

## MINUTES OF THE REGULAR COUNCIL MEETING

February 12, 2020

At 6:00 P.M. the meeting was called to order by Mayor Mac Pooler.

A roll call of the Council resulted as the following present:

Sid Armstrong, present by teleconference  
Ron Mercado  
Terry Douglas  
Dennis Norris  
Ron Delcamp  
Anna Moody

Officers present were:

Mayor Mac Pooler  
Building Official Mark Magnus  
Chief of Police David Wuolle  
Superintendent of Public Works Craig Lewis  
City Clerk /Treasurer Nila Jurkovich  
Project Manager Rod Plank  
Planning Consultant Collin Coles

Councilmember Delcamp led the Plèdge of Allegiance.

### HEARING –

At 6:01 p.m. it was moved by Councilmember Delcamp and seconded by Councilmember Moody to enter into the hearing. Motion carried.

Mayor Pooler advised those present this hearing is to take public testimony on the Kellogg Capital Improvements Plan and Development Impact Fee Report and proposed Development Impact Fee Ordinance.

The legal notice was published in the Shoshone News Press on Friday, January 24, 2020.

Ms. Julie Herlands of Tishler Bise went through their presentation, provided to the Council the previous week.

Tishler Bise prepared the Kellogg Capital Improvements Plan & Development Impact Fee Report which will be considered on by the Council later in the meeting.

After the review of the presentation questions were asked with respect to the residential rate, difference in fees from residential versus commercial, why the City cannot charge an impact fee for roads, and the costs associated with the impact for new sewer impact fees.

Councilmember Moody stated she has experienced communities that do not collect fees for the impact of new development. This is not a tax. It is important that we all understand the City provides a level of service and the public has to pay for that level of service.

At 6:32 p.m. it was moved by Councilmember Delcamp and seconded by Councilmember Mercado to close the hearing to reconvene back into regular session. Motion carried.

### ORAL COMMENTS

Earl Criger was present for the Boy Scouts, and with Mr. Criger was Mike Willis, the Scout Master and Nicholas Flood who is working towards his citizenship patch.

Mayor Pooler and Council welcomed them all.

## **STAFF REPORTS**

All reports were submitted, discussions from the reports are as follows:

### Police Chief Dave Wuolle

Actively reviewing employment applications with testing on March 7<sup>th</sup>.

### Superintendent of Public Works Craig Lewis

Working on the Public Works' to-do list, as the lack of snow has been on their favor.

## **CONSENT CALENDAR**

1. Approval or correction of the minutes of the January 8, 2020 regular council meeting and the minutes of the January 23, 2020 special council meeting.
2. Approval of payment of the bills for the month of January 2020 as presented. (Proving documents on file in the City Clerk's office)
3. Treasurer's Reports of Income & Expenditure, as submitted.
4. P&Z Commission minutes from the January 27, 2020 Meeting- Recommendation: Move forward with the Land Use Regulations amendment as presented at hearing.
5. Report of Commissions and Committees:  
Traffic Safety minutes from the January 13, 2020 Meeting. Recommendation: Move forward with the LHTAC Grant application for safety signage for Division and freeway exit.

It was moved by Councilmember Mercado and seconded by Councilmember Douglas to approve the Consent Calendar as presented. Motion carried.

## **OLD BUSINESS**

### EPA Road Remediation & Sewer Project– Alta Engineering

Ben Davis was present from Alta Engineering and advised the Council of the following:

Phase 2 and Phase 3 Sewer Project: All working towards the submittal of their final pay applications. This will take the rest of this month to finalize.

The oil escalation was resolved with the sub-contractors being present at the construction meeting held yesterday.

Alta is working on a memo to present to Kellogg. Wardner's sewer drains into Phase 3 work and has approximately 18% of operation and maintenance costs.

## **NEW BUSINESS**

### Kellogg Capital Improvements Plan and Development Impact Fee Report

Julie Herlands, Tischler Bise advised the Council her company prepared the report and it will be included with the proposed ordinance for impact fees

It was moved by Councilmember Douglas and seconded by Councilmember Moody to accept the Capital Improvements Plan and Development Impact Fee Report which will be Appendix "A" for the proposed Development Impact Fee Ordinance.

A roll call vote of the Council resulted as follows:

Councilmember Norris-Aye  
Councilmember Moody-Aye  
Councilmember Mercado-Aye

Councilmember Delcamp-Aye  
Councilmember Armstrong-Aye  
Councilmember Douglas-Aye

Motion carried.

### Development Impact Fee Ordinance

It was moved by Councilmember Delcamp and seconded by Councilmember Norris to have the proposed ordinance read by title only. Motion carried.

Clerk/Treasurer Nila Jurkovich read the title of the proposed ordinance numbered 607.

A lengthy discussion was held between the Council, Mark Magnus Building Official, Collin Coles Planner and Julie Herlands of Tischler Bise regarding the details of how and when to collect impact fees with respect to a burned or torn down buildings that are being rebuilt. The City needs to be consistent in the manner of collecting impact fees, the thought needs to go into what impact the proposal has on city services. Residential fees and commercial fees are separated in the Development Impact Fee Report.

### ORDINANCE NO. 607

#### DEVELOPMENT IMPACT FEE

AN ORDINANCE OF THE CITY OF KELLOGG, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, ADDING A NEW CHAPTER TO KELLOGG CITY CODE TO BE KNOWN AS THE "DEVELOPMENT IMPACT FEE ORDINANCE" TO ALLOW DEVELOPMENT IMPACT FEES, ESTABLISHING SUCH FEES, AND MORE PARTICULARLY SETTING FORTH THE TITLE AND PURPOSE AND PRESCRIBING THE PROCEDURES FOR CARRYING OUT THE PURPOSE HEREOF; ATTACHING AND INCORPORATING THE "CITY OF KELLOGG CAPITAL IMPROVEMENT PLAN AND DEVELOPMENT IMPACT FEE REPORT" ACCEPTED BY THE KELLOGG CITY COUNCIL ON FEBRUARY 12, 2020, AS **APPENDIX "A"** HERETO; PROVIDING FOR SEVERABILITY; PROVIDING REPEAL OF ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, after a public hearing by the City Council to consider a study entitled, "City of Kellogg Capital Improvement Plan and Development Impact Fee Report," accepted by the Kellogg City Council on February 12, 2020, hereinafter referred to in this Ordinance as "Report," the City Council has made and does hereby make the following findings, to wit:

1. The City is responsible for and committed to the provision of public facilities and services at levels necessary to cure any existing public service deficiencies in already developed areas;
2. Such facilities and service levels shall be provided by the City utilizing funds allocated via the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein;
3. New residential and nonresidential development, however, will causes and impose increased and excessive demands on existing City public facilities and services including, without limitations, law enforcement, parks, and sewer collection that would not otherwise be necessary;
4. On February 12, 2020, the City Council considered and accepted the findings contained in the "City of Kellogg Capital Improvement Plan and Development Impact Fee Report," which identifies land use projections, public facilities analysis, and the methodology for the determination of an impact fee for Parks & Recreation, Public Safety, and Sewer Collection and that these findings are incorporated herein by reference;
5. The land use projections as contained in the "Report" are based on the City's existing Comprehensive Plan;
6. The land use projections as contained in the "Report" indicate that such development will continue and will place ever increasing demands on the City to provide necessary public facilities;
7. To the extent that new development places demands on public facility infrastructure, those demands should be satisfied by shifting the responsibility for financing the

provision of such facilities from the public at large to the developments actually creating the demands;

8. The amount of the impact fee to be imposed shall be determined by the cost of the additional public facilities needed to support such development;
9. The City Council, after careful consideration of the matter, hereby finds and declares that an impact fee imposed upon residential and/or nonresidential development to finance parks & recreation, public safety, and sewer collection, the demand for which is created by such development is in the best interest of the general welfare of the City and its residents, is equitable, does not impose an unfair burden on such development by forcing developers and builders to pay more than their fair share or proportionate share of the cost and deems it advisable to adopt this ordinance as hereinafter set forth; and
10. There is a reasonable relationship between the amount of the impact fee and the cost of public facilities attributable to the development upon which the fee will be imposed because the fee is based only on the cost of providing the facilities necessary to serve the new development as discussed in the "Report."

WHEREAS, it is deemed by the Mayor and City Council to be for the interests of the City of Kellogg, Idaho, that said Ordinance be adopted.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Kellogg (the "City") that a new Title, designated as Title 14, be and is hereby added to the City's municipal code, to read as follows:

**Section 1.** The Kellogg City Code shall add a new Title 14 as follows:

#### **CHAPTER 1: TITLE, PURPOSE AND DEFINITIONS**

14-1-1: TITLE AND PURPOSE: The provisions of this Ordinance shall be known as the "City of Kellogg Development Impact Fee Ordinance." The purpose of these regulations is to prescribe the procedure whereby developers of land shall pay an impact fee as set forth in this Ordinance for the purpose of providing the public facilities and system improvements needed to serve future residents and users of such development. It is further the purpose of this Ordinance to:

1. Ensure that adequate facilities are available to serve new growth and development;
2. Promote orderly growth and development by establishing uniform standards by which the City may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;
3. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements;
4. Collect and expend development impact fees pursuant to the enabling powers granted by the provision of the Idaho Development Impact Fee Act, Title 67, Chapter 82, Idaho Code;
5. Provide the legal and procedural basis for the implementation of development impact fees within the City and/or the Area of City Impact; and
6. Ensure that any capital improvement funded wholly or in part with impact fee revenue shall first be included in an approved capital improvements plan that lists the capital improvements that may be funded with impact fee revenues as well as the estimated costs and timing for each improvement.

14-1-2: DEFINITIONS: As used in this Title, the following words and terms shall have the following meanings, unless another meaning is plainly intended:

**BUILDING PERMIT:** The permit required for new construction and additions pursuant to Section 4-1-3 of the Municipal Code.

**CAPITAL IMPROVEMENTS:** Improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility, or service improvement.

**CAPITAL IMPROVEMENTS PLAN:** A plan adopted and amended pursuant to the provision of the Development Impact Fee Act, Idaho Code 67-8208 that identifies capital improvements for which development impact fees may be used as a funding source. The capital improvements plan is included as a part of the Development Impact Fee Report.

**CITY:** The City of Kellogg, a municipal corporation duly organized pursuant to the laws of the State of Idaho.

**DEVELOPMENT:** Any man-made change to improved or unimproved real property, the use of any principal structure or land, or any other activity that requires issuance of a building permit, or manufactured/mobile home permit, which creates additional demand and need for public facilities.

**DEVELOPMENT APPROVAL:** Any written duly authorized document from the City which authorizes the commencement of a development.

**DEVELOPMENT IMPACT FEE:** A payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. This term is also referred to as an impact fee in this Ordinance. The term does not include the following:

- a. A charge or fee to pay the administrative, plan review or inspection cost associated with permits required for development;
- b. Connection or hookup charges;
- c. Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or
- d. Amounts collected from a developer in a transaction in which the City has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to Section 67-8209(3), Idaho Code, for credit or reimbursement.

**DEVELOPMENT REQUIREMENT:** A requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

**EXTRAORDINARY COSTS:** Those costs incurred as a result of an extraordinary impact.

**EXTRAORDINARY IMPACT:** An impact which is reasonably determined by the City to:

- a. Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Section 67-8214(2), Idaho Code;
- b. Result in the need for system improvements which are not identified in the Capital Improvements Plan; and
- c. Have an impact which results in a lower than acceptable level of service.

**FEE PAYER:** That person who pays or is required to pay a development impact fee.

**GROSS FLOOR AREA:** The sum of the areas of the several floors of the building or structure, including areas used for human occupancy or required for the conduct of the business or use, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics when not used for human occupancy, nor any floor space in an accessory building, carport, or the main building intended or designed for the parking of motor vehicles in order to

meet any City parking requirement nor nonresidential facilities; arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

IMPACT FEE: See Development Impact Fee.

LAND USE ASSUMPTIONS: A description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

LEVEL OF SERVICE: A measure of the relationship between service capacity and service demand for public facilities.

MANUFACTURED/MOBILE HOME: A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, *et seq.*

MODULAR BUILDING: Any building or building component, other than a manufactured/mobile home, which is constructed according to standards contained in the International Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

PRESENT VALUE: The total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

PROJECT: A particular development on an identified parcel of land.

PROJECT IMPROVEMENTS: In contrast to system improvements, project improvements are site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and the convenience of the occupants or users of the project.

PROPORTIONATE SHARE: That portion of the cost of system improvements determined pursuant to Section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project.

PUBLIC FACILITIES: Means those types of improvements described in Idaho Code 50-1703, including but not limited to the following:

- a. Water supply production, treatment, storage, and distribution facilities;
- b. Wastewater collection, treatment and disposal facilities;
- c. Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;
- d. Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
- e. Parks, open space and recreation areas, and related capital improvements; and
- f. Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

RECREATIONAL VEHICLE: A vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

SERVICE UNIT: A standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally

accepted engineering or planning standards for a particular category of capital improvements.

**SITE DEVELOPMENT PERMIT:** The permit required by the City Building Department for construction, placement, and installation of, and additions to modular structures and manufactured/mobile homes.

**SYSTEM IMPROVEMENTS:** In contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area including, without limitation, the type of improvements described in Section 50-1703, Idaho Code.

**SYSTEM IMPROVEMENTS COSTS:** Costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in Section 50-1702(h), Idaho Code, to provide additional public facilities needed to service new growth and development. For clarification, system improvement costs do not include:

- a. Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;
- b. Repair, operation or maintenance of existing or new capital improvements;
- c. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- d. Administrative and operating costs of the City unless such costs are attributable to development of the capital improvements plan, as provided in Idaho Code 67-8208; or
- e. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the City to finance capital improvements identified in the capital improvements plan.

**UNIT(S) OF DEVELOPMENT:** A quantifiable increment of development activity measured in terms of dwelling units, or other appropriate measurements contained in the impact fee schedule incorporated in the "Report."

## **CHAPTER 2: APPLICATION**

### **14-2-1: APPLICATION:**

- A. The provisions of this Ordinance shall apply uniformly to all those who benefit from new growth and development except as provided below.
- B. The provisions of this Ordinance shall not apply to the following:
  1. Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
  2. Remodeling or repairing a structure which does not increase the number of service units;
  3. Replacing a residential unit, including a modular building or manufactured/mobile home, with another residential unit on the same lot, provided that the number of service units does not increase;
  4. Placing a temporary construction trailer or office on a lot;
  5. Constructing an addition on a residential structure which does not increase the number of service units;
  6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements; or

7. Upon demonstration by fee payer by documentation such as utility bills and tax records, to the installation of a modular building, manufactured/mobile home or recreational vehicle on that same lot or space for which a development impact fee has been paid previously, and as long as there is no increase in service units.
  8. Construction or development by the city and by political subdivisions that are classified as taxing districts pursuant to Idaho Code Section 63-201, or its successor, shall be exempt from payment of the development impact fees provided for herein.
- C. An exemption must be claimed by the fee payer upon application for a building permit. Any exemption not so claimed shall be deemed waived by the fee payer. Applications for exemption shall be submitted to and determined by the Building Official, or his or her duly designated agent, within ninety (90) days. Appeals of the Building Official's, or his or her duly designated agent, determination shall be made under the provisions of Chapter X of this Ordinance entitled "Appeals."

### **CHAPTER 3: COLLECTION OF IMPACT FEE**

#### **14-3-1: COLLECTION OF IMPACT FEE:**

- A. The development impact fee shall be paid and collected at the time of issuance of a building permit, a site development permit, or a manufactured/mobile home installation permit.
- B. No building permit or other equivalent City approval shall be issued for development as herein defined unless the impact fee is paid pursuant to this Ordinance.
- C. A manufactured/mobile home unit may not locate on a manufactured/mobile home site unless the impact fee is paid pursuant to this Ordinance or has been paid on a previous manufactured/mobile home unit on the same site.
- D. In the event payment is dishonored, the City shall have all lawful remedies including but not necessarily limited to the withholding of utility services, the imposition of reasonable interest and penalties, the imposition of liens pursuant to Chapter 5, Title 45, Idaho Code, the withholding of other City approvals required for the development of other properties owned by the fee payor, and the issuance of "stop work" orders, and the revocation or suspension of the building permit.

### **CHAPTER 4: CAPITAL/SYSTEM IMPROVEMENT PROJECTS**

14-4-1: CAPITAL/SYSTEM IMPROVEMENT PROJECTS: The capital/system improvement projects to be financed by the impact fee are those listed in the "Report," incorporated herein by reference along with all footnotes, exhibits, appendices, and other attachments referenced.

### **CHAPTER 5: CALCULATION OF IMPACT FEE**

#### **14-5-1: CALCULATION OF IMPACT FEE:**

- A. The City shall calculate the amount of the impact fee due for each building permit, site development permit, and manufactured/mobile home installation permit by the procedure set forth in the "Report" within thirty (30) days of submittal of complete permit plans for residential development and within sixty (60) days of submittal of complete permit plans for commercial development.
- B. The calculation of a development impact fee shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.
- C. A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in this Ordinance and in the "Report" that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

- D. If the development for which a building permit, site development permit, or manufactured/mobile home installation permit, is sought contains a mix of uses, the impact fee will be calculated for each type of development.
- E. Prior to making an application for a building permit, site development permit, manufactured/mobile home installation permit, a prospective applicant may request in writing a written certification of the development impact fee schedule or individual assessment for a particular project which shall establish the development fee for a period of one (1) year from the date of certification. The certification shall include an expansion of facilities considered under Section 67-8207, Idaho Code. The certification shall specify the system improvement(s) for which the impact fee is intended to be used.
- F. Individual assessment of impact fees is permitted in situations where the fee payer can demonstrate by clear and convincing evidence that the established impact fee is inappropriate.
1. Individual assessments of development impact fees may be made by application to the Building Official, or his or her duly designated agent, prior to receiving building permits, site development permits, manufactured/mobile home installation permits, or other necessary approvals from the City. The Building Official, or his or her duly designated agent, shall evaluate such individual assessments under the guidelines provided for in Section F(4) of this Chapter. If the guidelines are met, the individual assessment shall be approved by the Building Official, or his or her designated agent, and forwarded to the City Council within thirty (30) days of receiving such application.
  2. Late applications for individual assessments may be submitted within thirty (30) days after the receipt of a building permit only if the fee payer makes a showing that the facts supporting such application were not known or discoverable prior to receipt of a building permit and that undue hardship would result if said application is not considered.
  3. The Building Official, or his or her duly designated agent, shall render a written decision regarding the individual assessment and forward it to the City Council within thirty (30) days of the date a complete application is submitted. The decision of the Building Official, or his or her duly designated agent, shall establish the impact fee for the project in question for a period of one (1) year from the date said decision becomes final.
  4. The Building Official, or his or her duly designated agent, shall evaluate an application for individual assessment and may approve the same if fee payer has shown by clear and convincing evidence that the established impact fee is inappropriate and that the following facts and conditions exist:
    - a. Exceptional or extraordinary circumstances or conditions apply to the development that do not apply generally to other properties in the vicinity of the development.
    - b. An individual assessment is necessary for the reasonable and acceptable development of the property.
    - c. The approval of the individual assessment will not be materially detrimental to the public welfare or injurious to property in the vicinity in which the development is located.
    - d. The approval of the individual assessment will not adversely affect the capital improvement plan for the City.
  5. Appeals of the Building Official's, or his or her duly designated agent's, decision regarding determination of individual assessment shall be made to the City Council by the filing of an appeal with the City Clerk within thirty (30) days of the date of mailing, faxing, or personal delivery of written notice of the decision of the Building Official, or his or her duly designated agent. Final determination regarding individual assessments shall be made by the City Council.
  6. The impact fees and trip generation rates (as determined by the latest edition of the Institute of Traffic Engineers trip generation manual) are set forth in the "Report." The

City Council may set forth impact fees and trip generation rates by resolution and modify the same by resolution as allowed by law.

## **CHAPTER 6: GENERAL METHODOLOGY FOR CALCULATION**

### **14-6-1: GENERAL METHODOLOGY FOR CALCULATION**

- A. The amount of the impact fee shall be calculated using the methodology contained in the "Report."
- B. A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with Section 67-8207, Idaho Code. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.
- C. A developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs, except as provided in Section 67-8214(3), Idaho Code. The schedule of development impact fees for various land users per unit of development shall be as set forth in the "Report."
- D. Proportionate Share Determination:
  1. All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the City in the provision of system improvements to serve the new development. The proportionate share is the costs attributable to the new development after the City considers the following:
    - a. Any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements;
    - b. Payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes which are dedicated for system improvements for which development impact fees would otherwise be imposed; and
    - c. All other available sources of funding such system improvements.
  2. In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the City:
    - a. The cost of existing system improvements within the service area or areas;
    - b. The means by which existing system improvements have been financed;
    - c. The extent to which the new development will contribute to the cost of system improvements through taxation, assessments, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions;
    - d. The extent to which the new development is required to contribute to the cost of existing system improvements in the future;
    - e. The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;
    - f. Extraordinary costs, if any, incurred in serving the new development;
    - g. The time and price differential inherent in a fair comparison of fees paid at different times; and
    - h. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The City shall develop a plan for alternative sources of revenue, which shall include but not necessarily be limited to plans generated during the City's annual budget process, lobbying efforts, tax increment financing, implementation of user fees and various forms of utilities.

## **CHAPTER 7: ADMINISTRATION OF IMPACT FEE**

### **14-7-1: ADMINISTRATION OF IMPACT FEE:**

- A. Upon receipt of impact fees, the City Clerk, or her or his duly designated agent, shall be responsible for placement of such funds into separate accounts as hereinafter specified. All such funds shall be deposited in interest-bearing accounts, within the Capital Projects Fund, in a bank authorized to receive deposits of city funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.
- B. The City Clerk, or her or his duly designated agent, shall establish separate accounts and maintain records for each such account whereby impact fees collected can be segregated.
- C. The City Clerk, or her or his duly designated agent, shall maintain and keep accurate financial records for each such account for all monies received; that shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program; and that shall provide an annual accounting for each impact fee account showing the source and amount of all funds collected and the projects that were funded.
- D. Development impact fees shall only be spent for the category of system improvements for which the fees are collected and either within or for the benefit of the service area in which the project is located.
- E. Unless the City Council deems some other time is appropriate, the City shall at least once every five (5) years commencing from the date of the original adoption of the capital improvement plan, review the development potential of the area and update the capital improvements plan in accordance with the procedures set forth in Idaho Code Section 67-8206. The City may make any updates as are deemed necessary as a result of (1) development occurring in the prior year; (2) capital improvements actually constructed; (3) changing facility needs; (4) inflation; (5) revised cost estimates for capital improvements; (6) changes in the availability of other funding projects; and (7) such other factors as may be relevant.
- F. The City shall annually adopt a capital budget.
- G. As part of its annual audit process, the City shall prepare an annual report describing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.
- H. All other requirements of Idaho Code 67-8210, regarding earmarking and expenditure of collected development impact fees, shall apply.

## **CHAPTER 8: CREDITS AND REIMBURSEMENT**

### **14-8-1: CREDITS AND REIMBURSEMENT:**

- A. In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of system improvements or contribution or dedication of land or money required by the City from a developer for system improvements of the category for which the development impact fee is being collected. Credit or reimbursement shall not be given for project improvements.
- B. If a developer is required to construct, fund or contribute system improvements in excess of the development project's proportionate share of system improvement costs, the developer shall receive a credit on future impact fees or be reimbursed at the developer's choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer(s) or fee payer.
- C. If credit or reimbursement is due to the developer pursuant to this section, the City shall enter into a written agreement, with the fee payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

- D. No credits shall be given for the construction of local on-site facilities, structures, improvements, or other project improvements required by zoning, subdivision, or other city regulations unless the improvement is identified in the "Report" as a system improvement.
- E. Any person requesting such credit or reimbursement shall submit their request in writing on a form provided by the City and present documentation of costs or payments for facilities to the City Clerk, or her or his duly designated agent, prior to issuance of a building permit, site development permit, or manufactured/mobile home installation permit. The determination shall be made no more than forty-five (45) days after complete documentation is submitted to the City Clerk, or her or his duly designated agent. Any appeal from such a determination by the City Clerk, or her or his duly designated agent, shall be pursuant to Chapter X of this Ordinance.

## **CHAPTER 9: REFUNDS**

### **14-9-1: REFUNDS:**

- A. The current owner or contract purchaser of property on which an impact fee has been paid may request a refund of such fee if:
  - 1. Service is available but never provided;
  - 2. The project for which a building permit has been issued has been lawfully altered resulting in a decrease in the amount of the impact fee due; or
  - 3. The City, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to Section 67-8210(4) Idaho Code.
  - 4. A building permit or permit for installation of a manufactured/mobile home is denied or abandoned.
- B. The request for refund must be filed in writing and submitted to the Building Official, or his or her duly designated agent, on a form provided by the City for such purpose. The Owner shall provide such documentation as the Building Official, or his or her duly designated agent, may require to prove such satisfaction, reconveyance, or releases from contract sellers, mortgagees, lienholders, and/or others having an interest in the real property for which an impact fees has been paid.
- C. A request for refund must be filed within the time allowed by law.
- D. Within ninety (90) days of the date of receipt of a request for refund, the Building Official, or his or her duly designated agent, must provide the owner, in writing, with a decision on the refund request including the reasons for the decision. If a right to refund exists, the City is required to send a refund to the owner of record within ninety (90) days after it is determined that a refund is due. A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in Section 28-22-104, Idaho Code.
- E. The owner may appeal the determination of the Building Official, or his or her duly designated agent, to the City Council pursuant to the provisions in Chapter X of this Ordinance.

## **CHAPTER 10: APPEALS**

### **14-10-1: APPEALS:**

- A. A developer or fee payer may appeal the written determination of the applicability and amount of the development impact fee, or refund, or any discretionary action or inaction by or on behalf of the City to the City Council.
- B. The developer or fee payer must file a notice of appeal to the City Council with the City Clerk within thirty (30) days following the written determination, discretionary

action or inaction. When filing an appeal, the fee payer shall submit a letter providing a full explanation of the request, the reason for appeal, as well as all supporting documentation.

- C. The filing of an appeal shall not stay required payment of the impact fee, however, a fee payer can pay a development impact fee under protest in order to obtain development approval or building permit.
- D. Upon voluntary agreement by the fee payer and the City, any disagreement related to the impact fee for the proposed development may be mediated by a qualified independent party.
  - 1. Mediation may take place at any time during the appeals process and participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this Ordinance.
  - 2. Mediation costs shall be shared equally by the fee payer and the City.

## **CHAPTER 11: EXTRAORDINARY IMPACTS**

### **14-11-1: EXTRAORDINARY IMPACTS:**

In determining the proportionate share of the cost of system improvements to be paid by the developer, the Building Official, or his or her duly designated agent, shall consider whether any extraordinary costs will be incurred in serving the development based upon an extraordinary impact as defined in Chapter I of this Ordinance. This determination shall be made prior to issuance of any permit for development and shall be paid prior to any such issuance except as may be provided pursuant to a private agreement between the parties as authorized by Idaho Code Section 67-8214.

If the Building Official, or his or her duly designated agent, determines that the development will result in an extraordinary impact, it shall advise the fee payer in writing what the extraordinary impact is, the reason for the extraordinary impact, and the estimated costs to be incurred as a result of the extraordinary impact.

Nothing in this Ordinance shall obligate the City to approve any development which results in extraordinary impact.

The fee payer may appeal the determination of any extraordinary impact or the amount of extraordinary costs incurred in writing by filing of appeal to the City Council with the City Clerk pursuant to the terms set forth in Chapter X, entitled "Appeals." When filing an appeal, the fee payer shall submit a letter providing the reason for the appeal along with supporting documentation. The City Council shall consider the appeal and make a final determination within ninety (90) days of receipt of the written appeal.

## **CHAPTER 12: DEVELOPMENT IMPACT FEE REPORT**

14-12-1: DEVELOPMENT IMPACT FEE REPORT: Addendum "A" entitled "Development Impact Fee Report" accepted by the City Council on February 12, 2020, along with all footnotes, exhibits, appendices, and other attachments referenced therein, are by this reference incorporated herein as if set forth fully. A description of acceptable levels of service for system improvements are described in the "Report."

## **CHAPTER 13: BONDING**

14-13-1: BONDING: Funds pledged toward retirement of bonds, revenue certificated, or other obligations of indebtedness for such projects may include impact fees and other city revenues as may be allocated by the City Council.

## **CHAPTER 14: EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT**

14-14-1: EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT: This Ordinance shall not affect, in any manner, the permissible use of

property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

## **CHAPTER 15: OTHER POWERS AND RIGHTS NOT AFFECTED**

### **14-15-1: OTHER POWERS AND RIGHTS NOT AFFECTED:**

- A. Nothing in this Ordinance shall prevent the City from requiring a developer to construct reasonable project improvements in conjunction with a development project.
- B. Nothing in is Ordinance shall be construed to prevent or prohibit private agreements between property owners or developers, the Idaho Transportation Department, the City, and other governmental entities in regard to construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer, including interproject transfers of credits or providing for reimbursement for project improvements which are used or shared by more than one development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction of the Idaho Transportation Department, then the agreement shall include a provision for the allocation of impact fees collected from the developer for the improvement of the public facility by the Idaho Transportation Department.
- C. Nothing in this Ordinance shall obligate the City to approve development which results in an extraordinary impact. Extraordinary impacts shall be determined and processed pursuant to Chapter XI of this Ordinance.
- D. Nothing in this Ordinance shall obligate the City to approve a development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee ordinance. To this end, the City may impose a development impact fee for system improvement costs incurred subsequent to adoption of the ordinance to the extent that new growth and development will be served by the system improvements.
- E. Nothing in this Ordinance shall be construed to create any additional right to develop real property or diminish the power of the City in regulating the orderly development of real property.
- F. Nothing in this Ordinance shall limit the use by the City of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.
- G. Nothing herein shall restrict or diminish the power of the City to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a developer or owner, or to impose reasonable conditions thereon, including the recovery of project or system improvement costs required as a result of such voluntary annexation.

**Section 2.** This ordinance is hereby declared to be severable. Should any portion of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

**Section 3.** All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**Section 4.** This ordinance shall be effective upon its passage and publication as provided by law.

ENACTED by the City Council as an Ordinance of the City of Kellogg on the 12th day of February, 2020.

PASSED under suspension of the rules upon which a roll call vote was taken and duly enacted an Ordinance of the City of Kellogg, Shoshone County, Idaho at a convened meeting of the City of Kellogg City Council and APPROVED by the Mayor on the 12th day of February, 2020.

CITY OF KELLOGG

By: \_\_\_\_\_  
Mac Pooler, Mayor

ATTEST:

\_\_\_\_\_  
Nila Jurkovich, City Clerk

It was moved by Councilmember Delcamp and seconded by Councilmember Moody to pass Ordinance #607 under suspension of the rules. A roll call vote of the Council resulted as follows:

Councilmember Norris-Aye  
Councilmember Douglas-Aye  
Councilmember Mercado-Aye

Councilmember Moody-Aye  
Councilmember Armstrong-Aye  
Councilmember Delcamp-Aye

Motion carried.

It was moved by Councilmember Douglas and seconded by Councilmember Delcamp to publish Ordinance #607 by summary written and approved by the City's attorney.

Motion carried.

Policy & Application Form for Restaurant/Tavern Outside Seating with serving of Alcohol

This topic was previously discussed at the Council Meetings in August and September 2019. At that time, the Council requested the policy and application be drafted. The Chief of Police and the City Clerk prepared the documents that are before the Council this evening.

Councilmember Moody inquired on the annual fee amount. The fee was the same amount that the City of Coeur d'Alene used, however the policy and the fee can be changed to whatever the Council wishes it to be. A hearing will be required to set the new fee.

It was moved by Councilmember Moody and seconded by Councilmember Douglas to approve the policy and application form with the proposed \$125 annual fee, as submitted. Motion carried.

City Clerk/Treasurer Nila Jurkovich will publish a notice for hearing for the March 11, 2020 Council meeting.

Fair Housing Proclamation

FAIR HOUSING MONTH PROCLAMATION

WHEREAS, April 2020 marks the 52nd<sup>1</sup> anniversary of the passage of Title VIII of the Civil Rights Act of 1968, commonly known as the Federal Fair Housing Act; and

WHEREAS, the Idaho Human Rights Commission Act has prohibited discrimination in housing since 1969; and

WHEREAS, equal opportunity for all-regardless of race, color, religion, sex, disability, familial status or national origin-is a fundamental goal of our nation, state and city; and

WHEREAS, equal access to housing is an important component of this goal-as fundamental as the right to equal education and employment; and

WHEREAS, housing is a critical component of family and community health and stability and

WHEREAS, housing choice impacts our children's access to education, our ability to seek and retain employment options, the cultural benefits we enjoy, the extent of our exposure to crime and drugs, and the quality of health care we receive in emergencies; and

WHEREAS, the laws of this nation and our state seek to ensure such equality of choice for all transactions involving housing; and

WHEREAS, ongoing education, outreach and monitoring are key to raising awareness of fair housing principles, practices, rights and responsibilities; and

WHEREAS, only through continued cooperation, commitment and support of all Idahoans can barriers to fair housing be removed;

NOW, THEREFORE, I, Mac Pooler, Mayor of City of Kellogg, do hereby proclaim April 2020 to be

#### **FAIR HOUSING MONTH**

In the City of Kellogg, Shoshone County, State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand at the City of Kellogg, Shoshone County in the State of Idaho, on this 12<sup>th</sup> day of February in the year of our Lord 2020.

Mac Pooler, Mayor

Nila Jurkovich,  
City Clerk

It was moved by Councilmember Douglas and seconded by Councilmember Delcamp to accept the Fair Housing Proclamation as submitted. Motion carried.

#### Limited English Proficiency Four Factor Analysis

Building Official Mark Magnus has been working with Nancy Mabile of Panhandle Area Council on the updated Limited English Proficiency Four Factor document. The Council has the final document before them.

It was moved by Councilmember Delcamp and seconded by Councilmember Douglas to authorize Mayor Pooler to execute the updated Limited English Proficiency Four Factor as submitted. Motion carried.

#### North Idaho Rev Up – Broadband Educational Portion of Program

The City met with Dorian Komberec, Panhandle Area Council to discuss the first training portion of a three part program. The City qualified for this training along with other cities in Shoshone County. There are no obligations from the cities, this will be educational workshops.

Councilmember Delcamp discussed the meetings the IT committee had two years ago trying to come up with a better internet solution. At that time the committee was working with Frontier. Their proposal was not something the City was able to commit to, due to the pricing. Councilmember Delcamp is prepared to have an IT meeting in the near future as there is a new company in town that is able to provide internet capabilities that are microwaved through the school location in town.

It was moved by Councilmember Delcamp and seconded by Councilmember Moody not to participate in the broadband portion of the three part educational program available to the City of Kellogg. Kellogg will continue with the other two parts of the North Idaho Rev Up program. Motion carried.

## ANNOUNCEMENTS AND REPORTS

### Mayor Pooler

There will be a special council meeting on February 26<sup>th</sup> to discuss the separation of the projects into the level of priority.

### Anna Moody

The library is proposing a Friends of the Library Foundation and they will be moving forward with their 501C3 status. By having this foundation available to the library, the Friends of the Library Foundation will be able to raise revenue to support the library. This is similar to the Cemetery Foundation that is set up to support the City's cemetery.

In meeting with administrative staff to see what duties are performed, her recent meeting was held with the City Clerk/Treasurer Nila Jurkovich. Nila had asked her employees to document what their duties consist of. These have been reviewed and Councilmember Moody was impressed that the employees did this. The front office employees are busy and are doing a great job. City Clerk Jurkovich thanked Councilmember Moody and will pass the information on to her staff.

### Ron Delcamp

Welcomed the Scout members and wished them the best with working towards the badge.

### Dennis Norris

Thanked the Scout members for attending the Council meeting.

There being no further business to come before the Council at this time, it was adjourned at 7:10 P.M. to meet at its regular time of March 11, 2020.

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Mac Pooler, Mayor

ATTEST:

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Nila Jurkovich, City Clerk/Treasurer