

Article 405: IMPACT FEE ORDINANCE

(Adopted 3-12-91)

405.1 PURPOSE

The Town of Kingston has experienced rapid growth and development which have increased costs from improvements to municipal infrastructure and public facilities. These increased costs have placed an excessive burden on local taxes. This ordinance is adopted to prevent premature and scattered development and to ensure the provision of adequate municipal facilities to accommodate Kingston's growth.

405.2 DEFINITIONS

- A. Capital Improvement:** only the following public facilities or assets that are owned or operated by the municipality, whether individually or cooperatively with other governmental entities:
1. Town-owned and maintained road systems and rights-of-way; and
 2. Public school facilities.

Capital improvement is further limited to those improvements that are treated as fixed assets for governmental units (according to generally accepted accounting principles) and that have an expected useful life of no less than five years. Capital improvement does not include costs associated with the operation, repair or maintenance of capital improvements, or with capital improvement replacements which do not increase the capacity or level of service, but it does include reasonable costs for planning, design, engineering, land acquisition, and other costs directly associated with the capital improvements described above.

- B. Capital Improvement Program (CIP):** A plan developed by the municipality consistent with RSA 674:5-7 which identifies the need for public facility capital improvements, the estimated cost of such improvements, and proposed funding sources. The plan shall specify the level of service standards adopted by the Town for each type of facility which is to be the subject of an impact fee, and such standards shall apply equally to existing and new

development. A capital improvements program shall cover at least a six-year period.

The CIP shall assess the following:

1. The need for capital improvements required to serve new development;
 2. Any current deficiencies in capital facilities serving existing development, in light of level of service standards, and the means by which such existing deficiencies will be eliminated within a reasonable period of time by means other than impact fees; and
 3. Any additional demands anticipated to be placed on specified capital facilities by new development.
- C. Impact Fee:** any charge, fee, or assessment imposed upon new development by a municipality to fund all or a portion of the public facilities capital improvement occasioned by the new development from which the fee is collected, or to recoup the cost of existing public facilities capital improvements made in anticipation of the needs of new development. Land dedications or provision of capital improvements which exclusively benefit new development are not considered as credit against impact fees.
- D. Impact Fee Roads:** town-owned and maintained roads which are scheduled for improvements in the Kingston Capital Improvements Program and which are shown to be affected by new development.
- E. Letter of Credit:** a financial commitment/contract issued by a bank on behalf of a development applicant to guarantee the performance of required capital improvements or the payment of impact fees to the town for those capital improvements.
- F. Long-term Affordable Housing:** housing whose combined rental and utility costs or combined mortgage loan debt service, property taxes, and required insurance do not exceed 30 percent of 80 percent of the gross median family income for Rockingham County. Median income shall be the most recent data available for all single persons or families, adjusted for the number of members. In order to qualify as long-term affordable housing, the housing affordability of the proposed units must

remain in compliance with the affordability standard defined herein for a period of fifteen years from the date of issuance of occupancy permit.

- G. New Development:** any building activity, any material alteration of the use or appearance of any structure or land, or any subdivision of land into two or more parcels which results in potential demand on municipal capital services. New development shall include the construction of a new housing unit or the expansion of a housing unit which increases the number of bedrooms; except in elderly housing or other exempted units.
- H. Per Pupil School Capital Cost:** costs for school facilities capital improvements multiplied by Kingston’s percentage of total school assessments, divided by the number of Kingston students enrolled in the school in a given year, as determined in the Kingston CIP.
- Per pupil capital cost = [School Improvement Cost x Kingston’s percentage of total school assessments]/number of Kingston students enrolled.
- I. Present Value Factor:** the factor used to estimate future annual payments and bring them back to present value.
- J. Proportionate Share:** that portion of the cost of capital Improvements that is reasonably attributable to new development, as determined and adjusted pursuant to Section 405.5 herein.
- K. Reasonable Benefit:** a benefit received from the provision of a capital improvement that is greater than that to be received by the general public within the jurisdiction of the local government imposing impact fees. The receipt of an incidental benefit by other developments shall not be construed as denying a reasonable benefit to new development.
- L. School-age Children Multiplier:** estimated number of school-age (grades K-12) children per housing unit (based on housing type and number of bedrooms) as determined in the Kingston CIP. Each type of housing unit will have its own multiplier.

405.3 ADMINISTRATION

- A. The Planning Board shall be authorized to impose and assess impact fees and shall give each applicant written notification of the assessed fee. The Board of Selectmen shall collect, administer, and disburse impact fees.

- B. Reasonable costs to the Town of determining and administering the impact fees for new development may be included in the fees assessed.

405.4 FACILITIES FUNDED BY IMPACT FEES

Impact fees may be imposed and expanded for those types of capital improvements specifically identified in the CIP, and those improvements required as a result of new development which could not have been reasonably foreseen when the CIP was prepared. Capital Improvements for which impact fees will be assessed will be limited to those defined in Section 405.2. Impact fees may include a proportionate share of the cost of existing capital improvements where it is shown that all or a portion of existing capital improvements were provided in anticipation of new development.

405.5 PROPORTIONATE SHARE

- A. Impact fees shall not exceed a proportionate share of the cost of providing capital improvements for which the need is reasonably attributable to those developments that pay the fees. New development must receive a reasonable benefit from capital improvements to be financed by impact fees.

- B. In determining a proportionate share of capital improvements costs, the following factors, when applicable, shall be addressed:
 - 1. The need for capital improvements required to serve new development, as reflected in the CIP;
 - 2. The availability of other means or sources of revenue to fund the capital improvements including, but not limited to, user charges, taxes, intergovernmental transfers and other revenues, and special taxation or assessment districts.
 - 3. The extent to which new developments required to pay impact fees will also contribute to the cost of the existing and planned capital improvements in the future through taxes, user fees, or debt service payments. Credits or offsets that may be due to new development, because of such payments

shall be estimated and included in the calculations of the impact fee assessment.

4. Offsets or credits which may be due because new development is required to construct or dedicate capital improvements, of which the total benefit does not accrue to that development.
- C. The amount of any required impact fee may be appealed in the manner provided for in appealing administrative decisions pursuant to RSA 677:15.

405.6 MUNICIPAL CONTRIBUTIONS

Provisions of this ordinance notwithstanding, the Town of Kingston, by vote of the legislative body, may contribute, from the general or other non-impact fee funds, all or part of the impact fee assessed against new development that achieves public purposes, including, but not limited to, the provision of long-term affordable housing, the retention of existing employment, or the preservation of open space. These public purposes must be associated with needs identified in the master plan. In no case shall such amounts be assessed to other new developments.

405.7 TIMING OF ASSESSMENT

- A. All impact fees imposed pursuant to this ordinance shall be assessed to new development prior to, or as a condition for, the granting of subdivision or site plan approval or, in the case of an existing lot, issuance of a building permit. Impact fees shall normally be collected as a condition of a certificate of occupancy. In the interim between assessment and collection, the Town may require that a bond be posted, a letter of credit be issued, a lien given, or that other suitable measures of surety be provided so as to guarantee future payment of assessed impact fees.
- B. The provisions of Article 405.7.A notwithstanding, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where the Town has appropriated the necessary funds to cover its portion of such improvements, the Town may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this ordinance shall prevent the Town and the assessed party from establishing an alternate mutually

acceptable schedule of payment.

405.8 ACCOUNTING SYSTEM AND DISBURSEMENT OF IMPACT FEES

- A.** Impact fee revenue shall be earmarked for the specific purpose of which it was assessed and shall be accounted for in a separate municipal impact fee fund. For each lot, Kingston's annual financial statements shall include an accounting for each impact fee, showing the source and amount of fees assessed, the amount of fees expended for capital improvements funded in whole or in part by impact fees, and the balance remaining at year end.
- B.** Impact fees shall be held in the custody of the Town Treasurer, subject to the same investment limitations as for other municipal funds pursuant to RSA 41:29. Impact fees shall be held in a separate, non-lapsing, interest-bearing account and not co-mingled with other municipal funds.
- C.** Impact fees shall be expended only for the purpose for which they are assessed in conformance with the capital improvement program, master plan, zoning ordinance, subdivision regulations, and site plan review regulations. Impact fees shall be expended after appropriation by the local legislative body. After said appropriation, impact fee expenditures shall be paid by the treasurer upon order of the Board of Selectmen or its designated agent, without further approval of the legislative body. Impact fees may be used to reimburse any account from which an amount has been expended in anticipation of the receipt of said fees. Impact fees assessed to recoup the cost of existing capital improvements made in anticipation of the needs of new development shall be applied as revenue against any outstanding debt for those capital improvements.
- D.** Impact fees received shall be expended or encumbered within eight years of receipt or refunded to the current land owner, unless there exists an extraordinary or compelling reason for fees to be held longer than eight years. The Selectmen shall have the authority to determine whether or not such extraordinary or compelling reason exists.

405.9 SCATTERED AND PREMATURE DEVELOPMENT

Nothing in this ordinance shall be construed as to limit the existing
Impact Fee Ordinance

authority of a planning board to provide against development which is scattered or premature, requires excessive expenditures of public funds, or otherwise violates valid regulations adopted pursuant to RSA 674:36 and RSA 674:44.

405.10 METHOD OF CALCULATING IMPACT FEES

A. Town Roads:

1. General

Fees will be assessed to new development on impact fee roads by applying the percentage of total trip ends per day (TPD) generated by new development to the cost for upgrading each impact fee road (cost as identified in the Kingston CIP).

The following formula will be used:

Road Impact Fee = %TPD x Improvement Cost (as per CIP).

2. Percentage

The trip and percentage will be calculated as follows: TPD generated by new development as a percentage of total TPD on impact fee roads (or segments thereof) after development. Total TPD after the development is the sum of existing TPD on an impact fee road plus TPD to be generated by the proposed development.

3. Road Segments

Where it is determined that new development will affect individual segments of impact fee roads or intersections differently, separate assessments will be determined for each segment depending on the level (proportion) of impact.

4. Trip Generation Information

Projected trip generation information used shall be the most recent publication available from the Institute of Transportation Engineers, Washington, D.C. Existing trip generation information shall be determined by a Traffic Impact Analysis (TIA) performed by a qualified consultant selected by the Planning Board. The cost of said TIA, and any other special

investigative studies necessary to evaluate new development for the assessment, shall be borne by the applicant in accordance with RSA 676:4, I(g) if required by the Planning Board. The content and extent of the TIA shall be determined by the Planning Board.

B. Public Schools:

1. General

Impact fees for public schools shall apply only to residential development. Fees will be assessed to new development for school capital improvements, which are scheduled in the CIP, using the following formula:

School Impact Fee - # of new units x school-age children multiplier x per pupil school capital cost.

2. Credits

A credit will be applied to impact fee assessments (determined in Articles 405.10.A and 405.10.B) for future taxes paid by the applicant to retire bonds for capital projects for which the applicant is assessed impact fees. Credits will be calculated for each year that a capital project, for which impact fees have been assessed, has an impact- on property taxes. The -credit will be based on the projected amount of the applicant's estimated tax bills attributable to the capital project (determined by projections in the CIP). The property value will be estimated by the Planning Board based on the applicant's intended property use and municipal tax records.

3. Present Value Factor

All monetary calculations must employ the applicable present value factor in order to allow for time-price differentials.

C. Refund of Unexpended Impact Fees:

Conditions Under Which Refund is Due

Impact fees received shall be expended or encumbered within eight years of receipt, or shall be refunded.

1. Procedure

The current owner of property on which an impact fee has been paid may apply for a refund of such fees plus any accrued interest. The refund shall be owed when the Town has failed within the period of time established in Article 405.10.B to expend or encumber impact fees on capital improvements intended to benefit the development that has paid the fees. The Town shall notify the owner of record according to the municipal tax records that he is eligible for an impact fee refund. Such notification shall be by publication in a newspaper of local circulation and by first class mail deposited with the United States Postal Service to said owner's last known address. Only the current owner of the property may apply for the refund. Application for the refund shall be submitted to the Town within one year of the date that the right to claim the refund arises. All refunds due and not claimed shall be retained in the special funds and expended or encumbered for capital improvements occasioned by other developments, as required in Article 405.4, except as provided in Article 405.10.B.2. This right to claim a refund may be limited by the provisions of Articles 405.5.A and 405.5.B.

2. Unencumbered Funds

When the Town, by vote pursuant to 675:2-5, rescinds its action authorizing impact fees, all unexpended or unencumbered funds, plus any accrued interest, shall be refunded pursuant to Article 405.10. Upon the finding that any or all fee requirements are to be terminated, the Town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least twice and shall notify all eligible claimants by first class mail deposited with the United States Postal Service to the last known address of claimants. All funds eligible for refund shall be made available to potential claimants for a period of one year from the date that the ordinance is rescinded. At the end of one year, any remaining funds shall be transferred to the general fund un-appropriated surplus. The Town is released from this notice requirement if there are no unexpended or unencumbered balances within a fund being terminated.