ORDINANCE NO. 2019-02

AN ORDINANCE OF IVINS CITY, UTAH, ADOPTING THE IVINS CITY WATER (CULINARY AND IRRIGATION) IMPACT FEE FACILITIES PLAN AND IMPACT FEE ANALYSIS; ENACTMENT OF WATER (CULINARY AND IRRIGATION) IMPACT FEES

WHEREAS, Ivins City (the "City") is a political subdivision of the State of Utah, authorized and organized under the provisions of Utah law; and

WHEREAS, the City has legal authority pursuant to Title 11, Chapter 36a of the Utah Code known as the "Impact Fee Act" (hereinafter "the Act") to impose development impact fees as a condition of development approval, which impact fees are used to defray capital infrastructure costs attributable to growth activity; and

WHEREAS, the City has historically assessed impact fees as a condition of development approval in order to appropriately assign capital infrastructure costs to development in an equitable and proportionate manner; and

WHEREAS, the City has reviewed and evaluated the City's Water (Culinary and Irrigation) System Service Area, and has determined that it is in the City's best interest to retain said Service Area for the purpose of imposing Water (Culinary and Irrigation) Impact Fees (See legend item "Culinary Water System Service Area" within Figure 1-1 entitled Ivins City Culinary Water Service Area of the 2019 Culinary Water Master Plan); and

WHEREAS, pursuant to the requirements of Sections 11-36a-301 and 11-36a-302 of the Act, the City has retained professional engineers (Bowen Collins & Associates) to prepare the Ivins City Culinary Water and Irrigation Master Plans, as well as the Water (Culinary and Irrigation) Impact Fee Facilities Plan attached hereto which has been properly certified pursuant to the requirements of Section 11-36a-306 of the Act; and

WHEREAS, pursuant to the requirements of Sections 11-36a-303 and 11-36a-304 of the Act, the City also retained Bowen Collins & Associates to prepare the attached written Water (Culinary and Irrigation) Impact Fee Analysis which has been properly certified pursuant to the requirements of Section 11-36a-306 of the Act; and

WHEREAS, the written Water (Culinary and Irrigation) Impact Fee Analysis also calculates for enactment proposed Water (Culinary and Irrigation) Impact Fees pursuant to the requirements of Section 11-36a-305 of the Act; and

WHEREAS, the City has given all required notices and copies of the Water (Culinary and Irrigation) Impact Fee Facilities Plan, Water (Culinary and Irrigation) Impact Fee Analysis and this Enactment have been made available to the public as required by the Act; and

WHEREAS, the required public hearing on the Water (Culinary and Irrigation) Impact Fee Facilities Plan, Water (Culinary and Irrigation) Impact Fee Analysis and the Water (Culinary and Irrigation) Impact Fee Enactment was held on February 7, 2019; and

WHEREAS, the Ivins City Council desires to hereby approve and adopt the Ivins City Water (Culinary and Irrigation) Impact Fee Facilities Plan and Water (Culinary and Irrigation) Impact Fee Analysis, and to formally enact the proposed Water (Culinary and Irrigation) Impact Fees pursuant the requirements of the Act;

NOW, THEREFORE, BE IT ORDAINED by the Ivins City Council as follows:

SECTION 1 PURPOSE.

This Water (Culinary and Irrigation) Impact Fee Enactment establishes the City's Water (Culinary and Irrigation) Impact Fee policies and procedures and is promulgated pursuant to the requirements of the Act. This Enactment establishes Impact Fees for Water (Culinary and Irrigation) facilities within the service area, describes certain capital improvements to be funded by impact fees, provides a schedule of impact fees for differing types of land-use development, and sets forth direction for adjusting and/or challenging said impact fees.

SECTION 2 DEFINITIONS.

Words and phrases that are defined in the Act shall have the same definition in this Impact Fee Ordinance.

SECTION 3 SERVICE AREA.

The Service Area for Water (Culinary and Irrigation) infrastructure within the City, for purposes of the Water (Culinary and Irrigation) Impact Fee Facilities Plan, shall be all areas within the boundaries of the legend item "Culinary Water System Service Area" as depicted in Figure 1-1 entitled Ivins City Culinary Water Service Area of the 2019 Culinary Water Master Plan. The City Council hereby approves and adopts the Service Area for imposing Water (Culinary and Irrigation) Impact Fees.

SECTION 4 IMPACT FEE FACILITIES PLAN.

1. Summary. Included within the Water (Culinary and Irrigation) Impact Fee Facilities Plan is a summary designed to be understood by a lay person. A copy of the Water (Culinary and Irrigation) Impact Fee Facilities Plan has been made available to the public as required by Section 11-36a-502 of the Act.
2. Plan Description. The Water (Culinary and Irrigation) Impact Fee Facilities Plan describes the public facilities required to serve development resulting from new development activity. The Water (Culinary and Irrigation) Impact Fee Facilities Plan has been prepared based on reasonable growth assumptions for the City and general demand characteristics of current and future users of the system. Further, the Water (Culinary and Irrigation) Impact Fee Facilities Plan identifies the impact on system improvements created by development activity and addresses existing and proposed levels of service.

3. Level of Service & Growth Demands. The Water (Culinary and Irrigation) Impact Fee Facilities Plan:

   (a) identifies the existing level of service;

   (b) establishes a proposed level of service;

   (c) identifies any excess capacity to accommodate future growth at the proposed level of service;

   (d) identifies demands placed upon existing public facilities by new development activity as the proposed level of service; and

   (e) identifies the means by which the City will meet those growth demands.

4. Consideration of Other Revenue Sources. In preparing the Water (Culinary and Irrigation) Impact Fee Facilities Plan, the City considered other applicable revenue sources to finance the impacts on system improvements, including: grants; bonds; interfund loans; and anticipated or accepted dedications of system improvements.

5. Adoption. The City Council hereby approves and adopts the Ivins City Water (Culinary and Irrigation) Impact Fee Facilities Plan attached hereto.

SECTION 5 WRITTEN IMPACT FEE ANALYSIS.

1. Summary. Included within the written Water (Culinary and Irrigation) Impact Fee Analysis is a summary that is designed to be understood by a lay person. A copy of the written Water (Culinary and Irrigation) Impact Fee Analysis has been made available to the public as required by Section 11-36a-504 of the Act.

2. Proportionate Share Analysis. Included in the Water (Culinary and Irrigation) Impact Fee Analysis is a proportionate share analysis which estimates the public facility improvements that are roughly proportionate and reasonably related to the service demands and needs of any development activity. In analyzing whether or not the proportionate share of the costs of public facilities are reasonably related to new development activity, the proportionate share analysis considered, as applicable:

   (a) the cost of each existing public facility that has excess capacity to serve the anticipated development resulting from the new development activity;

   (b) the cost of system improvements for each public facility;

   (c) other than impact fees, the manner of financing for each public facility, such as user charges, special assessments, bonded indebtedness, general taxes, or federal grants;

   (d) the relative extent to which development activity will contribute to financing the excess capacity of and system improvements for each existing public facility by such means as user charges, special assessments, or payment from the proceeds of general taxes;

   (e) the relative extent to which development activity will contribute to the cost of existing public facilities and system improvements in the future;

(f) the extent to which the development activity is entitled to a credit against impact fees because the development activity will dedicate system improvements or public facilities that will offset the demand for system improvements, inside or outside the proposed development;

(g) extraordinary costs, if any, in servicing the newly developed properties; and

(h) the time-price differential inherent in fair comparisons of amounts paid at different times.

4. Adoption. The City Council hereby approves and adopts the Water (Culinary and Irrigation) Impact Fee Analysis attached hereto.

SECTION 6 IMPACT FEE CALCULATIONS.

1. Elements. In calculating the Water (Culinary and Irrigation) Impact Fee, the City has included, to the extent applicable, realistic estimates for:

(a) costs of construction;

(b) the cost of acquiring land, improvements, materials, and fixtures;

(c) costs for planning, surveying, and engineering services provided for and directly related to the construction of system improvements; and

(d) debt service charges, if the City might use impact fees as a revenue stream to pay the principal and interest on bonds, notes, or other obligations issued to finance the cost of system improvements.

2. Maximum Supportable Impact Fees. The fee schedule included herein represents the maximum Impact Fees which the City may impose on development within the defined Ivins City Service Area and are based upon general demand characteristics and potential demand that can be created by each class of user.

WATER (CULINARY AND IRRIGATION) IMPACT FEES	
Maximum Allowable Impact Fee per Equivalent Residential Unit (ERU)	$3,331.85

Calculation of Non-Standard Impact Fee
Estimated Indoor Water Use / 670 gallons per day[1] *X Impact Fee per ERU = Impact Fee*

[1] Based on average water use per ERU for historical Ivins City records.

3. Adoption. The City Council hereby approves and adopts the Water (Culinary and Irrigation) Impact Fee Calculations contained in the attached Water (Culinary and Irrigation) Impact Fee Analysis.

4. Adjustments. The City may adjust the standard impact fee, at the time the fee is charged, to respond to unusual circumstances in specific cases or to ensure that impact fees are imposed fairly. The Impact Fee assessed to a particular development may also be adjusted should the developer supply sufficient written studies and/or data to the City showing a discrepancy between the fee being imposed and the actual impact on the system.

5. Developer Credits. A developer may receive a credit against or proportionate reimbursement of an impact fee if the developer dedicates land for a system improvement, builds and dedicates some or all of a system improvement, or dedicates a public facility that the City and the developer agree will reduce the need for a system improvement. A developer may also be allowed a credit against Impact Fees for any dedication of land for, improvement to, or new construction of, any system improvements provided by the developer if the facilities are system improvements, or are dedicated to the public and offset the need for an identified system improvement.

SECTION 7 IMPACT FEE PROCEEDS.

1. Accounting of Impact Fees. The City will establish a separate interest bearing ledger account for the impact fees collected pursuant to this Ordinance and will conform to the accounting requirements provided in Section 11-36a-601 of the Act. All interest earned on the collection of Water (Culinary and Irrigation) Impact Fees shall accrue to the benefit of the segregated account.

   (a) Reporting. At the end of each fiscal year, the City shall prepare a report on each fund or ledger account showing the source and amount of all monies collected, earned and received by the fund or ledger account and each expenditure from the fund or account. The City shall also produce a report that:

      (i) identifies impact fee funds by the year in which they were received, the project from which the funds were collected, the impact fee projects for which the funds were budgeted and the projected schedule for expenditures;

      (ii) is in a format developed by the state auditor;

      (iii) is certified by the City's Chief Financial Officer; and

      (iv) is transmitted annually to the state auditor.

   (b) Expenditure of Impact Fees. The City may expend impact fees only for a system improvement identified in the Impact Fee Facilities Plan and for the specific public facility type for which the fee was collected.

   (c) Time of Expenditure. The City shall expend or encumber the impact fees for a permissible use within six years of their receipt. For purposes of this calculation, the first funds received shall be deemed to be the first funds expended.

   (d) Extension of Time. The City may hold the fees for longer than six years if it identifies in writing;

      (i) an extraordinary and compelling reason why the fees should be held longer than six years; and

(ii) an absolute date by which the fees will be expended.

4. Refunds. The City shall refund any impact fee paid by a developer, plus interest earned, when:

   (i) the developer does not proceed with the Development Activity and files a written request for a refund;

   (ii) the fee has not been spent or encumbered; and

   (iii) no impact has resulted.

5. Additional Fees and Costs. The Impact Fees authorized herein are separate from and in addition to user fees and other charges lawfully imposed by the City and other fees and costs that may not be included as itemized component parts of the Impact Fee Schedule. In charging any such fees as a condition of development approval, the City recognizes that the fees must be a reasonable charge for the service provided.

6. Fees Effective at Time of Payment. Unless the City is otherwise bound by a contractual requirement, the Impact Fee shall be determined from the fee schedule in effect at the time of payment in accordance with the provisions of Section 6 below.

7. Imposition of Additional Fee or Refund After Development Activity. Should any developer undertake Development Activities such that the ultimate density or other impact of the Development Activity is not revealed to the City, either through inadvertence, neglect, a change in plans, or any other cause whatsoever, and/or the Impact Fee is not initially charged against all units or the total density within the development, the City shall be entitled to charge an additional Impact Fee to the developer or other appropriate person covering the density for which an Impact Fee was not previously paid.

SECTION 8 CHALLENGES

1. Standing. A person or entity residing in or owning property within the service area, or an organization, association, or a corporation representing the interests of persons or entities owning property within the service area, has standing to file a declaratory judgment action challenging the validity of an impact fee.

2. Generally. A person or an entity required to pay an impact fee who believes the impact fee does not meet the requirements of law may seek the remedies set forth in Section 11-36a-701 and 11-36a-703 of the Act by following the procedures set forth therein for each available remedy.

3. Time Limitations. A person or an entity that initiates a challenge under Subsection 11-36a-701(3)(a) of the Act may not initiate that challenge unless it is initiated within the times set forth in section 11-36a-702(1) of the Act. The deadline to file an action in district court is tolled from the date that a challenge is filed using an administrative appeals procedure described in Section 11-36a-703 of the Act until 30 days after the day on which a final decision is rendered in the administrative appeals procedure.

4. Mediation. In addition to the methods of challenging an impact fee under Section 11-36a-701 of the Act, a specified public agency may require the City to

participate in mediation of any applicable impact fee. To require mediation, the specified public agency shall submit a written request for mediation to the City and may submit a request for mediation at any time, but no later than 30 days after the day on which an impact fee is paid. Upon the submission of a request for mediation, the City shall cooperate with the specified public agency to select a mediator and participate in the mediation process.

5. Arbitration. A person or entity intending to challenge an impact fee under Section 11-36a-703 of the Act shall file a written request for arbitration with the City within the time limitation described in Section 11-36a-702 of the Act for the applicable type of challenge and by following the procedures set forth in Section 11-36a-705 of the Act.

SECTION 9 MISCELLANEOUS

1. Severability. If any section, subsection, paragraph, clause or phrase of this Enactment shall be declared invalid for any reason, such decision shall not affect the remaining portions of this Enactment, which shall remain in full force and effect, and for this purpose, the provisions of this Enactment are declared to be severable.

2. Interpretation. This Enactment has been divided into sections, subsections, paragraphs and clauses for convenience only and the interpretation of this Enactment shall not be affected by such division or by any heading contained herein.

3. Effective Date. This Enactment shall become effective 90 days after the day on which it was approved.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS _____ DAY OF FEBRUARY, 2019 BY THE FOLLOWING VOTE:

	AYE	NAY	ABSTAIN	ABSENT
Dennis Mehr	_____	_____	_____	_____
Cheyne McDonald	_____	_____	_____	_____
Jenny Johnson	_____	_____	_____	_____
Miriah Elliott	_____	_____	_____	_____
Ron Densley	_____	_____	_____	_____

_____
Chris Hart, Mayor

ATTEST:

_____
Kari Jimenez, City Recorder