

## **CHAPTER 75 IMPACT FEES**

[HISTORY: Adopted by the Durham Town Council June 20, 2005 as Ord. No. 2005-04. This ordinance establishes impact fees under the Revenue Enhancement/Tax Stabilization work area of the Town Council's Work Plan list. An impact fee is an assessment placed on developers for specific services provided. The Town has discussed impact fees for schools, water, sewer, public safety, and storm water.]

### **75-1. Authority**

These regulations are authorized by New Hampshire RSA 674:21, V, and other pertinent state law, as an innovative land use control. Under this authority, new development in the Town of Durham may be assessed impact fees in proportion to its demand on the capital facilities of the Town and its School District.

### **75-2. Findings**

- A. The Town Administrator, with assistance from all department heads and the Planning Board, has prepared and regularly updates a Capital Improvements Program and Budget as authorized under the Town Charter of March 10, 1987, which took effect in January 1988.
- B. The Master Plan and Capital Improvements Program demonstrate that new growth and development are anticipated in residential and non-residential sectors which will necessitate increased public expenditures to provide adequate public facilities.
- C. The Town of Durham is responsible for and committed to the provision of public facilities and services at standards determined to be necessary by the Town, to support residential and non-residential growth and development in a manner which protects and promotes the public health, safety, and welfare.

### **75-3. Purpose.**

The following regulations shall govern the assessment of impact fees for public capital facilities to accommodate the demands of new development on these facilities. These provisions are intended to:

- A. Assist in the implementation of the Master Plan;
- B. Provide for the public capital facilities necessitated by new development;

- C. Assess an equitable share of the growth-related cost of new and expanded public capital facilities to new development in proportion to the facility demands created by that development.

**75-4. Definitions.**

- A. Fee payer means the applicant for a subdivision or site plan approval, or a building permit that would create new development as defined in this Article.
- B. Impact fee means a fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is 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.
- C. New development means an activity that results in:
  - (1) The creation of a new dwelling unit or units in the habitable portion of a residential building; or
  - (2) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units; or
  - (3) Construction resulting in a new non-residential building or a net increase in the floor area of any non-residential building; or
  - (4) The conversion of a lawful existing use to another use if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment; however,
  - (5) New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.
- D. Off-site improvements means those improvements that are necessitated by a development, but which are located outside the boundaries of a property

that is subject to a subdivision plat or site plan approval by the Planning Board.

- E. Public open space means a parcel of land essentially unimproved and available to the public only for passive recreational uses such as walking, sitting, picnicking, table games, natural resource conservation, and similar uses. Town parks which do not include “public recreation facilities” constitute public open space within the meaning of this Article.
- F. Public recreation facilities means the land and facilities owned or operated by the Town of Durham, other than public open space, which are designed for the conduct of recreational sports or other active leisure time uses of an organized nature, which include equipment or substantial improvements to the land to provide active indoor or outdoor public recreation programs.
- G. School District means the Oyster River School District, of which the Town of Durham is a member municipality.

#### **75-5. Authority to Assess Impact Fees.**

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance and to delegate the administrative functions of impact fee assessment, collection and disbursement.

#### **75-6. Standards and Basis of Assessment.**

- A. The amount of any impact fee shall be a proportional share of public facility improvement costs which are reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.
- B. The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules therefore. The methodologies and schedule will be approved by the Town Council.
- C. No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.
- D. In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net positive

increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this Ordinance.

- E. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

#### **75-7. Review and Change in Assessment Schedules.**

The impact fee assessment schedules shall be reviewed annually by the Planning Board, along with the foundation documents that provide the basis for the assessment schedules. Such review may result in recommended adjustments in one or more of the fees based on the most recent data as they affect the variables in the fee calculations. Changes in the impact fee assessment schedules shall be effective only where the change in the basis of assessment or the fee schedule is adopted following a public hearing by the Planning Board on the proposed change and approved by the Town Council.

#### **75-8. Assessment and Collection of Impact Fees.**

- A. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan.
- B. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit.
- C. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected at the time when the development is ready for its intended use.
- D. The Planning Board and the fee payer may establish an alternate, mutually acceptable schedule of payment of impact fees. If an alternate schedule of payment is established, the Planning Board may require the applicant to post surety, in the form of a cash bond, letter of credit, or performance bond so as to guaranty future payment of assessed impact fees.

#### **75-9. 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 public capital facilities for which impact fees are normally assessed:

- A. A fee payer may request a full or partial waiver of public school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 55 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments

on restricted-occupancy units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 55 or over for a period of at least 20 years.

- B. A person may request, from the Planning Board, a full or partial waiver of impact fee assessments imposed by this ordinance. The amount of such a waiver shall not exceed the value of land, facilities construction, or other contributions to be made by that person toward public capital facilities. The value of on-site and off-site improvements which are required by the planning board as a result of subdivision or site plan review, and which would have to be completed by the developer, regardless of the impact fee provisions, shall not be considered eligible for waiver under this Ordinance. 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. All costs incurred by the Town for the review of a proposed waiver, including consultant and counsel fees, shall be paid by the person or entity requesting the waiver.
- C. A fee payer may apply to the Planning Board for a waiver of a portion or the full amount of the impact fee, where such waiver application is accompanied by an independent fee calculation that documents the proportionate capital cost impact of the new development. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such a study shall be paid by the fee payer.

**75-10. Appeals Under This Article.**

- A. A party aggrieved by a decision made by the Code Enforcement Officer relating to administrative decisions in the assessment or collection of impact fees authorized by this Section may appeal such decision to the Planning Board.
- B. A party aggrieved by a decision of the Planning Board under this Article may appeal such decision to the Superior Court as provided by RSA 677:15, as amended.

**75-11. Administration of Impact Fees.**

- A. All funds collected shall be properly identified and promptly transferred for deposit into an individual public capital facilities impact fee account for each of the facilities for which fees are assessed, and shall be used solely for the purposes specified in this Ordinance. Impact fee accounts shall be special revenue fund accounts and under no circumstances shall such revenues accrue to the general fund.

- B. The Town Business Manager shall have custody of all fee accounts, and shall pay out the same only upon written instructions from the Town Administrator.
- C. The Town Business Manager 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, tax map and lot reference number of properties for which fees have been paid under this Ordinance for a period of at least six (6) years.
- D. At the end of each fiscal year, the Town's Business Manager shall make a report to the Town Council and the School District, giving a particular account of all public capital facilities impact fee transactions during the year.
- E. Funds withdrawn from the public capital facilities impact fee accounts shall be used solely for the purpose of acquiring, constructing, expanding or equipping those public capital facilities identified in this Ordinance.
- F. In the event that bonds or similar debt instruments have been issued for public capital facilities which were constructed in anticipation of new development, or are issued for advanced provision of capital facilities identified in this Ordinance, impact fees may be used to pay debt service on such bonds or similar debt instruments.

**75-12. Refund of Fees Paid.**

- A. The 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:
  - (1) 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 final payment of the fee; or
  - (2) The Town, or in the case of school impact fees the School District has failed, within the period of six (6) years from the date of the final payment of such fee, to appropriate the non-impact fee share of related capital improvement costs.
- B. The Town Council shall provide all owners of record who are due a refund, written notice of the amount due, including accrued interest.

**75-13. Other Authority Retained.**

This ordinance shall not be deemed to affect other authority of the Planning Board over subdivisions and site plans, including, but not limited to:

- A. The authority of the Planning Board to declare a development to be

premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a); or

- B. The authority of the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21, V (j); or
- C. Other authority of the Town of Durham to assess other fees under the authority of other statutes, ordinances of the Town of Durham or the Durham Planning Board Site Plan Review and Subdivision Regulations.

The restrictions in this ordinance are subject to the protections afforded certain lots under RSA 674:39

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