

SECTION XXV IMPACT FEE ORDINANCE FOR PUBLIC SCHOOL FACILITIES (Added March 2000)

A. APPLICABILITY OF ARTICLE

The Town of Newton has developed a methodology for the assessment of impact fees for a proportionate share of the public school capital facilities of the Sanborn Regional School District. On the basis of this methodology, new development in Newton shall be assessed a public school impact fee that represents its proportional share of demand on the capital facilities of the District. The following regulations shall govern the assessment of impact fees for public school facilities in order to accommodate increased demand on the capacity of these facilities due to new development. These regulations are authorized by RSA 674:21, V, and other pertinent state law, as an innovative land use control. The administration of these regulations shall be the responsibility of the Board of Selectmen.

B. FINDINGS

In review of its school enrollment growth and the public school capacity available to Newton from the Sanborn Regional School District of which it is a member, the Town of Newton hereby finds that:

1. Each type of new residential development in Newton, with the exception of those having lawfully restricted occupancy that will exclude school age children, will create a need for the construction, equipping, or expansion of the public capital facilities of the Sanborn Regional School District to provide adequate public education for Newton pupils.
2. Recent and anticipated growth rates in public enrollment and associated improvement and renovation costs would necessitate an excessive expenditure of public funds in order to maintain adequate school facility standards and to promote and protect the public health, safety, and welfare.
3. The assessment of impact fees is one of the methods available to ensure that public expenditures are not excessive and that new development will bear a proportionate share of the cost of public school capital facility costs necessary to accommodate such development.
4. The Sanborn Regional School District, of which the Town of Newton is a member, provides an efficient and effective means for the towns of the District to provide educational services to the citizens of the District.
5. The impact fee methodology entitled Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999 and as amended) prepared for the Town of Newton, represents a reasonable, rational and proportional method for the assessment of growth-related school facility costs of the District. Based on this methodology, school impact fees will not exceed the costs of:
 - a. Providing additional public capital facilities necessitated by new residential development in Newton; and/or
 - b. Compensating the Sanborn Regional School District for school facility capacity that it provided in anticipation of new residential growth and development in Newton.
6. An impact fee ordinance for school capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Newton.

C. DEFINITIONS

1. District – The Sanborn Regional School District, of which Newton is a member municipality.
2. Fee-payer – The applicant for the issuance of a building permit which could create new development.
3. New Development – An activity which results in
 - a. The creation of a new dwelling unit or units; or

- b. The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units.

D. ASSESSMENT OF IMPACT FEES

1. Impact fees shall be assessed to new development to compensate the Town of Newton for the proportional share of the capital facility costs of the District generated by new development in Newton, including public school facilities to be constructed, or which were constructed in anticipation of new development.
2. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan.
3. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for the issuance of a building permit.
4. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected at the time when the development is ready for its intended use. However, the Board of Selectmen may negotiate an alternative schedule for collection with the fee payer.
5. The Board of Selectmen and the fee payer may establish an alternate, mutually acceptable schedule of payment of impact fees. If an alternate schedule of payment is established, the Board of Selectmen may require the applicant to post security, in the form of a cash bond, letter of credit, or performance bond so as to guarantee future payment of assessed impact fees.
6. No Certificate of Occupancy shall be issued for new development which is subject to impact fee assessment until the fee is paid in full.
7. Any person may request a full or partial waiver of school facility impact fees for the number of residential units that are lawfully restricted to occupancy by senior citizens age 62 or over, or to households with at least one person age 55 and over, as applicable, where such units are maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. School impact fees may, in the discretion of the Board of selectmen, be waived for such units within a complying development where the units are restricted by age for a period of at least 20 years.
8. A person may request a full or partial waiver of school facility impact fees from the Board of Selectmen for any residential units which have been approved for construction prior to the effective date of this article if the same are determined to be entitled to the four year exemption provided by RSA 674:39, to the extent that exemption is available pursuant to that statute. This waiver shall not be applicable to residential units in phases of a phased residential development project where active and substantial development, building and construction has not yet occurred in the phase in which those units are to be constructed.
9. Prior to acting on a request for waiver of impact fees under the provisions of paragraphs 3 or 4 of this section, the Board of Selectmen shall submit a copy of the waiver to the Planning Board for its review and comment, and the Planning Board shall set forth its comments in writing. In the process of its review, the Board of Selectmen shall set forth in writing its findings on the Planning Board's comments to the extent that such comments are not directly incorporated into the decision on the request for a waiver.

E. COMPUTATION OF IMPACT FEE

1. The amount of each impact fee shall be assessed in accordance with a report entitled Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended),

prepared for the Town of Newton and as adopted for the purposes of impact fee assessment by the Board of Selectmen.

2. In case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessment for the new use as compared to the highest impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Ordinance.

F. APPEALS

1. If a fee-payer elects to appeal the amount of the impact fee, the appeal shall be made to the Zoning Board of Adjustment. In support of such appeal, the fee-payer shall prepare and submit to the Zoning Board of Adjustment an independent fee calculation or other relevant study for the new development activity which is proposed. The independent study by the fee-payer shall set forth the specific reasons for departing from the adopted schedules and methodologies of the Town. The Board of Adjustment 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 fee-payer.
2. The decision of the Zoning Board of Adjustment may be appealed to the Superior Court as provided by RSA 677:2-14.

G. ADMINISTRATION OF FUNDS COLLECTED

1. All funds collected shall be properly identified and promptly transferred for deposit into a separate impact fee account for public school facilities. This impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues accrue to the General Fund.
2. The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Article for each building permit so affected for a period of at least nine (9) 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 Sanborn Regional School District for the cost of public school capital improvements made by the 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 District for the funding of capacity-related improvements to public schools, impact fees may be transferred to the District to pay debt service on such bonds or similar debt instruments.
5. At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen, giving a particular account of all impact fee transactions during the year.

H. REFUND OF FEES PAID

1. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest 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 District has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate any of the non-impact fee share of related capital

improvement costs thereby permitting the capital improvement or capital improvement program for which the impact fee was collected to be commenced. If any capital improvement or capital improvement program for which an impact fee has been collected has been commenced either prior to, or within six years from the date of final collection of an impact fee, that impact fee shall be deemed to be encumbered and legally bound to be spent for said capital improvement or capital improvement program and shall not be refunded, even if it is not fully expended within the six year period.

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.

I. ADDITIONAL ASSESSMENTS

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

J. PREMATURE AND SCATTERED DEVELOPMENT

Nothing in this article shall be construed so as to limit the existing authority of the Newton Planning Board to deny proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Newton Zoning Ordinance, or the Newton Planning Board Site Plan Review Regulations or Subdivision Regulations, or which may otherwise be lawfully denied.

K. REVIEW AND CHANGE IN METHOD OF ASSESSMENT

The Methodology for the Calculation of School Impact Fees in the Town of Newton, NH (prepared in 1999, and as amended) and the associated fee schedule shall be reviewed periodically by the Board of Selectmen. Such review shall take place not more than five years from the initial adoption of this ordinance, nor more frequently than annually. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be reviewed by the Planning Board prior to its final consideration by the Board of Selectmen. The review by the Board of Selectmen may result in recommended adjustments to the methodology and related fees based on the most recent data as may be available. The replacement or amendment of the impact fee methodology shall not be effective until it shall have been the subject of a public hearing before the Board of selectmen, noticed in accordance with RSA 675:7.

SECTION XXVI ACCESSORY APARTMENTS (Added March 2001)

Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory apartments within the Residential A Zone in accordance with the restrictions and requirements of this section.

To increase housing alternatives while maintaining neighborhood aesthetics and quality, an accessory apartment within a detached single family dwelling shall be permitted in the Residential A Zone.

For the purposes of this ordinance, the term “accessory apartment” shall be defined as follows:

“A second dwelling unit with provisions for cooking, eating, sanitation and sleeping, located within a single family dwelling and clearly a subordinate part thereof.”

1. Maximum of one (1) accessory apartment per property.
2. The property owner must occupy one (1) of the two (2) units.
3. Only one (1) bedroom is permitted in the accessory apartment.
4. Not more than two (2) people shall occupy said apartment.

5. Off street parking sufficient for both units must be provided (space for a minimum of four (4) vehicles).
6. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single family dwelling.
7. The septic system shall be adequate for both units, per New Hampshire Water Supply and Pollution Control Standards.
8. The accessory apartment must be attached to the primary dwelling unit. Accessory apartments are not permitted in detached accessory structures on the same lot. (for exceptions see #17)
9. The accessory apartment shall have convenient and direct access to the primary dwelling unit (a connecting inside door) AND its own separate entrance/exit.
10. Appearance shall remain that of a single-family residence. New entrances shall be located on the side or rear of the building.
11. The size of the accessory apartment shall be a maximum of 800 SF, or 1/3 of the total gross floor area, whichever is smaller. (Amended 2007)
12. The primary dwelling unit and the accessory apartment shall share common utilities including well, septic system, heating and electrical service.
13. Design of the accessory apartment shall be such that it would be readily adaptable to conversion into part of the primary dwelling.
14. Design, construction and all necessary permits for the accessory apartment shall be in accordance with the Town of Newton Building Code and Safety Ordinance.
15. An accessory apartment occupancy permit will have to be obtained and shall be revoked if all of these conditions are not maintained.
16. Any appeal of this ordinance shall be made to the Superior Court.
17. Accessory apartments shall be allowed in a detached accessory structure which is in existence prior to the adoption of this ordinance provided the following conditions are found to exist:
 - A. The existing detached accessory structure consists of at least 500 square feet of floor space;
 - B. No net increase in building footprint or floor space shall be allowed; and
 - C. Minimal structural modifications of the accessory structure are required to facilitate residential occupancy as determined by the Building Inspector.Existing structures are exempt from conditions 8, 9 and 13 provided all other conditions are met.
18. In accordance with RSA 676:17, a fine of \$275.00 per day shall be assessed for violations of this ordinance.