

## TITLE 5

### MUNICIPAL FINANCE AND TAXATION

#### CHAPTER 5

#### IMPACT FEES

##### SECTION

5-501. General impact fee provisions.

5-502. Road impact fees.

5-503. Park impact fees.

5-504. Public safety impact fees.

**5-501. General impact fee provisions.** (1) Purpose. This chapter is intended to ensure timely construction of off-site public capital improvements that are necessary to serve new development by ensuring that necessary financing is available for such improvements. The impact fees to be paid by each new development pursuant to this chapter are to be proportional to the impact that the new development will have on the types of facilities for which the fees are charged.

(2) Applicability. Until any impact fee required by this chapter has been paid in full, no certificate of occupancy shall be issued. A stop work order shall be issued on any development for which the applicable impact fee has not been paid in full. The collection of impact fees shall apply to all new development in the town, unless otherwise provided herein.

(a) The movement of a structure onto a lot shall be considered development and shall be subject to the impact fee provisions, unless otherwise provided herein.

(b) The impact fee provisions shall not apply to the following actions:

(i) Placing on a lot in the town a temporary construction trailer or office, but only for the life of the building permit issued for the construction served by the trailer or office;

(ii) Any development, including but not limited to the mere subdivision of land, installation of utilities, or the use of land for limited recreational, agricultural, filling or dredging purposes, which, in the opinion of the administrator, will not result in a significant net increase in the demand for public facilities subject to this chapter;

(iii) The park impact fee shall not apply to nonresidential development;

(iv) Any project or development paid for by the Rutherford County School System.

(3) Definitions. (a) “Administrator” shall be the director of planning or persons designated by the town to administer this chapter.

(b) “Hotel/motel” means a building or part thereof, in which short-term sleeping accommodations are offered to the public and in which there may be a public dining room, conference rooms or other facilities for the convenience of the guests.

(c) “Industrial” means a building principally used in connection with mining; construction; manufacturing; scientific research, investigation, testing, or experimentation; or transportation, communication, electric, gas and sanitary services; excluding buildings associated with these activities but principally used for office purposes as defined herein.

(d) “Major roadway system” means all existing or planned collector or arterial roadways that are identified on the town’s adopted major thoroughfare plan map and are or will be the responsibility of the town to improve and maintain.

(e) “Mini-warehouse” means an enclosed storage facility containing independent, fully enclosed bays that are leased to persons for storage of their household goods or personal property.

(f) “Mobile home/RV park” means a lot principally used, designed, or adapted for use to accommodate more than one mobile home or recreational vehicle on individual pad sites.

(g) “Multi-family” means a building used for two or more dwelling units, in which individual living accommodations are provided for each family.

(h) “Nonresidential development” means any development that does not principally consist of residential dwelling units and accessory uses.

(i) “Office” means a building principally used, designed or adapted for the provision of executive, management, administrative or professional services, excluding governmental functions. Typical uses include administrative offices and services, including real estate, insurance, property management, investment, personnel, travel, secretarial services, telephone answering, professional or consulting services in the fields of law, architecture, design, engineering, accounting, medicine (including veterinarians) and similar professions, business office of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with administrative office services, but not involving the sale of merchandise, except as an incidental use.

(j) “Public/institutional” means a place of public assembly, where patients or inmates are housed, or where educational services or governmental functions are provided, not located in a shopping center or fitting the definition of an office. Typical uses include government-

owned and occupied buildings, hospitals, mental institutions, nursing homes, assisted living facilities, convention centers, sports arenas, post office, jails, libraries, museums, places of religious worship, military bases, airports, bus stations, fire stations, fraternal lodges, elementary secondary schools, colleges, vocational or technical schools, day care centers, parks and playgrounds.

(k) “Retail/commercial” means a shopping center or any other nonresidential development not fitting the categories of hotel/motel, office, public/institutional, industrial, or warehouse as herein defined.

(l) “Single-family detached” means a detached dwelling on an individual lot principally used, designed, or adapted for use by a single family.

(m) “Warehouse” means a building primarily devoted to the storage of materials including warehousing and mini-warehouse as those terms are here defined.

(n) “Warehousing” means any warehouse other than a mini-warehouse.

(4) Benefit district. (a) There shall be one impact fee benefit district, which encompasses the entire town.

(b) The appropriateness of the designation and boundaries of the benefit district shall be reviewed by the town as part of the impact fee revision process set for in § 5-501 (16). Following such review and a public hearing, the benefit district may be amended.

(c) Impact fees collected within the benefit district shall be spent within the benefit district.

(5) Phase-in schedule. Each of the three types of impact fees may be assessed at some percentage of the maximum amounts calculated in the most recent impact fee study commissioned by the town, not to exceed 100 percent. This percentage may be changed by the town council during the adoption of the annual budget or by amending this chapter.

(6) Calculation based on fee schedule. Impact fees shall be calculated as follows:

(a) Unless an applicant requests an administrative determination or individual assessment as set forth in the following subsections, the impact fees shall be calculated for the proposed development based on the development plan approval or permit allowing the use, according the applicable fee schedule.

(b) The following impact fee schedules are hereby adopted and incorporated herein by reference:

(i) Road impact fee schedule (§5-502(1));

(ii) Park impact fee schedule (§5-503(1));

(iii) Public safety impact fee schedule (§5-504(1)).

(c) The units of development specified in the fee schedule shall be interpreted as follows:

(i) A hotel or motel “room” shall include any space that is part of the same rental unit and does not have a separate entrance.

(ii) Building square footage shall be measured in terms of gross floor area, as defined in Section 2.020, Definitions, of the town’s zoning ordinance.

(d) For categories of uses not specified in the applicable impact fee schedule, the administrator shall apply the category of use set forth in the applicable fee schedule that is deemed to be most similar to the proposed use.

(e) If the development plan approval or permit for the proposed development indicates a mix of uses in the development, the impact fees shall be calculated separately for each use according to the fee schedule, and the results aggregated. Accessory uses that are customarily part of the principal use of a building or lot shall be assessed at the same rate as the principal use.

(f) For an addition to or replacement of existing structures, or a change of use, the impact fee to be paid shall be the difference, if any, between

(i) The fee, if any, that would be payable for existing development on the site or, in the case of demolition or removal of a structure or the reuse of a vacant structure, the previous development and use on the site, provided that the demolition or removal of the structure or the discontinuation of the previous use has occurred within five (5) years of the date of submittal of the application for which impact fees are assessed; and

(ii) The fee, if any, that would be payable for the total development on the site after the new development.

(g) Upon written request of an applicant, the administrator shall provide an estimate of the current fee based on the data provided by the applicant. However, the administrator shall not be responsible for determining at such preliminary date the accuracy of the information provided.

(7) Reserved.

(8) Collection of fees. The collection of impact fees shall be as follows:

(a) Except as set forth in the following paragraph, the impact fees for all new development shall be calculated and collected in conjunction with the application for the certificate of occupancy issued on or after January 1, 2000, provided the accompanying building permit shall also have been issued on or after December 15, 1999.

(b) For other uses not ultimately requiring a building permit, electrical permit, certificate of compliance or occupancy, or other permit subsequent to development plan approval, the fee shall be calculated and collected at the time of approval of the development plan.

(9) Fund accounting. (a) The town shall establish a separate accounting fund in which the impact fees collected for a particular type of facility within the benefit district shall be credited. Such fees shall be invested by the town and the yield on such fees, at the actual rate of return to the town, shall be credited to such accounting fund periodically in accordance with the accounting policies of the town. Such funds shall be segregated from other town monies for accounting purposes.

(b) Any yield on such accounting fund into which the fees are deposited shall accrue to that fund and shall be used for the purposes specified for such fund.

(c) The town shall maintain and keep financial records for such accounting fund showing the revenues to such fund and the disbursements from such fund, in accordance with normal town accounting practices. The records of such fund shall be open to public inspection in the same manner as other financial records of the town.

(10) Expenditure of fees. Impact fees may only be spent on qualifying improvements, as follows:

(a) Road impact fees: as set forth in §5-502(3);

(b) Park impact fees: as set forth in §5-503(2);

(c) Public safety impact fees: as set forth in §5-504(2).

(11) Refunds. (a) Any impact fee or portion thereof collected pursuant to this chapter, which has not been committed for a use permitted by §5-501(10) within six (6) years from the last day of the fiscal year in which it was received by the town, shall be refunded to the current record owner of the property upon written application. Impact fees shall be deemed to be “committed” when they have been spent or encumbered by contract. Impact fees shall be deemed to be committed in the order in which they are received and committed by the town. The refund shall include accrued interest at the rate of return on investments earned by the town on such amount. In disbursing such funds the town may rely on the written certification of the current record owner of the property as to his entitlement to the refund, in the absence of a written assertion by another party that such proposed payee is not the proper payee. If in doubt, the town may deposit such funds in an appropriate court for disposition as the court may determine. In such event, the town may deduct from the funds deposited an amount equal to the reasonable cost of causing the funds to be deposited with the court, including reasonable attorney’s fees.

(b) If development for which an impact fee has been paid has not begun, the impact fee and any accrued interest thereon shall be returned to the applicant provided that the applicant applies for the refund in writing within sixty (60) days after the expiration of the building permit or other approval (or any extension thereof) on which it was assessed.

(c) The town shall charge an administrative fee for verifying and computing the refund of three percent (3%) of the amount of the refund.

(12) Offsets. Offsets, which are reductions from the impact fee that would otherwise be due from a development, shall be subject to the following provisions. Offsets adjustments shall be credited at the same percent of the maximum impact fee rate assessed per fee type.

(a) The administrator shall grant an offset for qualifying improvements, as defined in §5-501(10), or cash contributions for such improvements, that are required to be made by the fee payer as a condition of development approval for the type of facility against which such offset is claimed.

(b) Offsets shall be allowable and payable only to offset impact fees otherwise due for the same category of improvements and shall not result in reimbursements from, nor constitute a liability of, the town.

(c) Offsets shall be given only for the value of any construction of improvements or contribution or dedication of land or money by a fee payer or his predecessor in title or interest for qualifying improvements of the same category for which an impact fee was imposed.

(d) No offset shall be provided under this section for contributions, payments or construction made more than ten (10) years prior to the effective date of this chapter.

(e) The person applying for an offset shall be responsible for providing appraisals of land and improvements, construction cost figures, and documentation of all contributions and dedications necessary to the computation of the offset claimed. The administrator shall have no obligation to grant offsets to any person who cannot provide such documentation in such form as the administrator may reasonably require.

(f) The value of land dedicated or donated shall be based on the appraised land value of the parent parcel (which land value is based on the date of transfer of ownership to the town) as determined by a certified appraiser who was selected and paid for by the applicant, and who used generally accepted appraisal techniques. If the town disagrees with the appraised value, the town may engage another appraiser at the town's expense, and the value shall be an amount equal to the average of the two appraisals. If either party rejects the average of the two appraisals, a third appraisal shall be obtained, with the cost of such third appraisal being shared equally by the property owner and the town. The third appraiser shall be selected by the first two appraisers, and the third appraisal shall be binding on both parties.

(g) Offsets provided for qualifying improvements meeting the requirements of this section shall be valid from the date of approval until ten (10) years after the date of approval or until the last date of construction within the project, whichever occurs first.

(h) The right to claim offsets shall run with the land and may be claimed only by owners of property within the development for which the qualifying improvement was required.

(i) Any claim for offsets must be made no later than the time of submittal of a building permit application or application for another permit subsequent to development plan approval that is subject to impact fees. Any claim not so made shall be deemed waived.

(13) Developer agreements. (a) Where a development includes or requires a qualifying improvement, as defined in §5-501(10), the town and the developer may agree in writing to have the developer participate in the financing or construction of part or all of the qualifying improvements. Such agreement may provide for cash reimbursements, offsets, or other appropriate compensation to the developer for the developer's participation in the financing and/or construction of the improvements.

(b) The agreement shall include:

(i) The estimated cost of the qualifying improvements, using the lowest responsive bid by a qualified bidder, which bid is approved by the administrator; or, if no bid is available, the estimated cost certified by a licensed engineer and approved by the administrator;

(ii) A schedule for initiation and completion of the improvement;

(iii) A requirement that the improvement be designed and completed in compliance with any applicable town ordinances.

(iv) Such other terms and conditions as deemed necessary by the town.

(14) Appeals. (a) A fee payer affected by a decision of the administrator under this chapter may appeal such decision to the town council, by filing with the administrator within ten (10) working days of the date of the decision, written notice stating and specifying briefly the grounds of the appeal. The administrator shall place the appeal on the town council's agenda for the next regularly scheduled meeting.

(b) The town council, after a hearing, shall have the power to affirm or reverse the decision of the administrator. In making its decision, the town council shall apply the standards of the relevant sections of this chapter. If the town council reverses the decision of the administrator, it shall direct the administrator to recalculate the fee, offset, or refund in accordance with its findings. In no case shall the town council have the authority to negotiate the amount of the fee.

(15) Supplemental regulation. (a) Except as herein otherwise provided, impact fees are in addition to any other requirements, taxes, fees, or assessments imposed by the town on development or the issuance of building permits or certificates of occupancy which are imposed on and due against property within the jurisdiction of the town. Such fees are intended to be consistent with the town's comprehensive plan, capital improvements program, development regulations and other town policies, ordinances, and resolutions by which the town seeks to ensure the provision of capital facilities in conjunction with development.

(b) In addition to the use of impact fees, the town may finance qualifying capital improvements through the issuance of bonds, the formation of assessment districts or any other authorized mechanism, in such manner and subject to such limitations as may be provided by law.

(16) Updates. Not less often than every five (5) years, the town council, following a public hearing, shall review and, if warranted, recommend changes in the schedules of impact fees. Factors to be considered may include, without limitation, past and projected growth in residential and nonresidential development, qualifying improvements actually constructed, changing levels of service, revised cost estimates for qualifying improvements, changes in the availability of other funding sources, changes in demand generation characteristics, sources of non-town funds and such other factors as may be relevant. (1991 Code §5-601, as amended by Ord. #07-07, Feb. 2007, and Ord. #07-10, April 2007, modified)

**5-502. Road impact fees.** (1) Road impact fee schedule. At the option of the applicant, the road impact fee shall be calculated based on the fee schedule adopted with the annual budget ordinance or subsequently amended by ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use based on the definitions provided in this chapter.

(2) Individual assessments of road impact fees. Individual assessments of road impact fees shall be allowed as follows only for mixed-use projects with both residential and commercial components that are so designed as to provide significant opportunities for internal trip capture:

(a) The traffic study shall be signed by the traffic engineer submitting the assessment and shall include, without limitation, the following elements:

(i) A projection of the number of vehicular trips entering and departing from the project during an average weekday.

(ii) If the site is already developed, and some or all of the existing development will be replaced by the completed project, a calculation of the number of vehicular trips for that portion of

the existing development which will be replaced by the completed project.

(iii) The percentage of those trips identified in (i) and (ii) above, which are “primary trips” (as opposed to “pass-by trips” or “diverted-link trips” for which the project is not the primary destination).

(iv) The assumptions and conclusions from which any projections are made. If the assumptions or conclusions are derived from the current edition of the ITE manual or other standard reference materials, the materials shall be identified and appropriate excerpts or specific references provided. Otherwise, the reasoning underlying the assumptions and conclusions shall be clearly stated in writing.

(v) Such other information as the administrator shall reasonably request.

(b) The administrator shall determine the fee based on the review of the independent assessment and the following formula.

MAXIMUM FEE – PK HR VMT x NET COST/VMT x PERCENT

PK HR VMT – PK HR TRIPS x %NEW x LENGTH/2

Where:

PK HR TRIPS = Trip ends during PM peak hour of adjacent street traffic

% NEW = Percent of trips that are primary, as opposed to pass-by or diverted-link trips

LENGTH = Average length of a trip on the major roadway system divided by 2 = Avoids double-counting trips for origin and destination

NET COST/VMT = Average net cost to accommodate a new vehicle-mile of travel during the peak hour. Until recalculated by an update of the impact fee study, this shall be \$2,755.

PERCENT = Percent at which maximum fees are currently being assessed by the town.

(c) The administrator shall accept the calculations of the individual assessment if the administrator finds that:

(i) The proposed development is in fact so unique in its’ long-term impacts that the strict application of the fee schedule

or administrative determination would result in inaccurate impact projections; and

(ii) The individual assessment results in a fee that differs by at least ten percent (10%) from the fees calculated under the fee schedule.

(d) If the town accepts the computations of the individual assessment under this section, the applicable fee shall be determined from the individual assessment regardless of whether it is higher or lower than the fee calculated under the fee schedule or administrative determination.

(3) Use of road impact fees. (a) The revenues from road impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the major roadway system, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the transportation portion of the capital improvements program and in updating the road impact fee computations.

(b) Capacity-expanding improvements are those that increase the capacity of the major roadway system to accommodate additional traffic. Such improvements include, but are not limited to, widening of roadways to increase lane and/or shoulder width or to add additional travel lanes, signalization, addition of turn lanes and other intersection improvements. Improvements such as intersection improvements or acceleration/deceleration lanes that primarily serve traffic entering or exiting a development project shall not be considered capacity-expanding improvements.

(c) Qualifying project costs include project engineering costs; the acquisition cost of rights-of-way and easements, including legal costs; the construction cost of improvements, including, but not limited to, public street travel lanes, public pedestrian and bicycle pathways, turning lanes or the portion thereof located within the right-of-way of a public street, lighting, signalization, signage and landscaping improvements that are required for the road improvement to function effectively; and the principal, interest and other financing costs of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.

(d) Monies collected as road impact fees shall not be used to pay for any of the following:

(i) Construction, acquisition or expansions of public facilities other than qualifying major roadway system improvements;

(ii) Repair, operation or maintenance of existing or new public street or pathway improvements;

- (iii) Town personnel and consultants hired for purposes other than those expressly permitted under this section;
- (iv) Streets, pathways and related transportation improvements that are within and intended to serve only a specific development such as a new residential subdivision.

**5-503. Park impact fees.** (1) Park impact fee schedule. At the option of the applicant, the park impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance or subsequently amended by ordinance. The administrator shall determine the land use category in the fee schedule that best represents the proposed use.

(2) Use of park impact fees. (a) The revenues from park impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the town's parks and recreation facilities, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the parks and recreation portion of the capital improvements program and in updating the park impact fee computations.

(b) Capacity-expanding improvements are those that add land and facilities to the town's park and recreation system that are available to be used by town residents. Such improvement include, but are not limited to, acquiring or developing new parks and recreation facilities, improvements to existing parks that add new facilities, and expansions of existing recreation facilities.

(c) Qualifying project costs include project design and engineering costs; the acquisition cost of land and easements, including legal costs; the construction cost of improvements; and the principal, interest and other financing cost of bonds, notes, or other obligations issued by or on behalf of the town to finance qualified improvements.

(d) Monies collected as park impact fees shall not be used to pay for any of the following:

- (i) Construction, acquisition or expansion of public facilities other than qualifying parks and recreation improvements;
- (ii) Repair, operation, maintenance or replacement of existing parks and recreation facilities;
- (iii) Private parks and recreational facilities that are not open to the public.

**5-504. Public safety impact fees.** (1) Public safety impact fee schedule. At the option of the applicant, the public safety impact fee may be calculated based on the fee schedule adopted with the annual budget ordinance or subsequently amended by ordinance. The administrator shall

determine the land use category in the fee schedule that best represents the proposed use.

(2) Use of public safety impact fees. (a) The revenues from public safety impact fees collected within the benefit district and accrued interest on such revenues shall be used to finance project costs of capacity-expanding improvements to the town's public safety facilities, as determined by the town council, provided that the improvements are located within the same benefit district. Such revenues may also fund the cost of consultants used in updating the public safety facilities portion of the capital improvements program and in updating the public safety impact fee computations.

(b) Capacity-expanding improvements are those that add land and facilities to the town's public safety facilities that are available to serve town residents. Such improvements include, but are not limited to, acquiring or developing new fire and police stations, including land acquisition, expansions to existing fire and police stations that add additional space for personnel or equipment, and acquisition of new apparatus or vehicles for fire protection or police protection services.

(c) Qualifying project costs include project design and engineering costs; the acquisition cost of land and easements, including legal costs; the construction cost of improvements; and the principal, interest and other financing costs of bonds, notes or other obligations issued by or on behalf of the town to finance qualified improvements.

(d) Monies collected as public safety impact fees shall not be used to pay for any of the following:

(i) Construction, acquisition, or expansion of public facilities other than qualifying public safety facilities;

(ii) Repair, operation, maintenance, or replacement of existing fire or police stations or equipment;

(iii) Acquisition of apparatus, vehicles or equipment that essentially replaces existing or older equipment that is being taken out of service; provided that if the new equipment will provide better service than the comparable equipment being retired and is more costly than the current replacement cost of the existing equipment, the difference in cost may be funded out of public safety impact fees.