



## Legislation Text

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### *Department of Community Development*

**Reference:** Greater Brighton Fire Protection District IGA

**To:** Mayor Richard N. McLean and Members of City Council

**Through:** Holly Prather, AICP, Community Development Director

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### **PURPOSE**

The Greater Brighton Fire Protection District has sent the City of Brighton a proposed Inter-Governmental Agreement (IGA) for the purposes of imposing an impact fee under the recently enacted State statute. City staff would like to discuss staff's initial thoughts on the implementation of the statute and the draft IGA, and to seek policy direction from City Council at the August 22<sup>nd</sup> Study Session.

### **BACKGROUND**

In 2016 House Bill 16-1088 was passed by the Colorado Legislature, which allows a municipality or county to impose an impact fee to fund expenditures by a fire district on capital facilities needed to serve new development; imposition of the impact fee would be a condition of issuance of a development permit for the new development. The fire district is required to quantify the reasonable impacts of the proposed new development on existing capital facilities and establish the impact fee at a level no greater than necessary to defray the impacts directly related to the proposed development. The impact fee cannot be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.

Whether the impact fee will be imposed is at the sole discretion of the municipality.

The House Bill requires the municipality to confer with the fire district that will be providing services to the new development and the owner/developer of the development to assess and determine whether there should be an impact fee imposed to defray the impacts to the fire district.

If the municipality, in its sole discretion, elects to impose the impact fee to fund expenditures by the fire district directly related to the new development, then the municipality and the fire district enter into an intergovernmental agreement (IGA) defining the impact fee and the details of collection and remittance.

During the debate leading to the passage of House Bill 16-1088, fire districts lobbied the legislature by arguing that the mill levy that they already collect is only adequate to provide services to the existing population within their boundaries and that further funds are necessary to expand their operations to provide for the expanding population.

Very few cities have entered into IGA's with their respective fire districts; City Staff has reviewed approved materials from the Towns of Elizabeth and Monument, and an 'in process' agreement by the County of El Paso. In addition, City Staff has reached out to the other governmental entities in the Brighton Fire District's boundaries and they are on par with the City

of Brighton in their review and consideration of implementation of the statute; the consensus is that further analysis of the statute and any draft IGA is warranted.

#### **CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM**

Below are summaries of the applicable provisions of House Bill 16-1088:

*CRS 29-1-203* Grants the authority to cooperate or contract with one another (local governments and fire districts) to provide functions or services lawfully authorized to each or either of them (IGAs).

*CRS 29-20-103 (1.3)* Defines a “Fire and Emergency Service Provider”. The Greater Brighton Fire Protection District qualifies under this definition.

*CRS 29-20-104.5 (1)* Grants local governments (counties and statutory municipalities) broad impact fee authority enabling them to impose fees to fund expenditures incurred by the local government and/or a fire and emergency services provider on capital facilities needed to serve new development. Home rule municipalities are also authorized to collect impact fees by virtue of their constitutional home rule powers.

*CRS 29-20-104.5 (2)(a)* Requires the local government to quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee at a level no greater than necessary to defray such impacts directed related to the proposed new development.

*CRS 29-20-104.5 (2)(b)* Requires the local government to confer with the fire district and owner/developer of the new development to assess and determine whether there should be an impact fee imposed to defray the impacts, if any, to the fire district.

*CRS 29-20-104.5 (c)* Provides that if the local government, in its sole discretion, elects to impose an impact fee to fund the expenditures by the fire district for a capital facility, then the local government and the fire district must enter into an intergovernmental agreement to define the district impact fee, and the details of assessment, collection, and remittance.

#### **SUMMARY OF FINDINGS**

The Fire District has provided a draft IGA to the City which has been reviewed by City Staff, including the City Attorney; such examination has also included an analysis of the accompanying *Brighton Fire Rescue District Impact Fee Study* created by BBC Research & Consulting dated February 16, 2017 requisitioned by the Fire District to justify the fee rates (see attachments). Staff is appreciative of the opportunity to review the documents and speak directly to City Council on certain issues believed to be important considerations in determining the next steps. Below are some areas where staff finds it necessary to seek further clarification and or policy guidance from the City Council.

##### *City staff has concerns about:*

- The methodology used by the Fire District in determining the amount of the proposed impact fees.
- Agreeing to an IGA with the Fire District with the attached Fee Study as this may be interpreted as the City adopting and approving the methodology in the Fee Study. Staff finds this problematic as it is unsure of the fee calculations and analysis used for their justification.
- Collecting and remitting the fee itself. Staff is amenable to providing fee estimates to developers, but would require a process similar to School District 27J's where the City is only obtaining a receipt that the developer has paid the fee to the Fire District.
- The possibility of City residents paying a disproportionate impact fee to the fee being paid by unincorporated County residents.
- Not being able to directly relate the impact fees collected in Brighton to their use, as there must be a showing that the impact of new development is beyond what facilities and services the Fire District can currently provide.

##### *If the City decides to proceed with an IGA, the City staff recommends:*

- The definition of ‘capital facility’ be clarified and it be made clear where any capital equipment would be used, as the area served by the Fire District is larger than just the City Limits of Brighton.
- An effective date of January 1, 2018 specifically conditioned on all other local governmental jurisdictions, including Adams County, within the Fire District's boundary, having adopted an IGA with the same effective date.
- Requiring the Fire District to provide an updated fee study every three to five years instead of every seven years,

with staff's preference being three years.

- Requiring an annual report on what fees were collected and how the fees were used. This will provide the necessary transparency to assure that the Fire District's use of the fees is directly related to the new development where they were collected.
- Removing the provisions allowing developers to seek a waiver or to allow an in-kind contribution. Staff feels that this is contrary to the intent of the statute and challenges a consistent application of the impact fee assessments.
- Removing the linkage to the Consumer Price Index as there are currently no development impact fees with the City that utilize this method. Furthermore the development community desires predictably in their fees as these influence their pro formas and ability to obtain financing for development projects.

*City staff requests input from the Council on:*

- Whether the data and analysis used in the Fee Study to justify the calculation of the fees themselves need further review.
- Allowing a public comment period before City Council consideration, with the documents posted online, as the formal item at Council would not be a public hearing. This would allow residents, business, and the development community the opportunity to comment on the proposed increased cost to new development within the City Limits of Brighton.

### **STAFF RECOMMENDATION**

City staff recommends that City Council allow the staff to enter into further conversations with the Fire District regarding the viability of proceeding with the impact fees and, as applicable, comments on the Fire District's draft IGA based on the policy direction given to it by City Council at the Study Session on August 22<sup>nd</sup>; and to continue the communications with other jurisdictions served by the Brighton Fire District.

### **ATTACHMENTS**

- Fire District's Proposed IGA (Draft prior to City input)
- Fire District's Fee Study