

Topic: Alternative Dispute Resolution
Resource Type: Regulations
State: Idaho
Jurisdiction Type: Municipality
Municipality: City of Boise
Year (*adopted, written, etc.*): 1994-2008
Community Type – applicable to: Urban; Suburban
Title: City of Boise Development Impact Fee Ordinance – Alternative Dispute Resolution Provision
Document Last Updated in Database: February 3, 2016

Abstract

A mediation option is provided as part of the planning and zoning public hearing process of the city in accordance with Section 67-6510 of the Idaho Code. The cost of the first mediation session is paid by the city; if additional meetings are necessary, the parties agree to fee division. Mediation may be requested by Boise City Planning and Zoning Commission, City Council, the applicant, or other affected person and is voluntary unless it is initiated by the City, in which case, one session is mandatory. Hearings associated with appeal and applications are tolled during the mediation process. § 4-12-05(F).

Resource

Boise City Code
Chapter 4
Chapter 4-12
DEVELOPMENT IMPACT FEE ORDINANCE

Section 4-12-05 DEVELOPMENT IMPACT FEE - STANDARDS AND PROCEDURES

The development impact fee reflects the need for capital improvements to public facilities created by new development. Any person requesting a building permit for development or who is otherwise subject to this chapter, shall pay the impact fee equal to the sum of impact fees reflected in the impact fee schedules set forth in the Boise City Code and determined pursuant to the following:

(A) The development impact fee shall not exceed a “proportionate share” of the costs incurred or the costs that will be incurred by the City in the provision of “system improvements” to serve the new development.

(B) The "proportionate share" is the cost attributable to the new development after consideration by the City of the following factors:

(1) Any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements;

(2) Payments reasonably anticipated to be made by or as a result of the 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;

(3) All other available sources of funding such system improvements.

(C) In determining the "proportionate share" of the cost of system improvements to be paid by the developer, the following additional factors shall be considered.

(1) The cost of existing system improvements within the service area;

(2) The means by which existing system improvements have been financed;

(3) The extent to which the new development will contribute to the cost of system improvements through taxation, assessments, or developer or landowner contributions;

(4) The extent to which the new development is required to contribute to the cost of existing system improvements in the future;

(5) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area;

(6) Extraordinary costs, if any, incurred in serving the new development;

(7) The time and price differential inherent in a fair comparison of impact fees paid at different times; and

(8) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation as set forth more specifically in the comprehensive plan as required by Idaho Code § 67-8207 (2) (h).

(D) After payment of development impact fees to the fee administrator or the execution of an agreement for payment of development impact fees, additional impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.

(E) To ensure collection of development impact fees the fee administrator may use the following means and methods:

(1) Additions to the impact fee for interest at the highest legally allowable rate as well as a penalty of five per cent (5%) for each thirty (30) day period payment is late under the terms of this chapter or the agreement between the fee payer and the City;

(2) Withholding the building permit until the impact fee is paid;

(3) Withholding utility services until the impact fee is paid; and

(4) Imposition of liens for failure to timely pay the impact fee following the procedures set forth in Idaho Code title 45, chapter 5.

(F) A fee payer may request the City enter into mediation by a qualified independent party to address a disagreement related to the impact fee for a proposed development. If both parties agree to mediation, costs for the independent mediation service shall be shared equally by the fee payer and the City. Mediation may take place at any time during an appeals process and does not preclude a payer from pursuing other remedies as provided for in this ordinance.

(Repealed and Replaced, Ord. 6647, 03/11/2008, Ord. No. 5532, Enacted, 04/12/94; Ord. No. 5766, Amended, 11/19/96)

Chapter 11-03

GENERAL PROCEDURES

Section 11-03-07 APPEALS; FORM; CONTENT:

Section 11-03-07.05: Quasi-judicial Appeals to City Council of Decisions of Review Bodies: the Planning and Zoning Commission, Hearing Examiner and Historic Preservation Commission.

(H) Mediation. Nothing in this chapter shall affect the rights of any person regarding mediation of land use disputes as provided in Section 10-08-10 of the Boise City Code.

Chapter 11-08

CITY COUNCIL APPLICATION REQUIREMENTS AND PROCEDURES

Section 11-08-09 MEDIATION

In accordance with Section 67-6510 of the Idaho Code, a mediation option is hereby provided for as part of the planning and zoning public hearing process of the City of Boise. Any zoning, development or special permit application authorized by Title 11 of the Boise City Code shall be subject to this mediation option.

Section 11-08-10.01 Written Request Required

Mediation may be requested by the Boise City Planning and Zoning Commission, City Council, the Applicant or other Affected Person by submission of a written request for mediation. Such written request shall be submitted to the Planning Director or his assigned staff in the Planning Division of the Planning and Development Services Department. The written request shall include the name, address, and telephone number of the petitioner and a clear statement of the concerns and issues with the application and the objectives the petitioner hopes to accomplish through mediation.

Section 11-08-10.02 Notification of Willingness to Participate

Upon receipt of a mediation request, the Planning Director shall forward the request to the Applicant or Affected Persons on the other side of the issue. These parties shall be notified that they have seven (7) calendar days to notify the City as to whether or not they will participate in mediation. The Planning Director shall determine the appropriate parties to notify based in part on who submitted the request for mediation.

Section 11-08-10.03 Timing of Mediation Request

Mediation may be requested and may occur at any point during the decision making process or after a final decision has been made. If a resolution is agreed to by the participating parties after a final decision has been made, the revisions resulting from such resolution shall be the subject of a new public hearing before the decision-making body.

Section 11-08-10.04 Requirements for Participation

The Applicant and other Affected Persons may decline to participate in mediation requested by another party, except that the parties shall participate in at least one (1) mediation session if mediation was requested by the Planning & Zoning Commission or City Council, or if directed to do so by the City Council. If the Applicant or Affected Person declines to participate in mediation and the Council declines to direct mediation, the mediation process and the tolling of time limits are ended.

Section 11-08-10.05 Expenses of Mediation

The Council shall select and pay the expenses of the Mediator for the first mediation session. Compensation for the Mediator for any additional sessions beyond the initial session shall be agreed to by all participating parties prior to the scheduling of such sessions. The Council shall approve the hiring of the Mediator and a maximum amount of compensation prior to the first mediation session.

Section 11-08-10.06 Tolling of Time Limits

Once mediation is agreed to or is directed by the Council, the time limits related to hearings, acting upon applications, and appealing decisions are tolled (i.e., delayed). Such tolling of time shall cease when:

(1) The applicant or other Affected Person(s), following participation in at least one mediation session, provides written notice to the other parties, that no further participation is desired. In the case of multiple participating parties on one side of the issue, notice by only one party that participation is being discontinued, shall not discontinue mediation for the remaining parties; or

(2) No mediation sessions scheduled for a period of twenty-eight (28) days from the date the request for mediation is actually received by the City.

Section 11-08-10.07 Mediation Not Part of the Application Record

The mediation process shall not be part of the official application or project record, and shall not be disclosed or used in any subsequent City hearings on the application or appeal of a decision on such application, except that any resolution resulting from mediation shall be subject to a new public hearing.

Section 11-08-10.08 Definitions of Terms

AFFECTED PERSON:

The Applicant or any member of the public who has provided written or oral testimony in opposition to an application submitted to the City of Boise.

MEDIATOR:

An attorney, land use consultant, or other professional person with experience in land use issues and mediation, retained by the City of Boise to conduct the mediation process.

PARTICIPATING PARTIES:

Those individuals who have agreed or have been directed to participate in the mediation process, including the Applicant and affected persons.

PETITIONER(S): The person or persons who submit the request for mediation to the City of Boise. This may be the Planning and Zoning Commission, City Council, Applicant or other Affected Person.

(6331, Renumbered, 07/13/2004; 6254, Added, 08/05/2003)