

**IMPACT FEES
FOR PUBLIC CAPITAL FACILITIES ORDINANCE**

[Amended by Town Ballot March 2015]

A. AUTHORITY AND APPLICABILITY

1. This Section is authorized by New Hampshire RSA 674:21 as an innovative land use control. The administration of this Section shall be the responsibility of the Planning Board, as those responsibilities are set forth herein. This Section, as well as regulations and studies adopted by the Planning Board, and, or the Board of Selectmen consistent with and in furtherance of this Section, shall govern the assessment of impact fees imposed upon new development in order to meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the Town of Pelham or the Pelham School District.
2. The public facilities for which impact fees may be assessed in Pelham may include water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewer; storm water, drainage and flood control facilities; the proportional share of capital facilities of the Pelham School District or a cooperative or regional school district of which Pelham becomes a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; public recreation facilities, municipal office facilities, public road systems and Right of Ways, or other public facilities as may be authorized by RSA 674:21, but not including public open space.
3. Prior to 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.
4. The following regulations shall govern the assessment of impact fees for public capital facilities in order to accommodate increased demand on the capacity of these facilities due to new development.

B. FINDINGS

1. The Town of Pelham is responsible for and committed to the provision of public facilities and services at standards determined by the Town to be

necessary to support development in a manner which protects and promotes the public health, safety and welfare;

2. Capital facilities have been and will be provided by the Town.
3. The Town's legislative body has authorized the Planning Board to prepare and amend a Capital Improvements Program per RSA 674:5-8, and the Planning Board prepares and adopts such program.
4. An impact fee ordinance for capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Pelham;
5. New development in Pelham will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate facilities and services for its residents, businesses, and other needs occasioned by the development of land;
6. Impact fees may be used to assess an equitable share of the growth-related cost of public facility capacity to new development in proportion to the facility demands created by that development;
7. In the absence of impact fees, anticipated residential and non-residential growth and associated capital improvement costs could necessitate an excessive expenditure of public funds in order to maintain adequate facility standards and to promote and protect the public health, safety, and welfare;
8. Impact fees assessed pursuant to this Section will not exceed the costs of:
 - a. Providing additional public capital facilities necessitated by new development in Pelham; and/or
 - b. Compensating the Town of Pelham or the Pelham School District for facility capacity that it provided in anticipation of new development in Pelham.

C. DEFINITIONS

1. *Feepayer.* The applicant for the issuance of a permit that would create new development as defined in this Section.
2. *New Development.* An activity that results in:
 - a. Subdivision, site development, building construction or other land use that results in an increase in demand for capital improvement facilities as

identified in the Planning Board's impact fee schedules; such increases in demand for capital improvement facilities may arise from waivers granted by the Planning Board as to recreational or other facilities which the Planning Board would otherwise, in lieu of such a waiver, require the applicant to construct on-site. The dollar value of any such improvements waived by the Planning Board which result in a monetary contribution in lieu of on-site facility improvements shall constitute an impact fee.

- b. The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessment methodologies adopted by the Planning Board.

New development shall not include an addition to an existing single-family residence, the replacement or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, density or type of use, and where there is no net increase in demand on the capital facilities of the Town of Pelham.

D. COMPUTATION OF IMPACT FEE

1. 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 Pelham. 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. The amount of any impact fee shall be computed based on the municipal capital improvement cost of providing adequate facility capacity to serve new development. Such documentation shall be available for public inspection at the Planning offices of the Town of Pelham.
2. In the case of new development created by the conversion or modification of an existing use, the impact fee assessed shall be computed based upon the net increase in the impact fee assessment for the new use as compared to the impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Section.

E. ASSESSMENT OF IMPACT FEES

1. Impact fees shall be assessed at the time of Planning Board subdivision or site plan approval on new development to compensate the Town of Pelham for the proportional share of the public capital facility costs generated by that development.

2. Any person who seeks a permit for new development, including permits is hereby required to pay the public capital facility impact fees authorized under this Section in the manner set forth herein, except where all or part of the fees are waived in accordance with the criteria for waivers established in this Section.

F. 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 with respect to the particular capital facilities for which impact fees are normally assessed.

1. A person may request a full or partial waiver of school facility impact fees for those residential units that are lawfully restricted to occupancy by senior citizens per the Elderly Housing Ordinance. The Planning Board may waive school impact fee assessments on age-restricted units where it finds that the property will be bound by lawful deeded restrictions on occupancy for a period of at least 20 years.
2. 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 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 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 may be based on the value of exactions for on-site or 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 Section, but only in the instance of on-site recreational facility exactions and limited to the extent that the exactions substantially exceed a recreation fee otherwise due under the prevailing methodology.
3. The Planning Board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fee(s) waived.
4. The Planning Board may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written

conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the capital facility or system for which the impact fee is being assessed.

5. An applicant may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on capital facility capacity and related costs attributable to that development. In support of such request, the applicant shall prepare and submit to the Planning Board an independent fee calculation or other relevant study, and supporting documentation of the capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the Town. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the applicant.
6. A person may request a full or partial waiver of impact fees, other than those that expressly protect public health standards, for construction within a plat or site plan approved by the Planning Board prior to the effective date of this ordinance. Prior to granting such a waiver, the Board must find that the proposed construction is entitled to the four-year exemption provided by RSA 674:39, pursuant to that statute.

G. PAYMENT OF IMPACT FEE

1. No permit shall be issued for new development as defined in this Section until the impact fee has been assessed by the Planning Board. The applicant shall either agree to pay the impact fee prior to issuance of a building permit, or shall post an impact fee performance guarantee acceptable to the Planning Board prior to the issuance of any building permit. The Planning Director 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, or has been waived by the Planning Board. In the interim between assessment and collection, the Planning Board may authorize another mutually acceptable schedule for payment, or require the deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Pelham.
2. Where off-site capital improvements have been constructed, or where such improvements will be constructed simultaneously with, or subsequent to new development, and where the Town has appropriated necessary funds to cover such portions of the work for which it will be responsible, the Planning Office may collect the impact fee for such capital facilities at the time the building permit.

H. APPEALS UNDER THIS SECTION

A party aggrieved by a decision under this section may appeal such decision to the Superior Court as provided by RSA 676:5,III and RSA 677:15, as amended.

I. ADMINISTRATION OF FUNDS COLLECTED

1. All funds collected shall be properly identified and promptly transferred for deposit into separate impact fee accounts for each type of public capital facility for which impact fees are assessed. Each impact fee account shall be a non-lapsing, segregated account, and under no circumstances shall such revenues accrue in the general fund. The Town Treasurer shall have custody of all accounts.
2. The 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 and tax map reference number of properties for which fees have been paid under this Section, for each permit so affected for a period of at least ten (10) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
3. Impact fees collected may be spent, from time to time, by order of the Board of Selectmen, and shall be used solely for the reimbursement of the Town or the Pelham school district, for the cost of the public capital improvements for which they were collected, or to recoup the cost of capital improvements made by the Town or the Pelham school district in anticipation of the needs for which the impact fee was collected.
4. In the event that bonds or similar debt instruments have been or will be issued by the Town of Pelham or the Pelham school district for the funding of capacity-related improvements, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.
5. At the end of each month, the Treasurer shall make a report giving a particular account of all impact fee transactions during that month. At the end of each fiscal year, the Treasurer shall make a report to the Board of Selectmen and Planning Board, giving a particular account of all impact fee transactions during that year.

J. USE OF FUNDS

1. Funds withdrawn from the capital facility impact fee accounts shall be used solely for the purpose of acquiring, constructing, equipping, or making

improvements to public capital facilities to increase their capacity, or to recoup the cost of such capacity improvements.

2. Impact fee monies, including any accrued interest that are not assigned in any fiscal period shall be retained in the same public capital facilities impact fee account until the next fiscal period, except where a refund is due.
3. Funds may be used to provide refunds consistent with the provisions of this Section.

K. REFUND OF FEES PAID

1. Only the current owner(s) of the property on which impact fees have been paid may apply for a full or partial refund of such fees, together with any accrued interest. The person seeking a refund shall demonstrate to the satisfaction of the Planning Board and its legal counsel that they are legally entitled to receive the refund. The Planning Board reserves the right to interplead into the Superior Court by a Petition of Interpleader any refunds due if there is either a dispute or doubt as to the person entitled to receive the refund. An impact fee shall be refunded with accrued interest in the circumstances where:
 - a. 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 full and final payment of the fee; or
 - b. The calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the Town of Pelham, and the legislative body has failed to appropriate the Town's share of the capital improvements within six (6) years of complete and final payment of the impact fee assessed.
2. The Board of Selectmen shall provide all owners of record who are due a refund written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

L. ADDITIONAL ASSESSMENTS

Payment of the impact fee under this Section does not restrict the Town or the Planning Board from requiring other payments from the applicant, including payments for 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.

M. SCATTERED OR PREMATURE DEVELOPMENT

Nothing in this Section shall be construed so as to limit the existing authority of the Pelham Planning Board to deny any new proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Pelham Zoning Ordinance, or the Pelham Planning Board site plan review regulations or subdivision regulations, or which otherwise may lawfully be denied.

N. REVIEW AND CHANGE IN METHOD OF ASSESSMENT

The methodologies adopted by the Planning Board for impact fee assessment, and the associated fee schedules, shall be reviewed periodically and amended as necessary. Such review shall take place not more than five (5) years from the initial adoption of this Section, nor more frequently than annually, except as required to correct errors or inconsistencies in the assessment formula. Failure to conduct a periodic review of the methodology shall not, in and of itself, invalidate any fee imposed. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be submitted to the Planning Board prior to final consideration of the proposed changes. The review by the Planning Board may result in recommended changes or adjustments to the methodology and related fees based on the most recent data as may be available. No change in the methodology or in the impact fee schedules shall be adopted by the Planning Board until it shall have been the subject of a public hearing, noticed in accordance RSA 675: 7. Any change of impact fee assessment or methodologies adopted by the Planning Board shall be submitted to the Board of Selectmen for implementation.