

ARTICLE 21

IMPACT FEES FOR PUBLIC CAPITAL FACILITIES ORDINANCE

A. AUTHORITY AND APPLICABILITY

1. This Section is authorized by New Hampshire RSA 674:21 as an innovative land use control. The administration of this Section shall be the responsibility of the Planning Board. This Section, as well as regulations and studies adopted by the Planning Board consistent with and in furtherance of this Section, shall govern the assessment of impact fees imposed upon new development in order to meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the Town of Epping or the Epping School District.
2. The public facilities for which impact fees may be assessed in Epping may include water treatment and distribution facilities; waste water treatment and disposal facilities; sanitary sewer; stormwater, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the proportional share of capital facilities of a cooperative or regional school district of which Epping becomes a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreation facilities not including public open space.
3. Prior to assessing an impact fee for one or more of the public facilities enumerated above, the Planning Board shall have adopted such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.
4. The following regulations shall govern the assessment of impact fees for public capital facilities in order to accommodate increased demand on the capacity of these facilities due to new development.

B. FINDINGS

The Town of Epping hereby finds that:

1. The Town of Epping is responsible for and committed to the provision of public facilities and services at standards determined by the Town to be necessary to support development in a manner which protects and promotes the public health, safety and welfare;
2. Capital facilities have been and will be provided by the Town;
3. The Town's legislative body has authorized the Planning Board to prepare and amend a Capital Improvements Program per N.H. RSA 674:5-8, and the Planning Board prepares and adopts such program annually;
4. An impact fee ordinance for capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Epping;
5. New development in Epping will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate facilities and services for its residents, businesses, and other needs occasioned by the development of land;
6. Impact fees may be used to assess an equitable share of the growth-related cost of public facility capacity to new development in proportion to the facility demands created by that development;
7. In the absence of impact fees, anticipated residential and non-residential growth and associated capital

improvement costs could necessitate an excessive expenditure of public funds in order to maintain adequate facility standards and to promote and protect the public health, safety, and welfare;

8. Impact fees assessed pursuant to this Section will not exceed the costs of:
 - a. Providing additional public capital facilities necessitated by new development in Epping; and/or
 - b. Compensating the Town of Epping or the Epping School District for facility capacity that it provided in anticipation of new development in Epping.

C. DEFINITIONS

1. Feepayer. The applicant for the issuance of a permit that would create new development as defined in this Section.
2. New Development. An activity that results in:
 - a.. Subdivision, site development, building construction or other land use that results in an increase in demand for capital improvement facilities as identified in the Planning Board's impact fee schedules; or,
 - b. The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessment methodologies adopted by the Planning Board.

New development shall not include the replacement of an existing mobile home, or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on the capital facilities of the town of Epping.

D. COMPUTATION OF IMPACT FEE

1. The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the Planning Board for the purpose of capital facility impact fee assessment in Epping. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment, and shall include documentation of the procedures and calculations used to establish impact fee schedules. The amount of any impact fee shall be computed based on the municipal capital improvement cost of providing adequate facility capacity to serve new development. Such documentation shall be available for public inspection at the Planning offices of the Town of Epping.
1. In the case of new development created by the conversion or modification of an existing use, the impact fee assessed shall be computed based upon the net increase in the impact fee assessment for the new use as compared to the impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Section.

E. ASSESSMENT OF IMPACT FEES

1. Impact fees shall be assessed on new development to compensate the Town of Epping for the proportional share of the public capital facility costs generated by that development.
2. Any person who seeks a permit for new development, including permits for new or modified service connections to the public water system or public wastewater disposal system that would increase the demand on the capacity of those systems, is hereby required to pay the public capital facility impact fees authorized under this Section in the manner set forth herein, except where all or part of the fees are waived in accordance with the criteria for waivers established in this Section.

F. WAIVERS

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular capital facilities for which impact fees are normally assessed.

1. A person may request a full or partial waiver of school facility impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over. The Planning Board may waive school impact fee assessments on age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy for a period of at least 20 years.
2. The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers may not be based on the value of exactions for on-site or off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Section.
3. The Planning Board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fee(s) waived.
4. The Planning Board may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the capital facility or system for which the impact fee is being assessed.
5. A feepayer may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on capital facility capacity and related costs attributable to that development. In support of such request, the feepayer shall prepare and submit to the Planning Board an independent fee calculation or other relevant study and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the Town. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the feepayer.
6. A person may request a full or partial waiver of impact fees, other than those that expressly protect public health standards, for construction within a plat or site plan approved by the Planning Board prior to the effective date of this Section (insert date of ordinance posting). Prior to granting such a waiver, the Board must find that the proposed construction is entitled to the four year exemption provided by RSA 674:39, pursuant to that statute.

G. PAYMENT OF IMPACT FEE

1. No permit shall be issued for new development as defined in this Section until the impact fee has been assessed by the Building Inspector. The feepayer shall either agree to pay the impact fee prior to issuance of a building permit or shall post a performance guarantee acceptable to the Planning Board with the Planning Board prior to the issuance of any building permit to ensure payment of all fees. The Building Inspector shall not issue a certificate of occupancy for the development on which the fee is assessed until the impact fee has been paid in full, or has been waived by the Planning Board. In the interim between assessment and collection, the Planning Board may authorize another mutually acceptable schedule for payment, or require the deposit of an

irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Epping.

2. Where off-site capital improvements have been constructed, or where such improvements will be constructed simultaneously with new development, and where the Town has appropriated necessary funds to cover such portions of the work for which it will be responsible, the Building Inspector may collect the impact fee for such capital facilities at the time a building permit or a permit to connect to the public water or public wastewater system, is issued.

H. APPEALS UNDER THIS SECTION

1. A party aggrieved by a decision under this Section may appeal such decision to the Superior Court as provided by RSA 676:5, III and RSA 677:15, as amended.

I. ADMINISTRATION OF FUNDS COLLECTED

1. All funds collected shall be properly identified and promptly transferred for deposit into separate impact fee accounts for each type of public capital facility for which impact fees are assessed. Each impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues accrue in the General Fund. The Town Treasurer shall have custody of all accounts.
2. The Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership and tax map reference number of properties for which fees have been paid under this Section for each permit so affected for a period of at least ten (10) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
3. Impact fees collected may be spent from time to time by order of the Board of Selectmen and shall be used solely for the reimbursement of the Town or the Epping School District in the case of school impact fees, for the cost of the public capital improvements for which they were collected, or to recoup the cost of capital improvements made by the Town or the Epping School District in anticipation of the needs for which the impact fee was collected.
4. In the event that bonds or similar debt instruments have been or will be issued by the Town of Epping or the Epping School District for the funding of capacity-related improvements, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.
5. At the end of each month, the Treasurer shall make a report giving a particular account of all impact fee transactions during that month. At the end of each fiscal year, the Treasurer shall make a report to the Board of Selectmen and Planning Board, giving a particular account of all impact fee transactions during the year.

J. USE OF FUNDS

1. Funds withdrawn from the capital facility impact fee accounts shall be used solely for the purpose of acquiring, constructing, equipping, or making improvements to public capital facilities to increase their capacity, or to recoup the cost of such capacity improvements.
2. Impact fee monies, including any accrued interest, that are not assigned in any fiscal period shall be retained within the same public capital facilities impact fee account until the next fiscal period except where a refund is due.
3. Funds may be used to provide refunds consistent with the provisions of this Section.

K. REFUND OF FEES PAID

1. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:
 - a. The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
 - b. The calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, and the legislative body has failed to appropriate the municipality's share of the capital improvements with six (6) years of complete and final payment of the impact fee assessed.
2. The Board of Selectmen shall provide all owners of record who are due a refund written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

L. ADDITIONAL ASSESSMENTS

Payment of the impact fee under this Section does not restrict the Town or the Planning Board from requiring other payments from the feepayer, including such payments relating to the cost of the extension of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefitting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

M. SCATTERED OR PREMATURE DEVELOPMENT

Nothing in this Section shall be construed so as to limit the existing authority of the Epping Planning Board to deny new proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Epping Zoning Ordinance, or the Epping Planning Board Site Plan Review Regulations or Subdivision Regulations, or which may otherwise be lawfully denied.

N. REVIEW AND CHANGE IN METHOD OF ASSESSMENT

The methodologies adopted by the Planning Board for impact fee assessment, and the associated fee schedules, shall be reviewed periodically and amended as necessary by the Planning Board. Such review shall take place not more than five years from the initial adoption of this Section, nor more frequently than annually, except as required to correct errors or inconsistencies in the assessment formula. Failure to conduct a periodic review of the methodology shall not, in and of itself, invalidate any fee imposed. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be submitted to the Board of Selectmen for its review and comment prior to final consideration of the proposed changes by the Planning Board. The review by the Planning Board and Board of Selectmen may result in recommended changes or adjustments to the methodology and related fees based on the most recent data as may be available. No change in the methodology or in the impact fee schedules shall be adopted by the Planning Board until it shall have been the subject of a public hearing noticed in accordance with RSA 675:7.