

## TOWN OF PORTSMOUTH, RI

### ORDINANCE - # 2003 - 03 - 25

An Ordinance Adopting and Enacting Impact Fees within the Town of Portsmouth.

WHEREAS, the Portsmouth Comprehensive Community Plan supports growth management and impact fees in its *Facilities Element, Land Use Element, Housing Element*, and

WHEREAS, the Town Council of the Town of Portsmouth has entered upon such a growth management program in the Town, and

WHEREAS, the Town Council of the Town of Portsmouth has already adopted a Growth Management Ordinance, and

WHEREAS, the Town Council of the Town of Portsmouth has determined that costs associated with growth, particularly, school costs create unfair burdens on existing taxpayers, and

WHEREAS, the Town Council of the Town of Portsmouth has determined that a program of impact fees is consistent with the Town of Portsmouth's Comprehensive Plan, its Zoning Ordinance, and State enabling acts relative thereto,

NOW, THEREFORE, the Town Council of the Town of Portsmouth does hereby ordain as follows:

#### **Section 1. Impact Fees Authorized.**

This Article authorizes the establishment of an impact fee on land development in Portsmouth for providing new and/or expanded public facilities and infrastructure including schools (and its related facilities) within Portsmouth which are necessitated by such new development.

#### **Section 2. Findings.**

A) In accordance with RIGL Title 45 Chapter 45-22.4, the Town Council finds that an equitable program is needed for the planning and financing of public facilities to serve new growth and development in the Town of Portsmouth in order to protect the public health, safety and general welfare of the citizens of this Town.

- B) It is therefore the public policy of the Town and in the public interest to assess, impose, levy and collect fees defined herein as impact fees for certain new development within the Town's jurisdictional limits.
- C) It is the intent of the Town Council by enactment of this ordinance to:
- 1) Ensure that adequate public facilities are available to serve new growth and development;
  - 2) Ensure that new growth and development does not place an undue financial burden upon existing taxpayers;
  - 3) Promote orderly growth and development by establishing uniform standards to require that those who benefit from new growth and development pay a proportionate fair share of the cost of new and/or upgraded public facilities needed to serve that new growth and development;
- D) The Town is required by State statute to provide public educational opportunities for all Portsmouth school-age pupils and school site planning for new or expanded schools within the Town in order to ensure that plans for the construction and opening of public educational facilities are coordinated in time and place with plans for residential development and other necessary services;
- E) The Town of Portsmouth must expand its educational facilities in order to maintain current levels of service if new development is to be accommodated without decreasing current levels of service. This must be done in order to promote and protect the public health, safety, and welfare of current and future citizens;
- F) The State of Rhode Island through the enactment of Rhode Island Comprehensive Planning Act of 1988 and the Zoning Enabling Act of 1991 (RIGL Sec. 45-24-30) has sought to encourage Portsmouth to enact innovative development regulations and techniques. Title 45 Chapter 45-22.4 specifically enables the Town Council to adopt impact fee ordinances.
- G) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
- H) Development of new housing units will place additional students in the public schools of Portsmouth, necessitating the acquisition of school sites, the expansion of existing educational facilities, and the construction of new educational facilities.
- I) The fees established by this ordinance are derived from, based upon, and do not exceed the costs of providing for such educational facilities necessitated by new land developments for which the fees are levied. Such costs are established by the latest available costs.
- J) The report entitled "Town of Portsmouth, Rhode Island Phase II Growth Management – Needs Assessment for Impact Fee Schedule," dated October 28, 2002, and amended March 25, 2003 sets forth a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs of additional school sites and educational facilities in Portsmouth or the school district.

### **Section 3 Intent**

- A) The fees established by this ordinance are consistent with and are intended to assist in the implementation of the Portsmouth Comprehensive Plan.
- B) The purpose of this Article is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide public educational sites and facilities, as mandated by the State.

### **Section 4 Definitions**

As used in this section, the following words have the meanings stated in this section:

- A) “Capital improvements” means improvements with a useful life of ten (10) years or more, which increases or improves the service capacity of a public facility;
- B) “Capital improvement program” means that component of the Town’s budget or the regional school district’s master plan that sets out the need for public facility capital improvements for educational facilities, the costs of the improvements, and proposed funding sources. A capital improvement program must cover at least a five (5) year period and should be reviewed at least every five (5) years;
- C) “Developer” means a person or legal entity undertaking development, including any one person commencing a subdivision or land development project which may reasonably be expected to place students in the public schools, place additional burdens on the Town’s educational facilities and which requires the issuance of a building permit for one or more residential buildings;
- D) “Impact fee” means the charge imposed upon new development by the Town of Portsmouth to fund all or a portion of the public facility's capital improvements affected by the new development from which it is collected;
- E) “Proportionate share” means that portion of the cost of system improvements which reasonably relates to the service demands and needs of the project; and
- F) “Public facilities” means:
  - 1) Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and local components of state and federal highways;
  - 2) Storm water collection, retention, detention, treatment, and disposal facilities, flood control facilities, bank and shore projections, and enhancement improvements;
  - 3) Parks, open space areas, and recreation facilities;
  - 4) Police, emergency medical, rescue, and fire protection facilities;
  - 5) Public schools, including those capital projects undertaken by the Town or regional school district to accommodate existing and future Portsmouth school-age pupils. Such facilities may be located within Portsmouth or within any regional area; and

- 6) Other public facilities consistent with a community's capital improvement program.
- G) Capital costs of educational facilities are expenditures for the acquisition of fixed assets or additions to fixed assets and expenditures for site acquisition, construction, design, site development, necessary off-site improvements, and capital equipment pertaining to such facilities.
- H) Subdivision or land development projects which may reasonably be expected to place students in the public schools, means any construction or installation of new residential buildings or structures that will result in additional students in the public schools.
- I) Independent fee calculation study means the demographic and/or educational impact documentation prepared by a fee payer to allow the determination of the impact fee other than by the method established by this ordinance.

### **Section 5 Imposition of Public Facilities Impact Fee**

- A) Any person applying after the effective date of this ordinance, for a residential building permit which includes a new dwelling unit, conversion of a non-residential use to residential use, or addition of bedrooms to an existing housing unit is hereby required to pay a public facilities impact fee in the manner and amount set forth in this ordinance.
- B) The requirement of funds for provision of school facilities shall be based upon needs as established by the capital improvement program or regional master plan for Educational Facilities and shall be consistent with the policies stated therein. The Building Official is charged with the administration of the section. The fee amount shall be based upon the following:
- C) A fee schedule for educational facilities, per residential dwelling unit, shall be established by the Town Council annually for the fiscal year.
- D) The fee payer is required to pay the fee as established annually by the Town Council. If a fee payer disputes the impact fee determined as described herein, then the fee payer may appeal the decision of the Building Official to the Zoning Board of Review in accordance with Article 14 of the Zoning Ordinance and may submit an independent fee calculation study for the land development activity for which a building permit is sought. The student generation and/or educational impact documentation submitted shall show the basis upon which the independent fee calculation was made.

### **Section 6 Calculation of the Impact Fee**

The impact fee for all educational facilities shall be based on the following formula, as described in "Town of Portsmouth, Rhode Island Phase II Growth Management – Needs Assessment for Impact Fee Schedule," dated October 28, 2002, as amended March 25, 2003 and shall not exceed 75% of the calculated amount established by the formula:

The Impact Fee shall be a sliding scale per number of bedrooms. The basic per bedroom fee is calculated by multiplying the estimated capital cost per student of new or expanded educational facilities, net of State aid, times the average school enrollment per bedroom in Portsmouth. The above calculations shall omit the first bedroom in each unit. The impact fee imposed on individual buildings shall be the number of bedrooms, up to four total bedrooms, multiplied by 75% of the result of this formula.

The number of bedrooms applied to the above formula shall be the number of bedrooms in the septic system design approved by the R.I. Department of Environmental Management. The Building Inspector may revise such number for the purposes of Section 12 Paragraph E of this ordinance only.

The impact fee shall be recalculated on March 1 of each year, based on updated figures, as available and shall take effect on July 1 of each year.

### **Section 7 Payment of Fee**

The fee payer shall be assessed the educational facilities impact fee required by this ordinance upon application for a building permit, to the Building Official and shall be collected in full prior to the issuance of Certificate Of Occupancy.

### **Section 8 Capital Facilities Impact Fee Trust Fund Established**

- A) There is hereby established a separate capital facilities impact fee trust fund to be administered by the Town Treasurer. All funds collected shall be properly identified and promptly deposited in a special proprietary fund, which shall be invested in government insured or government backed instruments only with all interest accruing to the trust fund and used solely for the purposes specified in this ordinance.
- B) Within eight (8) years of the date of collection, impact fees shall be expended or encumbered for the construction of public facilities capital improvements of reasonable benefit to the development paying the fees and that are consistent with the capital improvement program. The construction, expansion or renovation of new school facilities anywhere in the town or in any regional school district shall be deemed to be such reasonable benefit.
- C) Where the expenditure or encumbrance of fees is not feasible within eight (8) years, the Town may retain impact fees for a longer period of time if there are compelling reasons for the longer period. In no case shall impact fees be retained longer than twelve (12) years.
- D) Funds withdrawn from this account must be used in accordance with the provisions of Section 9 of this ordinance.

### **Section 9 Use of Funds**

- A) Funds collected from capital facilities impact fees and deposited in the capital facilities impact fee trust fund by the Town Treasurer are for the purpose of constructing educational facilities for the Town of Portsmouth. Such funds shall be spent solely to acquire, construct, expand, and equip the educational sites and educational capital facilities necessitated by new development.

B) Funds may be used to make refunds required by Section 11 of this ordinance.

### **Section 10 Vested Rights**

Pursuant to Section 12 of the Zoning Ordinance, any application for a building permit that has been submitted and has been deemed complete prior to the adoption of this ordinance, shall have vested rights to proceed with the application and receive a building permit or Certificate of Occupancy without requiring the payment of an impact fee.

### **Section 11 Refund of Fees Paid**

- A) Any funds not expended or encumbered by the end of the calendar quarter immediately following eight (8) years, or twelve (12) years if Section 8 C) of this Ordinance applies, from the date the capital facilities impact fee was paid, shall be refunded to the current owner of record for the Assessor's Plat and Lot for which the fee was paid. The refund shall include interest on the original fee amount, equal only to the actual interest that the Town Treasurer may have accrued through an investment account or similar interest bearing account.
- B) The Town shall notify the said current owner of record by certified letter, return receipt requested, that a refund of impact fees are due for the reasons provided in Section 11 (A). Said current owner of record may respond and submit an application for a refund to the Building Official within one (1) year from the date of receipt of the Town's notice. Failure to respond within the specified time period shall indicate a waiver for such refund.
- C) If the Town Council were to act to terminate any or all impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided above. Upon the finding that any or all fee requirements are to be terminated, the Town shall place a notice of termination and availability of refunds in a newspaper of general circulation within the Town of Portsmouth at least two (2) times. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds may be transferred to the general fund and used for any public purpose. The Town is released from this notice requirement if there are no unexpended or unencumbered balances within a fund or funds being terminated.

### **Section 12 Exemptions**

The following shall be exempted from payment of the impact fee. Any claim of exemption must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

- A) Impact fees shall not be imposed for remodeling, rehabilitation, or other improvements to an existing structure where the use is not changed.
- B) Impact fees shall not be imposed for the construction of accessory buildings or structures that will not add a dwelling unit.
- C) Impact fees shall not be imposed for rebuilding a damaged structure, including the replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use.

- D) Impact fees shall not be imposed on nonresidential buildings and structures.
- E) Zero and 1-bedroom housing units.
- F) One new housing unit on any vacant lot of record in existence as of December 31, 2002, per the Tax Assessor's certified tax roll of that date, and in a Residential Zone, per the Zoning Ordinance in effect as of that date shall be exempt. Lots that have been subject to administrative subdivision that enlarged the lot (other than merging two or more lots) after the effective date of this ordinance shall not be exempt under this provision.
- G) Vested Rights - An application to construct a dwelling is not subject to this section if allowed pursuant to vested rights provisions of the Zoning Ordinance (Article XV, Section F).
- H) Elderly Housing - Dwellings which would contribute to meeting the year-round housing needs of elderly and disabled citizens through enforceable restrictions limiting occupancy to households whose members are sixty-two (62) years of age or older.
- I) Retired Adult Communities - Planned developments for retired citizens, with amenities, established through publicly enforceable restrictions limiting occupancy to residents whose members are fifty-five (55) years of age or older.
- J) Multifamily Dwellings - Multifamily dwellings having zero-bedroom (studio) or one-bedroom units, and which do not exceed a total of 800 sq. ft. floor area per dwelling unit.
- K) Accessory Family Dwelling Unit, as defined in the Zoning Ordinance.
- L) Community Residence - Any Community Residence as defined by R.I.G.L. Section 45-24-31.
- M) Hog Island – Any buildings on Hog Island are exempt from this Ordinance.

**Section 13 Effective Date**

This ordinance shall be effective upon adoption. Following the adoption of this ordinance, the impact fee shall be calculated as provided above. Applications submitted and accepted as complete before December 1, 2002 shall not be subject to this ordinance. This ordinance shall supercede any and all ordinances inconsistent herewith.

APPROVED BY TOWN COUNCIL  
ACTION ON MARCH 25, 2003

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Carol Zinno, Town Clerk