

CHAPTER 29 DEVELOPMENT IMPACT FEES

- § 29-1. Definitions
- § 29-2. Purpose of Article
- § 29-3. Effect on Provisions of the Town Code
- § 29-4. Applicability of Development Impact Fees
- § 29-5. Affordable Housing
- § 29-6. Annual Review and Adjustments
- § 29-7. Imposition and Enforcement of Development Impact Fees
- § 29-8. Calculation of Development Impact Fees – Fee Schedule
- § 29-9. Development Impact Fee Credits
- § 29-10. Administration of Development Impact Fees
- § 29-11. Appropriation of Development Impact Fees
- § 29-12. Refund of Development Impact Fees
- § 29-13. Amount of Impact Fees

Editor's Note. - Exhibit A to Ordinance 482-Schedule of Town of Easton Impact Fees, and all amendments thereto, are incorporated into this volume by reference as if fully set out herein. Copies are on file in the office of the town clerk, where they may be examined between the hours of 8:30 A.M. and 4:00 P.M., Monday through Friday, except on holidays.

SECTION 29.1. DEFINITIONS.

Unless otherwise defined in this section, words and terms shall have the meaning assigned to them in Article 28 (Zoning), Article 25, (Subdivision Regulations), and Article 6 (Building Code). In case of a conflict, any term in this Article shall have the meaning defined herein.

AFFORDABLE HOUSING means any residential dwelling unit that is sold for less than the Maximum Acquisition Cost.

AGRICULTURAL PURPOSES means the production, processing, or harvesting of crops, vegetation, or animals for human or animal consumption or use, and includes without limitation horticultural and floricultural wholesale operations, greenhouses, sod production, wholesale nurseries, viticulture (grape growing), orchards and aquaculture.

APPLICANT means an individual, corporation, or other legal entity that applies for a building permit or zoning certificate in the Town.

APPROPRIATION or **TO APPROPRIATE** means an action by the Town Council to identify specific public facilities for which development impact fee funds may be used. Appropriation shall include, but is not limited to:

- (1) Inclusion of a public facility in the adopted capital budget or Capital Improvement Plan ;
- (2) Execution of a contract or other legal encumbrance for construction of a public facility using impact fee funds in whole or in part; or,
- (3) Actual expenditure of impact fee funds through payments made from an impact fee account or subaccount.

BUILDING PERMIT means a permit or other final approval required as a condition precedent to the construction, extension, conversion, alteration, or reconstruction of a structure required under Article 6 (Building Code) and Article 28 (Zoning).

CAPITAL BUDGET means the budget adopted by the Town Council from time to time, for the purpose of identifying and financing needed capital improvements.

CAPITAL IMPROVEMENTS means land acquisition, site development, site related improvements, purchase of

equipment, or construction of structures necessary for the expansion or construction of public facilities serving the Town and its residents, including all related costs.

CAPITAL IMPROVEMENT PLAN means the schedule of capital improvements to be undertaken by the Town as determined from time to time by the Town Council or as set forth in the capital budget.

COMMERCIAL USE means any development for commercial or recreational/entertainment use of a site as defined in Chapter 28 (Zoning).

CREDIT AGREEMENT means an agreement made pursuant to this Article, which provides for a credit of certain required development impact fees in exchange for the provision of dedicated lands or the construction of facilities that are consistent with, add to, or complement the Town's Capital Improvement Plan .

DEPARTMENT means the Town's Department of Planning & Zoning and/or Department of Permits & Inspections.

DEVELOPMENT IMPACT FEE or **IMPACT FEE** means a fee levied pursuant to this Article as a condition of issuance of a building permit or zoning certificate, and which is intended to fund capital improvements and public facilities in the Town needed to serve new growth and development activity in the Town.

DWELLING UNIT -- means one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping.

FAMILY -- means an individual, or two or more persons related by blood or marriage, or a group of not more than three persons not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

FINANCE OFFICER means the Easton Town Clerk.

FLOOR AREA means the total horizontal area in square feet of all floors within the exterior walls of the building, including habitable or usable garage, basement, attic, or similar spaces, but not including vent shafts, unroofed inner courts, or unusable areas below ground or in attics.

INDUSTRIAL USE means any development for industrial use of a site as defined or described in Chapter 28 (Zoning).

INSTITUTIONAL USE means any development for institutional use of a site as defined in Chapter 28 (Zoning).

MAXIMUM ACQUISITION COST is the highest purchase price for a residential dwelling unit at which residents of Town remain eligible to participate in the "Maryland Mortgage Program" as established from time to time by the Maryland Department of Housing and Community Development, Community Development Administration (CDA).

MIXED USE DEVELOPMENT means a new development consisting of both residential and non residential uses and structures, or one or more different types of non residential uses or structures, either on the same site or part of the same new development.

NEW DEVELOPMENT means any development or development activity for which a building permit or zoning certificate is issued after the effective date of this Article, and which either increases the number of dwelling units or which increases total non residential floor area. Accessory and replacement residential structures are excluded.

NON RESIDENTIAL DEVELOPMENT means any development for commercial, industrial, or institutional use.

OWNER OCCUPIED AFFORDABLE HOUSING means a residential dwelling unit that has been granted an affordable housing deferral that is occupied by the owner as the owner's primary residence for at least seven (7)

months of each calendar year.

PERMIT OFFICIAL means the Town Planner and Codes Administrator.

PLANNING OFFICER means the Town Planner and Codes Administrator.

PUBLIC FACILITIES means public works, improvements, and facilities, including government facilities, bridges, streets and roads, parks and recreational facilities, police and fire stations or substations and storm drainage facilities required in whole or in part to accommodate new construction or development.

PUBLIC FACILITIES EXPENDITURES means funds or resources appropriated or dedicated in connection with the planning, design, engineering, and construction of public facilities; planning, legal, appraisal, and other costs related to the acquisition of land, financing, and development costs, the costs of compliance with purchasing procedures and applicable administrative and legal requirements, and all other necessary or incidental costs to provide the public facility.

RATE the rate or rates used to calculate development impact fees for non residential new development set forth in Appendix "A."

RESIDENTIAL DEVELOPMENT means any new development for residential use.

RESIDENTIAL USE means existing or proposed dwelling units, including, but not limited to, single family, multi family, duplex, manufactured, or modular homes, and apartments, including second floor apartments.

SITE RELATED IMPROVEMENT means off site capital improvements or facilities made necessary by new development, including, but not limited to, hiking/ biking paths, sidewalks, roadway construction, upgrades or improvements, and traffic control devices or measures.

ZONING CERTIFICATE means a permit for the use or occupancy of a structure where a building permit is not required but the development of the structure will produce additional dwelling units or will increase non residential floor area.

(Ordinance 482 effective 5/17/2005)

SECTION 29.2. PURPOSE OF ARTICLE.

The purpose of this Article is to promote the health, safety, and general welfare of the residents of the Town by:

Establishing uniform procedures for the imposition, calculation, collection, expenditure, and administration of development impact fees imposed on new development;

Requiring all new residential and non residential development to contribute its fair and proportionate share towards the costs of capital improvements reasonably necessitated by such new development;

Providing a means of financing public facilities needed to accommodate new development in a safe and timely manner;

Ensuring that the new development paying development impact fees reasonably benefits from the appropriation of impact fees to fund public facilities provided to accommodate such new development;

Implementing the Town's Comprehensive Plan and capital budget by seeking to ensure that adequate public facilities are available in a timely and well planned manner; and,

Ensuring that all applicable legal standards and criteria are properly incorporated in these procedures.

(Ordinance 482 effective 5/17/2005)

29.3. EFFECT ON PROVISIONS OF THE TOWN CODE.

29.3.1. Construction. This Article may not be construed to alter, amend, or modify any provision of Article 6 (Building Code), Article 25 (Subdivision Regulations), or Article 28 (Zoning) of this Code. The provisions of those Articles shall be operative and remain in full force and effect notwithstanding any contrary provisions, definitions, or intentions that are or may be expressed or implied in this Article. The parts and sub parts of this Article are intended to be severable. If a court should determine by a valid and final judgment that any part of this ordinance, or the application thereof to any person or circumstance, is unconstitutional, illegal, or void for any reason, then, notwithstanding that determination, the remaining provisions hereof and the application thereof to all other persons and circumstances shall remain in full force and effect.

29.3.2. Compliance with other laws. Payment of development impact fees shall not entitle the applicant to a building permit or zoning certificate unless all other applicable Federal, State, and Town statutes, ordinances, and regulations concerning land use, zoning, planning, adequate public facilities, forest conservation, critical area, sewage disposal, platting, subdivision, and other laws, requirements, standards, and conditions have been met, and all applicable permit requirements have been fulfilled. All of the foregoing prerequisites are independent of and in addition to the requirement for payment of a development impact fee.

29.3.3. Effect on land use and development regulations. This Article, including the specific development impact fee ordinances for particular public facilities, shall not affect, in any manner, the permissible use of property, density or intensity of development, design and improvement standards, or other applicable standards or requirements of land development regulations of the Town.

(Ordinance 482 effective 5/17/2005)

SECTION 29.4. APPLICABILITY OF DEVELOPMENT IMPACT FEES.

29.4.1. Affected area. This Article shall apply to all new development within the Town.

29.4.2. Type of development affected. Except as specifically exempt by the provisions of this Article, this Article shall apply to all new development.

29.4.3. Types of development not affected. No development impact fee shall be imposed upon:

- (1) development for which a building permit or zoning certificate has been issued prior to the effective date of this Article;
- (2) any new residential development that does not add a new dwelling unit; nor shall a development impact fee be imposed for alteration, expansion, or replacement of an existing dwelling unit where no additional dwelling unit is created;
- (3) the alteration or change of use of existing non residential structures where there is no increase in the non residential floor area;
- (4) developments that are the subject of a valid development rights and responsibilities agreement or other agreement to which the Town is a party that contains provisions in conflict with this Article, but only to the extent of the conflict or inconsistency;
- (5) farm structures, defined as any building or structure used exclusively for agricultural purposes; and
- (6) the development of public facilities by the State of Maryland, Talbot County, the Town, or the federal government.

(Ordinance 482 effective 5/17/2005)

SECTION 29.5. AFFORDABLE HOUSING.

29.5.1 Affordable housing reserve. The Council shall, as part of the annual budget process, establish an affordable housing reserve in the general fund to be used to defer impact fees otherwise payable on development and construction of affordable housing. In any budget year, the total amount of impact fees deferred for affordable housing shall not exceed the affordable housing reserve.

29.5.2. Deferral of development impact fees. Development impact fees shall be deferred on residential dwelling units that qualify as affordable housing under this Article, provided all of the following conditions are met.

- (a) Funds are available in the affordable housing reserve;
- (b) The record title holder files a written request for deferral before the issuance of a building permit;
- (c) The record title holders, on behalf of themselves and subsequent purchasers, agree to pay the amount of any deferral in full, except for amounts that are forgiven pursuant to Section 29.5.4;
- (d) The deferred development impact fee is paid when the residential dwelling unit is sold, transferred, or conveyed, except that the deferral may be continued and transferred to the initial purchaser if:
 - (1) the record title holder does not occupy or let the newly constructed residential dwelling unit prior to sale to the initial purchaser; and,
 - (2) the initial purchaser agrees to pay the deferred development impact fee in full, except for amounts that are forgiven pursuant to Section 29.5.4, when the residential dwelling unit is sold, transferred, or conveyed.
- (e) The property owner shall execute an agreement in a form prepared by the Town Attorney to repay any balance due on deferred impact fees, which agreement shall be recorded at the property owner's expense in the Land Records of Talbot County.

29.5.3. Records of deferrals. The Town shall maintain a record for the subject property containing:

- (1) the amount of deferral;
- (2) the tax map and parcel number; and,
- (3) the record title holder's and initial purchaser's name and address.

29.5.4. Forgiveness of deferrals. Deferrals for owner occupied affordable housing shall be forgiven at the rate of 15% of the original amount per year, pro rated for each portion of any 365 day period of occupancy.

29.5.5. Limitations of deferrals. No more than ten percent (10%) of the budgeted affordable housing reserve may be granted to any single applicant in any fiscal year. No more than twenty percent (20%) of the units in any subdivision or any phase thereof shall qualify for deferral of impact fees under this Article.

29.5.6. Termination of deferrals. Deferred impact fees for affordable housing terminate, and except to the extent that owner occupied affordable housing deferrals have been forgiven, deferred impact fees are due and payable immediately when the residential dwelling unit is sold, transferred, or conveyed.

29.5.7. Accounting for deferred amounts. The Finance Officer shall transfer the amount of deferred impact fees from the general fund affordable housing reserve to the appropriate impact fee categories in accordance with the provisions of Section 29.10 of this Article. When deferred impact fees are collected under Section 29.5.6 above, the funds shall be deposited into the general fund.

29.5.8. Notification to Finance Office. If the Permit Official determines that the proposed development qualifies

for a public housing, a non profit housing exemption, or an affordable housing deferral, he or she shall:

- (1) Notify the Finance Officer of the total amount of the impact fee that would be imposed on the new development absent the exemption, deferral, or reduction;
- (2) That the exemption, deferral, or reduction has been approved;
- (3) The amount by which the development impact fee has been exempted, deferred, or reduced; and
- (4) That a funding source other than development impact fees or other development exactions shall be used to fund the appropriate development impact fee account in the amount exempted, deferred, or reduced.

29.5.9. Effect of deferral, or reduction. If the Permit Official grants a deferral or reduction of development impact fees otherwise due, the Finance Officer shall transmit funds equal in amount to those deferred or reduced from a source other than impact fees into the appropriate development impact fee account no later than the beginning of the fiscal year following the calendar year in which the exemption or deferral was granted.

29.5.10. Administrative procedures and guidelines. The Town Council, by resolution, may adopt administrative procedures and guidelines to implement the affordable housing impact fee deferral programs. (Ordinance 482 effective 5/17/2005)

29.6. ANNUAL REVIEW AND ADJUSTMENTS.

29.6.1. Annual review. On or before January 31, of each year after adoption of this Article, and prior to Town Council adoption of the Annual Budget and Capital Improvement Plan , the Mayor shall coordinate the preparation and submission of an annual report to the Town Council on the subject of Development Impact Fees.

29.6.2. Contents of annual report. The annual report may include any or all of the following:

- (1) Recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting development impact fees for particular public facilities;
- (2) Proposed changes to the Town's Capital Improvement Plan , including the identification of additional public facility projects anticipated to be funded wholly or partially with development impact fees;
- (3) Proposed changes to development impact fee schedules as set forth in the ordinances imposing and setting development impact fees for particular public facilities;
- (4) Proposed changes to any development impact fee calculation methodology; and
- (5) Any other data, analysis, or recommendations as the Mayor may deem appropriate, or as the Town Council may request.

29.6.3. Annual inflation adjustment. On July 1 of each year after adoption of this Article, the amount of any development impact fee shall be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent 20 city annual national average data from the Engineering News Record Construction Cost Index. If this index is unavailable, the Town Engineer shall designate a substitute index. The adjustments shall apply to all permits issued on or after July 1 of each year. The Finance Officer shall make the automatic annual adjustment unless the Town Council has determined an alternate adjustment in their Annual Review.

29.6.4. Waiver of inflation adjustment. Nothing herein shall prevent the Town Council from electing to retain existing development impact fees or from electing to waive the inflation adjustment for any given fiscal year. (Ordinance 482 effective 5/17/2005)

SECTION 29.7. IMPOSITION AND ENFORCEMENT OF DEVELOPMENT IMPACT FEES.

29.7.1. In general. The Town shall not issue a building permit or zoning certificate for new development until the development impact fees required under this Article have been calculated and paid. The amount of the development impact fee is the amount of the fee in effect on the date of issuance of the building permit or zoning certificate.

29.7.2. Lien. If new development is undertaken without payment of all applicable development impact fees, the development impact fees shall:

- (1) Be a lien against the site of development.
- (2) Be levied, collected, and enforced in the same manner as real property taxes imposed by the Town; and
- (3) Have the same priority and bear the same interest and penalties as real property taxes.

29.7.3. Payment. If real property on which a development impact fee is due and unpaid is sold, in the absence of an agreement to the contrary between the contract seller and the contract purchaser, the seller shall pay the development impact fee prior to or at settlement.

29.7.4. Actions to recover. If a development impact fee is not paid as required by this Article, the Town Attorney may institute an action to recover the fee and enjoin any further construction and all use of the property until the fee is paid. Any persons who fail to pay a development impact fee as required by this Article shall be responsible for payment of enforcement costs, including court costs, litigation expenses, and reasonable attorney's fees. (Ordinance 482 effective 5/17/2005)

SECTION 29.8. CALCULATION OF DEVELOPMENT IMPACT FEES FEE SCHEDULE.

29.8.1 In general. At the time of application for a building permit or zoning certificate. The Permit Official shall calculate development impact fees and the applicant shall pay the same to the Town prior to the issuance of a building permit or zoning certificate.

29.8.2. Rate for mixed-use developments. Impact fees due from a mixed use development shall be based upon the development impact fee for each public facility generated by each land use type in the mixed use development. The Permit Official shall determine the area, number of units, type of use, and other criteria necessary to calculate the development impact fee based on uses, sizes, and configuration shown on the building plans.

29.8.3. Rates for other uses. For proposed new development for which no specific land use type is listed in this Article, the Permit Official shall apply the land use type as defined in the Institute of Traffic Engineers Trip Generation Manual (1997 ed.) that is most similar to the proposed new development in terms of impact on public facilities, based on the predominant characteristics of the proposed new development.

29.8.4. Calculation of fee. Upon receipt of an application for a building permit or zoning certificate, the Permit Official shall determine the development impact fee based on the following standards:

- (a) Whether the proposed new development constitutes a residential or non residential use.
- (b) The specific type of residential or non residential development, if applicable;
- (c) If residential, the number of new dwelling units;
- (d) If non residential, the number of additional square feet of floor area (rounded up to the nearest square foot) and the proposed use; and,
- (e) The calculation of development impact fees due from a phased new development shall be based upon

the development impact fees due for each specific land use within the phase of development for which building permits or zoning certificates are requested.

(f) The calculation of development impact fees for non residential development shall utilize graduated rates for square feet of total floor area within each separate size classification shown on Appendix "A". For mixed use developments, total non residential floor area within each size and use category shall be aggregated for each phase of development. The total amount of non residential floor area from each phase of development shall be added, cumulatively, to determine the graduated rate(s) for successive phases.

After making these determinations, the Permit Official shall calculate the applicable development impact fee by multiplying the number of new dwelling units or new floor area, by the amount of the applicable development impact fee per unit of development, and incorporating any applicable credit made pursuant to Section 29.9. (Ordinance 482 effective 5/17/2005)

SECTION 29.9. DEVELOPMENT IMPACT FEE CREDITS

29.9.1. Applicability. The Planning Officer shall grant a credit against any development impact fee imposed by this Article upon any new development where the applicant has negotiated and entered into a credit agreement with the Town to dedicate land or construct capital improvements that:

- (1) Are consistent with, add to, or complement the Town 's Capital Improvement Plan ;
- (2) Are funded by development impact fee revenue;
- (3) Are of the same category of public facility impacted by the proposed new development; and
- (4) Will be constructed or dedicated in accordance with a schedule set forth in the Capital Improvement Plan or credit agreement.
- (5) No credit shall exceed development impact fees imposed by this Article for the proposed new development.

29.9.2. Procedure. The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Planning Officer, which shall include the following:

- (1) A proposal to dedicate specific capital assets or to construct specific capital improvements that will be dedicated or constructed in lieu of the required development impact fee, and the time by which the capital assets will be dedicated or the capital improvements will be constructed; and
- (2) The fair market value of the assets to be dedicated, supported by independent appraisal(s), and the projected costs for the suggested capital improvements, which shall be based on local information for similar capital improvements, along with a construction timetable for the completion thereof. Such estimated costs shall include the cost of construction, labor and materials, lands, easements and rights, surveys, plans and specifications, engineering and legal services, and all other expenses necessary or incident to such construction.
- (3) The proposed plan and cost estimates shall be prepared by a person or persons qualified in the provision of the particular capital improvement, impact analysis, and economics.

29.9.3. Initial determination. Within sixty (60) working days of the submission of the proposed credit agreement, the Planning Officer shall determine if the proposed agreement is complete. If it is determined that the proposed credit agreement is not complete, the Planning Officer shall send a written statement to the applicant outlining the deficiencies and no further action shall be taken until all deficiencies have been corrected.

29.9.4. Review by Town staff. Once the Planning Officer determines the proposed credit agreement is complete,

within sixty (60) working days, the Planning Officer shall recommend approval of the agreement if the Planning Officer, with concurrence of the Town Engineer, determines that the proposed capital improvements are consistent with, add to, or complement the Town 's Capital Improvement Plan as it applies to the specific category of capital improvement, and the value of the assets to be dedicated or the construction costs of the suggested capital improvements equals or exceeds the amount of development impact fees otherwise payable. If, within this time period, the Planning Officer or the Town Engineer determine that either the suggested capital improvements are not consistent with, do not add to, or do not complement the Town 's Capital Improvement Plan , or that the proposed dedication, appraisal(s), construction costs, or schedule are not consistent with the requirements of this Article or are otherwise unacceptable, the Planning Officer, with the concurrence of the Town Engineer, shall propose changes to the agreement, construction, costs or schedule that are consistent with this Article and the Town 's Capital Improvement Plan .

29.9.5. Approval By Town Council. If the Planning Officer, with the concurrence of the Town Engineer, recommends approval of the proposed credit agreement, or if the changes proposed by the Planning Officer with the concurrence of the Town Engineer are acceptable to the applicant, the credit agreement shall be prepared and forwarded to the Town Council for final review and consideration. The Town Council may approve, by resolution disapprove, or modify the proposed credit agreement, in whole or in part, and may make any decision or determination that, in its judgment, may be necessary or prudent to protect the public interest or promote the purposes of this Article.

29.9.6. Payment of fees after execution of credit agreement. Upon execution of the credit agreement, the balance of development impact fees due, if any, shall be paid in accordance with this Article, and title to any land dedicated shall be conveyed to the Town pursuant to the credit agreement.

29.9.7. Conveyance of property. If the credit agreement requires dedication of assets other than land, the applicant shall execute such deeds, leases, easements, and other instruments in a form satisfactory to the Town Attorney as may be necessary to convey the same to the Town for public purposes no later than the time the development impact fees would otherwise be due.

29.9.8. Timing of conveyance. Any land awarded credit under this section shall be conveyed no later than the time at which development impact fees are required to be paid. The portion of the development impact fee represented by a credit for construction shall be deemed paid when the construction is completed and accepted by the Town for maintenance or when adequate security for the completion of the construction has been provided.

29.9.9. Bond and surety. The credit agreement shall include a payment and performance bond, surety, or other acceptable assurance that the project will be completed as proposed and that all payments required to be made by the applicant will be paid in full and on time in accordance with the credit agreement and construction contract documents. The bond, surety, or other assurance shall be in a form and amount acceptable to the Town Engineer and Town Attorney.

(Ordinance 482 effective 5/17/2005)

SECTION 29.10. ADMINISTRATION OF DEVELOPMENT IMPACT FEES.

29.10.1. Collection. The Permit Official shall collect all applicable development impact fees at or before the time of issuance of a Town or municipal building permit or zoning certificate unless:

- (1) The applicant is determined to be entitled to a full or partial credit, pursuant to Section 29.9 of this Article;
- (2) The applicant has been granted a deferral of the impact fee pursuant to Section 29.5;
- (4) The applicant has been determined to be not subject to the payment of a development impact fee; or
- (5) The applicant has filed an appeal and has posted with the Town a letter of credit or other surety acceptable to the Permit Official in the amount of the development impact fee, as calculated by the Permit

Official, in a form approved by the Town Attorney.

29.10.2. Accounting for development impact fees. The person required to pay development impact fees shall provide the Permit Official a statement of the amount of development impact fees required under this Article for each type of land use and each category of public facility.

29.10.3. Development impact fee accounts. The Finance Officer shall establish a development impact fee account for each category of public facilities for which development impact fees are imposed. Such account shall clearly identify the category, account, or fund for which the development impact fee has been imposed. All development impact fees collected by the Town shall be deposited in the appropriate development impact fee account, which shall be interest bearing. All interest earned on funds deposited to such account shall be credited to and considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other Town funds, over time. The Finance Officer shall establish and implement necessary accounting controls to ensure that the development impact fee funds are properly deposited, accounted for, and appropriated in accordance with this Article, and any other applicable legal requirements.
(Ordinance 482 effective 5/17/2005)

29.11. APPROPRIATION OF DEVELOPMENT IMPACT FEES.

29.11.1. In general. Development impact fee funds may be appropriated for public facilities, for public facilities expenditures, and for the payment of principal, interest, and other financing costs on contracts, bonds, notes, or other obligations issued by or on behalf of the Town or other applicable governmental entities to finance such public facilities and public facility expenditures. All appropriations from development impact fee accounts shall be detailed in a budget adopted by the Town Council.

29.11.2. Restrictions on appropriations. Development impact fees shall be appropriated only:

- (1) For the particular category of public facilities for which they were imposed, calculated, and collected. Development impact fees shall not be appropriated for funding any expenditure that would be classified in an accounting as a maintenance or repair expense or for operational or personnel expenses associated with the provision of a public facility; and,
- (2) Within six (6) years of the beginning of the fiscal year immediately succeeding the date of collection, unless the development impact fee funds will be appropriated in accordance with Section 29.11.3.

29.11.3. Appropriation of development impact fee funds beyond six (6) years of collection. Notwithstanding Section 29.11.2, development impact fee funds may be appropriated beyond six (6) years from the beginning of the fiscal year immediately succeeding the date of collection if, prior to the expiration of that time period, the Council finds:

- (1) The demand for the public facility is generated in whole or in part by the new development,
 - (2) The public facility will actually serve the new development, and
 - (3)
 - (a) The Capital Improvement Plan prepared by the Town for the particular category of public facility has used a longer time frame; or
 - (b) The public facility or capital improvement requires more than six (6) years to plan, design, fund and construct
- (Ordinance 482 effective 5/17/2005)

SECTION 29.12. REFUND OF DEVELOPMENT IMPACT FEES.

29.12.1. Expiration or revocation of building permit or zoning certificate. An applicant who has paid a development impact fee for a new development for which the necessary building permit or zoning certificate has

expired or for which the building permit or zoning certificate has been revoked prior to construction shall be eligible to apply for a refund of development impact fees.

29.12.2 Failure of Town to use or appropriate development impact fee funds within time limit. The current property owner may apply for a refund of development impact fees paid by an applicant if the Town has failed to use or appropriate the development impact fees collected from the applicant within the time limits established in Section 29.11.2 unless such funds are used or appropriated in accordance with Section 29.11.3 of this Article.

29.12.3. Abandonment of development after initiation of construction. An applicant who has paid a development impact fee for a new development for which a building permit or zoning certificate has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.

29.12.4. Administrative fee. An administrative fee of 2%, not to exceed \$500, shall be deducted from the amount of any refund granted and shall be retained by the Town to defray the administrative expenses associated with the processing of a refund application.

29.12.5. Refund application procedures.

- (1) Applications for a refund shall be made in writing and shall include specific amounts claimed from particular development impact fee categories and all other information required below.
- (2) Upon receipt of a complete application for a refund, the Permit Official shall review the application and documentary evidence submitted by the Applicant as well as such other information as the Permit Official may request, and shall make a written determination whether a refund is due.
- (3) Following an affirmative determination, the Permit Official shall notify the Finance Officer, who shall issue a refund from the appropriate development impact fee account. In calculating the amount of a refund, the Permit Official and Finance Officer shall not include any interest.
- (4) Applications for refunds due to abandonment of a new development prior to completion or due to expiration or revocation of a building permit or zoning certificate shall be made within sixty (60) days following expiration or revocation of the building permit or zoning certificate. The applicant shall submit:
 - (a) Evidence of the amount of the development impact fees paid by public facilities category and receipts evidencing such payments; and
 - (b) Documentation evidencing the expiration or revocation of the building permit or zoning certificate prior to construction.
 - (c) Documentation evidencing compliance with the requirements of Section 29.12.3 of this Article, if applicable.
- (5) Applications for refunds due to the failure of the Town to appropriate, expend, or encumber development impact fees within the time limits established in Section 29.7 of this Article shall be made by the current property owner(s) in writing and shall be made within one hundred eighty (180) days of the expiration of such time limit. If a portion of the impact fees collected have been appropriated, expended, or encumbered before the date of application, any refund to eligible property owners shall be distributed on a pro rata basis. The refund applicant shall submit:
 - (a) Evidence that the refund applicant is the property owner or the authorized agent of the property owner;
 - (b) The amount of the development impact fees paid by public facility category and receipts evidencing such payments; and

(c) Documentation of the Town 's failure to appropriate, expend, or encumber development impact fee funds for relevant public facilities within the time limits established in Section 29.11 of this Article.

29.12.6. Forfeiture of refund. Failure to apply for a refund within the deadlines set forth in this section shall constitute a forfeiture of any fees available for refund to the property owner or applicant.

29.12.7. Method of refund payment. The Town may, at its option, make refunds of development impact fees by direct payment, by offsetting such refunds against other development impact fees due from the applicant or property owner for the same category of public facilities for new development on the same property, or by other means subject to agreement with the applicant or property owner.
(Ordinance 482 effective 5/17/2005)

29.13. AMOUNT OF IMPACT FEES.

Residential and non residential development impact fees shall be paid as required by this Article in the amounts set forth in the schedule attached as Exhibit "A". The Council may amend the schedule of fees from time to time by ordinance. (Ordinance 482 effective 5/17/2005)

