

## CHAPTER 29.2 PUBLIC CAPITAL FACILITIES IMPACT FEES ORDINANCE<sup>1</sup>

### 29.2-1-1 Definitions.

The terms used in this chapter shall have the same meanings as they are given in the Zoning Ordinance, Chapter 28 of this Code of Ordinances. However, for purposes of this chapter, the following special definitions shall apply:

*AER Report.* "AER" means the report prepared by Applied Economics Research, Inc., entitled "Concord Impact Fee Feasibility Analysis," May 2001.

*Act.* "Act" means NH RSA 674:21, as amended.

*Applicant.* A person who has applied for the issuance of the first of the following development approvals, a building permit, a permit for mobile home installation, subdivision approval, site plan approval, a variance, a special exception, or other local land use decision, permit, or approval for new development. Where applicable, it shall also mean such person's predecessors in interest and successors in interest.

*City-wide recreational facilities.* Recreational facilities principally serving all of the citizens of the City of Concord.

*Clerk.* The Clerk of the City of Concord Planning Board.

*Dwelling unit.* "Dwelling unit" shall have the same meaning as set forth for the terms "Dwelling Unit," "Dwelling," and "Mobile Home" in section 28-2-2 of the City of Concord Zoning Ordinance.

*Floor area.* "Floor area" shall have the same meaning as set forth in section 28-2-2 of the City of Concord Zoning Ordinance and shall specifically include covered areas that are only partially enclosed by walls and outside sales areas, if such areas constitute an integral part of the use of the building or structure.

*Gross living area.* The sum of the areas of the several floors of a dwelling unit as measured from the exterior surfaces of the walls. It includes the area of enclosed porches, lobbies, mezzanines, stair openings, elevators, maintenance, and storage areas, and all areas used or intended for human occupancy in basements, attics, and penthouses. It excludes open porches, patios, and decks, garages, and the portions of attics or basements not intended for human occupancy. The area of the common spaces or facilities of a building that contains more than one dwelling unit shall be allocated pro rata among the dwelling units in the building.

*Impact fee or impact fees.* "Impact fee" or "impact fees" shall mean public capital facilities impact fees payable by an applicant with respect to new development in accordance with section 29.2-1-3, Assessment and Collection.

*Independent fee calculation study.* An independent study prepared by an applicant and submitted to the Clerk, which sets forth a proposed alternative determination of an impact fee payable by an applicant's new development in lieu of those provided for in the impact fee tables.

*Impact fee tables.* The tables of impact fees for new development set forth in section 29.2-1-2(b), Computation of the Amount of Impact Fee.

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<sup>1</sup>Editor's note(s)—Ord. No. 2381, adopted June 18, 2001, deleted Ch. 29.2 in its entirety and replaced it with similar provisions to read as herein set out. Former Ch. 29.2 derived from Ord. No. 2366, adopted Dec. 18, 2000.

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*ITE Manual.* The reference entitled "Institute of Traffic Engineers, Trip Generation, 6th ed., Washington, D.C. (1997)," and subsequent editions as they may be published from time to time.

*New development.*

- (a) New development includes any activity that is subject to review by the Planning Board, the Zoning Board of Adjustment, the Planning Division, the Building Inspector, or any other city official or board that will result in:
  - (1) The construction, erection, or creation of new or additional nonresidential floor area;
  - (2) The construction, erection, or creation of one or more new dwelling units, including the installation or siting of a mobile home;
  - (3) The conversion of an existing use to another use;
  - (4) The conversion of a seasonal dwelling to a year-round dwelling;
  - (5) The construction, erection, or creation of one hundred fifty (150) or more square feet of gross living area in or attached to a dwelling unit; or
  - (6) The expansion of an existing use that will result in an increase in the demand for public capital facilities that are the subject of this ordinance.
- (b) New development does not include:
  - (1) The reconstruction of a structure that has been destroyed by fire or natural disaster, provided that there is no increase in the size or density of the use, and no change in the use of the structure;
  - (2) The replacement of a mobile home on the same site;
  - (3) The construction of an accessory structure to an existing use that will not result in an increase in gross living area or in the demand for public capital facilities that are the subject of this ordinance; or
  - (4) The construction, erection, or creation of less than one hundred fifty (150) square feet of gross living area in or attached to a dwelling unit.

*New trip.* The total number of trips generated by a particular use less the number of pass-by trips.

*Nonresidential development.* All construction or development other than dwellings.

*Ordinance.* Unless otherwise indicated by its usage, shall mean this Chapter 29.2, Public Capital Facilities Impact Fee Ordinance.

*Public capital facilities.*

- (a) Public capital facilities include all assets, facilities, and equipment relating to them that are described in the Act, and that are owned and operated by the City of Concord or cooperatively owned and operated with other municipalities, the county, the state, the federal government, or by the school districts and that have a useful life of no less than five (5) years. Public capital facilities includes the reasonable costs of the City of Concord or the school districts for planning, engineering, design, land acquisition, right-of-way acquisition and development and construction of the assets, facilities, and equipment.
- (b) Public capital facilities does not include the costs associated with the operation, maintenance, or repair of assets, facilities, and equipment, or with the replacement of assets, facilities and equipment in a manner that does not increase the capacity or level of service. Public capital facilities include only the proportionate share of the public capital facilities of the Merrimack Valley School District that is allocable to the City of Concord.

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*Recreation facilities.* Public parks and indoor and outdoor recreation facilities, including equipment, of every nature other than open space.

*School districts.* School districts shall mean the Concord School District and the Merrimack Valley School District.

*School facilities.* School facilities shall mean schools, playing fields, and school support facilities of every nature.

*Senior housing.* Housing designed and operated to assist elderly persons, as defined in RSA 161-J:2, III "Housing for older persons" or RSA 161-J:2, III-a "Independent living retirement community," and which further meets the requirements of RSA 354-A:15 Housing for Older Persons.

*Site-related improvements.* All off-site and on-site capital improvements, or land dedications which the City may legally request an applicant to construct or dedicate to the City as a condition of the issuance of a land use permit or approval, including, without limitation:

- (a) New access roads leading to the new development;
- (b) Driveways and roads within the new development;
- (c) Acceleration and deceleration lanes, right and left turn lanes, intersection improvements and other improvements to city roads, leading to the roads and driveways referred to in (a) and (b), that are necessitated by the new development;
- (d) Traffic control measures for the roads and driveways referred to in (a) and (b);
- (e) Sidewalks, curbing, drainage improvements, walls and fences, landscaping buffers and berms on-site or within the new development's frontage, and existing public or private streets; and
- (f) All other facilities that are necessitated by the new development to the maximum extent that applicable law allows the cost or construction of such facilities to be imposed on or assessed against the applicant.

*Transportation facilities.* Transportation facilities shall mean public road systems and rights of way of the City of Concord and all associated facilities of every nature.

(Ord. No. 2381, § I, 6-18-01; Ord. No. 2955, § II, 1-11-16)

## **29.2-1-2 Assessment and Collection.**

(a) *Assessment of Impact Fees.*

- (1) Any person or entity, which seeks to undertake new development within the City of Concord, shall pay impact fees to the City in the manner and in the amounts set forth in this ordinance.
- (2) No new development shall be used or occupied by any party unless and until the applicable impact fees have been paid.
- (3) Impact fees shall be assessed by the Clerk prior to the issuance of a building permit for new development that requires a building permit. If no building permit is required for the new development to proceed, impact fees shall be assessed by the Clerk at the time of the approval of the new development by the applicable city board or administrative official, or, if no approval is required, the time of the initial use or occupancy of the new development.

(b) *Computation of the Amount of Impact Fee.*

- (1) The amount of the impact fees shall be determined using the information contained in the following tables as they are in effect at the time of the assessment of the impact fee:

**TABLE 1**  
SCHOOL FACILITIES  
**IMPACT FEE PER VARIABLE UNIT**

Type of New Development	Concord School District Facilities Impact Fee per Variable Unit	Merrimack Valley School District Facilities Impact Fee per Variable Unit	Variable Unit
Single-family residence	\$0	\$0	Dwelling unit
Town house/duplex	\$0	\$0	Dwelling unit
Multi-unit/apartment (other than townhouses or duplexes)	\$0	\$0	Dwelling unit
Mobile home	\$0	\$0	Dwelling unit

**TABLE 2**  
RECREATIONAL FACILITIES  
**IMPACT FEE PER VARIABLE UNIT**

Type of New Development	Recreational Facilities Impact Fee per Variable Unit	Variable Unit
Single-family residence	\$1,093.56	Dwelling unit
Townhouse/duplex	\$1,063.50	Dwelling unit
Multi-unit/apartment (other than townhouses or duplexes)	\$664.46	Dwelling unit
Mobile home	\$998.55	Dwelling unit

**TABLE 3**  
TRANSPORTATION FACILITIES  
**IMPACT FEE PER VARIABLE UNIT**

Type of New Development	Transportation Facilities Impact Fee per Variable Unit	Variable Unit
<b>Residential Uses</b>		
Single-family	\$2,110.48	Dwelling unit
Townhouse/duplex	\$1,408.99	Dwelling unit
Multi-unit dwelling/apartment (other than townhouses or duplexes)	\$1,449.88	Dwelling unit
Mobile home	\$1,035.63	Dwelling unit
Senior housing	\$844.44	Dwelling unit
<b>Nonresidential Uses</b>		
General office	\$1.70	Square foot of floor area
Single-tenant office	\$1.88	Square foot of floor area
General light industrial	\$1.09	Square foot of floor area
Manufacturing	\$0.63	Square foot of floor area

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Warehousing	\$0.78	Square foot of floor area
Quality restaurant	\$5.59	Square foot of floor area
High-turnover restaurant	\$6.73	Square foot of floor area
Fast food restaurant with drive-thru	\$ 20.59	Square foot of floor area
Small retail (less than 5,000 SF)	\$2.56	Square foot of floor area
Retail (5,001 SF to 100,000 SF)	\$4.51	Square foot of floor area
Retail (100,001 to 300,000 SF)	\$3.65	Square foot of floor area
Retail (greater than 300,000 SF)	\$3.33	Square foot of floor area
Bank with drive-up	\$12.05	Square foot of floor area
Daycare center	\$4.09	Square foot of floor area
Hotel/motel	\$1,817.16	Room
Gas station/convenience store	\$3,374.07	Pump
New car sales	\$6.52	Square foot of floor area
Automobile Service	\$3.96	Square foot of floor area
Automated car wash	\$5,280.90	Wash stall
<b>Residential &amp; Nonresidential Uses</b>		
All other uses	\$205.90	New trip

- (2) If the type of proposed new development is not specified in the impact fee tables in this Section, the Clerk shall assess the impact fees by using the impact fees applicable to the most nearly comparable type of land use in the Impact Fee Tables. The Clerk shall be guided in the classification of uses and in the selection of comparable types of land use by the City of Concord Master Plan, supporting documents of the Master Plan, the City of Concord Zoning Ordinance, and the definitions of such terms or similar terms as they are used in the ITE Manual. If the Clerk determines that there is not a comparable type of land use in the transportation facilities impact fee table, then the Clerk shall assess the impact fees by multiplying the number of new trips expected to be generated by the new development by the impact fee per new trip for "All Other Uses" appearing in table 3. The Clerk shall refer to the ITE Manual and may consult with the City Engineer and the City's outside consulting engineers with respect to the estimation of the expected number of new trips to be generated by new development.
- (3) In the case of new development that is a mixed use, the applicable impact fee shall be calculated for each use with respect to the allocable portion of the new development that is occupied or used by, or that benefits such use.
- (4) In the case of a change of use, expansion or modification of an existing use, the impact fees shall be the difference (if positive) between the impact fees that would be assessed for the entire project or facility if it were being newly constructed for the new use and the impact fees that would be assessed for the entire project or facility if it is being newly constructed for the existing use.
- (5) If an applicant elects to dispute the amount of an impact fee, then the applicant may prepare and submit to the Clerk an independent fee calculation study for the new development that is proposed.
- (6) The independent fee calculation study shall follow the methodologies and formats prescribed by the Clerk. The Clerk shall review such study, but is not required to accept any study that he deems to be inaccurate or unreliable. In the alternative, the Clerk may require the applicant to submit additional documents for consideration.

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- (7) If an acceptable independent fee calculation study is presented, the Clerk may, but is not be obligated to, adjust the amount of the impact fee for the new development, taking into consideration the information and data presented in the independent fee calculation study. Generally, no adjustment in an impact fee will be considered unless the impact fee calculation study supports a reduction of the impact fee by more than twenty-five (25) percent.
- (8) All costs incurred by the City to review the applicant's independent fee calculation study (including the cost to hire an outside consultant to review the study) shall be paid by the applicant in advance.
- (9) If an applicant cannot agree with the Clerk as to the proper classification of new development, the calculation of new trips expected to be generated by the new development, the acceptability of an independent fee calculation, the appropriate adjustment to an impact fee based upon an independent fee calculation, or the allocation of uses in mixed use new development, the applicant may request a hearing before the Planning Board on the determination of the classification, calculation of new trips, the acceptability of an independent fee calculation, the appropriate adjustment to an impact fee based upon an independent fee calculation, or allocation of uses. The Planning Board's decision on the issue shall be final.
- (10) The impact fee tables have been established in accordance with NH RSA 674:21,V(a), and shall be reviewed periodically by the Planning Board and shall be revised by the City Council whenever appropriate. On or before January 1 of each year, the Clerk shall submit a report to the City Council with respect to increases in the estimated costs to construct public capital facilities and the Clerk's recommendations for appropriate adjustments to the impact fee tables. The Clerk shall review the following sources and include such information in the report to the council:
- a. *Recreational Facilities Impact Fee:* Increases in the applicable park facility index as published in the "Means CostWorks Site Work and Landscape Cost Data" (R.S. Means Company, Inc.);
  - b. *School Facilities Impact Fee:* Increases in the applicable school cost index as published in the "Means CostWorks Facilities Construction Cost Data" (R.S. Means Company, Inc.); and
  - c. *Traffic Facilities Impact Fee:* Increases in the Construction Price index as published in the Engineering News Record all with respect the most recent twelve (12) months for which data is available. The City Council shall review such report and, in its sole discretion, amend the impact fee tables as it deems reasonable and necessary.
- (11) Notwithstanding any other provision of this ordinance, impact fees for new development within a development district established by the City pursuant to NH RSA 162-K (Tax Increment Financing) shall be established and paid pursuant to the tax increment financing plan adopted by the City in accordance with NH RSA 162-K:9, and the corresponding funding plan or agreement entered into between the City and the applicant.
- (12) A draft of age restricted covenants or binding federal housing program agreements shall be provided to the Clerk prior to assessment of traffic impact fees for Senior Housing, as listed in Table 3 of Section 29.2-1-2(b). Only the percentage of dwelling units that are age restricted, as set forth in the covenant or federal agreement, may be assessed under the Senior Housing category. Covenants accepted by the City shall be recorded prior to issuance of any building permits for the development. Recreation and school facility impact fees shall be assessed in accordance with the Type of New Development, as listed in Tables 1 and 2 of Section 29.2-1-2(b).
- (c) *Payment of Impact Fees.* The applicant shall pay the impact fees required by this ordinance to the City of Concord prior to the issuance of a certificate of occupancy for new development, or prior to the use and occupancy of new development that does not require a certificate of occupancy. Where new development consists of discrete parts that individually contribute to the need for impact fees (e.g., multi-lot subdivision), the impact fees shall be paid on an allocable basis at the time of the issuance of the certificate of occupancy

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with respect to, or the use and occupancy of, each portion of the new development. An alternate, mutually acceptable schedule of payment may be established by the Planning Board at the time of subdivision plat or site plan approval.

(d) *Credits Against Payment of Impact Fees.*

- (1) Applicants shall not receive a credit against impact fees for site-related improvements.
- (2) An applicant may request a credit against all or a portion of transportation facilities impact fee otherwise due or to become due with respect to a project or development by offering to construct or dedicate non-site-related improvements to the City. The applicant must specifically request a transportation facilities impact fee credit prior to the Planning Board public hearing associated with the application. The construction of such improvements must be in accordance with City or state design standards, whichever are applicable. The issuance of a credit shall be at the discretion of the Clerk and shall be determined and provided in the following manner:
  - a. The proposed right-of-way or other real property dedication and the proposed non-site-related improvements must be part of the City's approved Capital Improvement Program.
  - b. Credits for the dedication of non-site-related rights-of-way or other real property to the City shall be valued at the equalized assessed value of the dedicated property for real estate tax purposes, or, at the option of the applicant, at the fair market value of the dedicated property established by real estate appraisals completed by a licensed New Hampshire real estate appraiser acceptable to the City. Credit for the dedication of non-site-related rights-of-way shall be provided when the property has been conveyed at no charge to the City, and accepted by the Planning Board and, when necessary, the City Council.
  - c. Credits for non-site-related improvements shall equal the cost to design and construct the improvements. Applicants for credit for design and construction of non-site-related improvements shall prepare and submit acceptable engineering drawings and specifications, and construction cost estimates to the Clerk.
  - d. The Clerk shall consult with the City Engineer regarding the acceptability of the documentation. The Clerk shall consider the engineering drawings and specifications and construction cost estimates submitted by the applicant. The Clerk may require the applicant to submit additional or different documentation for consideration.
  - e. If acceptable documentation is submitted, the Clerk may grant the applicant a credit up to the total value of right-of-way dedications or actual costs of the non-site-related improvements as determined in this ordinance. If the applicant fails to submit acceptable documentation to the Clerk, the applicant shall pay the transportation facilities impact fee set forth in Sections 29.2-1-3(b) and 29.2-1-3(c).
  - f. All costs incurred by the City to review the applicant's documentation (including the cost to hire an outside consultant to review the documentation) shall be paid by the applicant in advance.
- (3) An applicant may, likewise, apply for a credit against all or a portion of the school facilities or recreational facilities impact fees by dedicating land or constructing improvements for such purposes after approval by the Clerk following the same procedures as is set forth in subsection (2), above, with respect to transportation facilities impact fee credits.
- (4) Where new development is part of a project for which the applicant has already paid an impact fee, exaction, or other assessment with respect to the cost of providing public facilities capital improvements prior to the adoption of this ordinance, the Clerk shall provide the applicant with a credit against the impact fees owed with respect to each class of public facilities capital improvements. The credits shall equal the pro rata value of such prior to credits for impact fees, exactions or other

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assessments for such specific class of public facilities capital improvements that is applicable to the portion of the project or development in question. Credit shall not be given for the cost of site-related improvements.

- (5) Credits against impact fees for one type of public capital facility (e.g., school, transportation, or recreation) shall not exceed the amount of the impact fees paid or payable by the applicant with respect to that type of public capital facility. Credits shall not be transferable from one project or development to another.
- (6) Credits against the impact fee assessed with respect to one type of public capital facility (e.g., school, transportation, or recreation) shall not be applied against the impact fee owed by the applicant with respect to another type of public capital facility.
- (7) If an applicant cannot agree with the Clerk as to the proper credit to be given against impact fees, the applicant may request a hearing before the Planning Board on the determination of the proper credit. The Planning Board's decision on the amount of the credit shall be final.

(e) *Waivers.*

- (1) An applicant may apply for a waiver of all or part of the impact fees that are payable with respect to new development or redevelopment, as provided in this section. The applicant must request a waiver prior to the date of the determination of the impact fee by the Clerk.
- (2) An applicant may request from the Clerk a full or partial waiver of the school facilities impact fee for new development of Senior Housing. The applicant shall provide the Clerk with a draft of age restricted covenants or binding federal housing program agreements at the time of the application for the waiver. Only the percentage of age restricted dwelling units, as set forth in the covenant or federal agreement, may be eligible for a full or partial waiver of the school facilities impact fee. Covenants accepted by the City shall be recorded prior to issuance of any building permits for the development. Any change in use, from Senior Housing to any other residential use without an age restriction, will result in revocation of the waiver. The owner of the property on the date of the change in use shall be required to pay the school facilities impact fee in effect at the time of the change in use, whether or not Planning Board approval is required for the change in use.
- (3) Waiver for the development of market rate housing within the Central Business Performance (CBP) District.
  - a. An applicant may request a waiver of the transportation facilities impact fees and the school facilities impact fees for the development of market-rate housing as set forth in Article 28-2-4(j), Table of Principal Uses, within existing buildings in the Central Business Performance (CBP) District.
  - b. This waiver also applies to the development of market rate housing permitted by special exception under the provisions of Article 28-9-3(b), Special Exception, and previously permitted but lapsed uses.
  - c. This waiver also applies to the development of market rate housing established by variance granted by the Zoning Board of Adjustment under the provisions of Article 28-9-3(c), Variances.
  - d. This waiver does not apply to any new construction or building addition.
- (4) *Waiver for nonresidential uses.*
  - a. An applicant for the development of permitted nonresidential uses as set forth in Article 28-2-4(j), Table of Principal Uses, shall qualify for a waiver of the transportation facilities impact fees.
  - b. This waiver also applies to the development of nonresidential uses established by special exception under the provisions of Article 28-9-3(b), Special Exceptions.



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- c. This waiver also applies to the development of nonresidential uses established by variance granted by the Zoning Board of Adjustment under the provisions of Article 28-9-3(c), Variances.
  - (5) If an applicant cannot agree with the Clerk regarding the qualification of new development or redevelopment for an impact fee waiver or regarding the amount of a waiver, the applicant may request a hearing before the Planning Board on determination of the qualification for and amount of a waiver. The Planning Board's decision on qualification for and amount of a waiver shall be final.

(Ord. No. 2381, § I, 6-18-01; Ord. No. 2599, § I, 3-21-05; Ord. No. 2600, § I, 3-21-05; Ord. No. 2639, § I, 3-20-06; Ord. No. 2667, § I, 3-12-07; Ord. No. 2694, §§ I, II, 2-11-08; Ord. No. 2775, § I, 2-8-10; Ord. No. 2815, § I, 2-14-11; Ord. No. 2868, § I, 2-13-12; Ord. No. 2897, § I, 2-11-13; Ord. No. 2918, § I, 11-12-13; Ord. No. 2934, § I, 11-10-14; Ord. No. 2936, § I, 11-10-14; Ord. No. 2955, §§ I, III, IV, 1-11-16; Ord. No. 2974, §§ I—III, 3-13-17; Ord. No. 2991, § I, 10-10-17; Ord. No. 2992, § I, 10-10-17)

### **29.2-1-3 Administration.**

- (a) *Administration of Funds Collected.* All impact fees collected by the City of Concord shall be held by the City Treasurer and shall be properly identified by and promptly transferred for deposit in the appropriate public capital facilities impact fee accounts as determined in subsection (b), below, and shall be used solely for the purposes specified in this ordinance and allowed by law. Impact fee revenues shall not accrue to the general fund, except for the payment of administrative expenses, as provided in subsection (c), below.
- (b) *Custody and Maintenance of Fund Accounts.*
  - (1) There shall be established separate public capital facilities accounts: (1) the recreational facilities account; (2) the transportation facilities account; (3) the Concord School facilities account; and (4) the Merrimack Valley School facilities account. These shall be nonlapsing, interest-bearing accounts.
  - (2) At the end of each fiscal year, the City Controller shall make a report giving a particular account of all impact fee transactions during the year. The report may be a portion of the City's annual report or audit.
  - (3) Impact fees that are withdrawn from any public capital facilities account must be used in accordance with the provisions of this ordinance.
- (c) *Use of Funds.*
  - (1) Impact fees that are withdrawn from any of the public capital facilities accounts shall be used solely for the purposes of paying the expenses of the particular public capital facilities for which the account is designated, making refunds as provided in this subsection (d), below, or defraying the costs of the administration of this impact fee ordinance and the impact fee accounts by the City. The following special disbursement rules also apply:
    - a. School facilities impact fees may only be disbursed and spent for allowed expenses of public capital facilities of the school district within which the new development lies.
    - b. Recreational facilities impact fees may only be spent for allowed expenses of recreational facilities that lie either within the same "recreational cost allocation district" as the new development is located, or for city-wide recreational facilities. A map of the "recreational cost allocation districts" is on file with the City Engineer.
    - c. Transportation facilities impact fees may only be spent for allowed expenses of transportation facilities that are located (1) within the same "traffic cost allocation district" as the new development is located, or (2) within any other "traffic cost allocation district," so long as the transportation facilities are located within one mile of a boundary of the "traffic cost allocation

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district" within which the new development is located. A map of the "traffic cost allocation districts" is on file with the City Engineer.

- d. The funds that have been held in the impact fee accounts for the longest period of time shall be deemed to be the first funds disbursed from the accounts.
  - (2) The City may also disburse an impact fee to reimburse itself or a school district for the cost of public capital facilities expenditures previously made in anticipation of the needs for which the impact fees were collected. In the event that bonds or similar debt instruments have been issued for public capital facilities that were constructed in anticipation of current growth, or are issued for advance provision of public capital facilities for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the public capital facilities provided are of the type for which the impact fees were collected.
  - (3) The periodic updates of the City's Capital Improvement Program shall assign funds, including any accrued interest, from the public capital facilities impact fee accounts to specified public capital facilities improvement projects and related expenses. Funds, including any accrued interest, not expended in any fiscal year, shall be retained in the same public capital facilities impact fee accounts until the next fiscal period except as provided in subsection (c) herein.
- (d) *Refund of Impact Fees.*
- (1) Any impact fees not expended on, encumbered for, appropriated for, or legally bound to be spent for public capital facilities for which they were collected within the period of six (6) years from the payment of the impact fees shall, upon written application of the then current owner of the property for which the impact fees were collected, be returned to such current owner with interest at a rate per annum each year equal to the average interest rate earned by the City of Concord on its investments, as published in the City's annual financial reports. The applicant must submit an application for a refund to the Clerk within one year from the date upon which a refund became due. Failure to submit the refund application within the specified time period shall result in the forfeiture of the impact fees actually paid. An impact fee shall be deemed to be encumbered and legally bound to be spent for the public capital facilities and shall not be refunded even if it is not fully expended within the six-year period, if construction of a public capital facility for which an impact fee has been collected is commenced within six (6) years of the date of the payment of an impact fee, or if the City Council has adopted resolution to appropriate the funds for construction of the public capital facility for which the impact fee has been collected within the six-year period.
  - (2) Where an impact fee has already been paid, and the applicant receives a credit against the impact fee pursuant to subsection (e), below, the lesser of the amount of the credit or the amount of the relevant impact fee shall, upon written application of the current owner of the property for which the impact fee was collected, be returned to such owner with interest at a rate per annum each year equal to the average interest rate earned by the City of Concord on its investments, as published in the City's annual financial reports. The applicant must submit a written application for such a refund to the Clerk within one hundred eighty (180) days after the determination of the credit pursuant to subsection (3), below. Failure to submit a written application within this time period shall result in the forfeiture of the impact fee actually paid.
  - (3) If an applicant cannot agree with the Clerk as to the proper amount of a refund of impact fees to be made, the applicant may request a hearing before the Planning Board on the determination of the proper refund. The Planning Board's decision on the amount of the refund shall be final.
- (e) *Additional Fees.* Payment of impact fees by an applicant does not prohibit or limit the right of the City or the Planning Board to require an applicant to pay such other municipal fees or assessments relating to the costs to the City of accommodating new development as are allowed by law. In addition to the assessment rights set forth in these procedures, the City expressly reserves all existing rights to collect financial exactions from

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applicants or to compel the construction of municipal improvements by applicants for on-site and off-site municipal improvements, the need for which is occasioned by a new development to the maximum extent allowed by law.

- (f) *Premature and Scattered Development; Planning Board Authority.* Nothing in this ordinance shall be construed so as to limit the existing authority of the Planning Board to provide against development which is scattered or premature, which requires an excessive expenditure of public funds, which requires the expenditure of public funds for capital facilities or improvements that are not public capital facilities, or which otherwise violates the City of Concord's Site Plan Review Regulations, Subdivision Regulations, or Zoning Ordinance. Nothing in this ordinance shall be deemed to limit or restrict the authority of the Planning Board conferred upon it by law.
- (g) *Incentives for Redevelopment of Blighted, Underutilized, Abandoned, or Contaminated Buildings.*
- (1) *City Priority Redevelopment Projects.* City Priority Redevelopment Projects shall include the following properties identified in "Table 4: City Priority Redevelopment Projects." Properties included within Table 4 shall be eligible for a reduction or limitation of total impact fees as specified in Table 4 City Priority Redevelopment Projects, regardless of any other redevelopment incentives, or limitations associated therewith, in this ordinance.

TABLE 4: CITY PRIORITY REDEVELOPMENT PROJECTS

Project Name	City Map/Block/Lot	Amount of Impact Fee Reduction
Former NH Employment Security Site	34/3/2 and 34/3/3	Net Impact Fees to be paid in conjunction with the redevelopment of the property shall not exceed \$150,000 for school, transportation, and recreational impact fees, combined, as might be required under this Ordinance, after applicable credits for the existing 26,000SF ± former Employment Security office building located at the property are deducted from the gross amount of impact fees owed for said redevelopment project.

- (h) *Exemption for Nonresidential Change of Use within the Central Business Performance (CBP) District.*
- (1) For existing buildings within the Central Business Performance (CBP) District, a change of use from one permitted nonresidential use to another permitted nonresidential use as set forth in Article 28-2-4(j), Table of Principal Uses, shall not be subject to a transportation facilities impact fee.
- (2) This exemption also applies to a change of use from permitted nonresidential uses established by special exception under the provisions of Article 28-9-3(b), Special Exception, and previously permitted but lapsed nonresidential uses.
- (3) This exemption does not apply to any new construction or building addition.
- (i) *Applicability and Rules of Construction.*
- (1) This ordinance shall be uniformly applicable to all new development that occurs within the corporate boundaries of the City of Concord.
- (2) The provisions of this ordinance shall be liberally construed so as to effectively carry out its purpose of protecting the public health, safety, and welfare.
- (3) For the purposes of administration and enforcement, and unless otherwise stated, the following rules of construction shall apply:

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- a. In the case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
  - b. The word "shall" is always mandatory; the words "may" and "will" are permissive.
  - c. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
  - d. It is intended that this ordinance comply with the requirements of the Act. Whenever possible, the terms of this ordinance shall be interpreted in a manner that complies with the Act. If it is found that any provision of this ordinance is inconsistent with the Act, the provisions of the Act shall control.

(Ord. No. 2381, § I, 6-18-01; Ord. No. 2593, § I, 2-14-05; Ord. No. 2694, § III, 2-11-08; Ord. No. 2714, § I, 4-14-08; Ord. No. 2864, § I, 1-9-12; Ord. No. 2918, § II, 11-12-13; Ord. No. 2935, §§ I—V, 11-10-14; Ord. No. 2988, § I, 10-10-17)