

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2022-222**

**AN ORDINANCE ADDING ARTICLE XV TO CHAPTER 17 OF THE
JOHNSTOWN MUNICIPAL CODE TO ESTABLISH A SPECIAL FEE TO
BE PAID BY THE OWNERS OF PROPERTY WITHIN CLOSE
PROXIMITY TO THE RECONSTRUCTED INTERCHANGE AT THE
INTERSECTION OF INTERSTATE 25 AND STATE HIGHWAY 402**

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, the Colorado Department of Transportation (“CDOT”) has constructed significant improvements to Interstate 25 (“I-25”) in Northern Colorado, which improvements include the reconstruction of the interchange at I-25 and State Highway 402 (the “Interchange”); and

WHEREAS, the reconstruction of the Interchange was made possible by a combination of federal, state and local funding, with the Town contributing approximately Seven Million Dollars (\$7,000,000) toward the I-25 improvements and the improvements to the Interchange; and

WHEREAS, of the Seven Million Dollars (\$7,000,000) contributed by the Town, based on territory in the Town limits and the overall improvements to I-25, Four Million Five Hundred Thousand (\$4,500,000) was allocated toward improvements to the Interchange (“Interchange Improvements”); and

WHEREAS, the Town Council recognizes that certain properties within the Town will benefit significantly from the Interchange Improvements; and

WHEREAS, under Article XX, Section 6 of the Colorado Constitution, the Town has authority to enact fees to recover the cost of providing infrastructure to properties within its jurisdiction; and

WHEREAS, the Colorado Supreme Court has affirmed this or similar authority in several separate decisions, including *Loup-Miller Const. Co. v. City and County of Denver*, 676 P.2d 1170 (Colo. 1984), *Bloom v. City of Fort Collins*, 784 P.2d 304 (Colo. 1989), and *E-470 Public Highway Authority v. The 455 Company*, 3 P.3d 18 (Colo. 2000); and

WHEREAS, pursuant to such authority, the Town desires to impose a special fee upon the owners of properties in close proximity to the Interchange because such properties will benefit substantially from the reconstruction of the Interchange and because the development or redevelopment of those properties will generate additional vehicular traffic at the Interchange; and

WHEREAS, recognizing that the Town as a whole will also benefit from the Interchange Improvements, the Town has concluded that the total amount of the special fee to be assessed against the benefitted properties, excluding interest, should be limited to Two Million Five Hundred Thousand

(\$2,500,000), or approximately fifty-five and one-half percent (55.5%) of the total amount expended by the Town for the Interchange; and

WHEREAS, to fairly apportion the cost to be recovered from and among the benefitted properties, determine the scope of the property within the Town that will benefit from the Interchange Improvements and assess the appropriate reimbursement from each such benefitted property, the Town engaged Felsburg, Holt & Ullevig, Inc., a Colorado corporation (“FHU”); and

WHEREAS, FHU completed the study, entitled *I-25/CO 402 Interchange Financial Analysis*, a copy of which is attached hereto and incorporated herein by reference as Exhibit A (“Study”), and, on December 16, 2019, presented the results of the Study to the Town Council; and

WHEREAS, as a part of the Study, FHU set forth the scope of the area that will benefit from the Interchange Improvements (“Region”) and classified the Region into two categories, Tier 1 and Tier 2 properties, with the Tier 1 properties benefiting more substantially than the Tier 2 properties; and

WHEREAS, based on the results of the Study, FHU recommended the following special fees for the Region, allowing the Town to recover a larger percentage of the Town’s overall investment in the I-25 improvements:

USE	TIER 1 ZONE	TIER 2 ZONE
Single Family Residential	\$ 1,180	\$ 472
Multi-Family Residential	\$ 915	\$ 366
Office (per 1000 SF)	\$ 1,218	\$ 487
Retail (per 1000 SF)	\$ 3,020	\$ 1,208
Industrial (per 1000 SF)	\$ 620	\$ 248

WHEREAS, for the foregoing reasons, to defray the cost of the Interchange Improvements, the Town Council desires to impose a special fee, to be known as the 402 Interchange Fee, upon benefitted properties in the Region and desires that the Town collect the 402 Interchange Fee at the time of issuance of each building permit; and

WHEREAS, despite FHU’s recommendation, so as not to financially burden the benefitted properties and the citizens of the Town, the Town Council desires to impose a lesser fee than recommended by FHU, in the following amounts:

USE	TIER 1 ZONE	TIER 2 ZONE
Single Family Residential	\$ 566	\$ 283
Multi-Family/Units	\$ 439	\$ 220
Office (per 1000 sf)	\$ 584	\$ 292
Retail/Commercial (per 1000 SF)	\$ 1,450	\$ 725
Industrial (per 1000 sf)	\$ 298	\$ 149

WHEREAS, the Town Council directs that revenues recognized from the 402 Interchange Fee be remitted to the Town's Street and Alley Fund; and

WHEREAS, the Town Council hereby finds, determines and declares that the 402 Interchange Fee is reasonably related to the expenses incurred by the Town in carrying out its legitimate goal of providing, maintaining and improving effective infrastructure in or near the Town; and

WHEREAS, the Town Council hereby further finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property, that this Ordinance is necessary for the protection of public convenience and welfare and that this Ordinance is in the best interests of the citizens of the Town.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Article XV of Chapter 17. Article XV shall be added to Chapter 17 of the Johnstown Municipal Code and shall read in full as follows:

Article XV – 402 Interchange Fee

Sec. 17-281 – Purpose.

Pursuant to the Town's authority to enact fees to recover the cost of providing, maintaining and improving infrastructure for properties within its jurisdiction, the Town hereby establishes a special fee, the 402 Interchange Fee, to recover a portion of the cost of improvements to the reconstructed interchange at Interstate 25 and State Highway 402.

Sec. 17-282 – Definitions.

For purposes of this Article, the following definitions apply:

402 Interchange Fee means the special fee imposed upon Property Owners in the Region to reimburse the Town for a portion of the cost of the Improvements.

Benefitted Property means a parcel of land in the Region, of whatever size and whatever designation, that is within close proximity to the Interchange.

Building Permit means a building permit issued in accordance with the Code before building or construction activity may be initiated on a Benefitted Property.

Improvements means the improvements to, and reconstruction of, the Interchange, accomplished between approximately 2017 and 2022.

Interchange means the interchange at Interstate 25 and State Highway 402.

Property Owner(s) means the current and future owner or developer of Benefitted Property in the Region.

Region means the real property in close proximity to the Interchange benefiting from the Improvements and includes Tier 1 properties and Tier 2 properties. The Region is depicted on Appendix A to this Article, which may be amended from time to time by resolution of the Town Council.

Sec. 17-283 – Establishment and payment of 402 Interchange Fee.

- (a) There is hereby established a special fee known as the 402 Interchange Fee.
- (b) The 402 Interchange Fee shall be levied and assessed as follows:

USE	TIER 1 ZONE	TIER 2 ZONE
Single Family Residential	\$ 566	\$ 283
Multi-Family/Units	\$ 439	\$ 220
Office (per 1000 SF)	\$ 584	\$ 292
Retail/Commercial (per 1000 SF)	\$ 1,450	\$ 725
Industrial (per 1000 SF)	\$ 298	\$ 149

- (c) The 402 Interchange Fee shall be paid by Property Owners in the Region at the time of issuance a Building Permit.
- (d) If a request is made upon application for a Building Permit, Property Owners shall not be required to pay the 402 Interchange Fee for the following Building Permits:
 - (1) Alterations or expansion of existing buildings where no additional dwelling units are created or square footage added;
 - (2) The construction of accessory buildings or structures that do not add dwelling units or square footage to the principal building or use of the land; or
 - (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same square footage.

Sec. 17-284 – Use of funds; limitation on total fee collection.

- (a) The revenues recognized from the 402 Interchange Fee shall be remitted to the Street and Alley Fund. The funds shall be used solely to reimburse the Town for the cost of the Improvements.
- (b) The Town shall keep an accurate accounting of the cost of the Improvements and the revenues collected from the 402 Interchange Fee.

- (c) In the event that the total amount of fee revenues paid to the Town by or on behalf of the Property Owners equals the sum of Two Million Five Hundred Thousand (\$2,500,000), plus interest on said amount from the effective date of this Ordinance at the rate of 2.75% per annum, all Property Owners shall be relieved of any further obligation to pay the 402 Interchange Fee.

Sec. 17-284 – Fee not an impact fee or development charge.

The Town Council does not intend that the 402 Interchange Fee be construed as an impact fee or development charge within the meaning of Section 29-20-104.5, C.R.S., as amended, but that the 402 Interchange Fee be a special fee within the home rule authority of the Town. To the extent that the provisions of Section 29-20-104.5, C.R.S., as amended, conflict with the provisions of this section, this section shall control.

Section 2. Severability. If any section, clause, phrase, word or other provision of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this Ordinance or the validity of this Ordinance as an entirety, it being the legislative intent that this Ordinance shall stand, notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 4. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Home Rule Charter of the Town of Johnstown, Colorado (“Charter”) and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Charter.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2022.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____ By: _____
Diana Seele, Town Clerk Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2022.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____ By: _____
Diana Seele, Town Clerk Gary Lebsack, Mayor