

AGENDA ITEM SUMMARY

DATE: 9-22--08

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: 

SUBJECT: Proposed Referendum Ballot

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

In accordance with Hailey's Initiative and Referendum Ordinance, the Hailey City Council decided to summarize the referendum petitions which seek the repeal of Hailey's Development Impact Fee and Business License Ordinances. I am attaching proposed ballots and a letter outlining some issues with the proposed ballot for the Development Impact Fee referendum.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input checked="" type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	<input type="checkbox"/> _____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	<input type="checkbox"/> _____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	<input type="checkbox"/> _____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss issues raised about the proposed Development Impact Fee referendum and the summaries of the ballots. If acceptable, make a motion to approve the ballots for the November 4, 2008, election.

FOLLOW-UP REMARKS:

NED C. WILLIAMSON
ATTORNEY AT LAW
115 SECOND AVENUE SOUTH
HAILEY, IDAHO 83333
(208) 788-6688
FAX (208) 788-7901

September 19, 2008

Mayor Rick Davis
City Council Members
City of Hailey
115 S. Main Street, Ste. H
Hailey, Idaho 83333

Re: Proposed Referendum Ordinances Repealing Hailey's Development Impact Ordinance and Business License Ordinance

Dear Mayor and Council Members:

As directed at the last City Council meeting, I drafted ballots for the referendum measures which will be decided at the November 4, 2008, election. Based on the Idaho Supreme Court case of *City of Boise City v. Keep the Commandments Coalition*, 143 Idaho 254, 141 P.3d 1123 (2006), I do not believe it is appropriate to suggest raising legal challenges to the proposed referendums at this time. In the *Keep the Commandments* case, the Court held that a legal challenge to an initiative or referendum before an election was not appropriate based on the ripeness doctrine. Nonetheless, I feel compelled to express several legal issues with the proposed referendum of the Development Impact Fee Ordinance.

First, the Idaho Supreme Court has recognized that some legislative matters cannot be addressed by initiative or referendum. In *Gumprecht v. City of Coeur D' Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), the Court concluded that an initiative to create a zoning law was inconsistent with the comprehensive nature of the Local Land Use Planning Act ("LLUPA"), Idaho Code §§ 67-6501 *et seq.* Much like LLUPA, the Idaho Development Impact Fee Act is a comprehensive and detailed law which may leave no room for direct legislation through the initiative process. *Gumprecht*, at 618, 661 P.2d at 1217.

Second, the proposed referendum seeks a refund of fees by purporting to create legislation. It seems anomalous to repeal an ordinance by referendum, but then create legislation in the referendum. A referendum repeals laws, while an initiative adopts laws. In this case, the proposed referendum seeks to both repeal and adopt laws.

Third, the proposed referendum seeks interest provided for in Idaho Code § 28-22-104. The problem with this language is that Idaho Code § 28-22-104 establishes two interest rates, 12% (a pre-judgment rate) and variable rates which are effective for a one year period beginning July 1 of every year.

Hailey Mayor and City Council Members


September 19, 2008

Page 2

Lastly, there is a financial problem with the refund request. I have been told that the development impact fees have been paid by 26 individuals or entities for 37 projects and that the fees have not been spent on any capital project yet. The difficulty is that Hailey has not budgeted any of projected revenue to pay for the interest payment. Using the 12% interest rate, the interest due would be approximately \$15,000. Where ever this money came from, the bottom line is that general taxpayers will be partially funding the refund to a few individuals.

If you have any questions, please contact me. Thank you.

Sincerely,



Ned C. Williamson

NCW/jrs

cc: Heather Dawson

SAMPLE BALLOT
CITY OF HAILEY, STATE OF IDAHO
NOVEMBER 4, 2008

INSTRUCTIONS: Vote on the following question by placing an X in the square according to the way you desire to vote on that question. If you, by mistake or accident, tear, deface, wrongly mark or otherwise mutilate this ballot, return it to the election judge and get another.

Shall the City repeal Hailey's Business License Ordinance?

(The Summary of Hailey's Business License Ordinance and the short title of the proposed ordinance repealing Hailey's Business License Ordinance are set forth below)

YES

NO

SUMMARY OF HAILEY'S BUSINESS LICENSE ORDINANCE

Purpose. The purpose of the Business License Ordinance ("Ordinance") is to promote the health, safety and general welfare of the citizens by ensuring compliance with building and fire codes and the zoning ordinance of the City of Hailey.

Background. The Ordinance was initially adopted by the City of Hailey in 1992, as authorized by Chapters 3 and 9, Title 50 of the Idaho Code.

Applicability. Except for specific exemptions, the Ordinance requires a business license for each premise engaged in the operation of a business or occupation. The Ordinance exempts the following from the requirement of a business license: 1) a sale under court order, 2) an auction sale, 3) a garage sale, and 4) a business activity approved for fireworks or special events.

Standards. A business license shall be issued by the City Clerk if the business complies with adopted building and fire codes and zoning laws and if the business is lawfully connected to city water and sewer. An annual fee, established by resolution, is required to be paid for the administrative and inspection costs of processing an application for a business license.

Enforcement. The Ordinance provides that the Ordinance may be enforced through a civil lawsuit and that a violation of the Ordinance is a misdemeanor. A person may appeal any decision made in the enforcement and administration of the Ordinance.

SHORT TITLE OF THE PROPOSED REFERENDUM ORDINANCE
REPEALING HAILEY'S BUSINESS LICENSE ORDINANCE

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, REPEALING CHAPTER 5.02 OF THE HAILEY MUNICIPAL CODE, ENTITLED "LICENSES GENERALLY"; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

SAMPLE BALLOT
CITY OF HAILEY, STATE OF IDAHO
NOVEMBER 4, 2008

INSTRUCTIONS: Vote on the following question by placing an X in the square according to the way you desire to vote on that question. If you, by mistake or accident, tear, deface, wrongly mark or otherwise mutilate this ballot, return it to the election judge and get another.

Shall the City repeal Hailey's Development Impact Fee Ordinance, and refund the principal amount of collected development impact fees, plus interest calculated in accordance with Idaho Code § 28-22-104, accruing between the date of payment of the fee and the date the fees are refunded, which refund shall occur within thirty (30) days of the passage of this referendum?

(The Summary of Hailey's Development Impact Fee Ordinance and the short title of the proposed ordinance repealing Hailey's Development Impact Fee Ordinance are set forth below)

YES

NO

SUMMARY OF HAILEY'S DEVELOPMENT IMPACT FEE ORDINANCE

Purpose. The purpose section of the Development Impact Fee Ordinance ("Ordinance") provides that the intent of the Ordinance is to ensure new development bears a proportionate share of the cost of improvements to the City's capital facilities, that the proportionate share does not exceed the cost of improvements to the facilities required to accommodate the development and that the collected fees are actually used to fund the required improvements.

Background. The Ordinance was adopted by the City of Hailey effective on May 30, 2007, and is authorized by Chapters 82 and 65, Title 67 of the Idaho Code. The Ordinance authorizes a development impact fee ("Fee"), which was adopted after an independent impact fee study formulated a recommendation for the methodology and calculation of the Fee. The Ordinance has also been reviewed by an independent Development Impact Fee Advisory Committee ("Committee").

Applicability. Except for specific exemptions, the Ordinance establishes the Fee for all development in the City of Hailey, which shall only be used for city wide infrastructure improvements for a) parks and recreation, b) transportation, c) police and d) fire/emergency medical services ("System Improvements"). The Ordinance also allows for

the repayment of the cost of the independent impact fee study. The Ordinance exempts the following development from payment of the Fee: 1) remodeling a structure destroyed by a fire, 2) remodeling a structure which does not increase the number of service units as defined by the Ordinance, 3) replacing a residence which does not increase the number of service units, 4) placing a temporary structure on a property, 5) constructing an addition to a residence which does not increase the number of service units, 6) adding accessory uses to residential property and 7) installing certain manufactured buildings.

Calculation. The Fee is calculated in accordance with generally accepted accounting principles. The Fee shall not exceed a proportionate share of the cost of the System Improvements. The Fee schedule for specific uses is attached hereto as Exhibit "A." If a use is not listed, the Fee is calculated based on traffic generation rates recognized by a published engineering manual.

Limitations on the Use of the Fee. All monies paid for the Fee shall be deposited in a trust fund, with separate accounts for the System Improvements for parks and recreation, transportation, police and fire/emergency services. The monies in each account must be spent on a first-in/first-out basis and only for the specifically identified System Improvements for each account.

Procedures. An individual required to pay the Fee can 1) seek an exemption to the Fee, 2) propose an alternative individual assessment to the Fee, 3) seek a credit for previously paid contributions to System Improvements, 4) request a refund of the Fee in certain circumstances, 5) file an appeal of a decision interpreting the Ordinance, 6) make a payment under protest, 7) pursue mediation and 8) seek other legal and equitable remedies. The Ordinance establishes procedures for these options.

Review. On an annual basis, the Ordinance requires the Committee to review the Ordinance, and the City of Hailey to adopt a capital budget and to prepare an audit. Every five years, the City must review and update its capital improvement plan.

SHORT TITLE OF THE PROPOSED REFERENDUM ORDINANCE
REPEALING HAILEY'S DEVELOPMENT IMPACT FEE ORDINANCE

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, REPEALING CHAPTER 15.16 OF THE HAILEY MUNICIPAL CODE, ENTITLED "DEVELOPMENT IMPACT FEES"; PROVIDING FOR A REFUND OF ANY FEE COLLECTED PLUS INTEREST PROVIDED FOR IN IDAHO CODE § 28-22-104 BEGINNING ON THE DATE THAT THE PAYMENT OF THE DEVELOPMENT IMPACT FEE WAS PAID; PROVIDING FOR A REFUND WITHIN THIRTY DAYS OF PASSAGE OF THIS REFERENDUM; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

EXHIBIT "A"

Development Impact Fee Schedule

ITE Code	Parks	Trans- portation	Police	Fire & EMS	CIP Cost	TOTAL
Residential						
	Per Housing Unit					
210 Single Family Detached	\$934	\$903	\$365	\$350	\$77	\$2,629
230 All Other Housing Types	\$782	\$553	\$305	\$293	\$77	\$2,010
Nonresidential						
	Per Square Foot of Floor Area					
820 Commercial / Shop Ctr 25,000 SF or less	\$4.94	\$0.31	\$1.33	\$0.06		\$6.64
820 Commercial / Shop Ctr 25,001-100,000 SF	\$3.58	\$0.23	\$1.00	\$0.06		\$4.87
820 Commercial / Shop Ctr 100,001 SF or more	\$2.60	\$0.16	\$0.80	\$0.06		\$3.62
710 General Office 25,000 SF or less	\$1.46	\$0.09	\$1.66	\$0.06		\$3.27
710 General Office 25,001 SF or more	\$1.25	\$0.08	\$1.56	\$0.06		\$2.95
720 Medical-Dental Office	\$2.89	\$0.18	\$1.62	\$0.06		\$4.75
610 Hospital	\$1.40	\$0.09	\$1.35	\$0.06		\$2.90
770 Business Park	\$1.02	\$0.06	\$1.26	\$0.06		\$2.40
110 Light Industrial	\$0.55	\$0.03	\$0.92	\$0.06		\$1.56
150 Warehousing	\$0.39	\$0.02	\$0.51	\$0.06		\$0.98
151 Mini-Warehouse	\$0.20	\$0.01	\$0.01	\$0.06		\$0.28
Other Nonresidential						
320 Lodging (per room)	\$450	\$29	\$176	*		\$655
520 Elementary School (per student)	\$103	\$6	\$32	*		\$141
530 Secondary School (per student)	\$136	\$8	\$36	*		\$180
565 Day Care (per student)	\$358	\$23	\$64	*		\$445
620 Nursing Home (per bed)	\$189	\$12	\$144	*		\$345

* Other nonresidential will also pay the cost of CIP preparation at the rate of \$0.06 per square foot of floor area.