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Chapter 10 - DEVELOPMENT IMPACT FEES

ARTICLE I. - AUTHORITY AND APPLICABILITY

Sec. 10 - 1. - Authority.

This chapter has been prepared and adopted by the Harris County Board of Commissioners in accordance with the authority provided by Chapter 9, Section 2, Paragraph 3 of the Constitution of the State of Georgia, the Georgia Development Impact Fee Act (O.C.G.A. 36-71-1 *et seq.* as amended), and such other laws as may apply to the provision of public facilities and the power to charge fees for such facilities.

Sec. 10 - 2. - Applicability.

(a) The provisions of this chapter shall not be construed to limit the power of the county to use any other legal methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this chapter.

(b) This chapter shall apply to all unincorporated areas under the regulatory control and authority of Harris County and such other areas as may be included by intergovernmental agreement.

ARTICLE II. - FINDINGS, PURPOSE, AND INTENT.

Sec. 10 - 3. - Findings.

The Harris County Board of Commissioners finds and declares:

(a) That an equitable program for planning and financing public facilities to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the county; and

(b) That certain public facilities as herein defined have been and must be further expanded if new growth and development is to be accommodated at the same level of service available to existing development; and

(c) That it is fair and equitable that new growth and development shall bear a proportionate share of the cost of such public facilities necessary to serve new growth and development.

Sec. 10 - 4. - Purpose.

(a) The purpose of this chapter is to impose impact fees, as hereinafter set forth, for certain public facilities, as hereinafter defined.

(b) It is also the purpose of this chapter to ensure that adequate public facilities are available to serve new growth and development in the county and to provide that new growth and

development bears a proportionate share of the cost of new public facilities needed to serve them.

Sec. 10 - 5. - Intent.

This chapter is intended to implement and be consistent with the Harris County Comprehensive Plan, as it has been adopted or may be amended in accord with the Georgia Comprehensive Planning Act (O.C.G.A. 50-8-1 *et seq.*); and the applicable *Development Impact Fee Compliance Requirements*, as adopted by the Georgia Board of Community Affairs and amended from time to time.

ARTICLE III. - RULES OF CONSTRUCTION AND DEFINITIONS.

The provisions of this chapter shall be construed so as to effectively carry out its purpose in the interest of the public health, safety, and general welfare of the citizens of Harris County.

Sec. 10 - 6. - Rules of construction.

Unless otherwise stated in this chapter, the following rules of construction shall apply to the text of this chapter:

(a) In the case of a conflict between words or phrases as used in this chapter and as used in other codes, regulations or laws of the county, such difference shall not affect the meaning or implication of such words or phrases as used in this chapter.

(b) In the case of a conflict between the text of this chapter and any caption, illustration, summary table or illustrative table, the text shall control.

(c) The word “shall” is always mandatory and not discretionary; the word “may” is permissive.

(d) Words used in the present tense shall include the future and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(e) The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other legal or similar entity.

(f) The conjunction “and” indicates that all the connected terms, conditions, provisions, or events shall apply.

(g) The conjunctions “or” and “and/or” indicate that the connected items, conditions, provisions, or events may apply singly or in any combination.

(h) The use of “either … or” indicates that the connected items, conditions, provisions, or events shall apply singly and not in combination.

(i) The word “includes” or “including” and the phrase “such as” shall not limit a term to the specific example or examples given but are intended to extend its meaning to all other instances or circumstances of like kind or character.

(j) The section and paragraph headings and enumerations used in this chapter are included solely for convenience and shall not affect the interpretation of this chapter.

Sec. 10 - 7. - Definitions.

As used in this chapter, the following terms shall have the meaning set forth below.

Administrator means the director of community development for Harris County, or the director's designee, who is hereby charged with implementation and enforcement of this chapter.

Building permit means the document issued by the county authorizing the construction, repair, alteration of, or addition to a structure.

Capital improvement means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

Capital improvements element means a component of the county's comprehensive plan that sets out projected needs for system improvements during the planning horizon established therein, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement, as most recently adopted or amended by the board of commissioners.

Board of Commissioners means the Board of Commissioners of Harris County.

Commencement of construction, for private development, means initiation of physical construction activities as authorized by a development or building permit and leading to completion of a foundation inspection or other initial inspection and approval by a public official charged with such duties; and for public projects, means expenditure or encumbrance of any funds, whether they be development impact fee funds or not, for a public facilities project, or advertising of bids to undertake a public facilities project.

Completion of construction means the issuance of the final certificate of occupancy by the appropriate county official. The date of completion is the date on which such certificate is issued.

Community work program means the component of the comprehensive plan that lays out the specific activities the county plans to undertake during the five years following adoption of the plan.

Comprehensive plan means the plan or planning elements as adopted or amended in accord with O.C.G.A. 50-8-1 *et seq.* and the applicable *Minimum Standards and Procedures for Local Comprehensive Planning* as adopted by the Georgia Board of Community Affairs.

Day means a calendar day, unless otherwise specifically identified as a "work" day or other designation when used in the text.

Developer means any person or legal entity undertaking development.

Development means any construction or expansion of a building, structure, or use; any change in use of a building or structure; or any change in the use of land; any of which creates additional demand and need for public facilities, as defined herein.

Development approval means any written authorization, such as issuance of a building permit, land disturbance permit or other approval for grading or site development, or other forms of official action required by law or regulation which authorizes the commencement of construction.

Development impact fee means a payment of money imposed upon new development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

Development impact fee assessment means the determination of the amount of an impact fee due for issuance of a particular building permit.

Development impact fee collection means the receipt by the county of the amount due for an impact fee assessed for a particular building permit.

Dwelling unit means one room or rooms connected together, constituting a separate, independent housekeeping establishment for occupancy by one family, and physically separated from other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and sanitary facilities. A dwelling unit may be a single-family detached home, an apartment or condominium in a multi-family structure, or any other type of domicile intended for long-term human occupancy.

Encumber means to legally obligate by contract or otherwise commit to use by appropriation or other official act of the board of commissioners.

Excess capacity means that portion of the capacity of a public facility or system of public facilities which is beyond that necessary to provide adequate service to existing development at the adopted level-of-service standard.

Family means one or more persons related by blood, marriage, or adoption, consisting of spouse, children, grandchildren, parents, or grandparents, or who requires medical attention, guardianship, or assistance due to disability, occupying the premises and living as a single nonprofit housekeeping unit as distinguished from a group occupying a boarding or lodging house, hotel, club, or similar dwelling for group use.

Fee assessment: see “Development impact fee assessment”.

Fee collection: see “Development impact fee collection”.

Feepayor means that person or entity who pays a development impact fee, or his or her successor in interest, where the right or entitlement to any refund of previously paid development impact fees that are required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed “not to run with the land.”

Floor area means the sum of the gross floor area for each of the several stories under roof, measured from the exterior limits or faces of a building or structure.

Individual assessment determination means a finding by the administrator that an individual assessment study does or does not meet the requirements for such a study as established by this chapter or, if the requirements are met, the fee calculated therefrom.

Individual assessment study means the engineering, financial, or economic documentation prepared by a feepayor or applicant to allow individual determination of a development impact fee other than by use of the applicable fee schedule.

Level of service means a measure of the relationship between service capacity and service demand for specified public facilities as established by the county in terms of demand to capacity ratios or the comfort and convenience of use or service of such public facilities, or both.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, council, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State of Georgia, any interstate body or any other legal entity.

Present value means the current value of past, present, or future payments, contributions, or dedications of goods, services, materials, construction, or money, as calculated using methods of financial analysis acceptable to the administrator for determination of "net present value."

Project means particular development on an identified parcel of land.

Project improvements means site improvements and facilities that are planned, designed, or built to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not "system" improvements. The character of the improvement shall control a determination of whether an improvement is a "project" improvement or a "system" improvement, and the physical location of the improvement on-site or off-site shall not be considered determinative of whether an improvement is a "project" improvement or a "system" improvement. If an improvement or facility provides or will provide more than incidental service or facility capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities and approved for public funding by the county shall be considered a project improvement.

Property owner means that person or entity that holds legal title to property.

Proportionate share means that portion of the cost of system improvements that is reasonably and fairly related to the service demands and needs of a project.

Public facilities, as used in this chapter, means (a) parks and recreation areas and related facilities; and (b) public safety facilities, including the sheriff's office (which includes the county jail), fire protection, emergency medical services, and emergency communications facilities.

Regional commission means the River Valley Regional Commission.

Service area means a geographic area defined by the county, in which a defined set of public facilities provide service to development within the area. Service areas are designated on the basis of sound planning or engineering principles or both.

System improvements means capital improvements that are public facilities designed to provide service to more than one project or to the county at large, in contrast to "project" improvements.

System improvement costs means costs incurred to provide additional public facilities capacity to serve new growth and development for planning, design and construction, land acquisition, land improvement, design, and engineering related thereto, including the cost of constructing or

reconstructing system improvements or facility expansions. System improvement costs include but are not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees); expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the Capital Improvements Element; and administrative costs, provided that such administrative costs shall not exceed three percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the county to finance the Capital Improvements Element. System improvement costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

Unit of development means the standard incremental measure of land development activity for a specific type of land use upon which the rate of demand for public service and facilities is based, such as a dwelling unit, square foot of floor area, motel room, etc.

Unused or excess impact fee means any individual impact fee payment from which no amount of money or only a portion thereof has been encumbered or expended according to the requirements of this chapter.

ARTICLE IV. - IMPOSITION OF DEVELOPMENT IMPACT FEES.

Any person who, after the effective date of this chapter, engages in development shall pay a development impact fee in the manner and amount set forth in this chapter.

Sec. 10 - 8. - Construction not subject to impact fees.

(a) The following projects and construction activities do not constitute “development” as defined in this chapter, and are therefore not subject to the imposition of impact fees:

(1) Rebuilding no more than the same number of units of development (as defined in this chapter) that were removed by demolition, or destroyed by fire or other catastrophe, on the same lot or property.

(2) Remodeling or repairing a structure that does not result in an increase in the number of units of development.

(3) Replacing a residential housing unit or units with the same or fewer number of housing units on the same lot or property.

(4) Placing a temporary transportable construction office or temporary transportable sales office on a lot during the period of construction or build-out of a development project.

(5) Constructing an addition to or expansion of a residential dwelling unit that may increase the floor area or number of rooms but does not increase the number of housing units.

(6) Adding uses that are typically accessory to residential uses and intended for the personal use of the residents, such as a deck or patio, detached garage or utility shed, satellite antenna, pet enclosure, or private recreational facilities such as a swimming pool or tennis court.

(b) A person claiming to be not subject to impact fees under this Section shall submit to the administrator information and documentation sufficient to permit the administrator to determine whether such claim is correct.

Sec. 10 - 9. - Grandfathered projects.

(a) Notwithstanding any other provision of this chapter, that portion of a project for which a valid building permit has been issued prior to the effective date of this chapter shall not be subject to development impact fees so long as the permit remains valid and construction is commenced and is pursued according to the terms of the permit.

(b) Any building for which a valid and complete application for a building permit has been received by the county prior to the effective date of this chapter may proceed upon payment of impact fees otherwise in effect, provided that said construction shall be commenced, pursued, and completed within the time established by the building permit, or within 180 days, whichever occurs sooner. No extensions of the building permit will be allowed or approved.

Sec. 10 - 10. - Method of calculation.

(a) Any development impact fee imposed pursuant to this chapter shall not exceed a project's proportionate share of the cost of system improvements and shall be calculated on the basis of levels of service for public facilities that are the same for existing development as for new growth and development.

(b) Notwithstanding anything to the contrary in this chapter, the calculation of impact fees shall be net of credits for the present value of ad valorem taxes or other revenues as established in the capital improvements element, and which:

(1) are reasonably expected to be generated by new growth and development; and

(2) are reasonably expected on the basis of historical funding patterns to be made available to pay for system improvements of the same category for which an impact fee is imposed.

(c) The method of calculating impact fees for public facilities under this chapter shall be maintained for public inspection as a part of the official records of the county and may be amended from time to time by official act.

(d) In addition to the cost of new or expanded system improvements needed to be built to serve new development, the cost basis of a development impact fee may also include the proportionate cost of existing system improvements to the extent that such public facilities

have excess service capacity and new development will be served by such facilities, as established in the Capital Improvements Element.

(e) Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs, as set forth in the Capital Improvements Element.

ARTICLE V. - FEE ASSESSMENT AND PAYMENT.

Sec. 10 - 11. - Fee schedule.

(a) Payment of a development impact fee pursuant to the fee schedule attached hereto and incorporated herein as Attachment A, shall constitute full and complete payment of the project's proportionate share of system improvements as individually levied by the county, and shall be deemed to be in compliance with the requirements of this chapter.

(b) When a land development activity for which an application for a building permit has been made includes two or more buildings, structures, or other land uses in any combination, including two or more uses within a building or structure other than a shopping center, the total development impact fee shall be the sum of the fees for each and every building, structure, or use, including each and every use within a building or structure. Shopping centers shall be assessed a single impact fee, in accordance with Attachment A, as a single use without regard to its individual tenants.

(c) In the event that an applicant contends that the land use category of the proposed development is not shown on the fee schedule or fits within a different land use category, then:

(1) The administrator in his or her sole discretion shall make a determination as to the appropriate land use category and the appropriate development impact fee.

(2) In making such determination, the administrator may require such additional information from the applicant as necessary to form a logical fee determination relative to the land use categories shown on the adopted fee schedule (Attachment A hereto).

(3) If the land use of the proposed development is not similar to a land use category shown on the adopted fee schedule, then an appropriate fee may be determined by the administrator as an individual assessment in accordance with the individual assessment determinations section of this chapter.

(4) Appeals from the decision of the administrator shall be made to the board of commissioners in accordance with the administrative appeals section of this chapter.

Sec. 10 - 12. - Timing of assessment and payment.

(a) Development impact fees shall be assessed at the time of application for a building permit and shall be collected based on the use of the building determined at that time.

(b) If the final use of a building cannot be determined at the time of the initial building permit, the administrator shall have the authority to assess and collect a development impact fee based on the most likely use of the building. If the final use of the building differs from the use upon which the original impact fee was paid, the administrator shall adjust the fee in accordance with the following:

(1) Prior to the completion of the project, and as a condition to the issuance of a certificate of occupancy, the developer shall certify in writing to the administrator the actual land use or uses of the project and shall present an architect's certificate of the actual gross square footage of floor area attributable to each use.

(2) In the event that the actual land use or uses and/or the actual gross square footage applicable to the actual land use or uses differs from that originally certified, and in the event that the impact fee applicable to the actual land use or uses and/or gross square footage exceeds the impact fee previously paid, the developer shall be required to pay the amount of the excess as a condition to the issuance of a certificate of occupancy.

(3) The amount of the excess shall be based upon the impact fee schedule in effect on the date the certificate of occupancy is issued.

(4) If the actual gross square footage constructed after the issuance of the building permit is less than the amount originally certified, the developer shall be entitled to a refund of the excess portion of the fee already paid or may carry the excess portion forward as a credit against future impact fees in accordance with the credit provisions of this chapter.

(c) For projects not involving issuance of a building permit, all development impact fees shall be collected at the time of approval of the development permit or such other authorization to commence construction or to commence use of a property, whichever is earliest.

(d) Notwithstanding any other provision of this chapter to the contrary, any future change in land use that requires a higher impact fee than the previous impact fee shall result in the assessment of such additional fee to cover the difference. Future changes in impact fees may result from a change in the land use category of the occupant of the building or property, the expansion of a building or use on a property that results in an increase in the units of development (as defined herein), the adoption of a new impact fee schedule by the board of commissioners, or the subsequent discovery of facts unknown or misrepresented at the time of the original fee assessment by the county.

Sec. 10 - 13. - Individual assessment determinations.

An individual assessment of development impact fees for a particular property or proposed use may be established as follows:

(a) At their option, an applicant for development approval may petition the administrator for an individual assessment determination of development impact fees due for their project in lieu of the fee established on the fee schedule attached hereto and incorporated herein as Attachment A.

(b) In the event that an applicant elects an individual assessment, the applicant shall submit an individual assessment study. The individual assessment study shall:

(1) be based on relevant and credible information from an accepted standard source of engineering or planning data; or,

(2) be based on actual, relevant, and credible studies or surveys of facility demand conducted in the county or its region, carried out by qualified engineers or planners pursuant to accepted methodology.

(c) The applicant shall provide any other written specifications as may be reasonably required by the administrator to substantiate the individual assessment determination.

(d) The administrator in his or her sole discretion shall determine whether the content of an individual assessment study satisfies the requirements of this chapter. A negative determination by the administrator may be appealed to the board of commissioners in accordance with the administrative appeals section of this chapter.

(e) Any fee approved as an individual assessment determination shall have standing for 180 days following the date of approval. Payment of such an approved individual assessment determination shall constitute full and complete payment of the project's proportionate share of system improvements as individually levied by the county, and shall be deemed to be in compliance with the requirements of this chapter.

Sec. 10 - 14. - Fee certification.

Upon application to the administrator, a property owner or developer may receive a certification of the development impact fee schedule attached hereto and incorporated herein as Attachment A or a certified fee for a particular project, as applicable.

(a) The administrator shall provide an applicant with a written certification of the impact fee schedule within 5 working days after the administrator’s receipt of a completed application. The fee schedule certified by the administrator shall establish the impact fee schedule for the proposed development activity for a period of 180 days from the date of certification.

(b) The administrator shall provide the applicant with a written certification of an individual fee determination within 30 days after receipt of a completed application. The individual fee determination certified by the administrator shall establish the total impact fee for the proposed development activity for the 180-day period immediately following the date of such certification.

(c) Notwithstanding the issuance of any certification of an individual fee determination, any additions or changes to the proposed development activity different from the development activity identified in the original application shall negate any such certification.

ARTICLE VI. - EXEMPTIONS.

Sec. 10 - 15. - Exemption policy.

(a) The board of commissioners recognizes that certain office, retail trade, hospitality, and other business development projects may provide extraordinary benefit in support of the economic advancement of the county's citizens over and above the access to jobs, goods, and services that such uses offer in general.

(b) To encourage such development projects of public benefit to the county, the board of commissioners may at its discretion create a process for granting a reduction in the impact fee for certain business development projects upon the determination and relative to the extent that the project represents extraordinary economic development and employment growth, in accordance with adopted exemption criteria.

(c) Such exemption criteria shall be adopted by the board of commissioners if, and when, it deems that such exemptions are warranted and would be of benefit to the entire county, its business community, and its residents.

(d) It is recognized that the cost of system improvements otherwise foregone through exemption of any impact fee must be funded through revenue sources other than impact fees. As part of the annual budgeting process, adequate funds shall be identified and transferred to the impact fee fund accounts equal to the amount of all exemptions granted by the board of commissioners during the preceding year.

ARTICLE VII. - DEPOSIT AND EXPENDITURE OF FEES.

The county shall comply with all applicable accounting requirements of O.C.G.A. § 36-71-8, which include the following:

Sec. 10 - 16. - Maintenance of funds.

(a) All development impact fee funds collected for future expenditure on construction or expansion of facilities pursuant to this chapter shall be maintained in one or more interest-bearing accounts until encumbered or expended. Restrictions on the investment of development impact fee funds shall be the same that apply to investment of all such funds generally.

(b) Separate accounting records shall be maintained for each category of public facility improvements (parks and recreation, the sheriff's office (which includes the county jail), fire protection, emergency medical services, and emergency communications facilities) and for administration and capital improvement element preparation fees collected.

(c) Interest earned on development impact fees shall be allocated to each category of system improvements and the administration accounts in proportion to the impact fees collected, shall be considered funds of the account on which it is earned, and shall be subject to all restrictions placed on the use of development impact fees under this chapter.

Sec. 10 - 17. - Expenditures; restrictions.

(a) Expenditures from the public facility impact fee accounts shall be made only for the system improvements in the public facility category for which the development impact fee was assessed and collected.

(b) Expenditures from the impact fee account for a particular public facility category shall be made only for projects that are listed for that category in the most recently adopted Capital Improvements Element.

(1) Such expenditures for a specific project may be based on the amount of the actual cost of the project, but such shall not exceed the impact fee eligibility limits described in paragraph (b)(2) below.

(2) Such expenditures may not exceed the percentage of impact fee eligibility established for such project in the capital improvements element.

(3) Expenditures for projects not listed in the Capital Improvements Element may be made only after they have been included in the Capital Improvements Element by amendment adopted by the board of commissioners.

(c) Notwithstanding anything to the contrary in this chapter, the following shall be considered general revenue of the county, and may be expended accordingly:

(1) Impact fees collected to recover the present value of excess capacity in existing system improvements;

(2) Any portion of an impact fee collected as a repayment for expenditures previously made by the county for system improvements intended to be funded by such impact fee; and,

(3) Any portion of an impact fee collected for administration of the impact fee program, and such additional amount assessed for repayment of the cost of preparing the capital improvements element or the required annual reports that are submitted to the regional commission for review by the Georgia Department of Community Affairs.

Sec. 10 - 18. - Annual report.

(a) The administrator shall prepare an annual report to the board of commissioners based on the most recently adopted annual audit describing the amount of any development impact fees collected, encumbered, and used during such fiscal year by category of public facility.

(b) Such annual report shall be prepared following guidelines of the Georgia Department of Community Affairs (DCA), and submitted to the regional commission in conjunction with the annual update report of the update of the community work program of the comprehensive plan. The annual update of the community work program shall maintain, at a minimum, a schedule of impact fee eligible system improvements for each of the subsequent five years and may include changes in funding sources or project costs, or changes in the scheduling

of projects, than as otherwise shown in the most recently adopted capital improvements element.

(c) The annual report is to be closely tied to and updates the most recently adopted capital improvements element as approved by the Georgia Department of Community Affairs. No new projects that are not included within the capital improvements element may be added to the annual report. Such additions must be made as an amendment of the capital improvements element in accordance with the procedures contained in this chapter.

ARTICLE VIII. - CREDITS.

When eligible, feepayors shall be entitled to a credit against impact fees otherwise due and owing under the circumstances and in the manner set forth in this article.

Sec. 10 - 19. - Credits; restrictions.

(a) Except as provided in the following Paragraph (b), no credit shall be given for construction, contribution, or dedication of any system improvement or funds for system improvements made before the effective date of this chapter.

(b) If the value of any construction, dedication of land, or contribution of money made by a developer (or his or her predecessor in title or interest) prior to the effective date of this chapter for system improvements that are included for impact fee funding in the capital improvements element, is greater than the impact fee that would otherwise have been paid for the project, then the developer shall be entitled to a credit for such excess construction, dedication, or funding. Notwithstanding anything to the contrary in this chapter, any credit due under this section shall not constitute a liability of the county, and shall accrue to the developer to the extent of impact fees assessed for new development for the same category of system improvements.

(c) In no event shall credit be given for project improvements, as defined in this chapter, or for system improvements not included for impact fee funding in the most recently adopted capital improvements element.

Sec. 10 - 20. - Granting of credits.

(a) Credit shall be given for the present value of any construction of improvements, contribution or dedication of land, or payment of money by a developer or his or her predecessor in title or interest for system improvements of the same public facilities category for which a development impact fee is imposed, provided that:

  (1) The system improvement is included for impact fee funding in the capital improvements element;

  (2) The amount of the credit does not exceed the portion of the system improvement's cost that is eligible for impact fee funding, as shown in the capital improvements element; and,

(3) The board of commissioners shall have explicitly approved said improvement, contribution, dedication, or payment and the value thereof prior to its construction, dedication, or transfer.

(b) The credit allowed pursuant to this section shall not exceed the impact fee due for any particular public facilities category for which a development impact fee is imposed, unless a greater credit is authorized under a private contractual agreement executed under the provisions of this chapter.

(1) Any credit amount in excess of the impact fee due for any particular public facilities category may be carried over and applied to the impact fee due in the same public facilities category for another development by the developer, or to a successor in interest, within the county.

(2) To qualify as a "successor in interest" for entitlement to a credit, notice must have been given to the administrator of a legal transfer or assignment of the right of entitlement to the credit, including the name, mailing address, and written, notarized authorization of the grantor and the name and mailing address of the grantee.

Sec. 10 - 21. - Guidelines for credit valuation.

Credits under this article shall be valued using the following guidelines:

(a) For the construction of any system improvements by a developer (as defined in this chapter) or his or her predecessor in title or interest and accepted by the county, the developer must present evidence satisfactory to the administrator of the original cost of the improvement, from which present value may be calculated.

(b) For any contribution or dedication of land for system improvements by a developer or his or her predecessor in title or interest and accepted by the county, the original value of the land shall be the same as that attributed to the property by the validated tax appraisal at the time of dedication, from which present value may be calculated.

(c) For any contribution of capital equipment that qualifies as a system improvement by a developer or his or her predecessor in title or interest and accepted by the county, the value shall be the original cost to the developer of the capital equipment or the cost that the county would normally pay for such equipment, whichever is less.

(d) For any contribution of money for system improvements from a developer or his or her predecessor in title or interest accepted by the county, the original value of the money shall be the same as that at the time of contribution, from which present value may be calculated.

(e) In making a present value calculation, the discount rate used shall be the interest rate being earned on the county's impact fee funds, and the average annual inflation rate shall be that for the Consumer Price Index (the CPI) for the cost of money, or the average rate reported by the Engineering News Record for construction in general (the CCI) or building construction specifically (the BCI), as appropriate.

Sec. 10 - 22. - Credits; application.

(a) Credits shall be given only upon written application of the developer to the administrator. A developer must present written evidence satisfactory to the administrator at or before the time of development impact fee assessment.

(b) The administrator, in his or her reasonable discretion, shall review all applications for credits and make determinations regarding the allowance of any claimed credit, and the value of such allowed credit.

(c) Any credit approved by the administrator shall be acknowledged in writing by the administrator and calculated at the time of impact fee assessment.

(d) Appeals from the decision of the administrator shall be made to the board of commissioners in accordance with the Administrative Appeals article of this chapter.

Sec. 10 - 23. - Credits; abandoned building permits.

(a) In the event that an impact fee is paid but the building permit is abandoned, credit shall be given for the present value of the impact fee against future impact fees for the same parcel of land, upon submission of adequate evidence to the administrator that an impact fee was received by the county, the amount paid, and that the building permit was abandoned.

(b) A building permit shall be deemed abandoned if no construction has been commenced prior to the expiration of the building permit.

ARTICLE IX. - REFUNDS.

Sec. 10 - 24. - Eligibility for a refund.

(a) Upon the written request of a feepayor regarding a property on which a development impact fee has been paid, the development impact fee shall be refunded if:

   (1) capacity is available in the public facilities for which the fee was collected but service is permanently denied; or,

   (2) the development impact fee has not been encumbered or construction has not been commenced within six years after the date the fee was collected.

(b) In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis.

Sec. 10 - 25. - Notice of entitlement to a refund.

When the right to a refund exists due to a failure to spend or encumber the development impact fees, the administrator shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given adequate notice to the administrator of a legal transfer or assignment of the right to entitlement to a refund and who has provided a mailing address. Such

notice shall also be published in a newspaper of general circulation in the county within 30 days after the expiration of the six-year period after the date that the development impact fee was collected and shall contain a heading “Notice of Entitlement to Development Impact Fee Refund.” No refund shall be made for a period of 30 days from the date of said publication.

Sec. 10 - 26. - Filing a request for a refund.

A request for a refund shall be made in writing to the administrator within one year of the time the refund becomes payable or within one year of publication of the notice of entitlement to a refund, whichever is later. Failure to make a claim for a refund within said time period shall result in a waiver of all claims to said funds. Such funds together with the accrued interest thereon shall be transferred to the general revenue account of the county.

Sec. 10 - 27. - Payment of refunds.

(a) All refunds shall be made to the feepayor within 60 days after it is determined by the administrator that a sufficient proof of claim for refund has been made, but no sooner than 30 days after publication of the notice of entitlement to the refund.

(b) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess impact fee collected.

(c) In no event shall a feepayor be entitled to a refund for impact fees assessed and paid to recover the cost of excess capacity in existing system improvements, for any portion of an impact fee collected as a repayment for expenditures made by the county for system improvements intended to be funded by such impact fee, or for that portion of the fee payment that was assessed for administration of the impact fee chapter or for recovery of the cost of preparation of the capital improvements element.

ARTICLE X. - PRIVATE CONTRACTUAL AGREEMENTS.

Sec. 10 - 28. - Private agreements; authorized.

Nothing in this chapter shall prohibit the voluntary mutual approval of a private contractual agreement between the county and any developer or property owner or group of developers and/or property owners in regard to the construction or installation of system improvements and providing for credits for such system improvement costs incurred , including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project, provided that:

(a) The system improvements are included for impact fee funding in the capital improvements element most recently adopted by the board of commissioners; and,

(b) The amount of any credit granted shall not exceed the portion of the system improvement’s cost that is eligible for impact fee funding.

Sec. 10 - 29. - Private agreements; provisions.

A private contractual agreement for system improvements may include, but shall not be limited to, provisions that:

(a) Modify the estimates of impact on public facilities according to the methods and provisions concerning the calculation of impact fees, provided that any such agreement shall allow the county to assess additional development impact fees after the completion of construction according to the fee schedule set forth in this chapter as Attachment A.

(b) Permit construction of, dedication of property for, or other in-kind contribution for specific public facilities of the type for which development impact fees would be imposed in lieu of or with a credit against applicable development impact fees.

(c) Permit a schedule and method of payment appropriate to particular and unique circumstances of a proposed project in lieu of the requirements for payment under this chapter, provided that acceptable security is posted ensuring payment of the development impact fees. Forms of security that may be acceptable include a cash bond, irrevocable letter of credit from a bank authorized to do business within the State of Georgia, a surety bond, or lien or mortgage on lands to be covered by the building permit.

Sec. 10 - 30. - Private agreements; procedure.

(a) Any private agreement proposed by an applicant pursuant to this article shall be submitted to the administrator for review and negotiation, prior to submission to the board of commissioners.

(b) Any private agreement proposed by an applicant pursuant to this article shall be reviewed and approved by the county attorney as to form and sufficiency prior to consideration by the board of commissioners.

(c) Any such agreement must be presented to and approved by the board of commissioners prior to the issuance of the first building permit or other qualifying permit.

(d) Any such agreement shall be executed or approved by mortgagees, lien holders, or contract purchasers in addition to the landowner, and shall require the applicant to submit such agreement to the clerk of superior court for recording on the deed records.

ARTICLE XI. - PERIODIC REVIEW AND AMENDMENTS.

Sec. 10 - 31. - Chapter amendments.

(a) This chapter may be amended from time to time as deemed appropriate or desirable. Any such amendment to this chapter, including an amendment to the development impact fee schedule attached hereto as Attachment A, shall follow the procedures imposing a development impact fee as set out and required under the Georgia Development Impact Fee Act (O.C.G.A. § 36-71-1 et seq. as amended).

(b) No less often than once each year, as part of its annual capital improvement program process or as part of any other planning process, the board of commissioners may review the capital improvements element and calculation of development impact fees, and may amend the capital improvements element, fee calculation methodology, or development impact fee schedule as deemed appropriate and necessary.

(c) Interim amendments to the impact fee schedule regarding the establishment of new land use categories by the administrator under the provisions of this chapter are expressly authorized, and shall be confirmed by the board of commissioners when this chapter is subsequently amended.

Sec. 10 - 32. - Capital improvements element periodic review.

(a) Annual update. At least once each year, the board of commissioners shall review and may update the capital improvements element so as to maintain, at a minimum, a schedule of system improvements for each of the subsequent five years. The capital improvements element update may include changes in funding sources or project costs, or changes in the list or scheduling of projects. The capital improvements element update shall be submitted to the regional commission for their review and submission to the Georgia Department of Community Affairs, in accordance with the *Development Impact Fee Compliance Requirements* as adopted by the Board of Community Affairs of the State of Georgia.

(b) Amendment. In conducting a periodic review of the capital improvements element and calculation of development impact fees, the board of commissioners may determine to amend the capital improvements element. Amendments to the capital improvements element shall comply with the procedural requirements of the *Development Impact Fee Compliance Requirements* as adopted by the board of community affairs of the State of Georgia, and shall be required for any change to the capital improvements element that would:

(1) Change the list of system improvement projects by adding, deleting, or substantially modifying the projects;

(2) Redefine or extend growth projections, land development assumptions, or goals or objectives that would affect system improvements proposed in the capital improvements element;

(3) Add new public facility categories for impact fee funding, modify impact fee service areas, or make changes to or add additional system improvement projects;

(4) Change service levels established for an existing impact fee service area; or

(5) Make any other revisions needed to keep the capital improvements element up to date.

Sec. 10 - 33. - Continuation of validity.

Failure of the board of commissioners to undertake an annual update of, or adopt an amendment to, the capital improvements element shall result in the continued use and application of the latest adopted development impact fee schedule; project listings, including estimated costs, and impact eligibility percentages; and data upon which the level of service standards and impact fee calculations are based. The failure to periodically review such data shall not invalidate this chapter.

ARTICLE XII. - ADMINISTRATIVE APPEALS.

Sec. 10 - 34. - Eligibility to file an appeal.

Only applicants or feepayors who have already been assessed an impact fee by the county or who have already received a written determination of individual assessment, refund, or credit amount shall be entitled to an appeal. Such appeals may address:

(a) The imposition and/or the amount of an impact fee.

(b) The entitlement to and/or the amount of credits applicable to an impact fee.

(c) The entitlement to and/or the amount of a refund of an impact fee.

Sec. 10 - 35. - Appeals process.

(a) The aggrieved applicant or feepayor must file a written appeal with the administrator within 15 days of the receipt of written determination of the amount of the development impact fee due, or entitlement to an amount of a refund or credit. Such written appeal shall be of sufficient content to clearly and unequivocally set forth the basis for the appeal and the relief sought.

(b) Such written appeal shall state the basis for the appeal and the relief sought, and shall include:

  (1) The name and address of the aggrieved applicant or feepayor;

  (2) The location of the affected property;

  (3) A copy of any applicable written decision or determination made by the administrator from which the appeal is taken.

(c) Within 15 days after receipt of the appeal, the administrator shall make a written decision with respect to the appeal. Such decision shall be of sufficient content to set forth the basis for the determination.

(d) Appeals from the decision of the administrator shall be made to the board of commissioners within 30 days of receipt by the aggrieved applicant or feepayor of the administrator's decision. Delivery by hand or certified mail to, or posting upon the property, at the address given by the aggrieved applicant or feepayor in the application for relief shall constitute “receipt by the aggrieved applicant or feepayor” under this provision.

(e) The board of commissioners shall thereafter establish a reasonable date and time for a hearing on the appeal, give written notice thereof to the applicant or feepayor, and decide the issue within a reasonable time following the hearing. Any party making an appeal shall have the right to appear at the hearing to present evidence and may be represented by counsel.

Sec. 10 - 36. - Payment of impact fee during appeal.

(a) The filing of an appeal shall not stay the collection of a development impact fee as a condition to the issuance of development approval.

(b) A developer may pay a development impact fee under protest to obtain a development approval, and by making such payment shall not be estopped from exercising this right of appeal or receiving a refund of any amount deemed to have been collected in excess.

ARTICLE XIII. - ENFORCEMENT AND PENALTIES.

Sec. 10 - 37. - Enforcement authority.

(a) The enforcement of this chapter shall be the responsibility of the administrator and such personnel as the administrator may designate from time to time.

(b) The administrator shall have the right to inspect the lands affected by this chapter and shall have the right to issue a written notice, a stop work order, or citation for violations, as the administrator in his or her reasonable determination may deem appropriate to the circumstances.

   (1) Refusal of written notice of violation, stop work order, or citation under this chapter shall constitute legal notice of service.

   (2) The citation shall be in the form of a written official notice issued in person or by certified mail to the owner of the property, or to his or her agent, or to the person performing the work giving rise to such violation.

   (3) The citation shall include reference to, and a copy of, the specific provisions of this chapter that the administrator has determined to be the basis of the violation.

   (4) The receipt of a citation shall require that corrective action be taken within 30 days unless otherwise extended at the discretion of the administrator.

(c) If the required corrective action is not taken within the time allowed, the administrator may use any available civil or criminal remedies to secure compliance. Such remedies may include the suspension or revocation of any building permit, withholding the issuance of other development approvals, and/or bringing an action before any court of competent jurisdiction.

Sec. 10 - 38. - Violations.

(a) Knowingly furnishing false information on any matter relating to the administration of this chapter shall constitute an actionable violation.

(b) Proceeding with construction of a project that is not consistent with the project's impact fee assessment, such as the use category claimed or units of development indicated, shall constitute an actionable violation.

(c) Failure to take corrective action following the receipt of a citation within the time period required shall constitute an actionable violation.

(d) A violation of this chapter shall be a misdemeanor punishable according to law, including the general penalty provisions of the county's Code of Ordinances. In addition to or in lieu of criminal prosecution, the board of commissioners shall have the power to sue in law or equity for relief in civil court to enforce this chapter, including recourse to such civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of this chapter, including but not limited to injunctive relief to enjoin and restrain any person from violating the provisions of this chapter and to recover such damages as may be incurred by the implementation of specific corrective actions.

ARTICLE XIV. - INCORPORATION BY REFERENCE OF GEORGIA LAWS.

It is the intent of the board of commissioners that this chapter comply with the terms and provisions of the Georgia Development Impact Fee Act (O.C.G.A. § 36-71-1 et seq.) as amended. To the extent that any provision of this chapter is inconsistent with the provisions of said act, the latter shall control. Furthermore, to the extent that this chapter is silent as to any provision of said act that is otherwise made mandatory by said act, such provision shall control and shall be binding upon the county.

ARTICLE XV. - REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

Sec. 10 - 39. - Repeal of conflicting laws.

Any and all other chapters, resolutions, or regulations, or parts thereof, in conflict with this chapter are hereby repealed to the extent of such conflict. Where this chapter overlaps with other chapters or regulations adopted by the board of commissioners, whichever imposes the more stringent restrictions shall prevail.

Sec. 10 - 40. - Severability.

If any sentence, clause, part, paragraph, section, or provision of this chapter is declared by a court of competent jurisdiction to be invalid, the validity of the chapter as a whole or any other part hereof shall not be affected.

Sec. 10 - 41. - Effect.

This chapter or any amendment thereto shall take effect upon adoption, unless otherwise specified in the motion for adoption.

Attachment A – Impact Fee Schedule

To be inserted.