

CHAPTER 200

IMPACT FEES

[HISTORY: Adopted by the Planning Board of the Town of Pembroke 4-26-1994. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. **143**.

Site plan review — See Ch. **203**.

Subdivision of land — See Ch. **205**.

ARTICLE I General Provisions

§ 200-1 Title.

This chapter shall hereafter be known, cited and referred to as the "Impact Fee Regulations of the Town of Pembroke."

§ 200-2 Authority.

These regulations are adopted pursuant to the authority vested in the Planning Board by RSA 674:21(V), as amended. The Pembroke Planning Board hereby adopts the following regulations governing impact fees in the Town of Pembroke, New Hampshire, on April 26, 1994.

§ 200-3 Purpose.

The purpose of these regulations is to establish the methodology, collection, disbursement and accounting procedures to be utilized in the implementation of the Impact Fee Ordinance within the Town of Pembroke.

§ 200-4 Findings.

The Town of Pembroke Planning Board hereby finds that:

A. The town is responsible for and committed to the provision of public facilities and services at levels necessary to support basic residential and nonresidential growth and development;

B. Such facilities and services shall be provided by the town utilizing funds allocated via the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein;

C. The rate of growth experienced in the past by the town, as documented in the Master Plan, has outpaced the rate of expenditure of funds for new facilities which can reasonably be supported by existing revenue sources;

D. The amount and concentration of such development has contributed to the need for various public facilities and services, including but not limited to sanitary sewers, storm sewers, water lines, roads, schools, parks, police stations, fire stations, libraries and other public buildings that would not otherwise be necessary;

E. Planning and zoning projections indicate that such development will continue and will place ever-increasing demands on the town's ability to provide necessary public facilities;

F. The provision of municipal services has a direct effect on the value of property and their potential for development. The need for municipal services is outlined in the Master Plan and is implemented via the town's Capital Improvements Program;

G. To the extent that such development places demands upon the public facilities infrastructure in excess of the basic level of facilities and services provided by the town, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public at-large to the development(s) actually creating the demands;

H. The amount of the impact fees to be imposed shall be determined by the cost of the additional public facilities needed to support such development, which public facilities shall be identified in a Capital Improvements Program; and

I. An impact fee imposed upon residential and nonresidential development in order to finance specified major public facilities, the demand for which is created by new development, is in the best interest of the general welfare of the town and its residents, is equitable, does not impose an unfair burden on such development and deems it advisable to adopt these regulations as hereinafter set forth.

§ 200-5 Capital Improvements Program and Master Plan.

A. To serve the projected development, the impact fee shall be required to fund public facilities as shown in the Capital Improvements Program of the Town of Pembroke incorporated herein by reference.

B. The calculation of the impact fees shall be based on information and standards presented in the Pembroke Master Plan as amended, and incorporated herein by reference.

§ 200-6 Definitions.

The definitions found within the Town of Pembroke's Zoning Ordinance, Subdivision Regulations, Site Plan Review Regulations *Editor's Note: See Chapters. 143, 205 and 203, respectively.* and RSA 674:21, as amended, are hereby adopted for the purpose of these regulations.

ARTICLE II Fee Calculation

§ 200-7 Impact fee calculation methodology.

A Planning Board report, "Town of Pembroke Impact Fee Ordinance Background and Assumptions," documents the methodologies used to calculate impact fees and is adopted herein by reference. This report shall be revised and updated on an annual basis by the Planning Board.

§ 200-8 Impact fee categories.

A. The categories for which impact fees may be assessed by the town are as follows:

- (1) Highways;
- (2) Roads and Intersections;
- (3) Library;
- (4) Schools;
- (5) Fire Department;
- (6) Recreation and conservation; and

- (7) Solid waste.
- B. Depending on the Capital Improvements Program for the town in effect, a fee may or may not be assessed for each category.

§ 200-9 Calculation of an individual impact fee.

The general procedure to be used by the Code Enforcement Officer (CEO) to calculate the impact fee shall be as follows:

- A. Verify the number and type of residential dwelling units and/or the gross floor area and type of nonresidential development;
- B. Determine the applicable impact fee per unit or per square foot or other unit of measurement as specified in the Impact Fee Schedule;
- C. Multiplying the applicable per unit or per square foot impact fee by:
 - (1) The appropriate number of residential dwelling units; or
 - (2) The gross floor area of nonresidential development;
- D. Calculating separately, for mixed use developments, the impact fee as set forth above, for each type of use; and
- E. Subtracting from the total fee any applicable credits consistent with § 143-33 of the Pembroke Zoning Ordinance *Editor's Note: See Ch. 143, Zoning.* and § 200-29 of this chapter.

§ 200-10 Impact fee estimate.

Prior to making an application for a building permit, applicants may request a nonbinding estimate of the impact fee amount from the town.

ARTICLE III Collection of Fees

§ 200-11 Collection of fees.

- A. It shall be the responsibility of the Code Enforcement Officer to collect the appropriate fee for all developments within the Town of Pembroke pursuant to

Article **V** of the Pembroke Zoning Ordinance. *Editor's Note: See Chapter 143, Zoning, §§ 143-17 through 143-35.*

B. In the absence of the CEO it shall be the responsibility of the individual issuing the certificate of occupancy to collect the impact fee.

§ 200-12 Impact fee calculation worksheet.

A. Upon presentation of an application for a building permit, the CEO shall fill out an impact fee calculation worksheet for the project. This worksheet shall be used to calculate the applicable impact fee less any credits due the applicant.

B. A copy of the impact fee calculation worksheet shall be distributed in the following manner:

- (1) Building permit files;
- (2) impact fee file;-
- (3) The Town Planner;
- (4) Town Treasurer; and
- (5) The applicant.

§ 200-13 Issuance of a certificate of occupancy.

No certificate of occupancy (CO), either temporary or permanent, shall be issued for any development unless the Code Enforcement Officer (CEO) has determined that one (1) of the following situations exist:

A. The applicant has paid the requisite impact fee to the town;

B. The Impact Fee Ordinance is not applicable to the issuing of the CO as outlined under § **143-21** of the Pembroke Zoning Ordinance *Editor's Note: See Chapter 143, Zoning.* ; or

C. That credits due to a developer, as determined by the Board of Selectmen, equal or exceed the amount of the impact fee.

§ 200-14 Impact fee file.

A. The CEO shall be responsible for establishing and maintaining the impact fee file. Each application for a building permit requiring a payment of an impact fee shall have a separate file in the impact fee file. This file shall contain, at a minimum, the following information:

- (1) A copy of the building permit;
- (2) A copy of the impact fee calculation worksheet and check, or other mechanism, used to pay the fee; and
- (3) Any correspondence, worksheets or other information relative to the application and payment of the impact fee.

B. The impact fee file is unique in that a major criteria is the date of the payment of the fee and issuance of the permit. Because of this each file will be identified by the date of the payment and the applicant's name. The files shall be kept in chronological order with the earliest date of permit issuance in front.

§ 200-15 Impact fee payments.

A. Acceptable forms of payment of the impact fee are:

- (1) Cash;
- (2) Check;
- (3) Certified Bank Check; or
- (4) A letter of credit or other form of security as authorized by the Board of Selectmen.

B. Any other form of payment must be approved by the Board of Selectmen.

§ 200-16 Impact fee file maintenance.

A. The CEO shall be responsible for the maintenance and upkeep of the impact fee file. The CEO shall review the impact fee file on a monthly basis to determine:

(1) If a building permit has expired without the construction of the structure; or

(2) Six (6) years have expired since the collection of the impact fee and there are currently unexpended funds in the account.

B. Upon determination of either of the above situations the CEO shall flag the file and begin the refund procedures outlined under § **200-24** of these regulations.

ARTICLE IV Accounting Procedures

§ 200-17 Establishment of impact fee account.

The Town Treasurer shall be responsible for the establishment of an impact fee account. This account shall be an interest bearing savings account separate from the town general fund. The town has the sole authority in determining the financial institute that shall be used for this account.

§ 200-18 Internal accounting procedures.

A. Upon receipt of the impact fee the Town Planner shall forward the fee, along with a letter explaining the purpose of the money, to the Town Treasurer who will then deposit the fee into the impact fee savings account.

B. The Town Planner shall maintain a database containing the impact fee and the distribution of fees within each of the fee categories.

§ 200-19 Maintenance of savings account.

The Town Treasurer shall maintain and keep adequate financial records for the impact fee savings account, which shall show the source and disbursement of all funds. The Treasurer shall ensure that the fees collected are placed into the savings account. The Town Planner shall ensure that the impact fees are disbursed solely and exclusively for the provision of projects specified in the Capital Improvements Program for which the fees were collected. Impact fees will be expended in the order of payment to the town.

§ 200-20 Calculation of interest income.

A. The Town Treasurer shall calculate the interest income earned on the balance of the fees in the account on a monthly basis. The interest credited to an internal account shall be expended solely for the purpose specified for such account. It is recognized that upon the issuance of a bond for a Capital Improvements Project, fees collected for the project will be paid toward the debt retirement of said bond, and the interest will not be credited to the respective internal account.

B. The Town Treasurer shall submit to the Town Planner the amount of interest earned by the account on a monthly basis. The Town Planner shall calculate and credit to each internal account an appropriate amount of interest income earned on the balance of the fees in each account.

§ 200-21 Annual impact fee account report.

At the beginning of each year, the Town Planner, in consultation with the Town Treasurer, shall prepare an annual report showing all activity within that account, including the amount of interest earned for each account.

ARTICLE V Disbursement of Impact Fees

§ 200-22 Disbursement types.

Impact fees are disbursed in three (3) ways: first, by the construction of, or the encumbrance of the fees for, the public facility for which it was collected; second, via a refund request from a property owner; or third, based on the determination of the CEO that the building permit has expired without the construction of the building.

§ 200-23 Construction/encumbrance of facilities.

Upon determination by the Town Planner that a facility has been constructed or will be constructed, and fees have been encumbered for that purpose, he/she shall follow the following procedures:

A. The Town Planner shall submit a request for the amount of the encumbrance, in writing, to the Town Treasurer;

B. The Town Treasurer shall transfer the amount to be disbursed from the impact fee savings account to the town's general fund;

C. The Town Planner shall then authorize the Town Bookkeeper to issue a check from the general fund to the appropriate funding agency, in the amount of the disbursement; and

D. The Town Planner shall be responsible for calculating the amount of money disbursed by category and shall make the appropriate adjustment in the impact fee database.

§ 200-24 Refunds.

A. The current owner of the property for which an impact fee has been paid may apply for a full refund of such fee, with interest as calculated by the Town Treasurer per § 200-20 if:

(1) The town has failed to begin construction of, or encumbered the funds for, the public facility for which the fee was collected within six (6) years of the date of payment of the impact fee;

(2) The building permit for which the impact fee has been paid has lapsed for noncommencement of construction and the fee has not been spent;

(3) The applicant has decided not to construct the structure for which the impact fee was collected. In this case the Code Enforcement Officer shall void the building permit.

B. A petition for refund must be filed within thirty (30) days of the event giving rise to the right to claim the refund.

C. Any request for a refund must be made on the refund request form and submitted to the Board of Selectmen or their duly appointed representative for approval.

C. If the town has not commenced construction or encumbered the funds within six (6) years of the date of payment, then the town shall notify the current property owners of their right for a refund as outlined under § 200-27.

§ 200-25 Partial refunds.

The current property owner may apply for a partial refund if the project for which a building permit has been issued has been altered, resulting in a decrease in the amount of the impact fee due. The amount of the refund shall equal the amount of the impact fee already paid less the amount of the recalculated fee based on the altered project.

§ 200-26 Refund request procedures.

If a property owner requests a refund of the impact fees paid the following procedures shall be used:

- A. The Town Planner shall review the appropriate file in order to determine whether a refund is due pursuant to the requirements of § 200-24 or 200-25.
- B. If the property owner is due a refund the Town Planner shall notify them of that and send the property owner a refund request form.
- C. The refund request procedures shall be followed as outlined under § 200-27E and F.

§ 200-27 Refund notification procedures.

Based on the monthly review of the impact fee file the Code Enforcement Officer (CEO) shall determine if any projects are due a refund. If it is determined that a refund is due the following procedures shall be utilized:

- A. The Town Planner shall notify all current property owners due a refund by registered mail, return receipt requested, that they may apply for a refund. This notification shall be made prior to the expiration date of the permit or CIP deadline as outlined in § 200-24 of these regulations;
- B. The notification shall consist of a letter outlining the fact that a refund can be obtained from the town, the process required to obtain the refund, the deadline for obtaining a refund and a copy of the refund request form;
- C. The property owners shall have ninety (90) days from the return of the receipt, or the refusal to accept the notification, to claim a refund.
- D. If a refund request has not been received within the first ninety (90) days a second notification shall be sent out with an additional ninety-day response period. Failure to claim the impact fee within the second ninety-day period shall

constitute abandonment and the town shall follow the procedures as outlined in § 200-30;

E. Within thirty (30) days of the date of receipt of a petition for refund the Board of Selectmen, or their duly appointed representative, must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision; and

F. Upon determination that a refund is due the Town Planner shall fill out the refund section of the fee disbursement worksheet and follow the refund accounting procedures outlined under § 200-28.

§ 200-28 Refund accounting procedures.

Once a refund request has been received and approved the following procedures shall be utilized:

A. The Town Planner shall submit a request for the amount of the refund, in writing, to the Town Treasurer;

B. The Town Treasurer shall transfer the amount to be disbursed from the impact fee savings account to the general fund;

C. The Town Planner shall then authorize the Town Bookkeeper to issue a check from the general fund to the current owner in the amount noted on the worksheet; and

D. Following the issuance of a refund check the CEO shall be responsible for closing out the impact fee file.

ARTICLE VI Miscellaneous Procedures

§ 200-29 Credits.

Credits to be utilized in calculating the impact fees are as follows:

A. The owner of a vacant parcel of land shall receive a credit against the assessed impact fee to reflect past taxes paid for said parcel that went towards the specific capital facility;

B. For existing structures undergoing an expansion of the existing use the impact fee shall be based on a percentage of the expansion. The applicant shall receive a credit for the existing square footage of the structure; and

C. Credits based on past and future monetary and nonmonetary contributions by the applicant may be used in the calculation of the impact fee. These include but are not limited to:

- (1) Donations of land to the town for roads, recreation or other municipal use over and above that required by the Planning Board or municipal ordinances;
- (2) Donations of equipment and or facilities over and above that required by the Planning Board or other municipal ordinances; or
- (3) Construction of improvements above and beyond those required by the proposed development.

§ 200-30 Unclaimed impact fees.

All impact fee refunds due and not claimed shall be retained in the impact fee savings account and expended on or encumbered for capital improvements occasioned by other developments.

§ 200-31 Waivers.

The Board of Selectmen is given sole authority to waiver the imposition of the impact fee. The waiver request must be presented in writing to the Board of Selectman outlining the reasons for the request. The Selectmen may consult with other town boards or departments in making its decision. The Selectmen shall, within thirty (30) days of the receipt of a waiver request, notify the applicant of a decision outlining the reasons for, or against the waiver.

200a Impact Fee Worksheets and Form