



Town of Middleton Planning Board

Proposed Amendment to Zoning Ordinance

Summary: Newly proposed Article to be added.

IMPACT ORDINANCE STRUCTURE

A. PURPOSE The following Ordinance shall govern the assessment of impact fees for public capital facilities to accommodate increased demand on the capacity of these facilities due to new development. This Ordinance is authorized by RSA 674:16 and 674:21 as an innovative land use control to promote public health, safety, convenience, welfare, and prosperity; ensure that adequate and appropriate public facilities are available; and provide for the harmonious development of the Town of Middleton and its environs.

B. AUTHORITY

- (1) Impact fees may be assessed for new development to compensate the Town of Middleton and the Middleton School District for a proportionate share of the cost of the capital facility needs occasioned by new development. Any person who seeks a building permit for new development may be required to pay an impact fee in the manner set forth herein.
- (2) The Planning Board may, as a condition of approval of any subdivision or site plan, and when consistent with applicable Board regulations, require an applicant to pay an impact fee for the applicant's proportional share of public facilities affected by the development.
- (3) Nothing in this Section shall be construed to limit the authority of the Planning Board or the Town to require exactions for off-site improvements, other conditions of approval, or to assess additional fees governed by other statutes, ordinances, or regulations.
- (4) Before assessing an impact fee for one or more of the public facilities enumerated above, the Planning Board shall have adopted such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.

C. DEFINITIONS



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Impact Fee: A fee or assessment imposed by the Town of Middleton upon development, including subdivision, building construction, or other land-use change, to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned by the Town of Middleton District, including but not limited to; stormwater, drainage, and flood control facilities; public road systems and rights-of-way; Town office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; and public recreation facilities, not including public open space.

Fee Payer: The applicant for the issuance of a building permit that creates new development.

Capital Facilities: Facilities and associated structures, including but not limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; stormwater, drainage, and flood controls facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space.

New Development Construction: The creation of a new dwelling unit or units in the habitable portion of a residential building or the conversion of legally existing use or additions to that, which - would result in a net increase in the number of dwelling units; or construction resulting in a new non-residential building or a net increase in the floor area of any non-residential building, or the conversion of a lawful existing use to another use if such change would result in a net increase in the demand on public capital facilities that are the subject of impact fee assessment; however, 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.

Off-Site Improvements: improvements that are necessitated by a development but located outside the boundaries of a property subject to a subdivision plat or site plan approval by the Planning Board.

Public Open Space: means a parcel of land essentially unimproved and available to the public only for passive recreational uses such as walking, sitting, picnicking, table games, natural resource conservation, and similar uses. Town parks that do not include "public recreation facilities" constitute public open spaces within the meaning of this Article.

Public Recreation Facilities: means the land and facilities owned or operated by the Town of Middleton, other than public open space, which is designed for the conduct of recreational sports or other active leisure time uses of an organized nature, which includes equipment or substantial improvements to the land to provide active indoor or outdoor public recreation programs.



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D. ASSESSMENT METHODOLOGY

Computation: Before assessing an impact fee required by the Planning Board for one or more of the public capital facilities listed above, the Planning Board shall adopt such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.

Proportionality: The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs that 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.

Conversion or Modification of Use: In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessed for further 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 this Ordinance.

Existing Deficiencies: Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

E. ADMINISTRATION

(1) Accounting:

- (a) In accordance with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Board of Selectmen, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.
- (b) If bonds or similar debt instruments have been or will be issued by the Town of Middleton or the Middleton School District for the funding of capital improvements that are the subject of impact fee assessment, impact fees from the appropriate related capital facility impact fee may be applied to pay debt service on such bonds or similar debt instruments.
- (c) The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment and shall maintain an updated record of the current ownership, tax map, and lot reference



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number of properties for which fees have been paid under this Ordinance, for each building permit so affected for at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.

- (d) Impact fees collected may be spent from time to time by order of the Board of Selectmen. They shall be used solely to reimburse the Town and the School District for the cost of public capital improvements for which they were collected or to recoup the cost of capital improvements made by the Town or School District in anticipation of the needs for which the impact fee was collected.
- (e) If bonds or similar debt instruments have been or will be, issued by the Town or the School District to fund capacity-related facility improvements. In that case, impact fees may be transferred to pay debt service on such bonds or similar debt instruments.
- (f) At the end of each fiscal year, the Town Treasurer shall provide a report to the Board of Selectmen, giving a particular account of all impact fee transactions for the year. Additional reporting shall be made to NH DRA and IRS.

(2) **Assessment:** All impact fees imposed under this Section shall be assessed at the time of planning board approval of a subdivision, site plan, or change of use as per the Planning Board approved Schedule of Fees. When no planning board approval is required or has been made before the adoption or amendment of this Ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with the development as determined by the Board of Selectmen.

(3) **Security:** In the interim between assessment and collection, the Board of Selectmen may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable security measures to guarantee future payment of assessed impact fees.

(4) **Collections:** Impact fees shall be collected as a condition for issuing a certificate of occupancy. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. The collection of impact fees shall be the responsibility of the Code Enforcement Officer. 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 such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this Section shall prevent the Board of Selectmen, with the review by the Planning Board and the assessed party, from establishing an alternate, mutually acceptable schedule of payment.



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- (5) **Refund of Fees Paid:** The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
- (a) When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within six (6) years from the date of the total and final payment of the fee; or
 - (b) When the Town of Middleton, or in the case of school impact fees, the Middleton School District, has failed, within the period of six (6) years from the date of the total and final payment of such fee, to appropriate their proportionate non-impact fee share of related capital improvement costs.

F. APPEALS:

- (1) A party aggrieved by a decision made by the Code Enforcement Officer relating to administrative decisions in the assessment or collection of impact fees authorized by this Section may appeal such decision to the Planning Board.
- (2) A party aggrieved by a decision of the Planning Board under this Article may appeal such decision to the Superior Court as provided by RSA 677:15, as amended.

G. WAIVERS:

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met concerning the public capital facilities for which impact fees are typically assessed.

- (a) An applicant may request a full or partial waiver of school impact fees for those residential units lawfully restricted to occupancy by senior citizens aged 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive the school impact fee assessments on age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy by senior citizens age 62 or over for at least 20 years. Upon expiration of the specified waiver period, any proposed change in use or conversion of residential units from age-restricted occupancy may be subject to an assessment of impact fees.



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- (b)** A person may request a full or partial waiver of impact fees for construction within a subdivision or site plan approved by the Planning Board before the effective date of this Ordinance. Before granting such a waiver, the Planning Board must find that the proposed construction is entitled to the four-year exemption provided by RSA 674:39, according to that statute. This waiver shall not apply to phases of a phased development project where active and substantial development, building, and construction have not yet occurred in the phase in which construction is proposed. 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. Before acting on a request for a waiver of impact fees under this provision that would involve 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 and hold a public hearing prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind. It may not be credited to other categories of impact fee assessment. The applicant shall pay all costs incurred by the Town to review such proposal, including consultant and counsel fees.

H.ADDITIONAL ASSESSMENTS

Payment of the impact fee under this Article does not restrict the Town or the Planning Board from requiring other payments from an applicant, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.