

## **Article 405: IMPACT FEE ORDINANCE**

(Adopted 3/12/91; amended 3/12/13, 03/14 / /2017)

### **405.1 AUTHORITY**

- A. This Article is authorized by New Hampshire RSA 674:21, V, and other pertinent state law, as an innovative land use control. Under this authority, new development in Kingston may be assessed impact fees in proportion to its demand on the public capital facilities of the Town and School District.
- B. The public facilities for which impact fees may be assessed in Kingston may include municipal office facilities; public school facilities; public safety facilities; public road systems and rights-of-way; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; public recreation facilities, not including public open space; water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; and storm water, drainage and flood control facilities.
- C. The Planning Board is hereby authorized to assess impact fees in accordance with the standards set forth in this Article. The Planning Board shall have the authority to adopt regulations to implement the provisions of this Article and to delegate the administrative functions of impact fee assessment, collection and disbursement as necessary.

### **405.2 PURPOSE**

Impact fees may be used to assess an equitable share of the cost of public facility capacity to new development in proportion to the facility demands created by that development. The purpose of this Article is to:

- A. Assist in the implementation of the Master Plan and Capital Improvements Program;
- B. Enable the Town of Kingston to assess an equitable share of the cost of public capital facilities to new development in proportion to its demand on the capital facilities; and

- C. Provide authority to the Planning Board to adopt appropriate methods that support proportionate impact fee assessments, and to provide for the administration thereof.

### 405.3 DEFINITIONS

- A. **Assessed property** means any land or buildings comprising new development that is subject to an impact fee assessment under this Article.
- B. **Assessment**, with respect to an impact fee, means a notification issued by the Town of Kingston, its Planning Board, or its Building Inspector, stating the amount of an impact fee due for an assessed property, and the conditions or schedule for its collection.
- C. **Collection**, with respect to an impact fee, means the actual delivery of payment of the fee to the Town of Kingston on behalf of an assessed property.
- D. **Long-term Affordable Housing**: means a housing unit 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 area median family income applicable in Kingston based on the most recent income schedules by household size as published annually by the U. S. Department of Housing and Urban Development. In order to qualify as long-term affordable housing under this Article, the housing affordability of the proposed units must remain in compliance with the affordability standard defined herein for a period of at least fifteen years from the date of issuance of occupancy permit.
- E. **New development**, for the purpose of impact fee assessment, may include the following land use changes:
  - 1. The construction of any new dwelling unit; or
  - 2. Changes to an existing structure that would result in a net increase in the number of dwelling units; or
  - 3. Construction of a new commercial/industrial building or any net increase in the gross floor area of an existing commercial/industrial building; or
  - 4. The conversion of an existing use to another use that is determined by the Planning Board, with consultation/advice of

the Building Inspector, to result in a measurable net increase in the demand on the public capital facilities that are the subject of impact fee assessment; however,

5. New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

- F. **Off-site improvements** means highway, drainage, and sewer and water upgrades or improvements that are necessitated by a development but which are located outside the boundaries of the property, as determined by the Planning Board during the course of subdivision plat or site plan approval.
- G. **School District** means the Sanborn Regional School District or other regional or cooperative school district of which the Town of Kingston becomes a member municipality, or any successor school district of which Kingston is a member.

#### **405.4 STANDARDS FOR ASSESSMENT**

- A. The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the Planning Board for the purpose of capital facility impact fee assessment in Kingston. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment, and shall include documentation of the procedures and calculations used to establish impact fee schedules. Such documentation shall be available for public inspection at the Planning office of the Town of Kingston.
- B. The amount of any impact fee shall be a proportional share of public facility improvement costs which are reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.
- C. The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules thereof.
- D. No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the

basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.

- E. In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net positive increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of the assessment.

## **405.5 WAIVER OF IMPACT FEES**

The Planning Board may grant full or partial waivers of impact fees to an assessed property, subject to its finding that the proposed development meets one or more of the applicable conditions set forth below:

- A. A full or partial waiver of public school impact fees may be granted for residential units that are lawfully restricted to exclusive occupancy by persons age 55 or older within a development that is maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments for the age-restricted units within a development that are subject to deeded restrictions that limit occupancy to persons age 55 or older. Should these occupancy restrictions be rescinded subsequent to the construction of the affected units, the units shall be subject to the school impact fee assessment in effect at the time the age restriction on occupancy is removed.
- B. The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that involves a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers of impact fees may not be based on the value of exactions for off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Article.

- C. Full or partial waivers of impact fee assessments may be granted for amounts contributed to an impact fee account on behalf of a new development by the Town of Kingston. The Town of Kingston, by vote of the legislative body, may contribute, from the general fund or other non-impact fee funds, all or part of the impact fee assessed to new development to achieve public purposes, including, but not limited to, the provision of long-term affordable housing, the retention of existing employment, or other public purposes specifically identified in the master plan. In no case shall such amounts be assessed to other new developments.

## **405.6 ASSESSMENT AND COLLECTION OF IMPACT FEES**

The administrative process of assessment and collection of impact fees will be the delegated to the Building Inspector. The management and disbursement of impact fee accounts will be the responsibility of the Treasurer.

- A. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan. The amount of such assessment shall be applicable to subsequent building construction within the approved subdivision or site plan for a period of five years from the date of Planning Board approval. Once this five-year period has expired, remaining construction for which no building permit has been obtained shall be subject to the adopted fee schedule in force at the time of the building permit application.
- B. With the exception of those plats and site plans meeting the conditions in (A) above, and when no other Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit. The impact fee schedule in force at the time of the building permit application shall apply.
- C. Unless an impact fee is inapplicable to a particular development or has been waived by the Planning Board, no permit shall be issued for new development as defined in this Article until the applicable impact fees have been assessed. The Building Inspector shall not issue a Certificate of Occupancy for the development on which the fee is assessed until the impact fee has been paid in full by cash or certified check.
- D. The Planning Board and applicant may agree to another mutually acceptable schedule for payment. If an alternate schedule of payment is established, the Planning Board shall require the

deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Kingston.

#### **405.7 ACCOUNTING AND DISBURSEMENT OF IMPACT FEES**

- A. 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 separate, non-lapsing, interest-bearing accounts and not co-mingled with other municipal funds.
- B. Per NH RSA 674:21, V (c), 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.
- C. 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 may be applied as revenue against any outstanding debt for those capital improvements. In the absence of outstanding debt service obligations for a particular capital facility, the recoupment may be applied to offset the cost of other capital expenditures within the same facility category where the Planning Board finds that there is sufficient facility capacity to accommodate new development.
- D. Impact fee revenue shall be earmarked for the specific purpose of which it was assessed and shall be accounted for in separate municipal impact fee accounts. For each assessed property, 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. The annual statements shall show the capital improvement category for which the fees were assessed and the date of assessment and collection of the fee. The report shall be sufficiently detailed as to allow the public to determine how the fees were applied, and whether the fees were expended, retained, or refunded.

#### **405.8 REFUND OF IMPACT FEES**

- A. The owner of record of an assessed property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:

---

*Impact Fee Ordinance*

1. The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the final payment of the fee; or
  2. The Town, or in the case of school impact fees the School District has failed, within the period of six (6) years from the date of the final payment of such fee, to appropriate the non-impact fee share of related capital improvement costs.
- B. The Town shall notify the owner of record according to the municipal tax records of the eligibility of the assessed property for an impact fee 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.
- C. In the event that 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 this section. 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 based on tax assessment records. The Town is released from this notice requirement if there are no unexpended or unencumbered balances within the impact fee account that is being terminated. All refunds 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 considered available for capital improvement costs or for deposit to capital reserve accounts within the same facility category as the original impact fee assessment.

## **405.9 REVIEW AND CHANGE IN ASSESSMENT SCHEDULES**

An impact fee assessment schedule adopted by the Planning Board shall be reviewed not more than five years following its adoption. However, the fee schedule shall be revised upon the Board's adoption of revisions to a Capital Improvement Program if its adoption would affect the facility standards or capital cost assumptions used to define the fee schedules. Periodic review of fee schedules may result in recommended adjustments in one or more of the fees or the basis of assessment, using the most recent data that affect the variables in the fee calculations. A proposed change in the impact fee assessment schedules or the basis of assessment shall be effective only where such change is adopted by the Planning Board following a public hearing. Failure to conduct a periodic review of the methodology shall not, in and of itself, invalidate any fee imposed.

#### **405.10 APPEALS UNDER THIS ARTICLE**

- A. A party aggrieved by a decision made by the Building Inspector or other Town official relating to an administrative decision in the assessment or collection of impact fees authorized by this Article may appeal such decision to the Zoning Board of Adjustment as provided by RSA 676:5, as amended.
- B. A party aggrieved by a decision of the Planning Board under this Article may appeal such decision to the Rockingham County Superior Court as provided by RSA 677:15, as amended.

#### **405.11 OTHER AUTHORITY RETAINED**

This Article shall not affect other authority of the Planning Board over subdivisions and site plans, including, but not limited to:

- A. The authority of the Planning Board to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a); or
- B. The authority of the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21, V (j); or
- C. Other authority of the Town of Kingston to assess additional fees under the authority of other statutes, ordinances of the Town of Kingston or the Kingston Planning Board Site Plan Review and Subdivision Regulations.

#### **405.12 EFFECTIVE DATE**

This Article shall become effective upon adoption. Specific Impact fee schedules applicable to new development shall not become effective until the Planning Board has adopted a basis of assessment and fee schedule for capital facilities under the procedures provided for in this Article.