required by this chapter.
 - (e) City owned building projects.
- (2) Any claim for an exemption must be made no later than the time when the developer applies for the building permit or for the extension of a building permit issued prior to the effective date of this chapter, or for a sewer connection for the proposed development, and any claim for exemption not made at or before that time shall have been waived.
- (3) The city shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection (F)(1) of this section.

G. Site-Specific Credits and Developer Reimbursements

- (1) The city council may adopt policies related to site-specific credits or developer reimbursements for water impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees.

10-9-12 Administrative Fees

A. Imposition of Water and Sewer Impact Fee Administrative Fees.

- (1) Any developer who is responsible to pay an impact fee under this ordinance shall also pay a fee for the administration of the impact fee to the city when the impact fee is paid.

B. Amount of Water and Sewer Impact Fee Administrative Fees.

- (1) Five percent of the total amount of water and sewer impact fees shall be collected to pay for administrative costs.

C. When Water and Sewer Impact Fee Administrative Fees Paid.

- (1) Any developer who pays an impact fee under this ordinance shall also pay the water and sewer impact fee administrative fees to the city when the impact fee is paid.
- (2) All funds paid by a developer pursuant to this subchapter shall be identified as water and sewer impact fee administrative fees and shall be promptly deposited in the water and sewer impact fees administrative fees fund described in subsection D of this section.

D. Water and Sewer Impact Fee Administrative Fees Funds.

- (1) A single water and sewer impact fee administrative fees fund is created and such fund shall be maintained in an interest bearing account.
- (2) Such fund shall contain only those water and sewer impact fee administrative fees collected pursuant to this subchapter and any interest which may accrue from time to time on such amounts.

10-9-13

Refunds or Credits for Water and Sewer Impact Fees Paid

- A. The city council may grant refunds or credits for water and sewer impact fees paid:
- (1) That it considers appropriate and that are consistent with the provisions of MCA, Section 7-6-1602 and MCA Title 7, Chapter 6, Part 16; or
 - (2) In accordance with a voluntary agreement consistent with the provisions of MCA, Section 7-6-1602, and MCA, Title 7, Chapter 6, Part 16 between the city and the developer being assessed the water and sewer impact fees.

10-9-14

Donation of Capital Improvements in Lieu of Impact Fees

- A. The city may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees when:
- (1) The need for the dedication or construction is clearly documented pursuant to MCA, Section 7-6-1602; and
 - (2) The land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the city council.

- B. The fair market value of the proposed dedications or constructions shall be established by appraisal, construction cost, or by such other reasonable method of valuation as may be determined and approved by the city council.
- C. The city council shall determine a means and method of valuation of the proposed dedication or construction to establish credits against future impact fee revenue if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

10-9-15 Appeal

A. Right to Appeal.

- (1) The developer charged an impact fee under the provisions of this ordinance may appeal the charge if the developer believes an error has been made.
- (2) The city council shall consider, hear and decide all appeals filed under this section.

B. Appeal Procedure.

- (1) The developer making the appeal shall file with the city clerk a written notice of appeal that sets forth the basis for the appeal including the alleged error.
- (2) The developer making the appeal shall pay the city an appeal fee of five hundred dollars at the time of filing the written notice of appeal.
- (3) The mayor shall fix a time and place for hearing the appeal and the city clerk shall mail notice of the hearing to the applicant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in such notice given by the city. The decision of the city council shall be final.
- (4) The appeal shall be heard and a written decision rendered by the city council within sixty days of the filing of written notice of appeal.
- (5) If an appeal is successful the city shall refund the developer's appeal fee.

10-9-16 Miscellaneous Provisions

- A. Interest earned on monies in any impact fee fund shall be considered part of such fund and shall be subject to the same restrictions on use applicable to the impact fees deposited in such fund.
- B. No monies from any impact fee fund shall be spent for operations or maintenance of any facility or to cure deficiencies in public facilities existing on the effective date of this chapter.

- C. Nothing in this chapter shall restrict the city from requiring an applicant to construct reasonable project improvements required to serve the applicant's project whether or not such improvements are of a type for which credit is available under Section 3.10.120.
- D. The city shall maintain accurate records of impact fees paid including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matter that the city deems appropriate or necessary to the accurate accounting of such fees. Records shall be available for review by the public during city business hours.
- E. At least once during the fiscal year of the city, the mayor shall present to the city council a proposed capital improvement program for the water and wastewater systems, and such capital improvement program shall assign monies from each impact fee fund to specific projects and related expenses for improvements to the type of facilities or services for which the fees in that fund were paid. Any monies collected including accrued interest not assigned to specific projects within such capital improvement program and not expended shall be retained in the same impact fee fund until the next fiscal year. The impact fee capital improvement program shall be adopted by the city council as a supplemental document to the city budget. The impact fee capital improvements program shall anticipate project expenditures and fund revenues for a five year period. The individual fee funds shall maintain a positive fiscal balance. City council has the ability to amend the program with a minimum of four council votes.
- F. If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the city to the applicant within thirty days after the city's acceptance of the recalculated amount with interest at the current prime rate plus one percent per annum since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the city within thirty days after the city's acceptance of the recalculated amount with interest at the rate of five percent per annum since the date of such underpayment. In the event the underpayment is caused by an error attributed solely to the city, the applicant shall pay the recalculated amount without interest.
- G. The impact fees described in this chapter and the administrative procedures and manual of this chapter shall be updated at least once every two fiscal years to ensure that (1) the demand and cost assumptions underlying such fees are still valid, (2) the resulting fees do not exceed the actual cost of constructing improvements that are of the type for which the fee was paid and that are required to serve new development, (3) the monies collected or to be collected in each impact fee fund have been and are expected to be spent for

improvements of the type for which such fees were paid, and (4) that such improvements will benefit those developments for which the fees were paid.

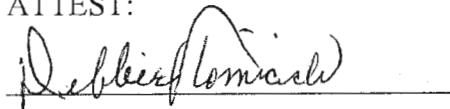
- H. The section titles used in this chapter are for convenience only, and shall not affect the interpretation of any portion of the text of this chapter.
- I. Any judicial action or proceeding to void, review, set aside or annul the reasonableness, legality or validity of any impact fee must be filed within ninety days following the date of imposition of the fee or the final determination of the city council, whichever is the latter.
- J. Penalty: Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in the General Red Lodge City Code Book, Section 1-4-1. (1980 Code 14.02.050).
- K. Partial Invalidity: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance that shall remain in full force and effect. The City Council declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Passed by the City Council of the City of Red Lodge, Montana at regular session thereof held on the 12th day of June, 2007.

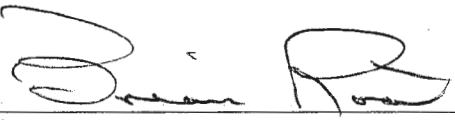


Brian Roat, Mayor

ATTEST:

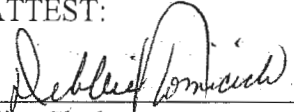


Passed, adopted and approved by the City of Red Lodge, Montana on second reading at a regular session held on the 26th day of June, 2007.



Brian Roat, Mayor

ATTEST:



City Clerk

RAFT