

*Introduced: 08/20/01
Second Read/Pub. Hrg.: 09/10/01
Adopted: 09/10/01*

Ordinance 2001-05

*AN AMENDMENT TO THE ZONING ORDINANCE
RELATING TO IMPACT FEES*

WHEREAS the Londonderry Planning Board voted on June 13, 2001 to the amendment of certain sections of the Zoning Ordinance; and,

WHEREAS the Londonderry Town Council is desirous of amending the Zoning Ordinance, Section XII- Impact Fees Ordinance, to include revisions to certain subsections of said Ordinance; and,

WHEREAS the Londonderry Town Council is vested with the power to effect such changes to the Zoning Ordinance; and,

WHEREAS the Town Council recognizes that such change will promote the orderly maintenance and update of the Zoning Ordinance;

NOW THEREFORE BE IT ORDAINED by the Londonderry Town Council that Section XII - Impact Fees, is revised in accordance with the attached.

Mark G. Oswald
Chairman - Londonderry Town Council

A TRUE COPY ATTEST: _____
00/00/01 Marguerite Seymour
Town Clerk

Town Seal

TOWN OF LONDONDERRY, N.H.
ZONING REGULATIONS
REVISED 2001
Section XII - (1201 - 1203.H)
Chapter 1—ZONING ORDINANCE
SECTION XII—IMPACT FEES

1201 Authority

These provisions are established pursuant to New Hampshire RSA 674:21, V.

1202 Purpose

These provisions are intended to:

- A. Assist in the implementation of the Town of Londonderry Master Plan; especially recommendation six (6) under the community facilities, and recommendation two (2) under transportation.
- B. Insure the adequate provision of public facilities necessitated by the growth of the Town of Londonderry.
- C. Assess an equitable share of the growth-related cost of new and expanded public capital facilities to all types of new development in proportion to the facility demands created by that development.

1203 Findings

The Londonderry Planning Board has made the following findings based on extensive consultation with all municipal departments, and a careful study of municipal facility needs.

- A. The Londonderry Planning Board adopted a Master Plan in January, 1988.
- B. The Londonderry Planning Board has prepared, and regularly updated, a Capital Improvements Program and Budget as authorized by the Londonderry Town Meeting of March 11, 1988.
- C. The Master Plan and the Capital Improvement Program demonstrate that significant new growth and development is anticipated in residential and non-residential sectors which will necessitate increased expenditures to provide adequate public facilities.
- D. The Town of Londonderry 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.
- E. The cost of providing public capital facility capacity to serve new growth will be disproportionately borne by existing taxpayers in the absence of impact fee assessments.
- F. The calculation methodology for impact fees, as established by a report by the Planning Board entitled "Impact Fee Analysis: Town of Londonderry," shall represent a fair and rational method for the allocation of growth-related capital facility costs to new development. Based on this methodology, impact fees will not exceed the costs of:
 - 1. Providing additional public capital facilities necessitated by the new developments paying impact fees, or
 - 2. Compensating the Town of Londonderry for expenditures made for existing public facilities which were constructed in anticipation of new growth and development.
- G. Impact fee payments from new development will enable the Town of Londonderry to provide adequate public facilities to serve new growth, and provide new development with a reasonable benefit in proportion to its contribution to the demand for such facilities.
- H. The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessitated to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare.

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Section XII - (1204 -1205.C)

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SECTION XII—IMPACT FEES (Cont'd)

1204 Definitions

- A. **Fee payer-** A person applying for the issuance of a building permit, subdivision or site plan approval, special exception, variance or other local land use decision which would create new development.
- B. **New Development** - Any activity which results in a net increase in the demand for additional public capital facilities, as defined in this ordinance:
 - 1. The creation of a new dwelling unit, except for the replacement of existing units of the same size and density;
 - 2. A net increase in the gross floor area of any nonresidential building or in the habitable portion of a residential building;
 - 3. The conversion of a legally existing use to another permitted use if such change of use would create a net increase in the demand for additional public capital facilities, as defined by this ordinance.
- C. **Gross Floor Area** - The entire square footage of a building calculated from the dimensional perimeter measurements of the first floor of the building with adjustments to the useable area of the other floors made in a manner consistent with Londonderry property tax assessment procedures. For residential structures, gross floor area shall not include portions of residential structure or accessory structure which is not available for human habitation.
- D. **Public Capital Facilities** - Facilities and equipment owned, maintained or operated by the Town of Londonderry as defined in the Capital Improvement Program and which are listed in the adopted impact fee schedule.

1205 Imposition of Public Capital Facilities Impact Fee

- A. Any person who, after March 9, 1994 seeks approval of new development within the Town of Londonderry, New Hampshire, is hereby required to pay a public capital facilities impact fee in the manner and amount set forth in Section 1206.
- B. A person may request, from the Planning Board, a full or partial waiver of impact fee payments required in this ordinance. The amount of such waiver shall not exceed the value of the 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 or credit under Section 1211 of this Ordinance.
- C. A person undertaking new development for residential use in which all or a portion of its occupancy will be restricted to persons age ~~sixty-two (62)~~ **fifty five (55)** and over, and where it can be shown to the satisfaction of the Planning Board that such restricted

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SECTION XII—IMPACT FEES (Cont'd)

1205 Imposition of Public Capital Facilities Impact Fee (Cont'd)

- C. occupancy will be maintained for a period of at least twenty (20) years, may apply for a waiver of the school impact fees for the said restricted occupancy units.
- D. A person undertaking new development for residential use in which all or a portion of its occupancy will be restricted to persons of low and moderate income as defined by the United States Department of Housing and Urban Development (HUD), and where it can be shown to the satisfaction of the Planning Board that such low and moderate income housing will be maintained with appropriate restrictions for a period of at least twenty (20) years, may apply for a waiver of impact fees for said restricted units.
- E. No building permit for new development requiring payment of an impact fee pursuant to Section 1206 of this Ordinance shall be issued until the public facilities impact fee has been determined and assessed by the Planning Board or its authorized agent.
- F. A person undertaking new development for residential use in which all or a portion of its occupancy will be assisted living facilities restricted to persons who are age fifty five (55) and over and/or disabled, may apply for a waiver of Recreation Impact Fees for said restricted units where it can be shown to the satisfaction of the Planning Board that internal private recreation programs will be provided to the occupants by the developer and provisions to that effect will be maintained with appropriate restrictions for a period of at least twenty (20) years.

1206 Computation of Impact Fee

- A. The amount of the public facilities impact fee shall be determined by the Impact Fee Schedule prepared in accordance with the methodology established in a report by the Planning Board entitled, "Impact Fee Analysis: Town of Londonderry", as updated by the reports entitled, "Methodology for Assessment of Public School Impact Fees, Town of Londonderry, and "Methodology for Assessment of Recreation Impact Fees, Town of Londonderry" by Bruce C. Mayberry, dated January 21, 1999, subject to annual adjustments in accordance with Section 1214.
- B. In the case of new development created by a change of use, redevelopment, or expansion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee for the new use as compared to that which was or would have been assessed for the previous use

1207 Payment of Fees

No certificate of occupancy shall be issued for new development until the assessed impact fee has been paid, or until the fee payer has established a mutually acceptable schedule for payment.

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SECTION XII—IMPACT FEES (Cont'd)

1208 Appeals

- A. Any aggrieved party may appeal to the Planning Board the amount of the public facilities impact fee, under the procedures established by the Board for handling such appeals.
- B. If a fee payer elects to appeal the amount of the impact fee, the fee payer shall prepare and submit to the Planning Board an independent fee calculation study for the new development activity which is proposed. All costs incurred by the Town for the review of such study shall be paid by the fee payer.

1209 Administration of Funds Collected

- A. All funds collected shall be properly identified and promptly transferred for deposit in individual Public Capital Facilities Impact Fee Accounts for each of the facilities for which fees are assessed, and shall be special revenue fund accounts and under no circumstances shall such revenue accrue to the General Fund.
- B. The Town Treasurer shall have custody of all fee accounts, and shall pay out the same only upon written orders of the Town Council.
- C. The Town Treasurer shall record all fees paid, by date of payment and the name of the persons making payment, and shall maintain an updated record of 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 ten (10) years.
- D. At the end of each fiscal year, the Town Treasurer shall make a report to the Town Council, 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.

1210 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:

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SECTION XII—IMPACT FEES (Cont'd)

1210 Refund of Fees Paid (Cont'd.)

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 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, annually, provide all owners of record who are due a refund, written notice of the amount due, including accrued interest.

1211 Credit

- A. Land and/or public capital facility improvements may be offered by the fee payer as total or partial payment of the required impact fee. The offer must be determined to represent an identifiable dollar value computed in a manner acceptable to the Town Council. The Town Council may authorize the fee payer an impact fee credit in the amount of the value of the contribution.
- B. Any claim for credit must be made no later than the time of application for the building permit.
- C. Credits shall not be transferable from one project of development to another without written approval of the Town Council.
- D. Credits shall not be transferable from one component of the public capital facilities impact fee to any other component of this fee without written approval of the Town Council. Records of the amounts of and reasons for such transfers shall be maintained.
- E. Determinations made by the Town Council pursuant to the credit provisions of this section may be appealed to the Board of Adjustment according to the procedures applicable to appeals from administrative decisions contained in part 1208 of this Ordinance.

1212 Additional Assessments

Payment of a public capital facilities impact fee does not restrict the Town or the Planning Board in requiring other payments from the fee payer, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or turning lanes to access the site or other infrastructure and facilities specifically benefitting the development as required by the subdivision or site plan review regulations.

1213 Premature and Scattered Development

Nothing in this Ordinance shall be construed so as to limit the existing authority of the Londonderry Planning Board to provide against development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Londonderry Site Plan Review Regulations, Subdivision Regulations, or Zoning Ordinance.

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1214 Review

The Impact Fee Assessment Schedule shall be reviewed annually by the Planning Board, using the methodology established in the reports referred to in Section 1206. Such review may result in recommended adjustments in one or more of the fees based on the most recent data as may be available from the Bureau of the Census, local property assessment records, market data reflecting interest and discount rates, current construction cost information for public capital facilities, etc. Adjustments shall be approved by the Town Council no more frequently than annually, based on such data.

~End of Section~