

Chapter 193. FEES

Article III. Development Impact Fees

[Adopted 9-4-2001 (Ch. 16, Art. XI, of the 1985 Code of Ordinances); amended in its entirety 4-26-2005]

§ 193-8. Legislative findings.

The Town Council of the Town of Smithfield finds, determines, and declares that:

- A. The Town of Smithfield must expand its recreational and open space resources and facilities in order to maintain current standards if new residential development is to be accommodated without decreasing current standards. This must be done in order to promote and protect the public health, safety, and welfare.
- B. The State of Rhode Island through the enhancement of R.I.G.L. § 45-22.4-1 et seq., Rhode Island Development Impact Fee Act, provides for orderly growth and makes provisions for protecting public investment in public facilities.
- C. The imposition of impact fees is one of the preferred methods of ensuring that residential development bears a proportionate share of the cost of capital facilities necessary to accommodate the needs of future residents of such developments. This must be done in order to promote and protect the public health, safety, and welfare.
- D. Residential land development, except as exempted in § **193-12** hereof, creates demand for the acquisition or expansion of parks, open space and recreational facilities, the construction of park improvements, the addition of library facilities, and the expansion of school facilities. The fees established by § **193-12** are derived from and based upon the costs of providing certain facility improvements necessitated by the new land developments for which the fees are levied. These facility improvements are listed as follows:
 - (1) Park, recreation and historic facility improvements.
 - (2) Libraries.
 - (3) Schools.
 - (4) Road improvements.
 - (5) Open space and conservation areas.

§ 193-9. Intent and purpose.

- A. This article is intended to assist in the implementation of the Smithfield Comprehensive Community Plan.

- B. The purpose of this article is to regulate the use and development of land so as to assure that new residential development bears its proportionate share of the cost of capital expenditures necessary to provide certain facility improvements in the Town of Smithfield.

§ 193-10. Rules of construction; word usage.

- A. The provisions of this article shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.
- B. For the purpose of administration and enforcement, unless otherwise stated in this article, the following rules of construction shall apply to the text hereof.
 - (1) In case of any difference of meaning or implication between the text of this article and any caption, the text shall control.
 - (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
 - (3) Words used in the present shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - (4) The phrase "used for" includes "arranged for," "designed for," "maintained for," and "occupied for".
 - (5) The word "person" includes an individual, a corporation, a partnership, an unincorporated association, or any other similar entity.
 - (6) 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.
 - (7) The word "Town Manager" means the Town Manager or the municipal officials he/she may designate to carry out the administration of this article.

§ 193-11. Definitions.

The following terms shall be defined according to the Rhode Island Development Impact Fee statute:

APPLICANT

A person obtaining a building permit for an activity requiring payment of an impact fee by § 193-12 of this article and any successor in interest of such person.

CAPITAL IMPROVEMENT PROGRAM

That component of a municipal budget that sets out the need for public facility capital improvements, the costs of such improvements, and proposed funding sources. A capital improvement program must cover at least a five-year period and should be reviewed at least every five years.

CAPITAL IMPROVEMENTS

Improvements with a useful life of 10 years or more, which increases or improves the service capacity of a public facility.

CONDOMINIUM

The ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property, as defined in Chapter 34-36 of the Rhode Island General Laws entitled "Condominium Ownership."

DEVELOPER

A person or legal entity undertaking development.

DWELLING, MULTI-HOUSEHOLD

A building or portion thereof used for rental occupancy by three or more households living independently of each other.

GOVERNMENTAL ENTITY

A unit of local government.

IMPACT FEE

The charge imposed upon new development by a governmental entity to fund all or a portion of the public facility's capital improvements affected by the new development from which it is collected.

PROPORTIONATE SHARE

That portion of the cost of system improvements which reasonably relates to the service demands and needs of the project.

PUBLIC FACILITIES

- A. Water supply production, treatment, storage, and distribution facilities;
- B. Wastewater and solid waste collection, treatment, and disposal facilities;
- C. Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and local components of state and federal highways;
- D. Stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, bank and shore projections, and enhancement improvements;
- E. Parks, open space areas, and recreation facilities;
- F. Police, emergency medical, rescue, and fire protection facilities;
- G. Public schools and libraries; and
- H. Other public facilities consistent with the Smithfield Capital Improvement Program Plan or Comprehensive Community Plan, including but not limited to historical preservation or restoration projects.

§ 193-12. Administration of impact fees.

This article is enacted pursuant to the authority of the Rhode Island Development Impact Fee Act, Rhode Island General Laws, § 45-22A-1 et seq.

- A. Generally. All new residential development shall be assessed fair share development fees {hereafter known as "fees"}. The following types of assessments shall be imposed, unless otherwise provided herein:
- (1) Park, recreation and historic facility improvements.
 - (2) Libraries.
 - (3) Schools.
 - (4) Road improvements.
 - (5) Open space and conservation areas.
- B. Reports; adoption of findings.
- (1) The findings set forth in the following two reports (hereafter referred to as "reports") are adopted herewith.
 - (a) The Louis Berger Group, Inc., Town of Smithfield, Rhode Island. Phase II Impact Fee Study, June, 2001.
 - (b) Kleinschmidt Associates and Anthony W. Lachowicz, Needs, Assessment and Growth Study, Town of Smithfield, Rhode Island, Final Report, February 2005.
 - (c) Mason & Associates, Inc., Smithfield Impact Fee Update Town of Smithfield, Rhode Island-March 2015
 - (2) The reports assess Town facilities and provide the data sources and methodology upon which the following fees are based. The reports are on file at the Town Clerk's office and are available for examination by the public upon request.
- C. Calculation of fees. The fees shall be calculated according to the formulas set forth in the report. Over time, the variables in the formulas may change, causing the fees to change. The following sets forth the initially adopted fees per dwelling unit, as outlined in the report:

- (1) Residential dwelling units.

Type of Residential Dwelling Unit	Impact Fee Amount						Total
	Library	Schools	Roads	Open Space	Parks and Recreation	Police Facilities	
Single family attached	\$709.19	\$0.00	\$2,604.12	\$0.00	\$1,819.42	\$1,440.60	\$6,573.33
Two- and three- family	\$730.71	\$0.00	\$1,575.14	\$0.00	\$1,824.00	\$1,466.55	\$5,596.39
Condominium	\$730.71	\$0.00	\$1,575.14	\$0.00	\$1,824.00	\$1,466.55	\$5,596.39
Multi-household	\$754.63	\$0.00	\$1,852.48	\$0.00	\$1,535.00	\$1,252.11	\$5,394.48

- (2) Credits. An adjustment shall be made to any impact fee for facilities that were funded by the issuance of bonds. The annual debt service for the bonds apportioned to the facilities expansion shall be subtracted from the impact fee as presented within the calculations in the report.

D. Exemptions.

- (1) Low- and moderate-income housing units. Low- and moderate-income housing units shall be exempt from the requirements of this article. The term "low- or moderate-income housing" shall be as defined in the General Laws of Rhode Island, Chapter 45-53 entitled "Low and Moderate Income Housing," § 45-53-3(5) as amended. Only the subsidized units in a low- and moderate-income housing project are exempt from the requirements of this section. All other units in a low- and moderate-income housing project are subject to the fees.
- (2) Housing for older persons. The payment of the educational facility fee shall be deferred for housing for older persons. "Housing for older persons" shall mean dwelling units that are permanently restricted for occupancy by at least one person over the age of 55. Satisfactory evidence of the restriction shall be attached to the building permit application. In the event that housing that qualifies for this deferment is later acquired by a person or persons who do not meet the age requirement of this subsection, the educational facility fee shall be assessed and collected at such time.

E. Administration of fees.

- (1) Assessment. The fees shall be assessed upon the issuance of a building permit authorizing the construction of, or change in use to, a residential dwelling unit. As part of the building permit process, the Department of Planning and Development shall review the building permit application and assess the appropriate fees according to Subsection C above prior to the Building Inspector issuing a building permit.
- (2) Collection. The fees shall be collected in full on or before the issuance of a certificate of occupancy and shall be kept in a restricted interest-bearing account.
- (3) Expenditure. By the second Thursday of March of each year, the Town Manager shall submit to the Town Council a budget for the ensuing year. This budget may include special capital improvement expenditures funded from the Capital Improvement Impact Fee Fund. Any expenditures from the Capital Improvement Impact Fee Fund shall be included in the Town budget. Moreover, any subsequent increases or decreases to the expenditures proposed by the Town Council from the Capital Improvement Impact Fee Fund will follow the procedure outlined in the Town Charter for increases or decreases in the budget. In no event shall the sum of funds appropriated under this article exceed the total funds available in the Capital Improvement Impact Fee Fund at the time of the appropriation. All expenditures from the Capital Improvement Impact Fee Fund must be approved by a specific resolution at the Financial Town Meeting and the Town Council shall oversee the expenditure of all funds disbursed by this article.
- (4) Refunds. Within eight years of the date of collection, impact fees shall be expended or encumbered for the construction of public facilities' capital improvements; however, if the expenditure or encumbrance is not feasible within eight years, the Town may retain impact fees for a period of 10 years if there are compelling reasons for such a longer period. If impact fees are not expended or encumbered within this period, the Town shall refund to the applicant or his/her successors the amount of fee paid and accrued interest. The Town shall send the refund to the applicant at the last known address by certified mail within one year of the date on which the right to claim refund arises. All refunds due and not collected within one year shall be retained by the Town.
- (5) Impact fee termination. Should the Town 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 impact fee requirements are to be terminated, the Town shall place a notice of termination and availability of refunds in a newspaper of general circulation in the

community at least two 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.

- F. Notice of future homeowners. In the instance of a subdivision or land development project, notice of the fees shall be provided on the record plan (i.e., the plan that is recorded in the land evidence records). In all instances where a parcel of real property (vacant or developed) is sold to a new owner prior to the issuance of a certificate of occupancy, the seller of the real property shall provide written notice of the fees to the new owner on or before the date in which the parties enter into a purchase and sales agreement. The seller shall maintain said written notice for his/her records
- G. Alternative means of satisfying assessments for subdivisions and land development projects. In the event of a subdivision or land development project, the applicant may, upon the request of the Planning Board, agree to satisfy the assessments in the following manner in lieu of payment of a particular fee; dedication of land, performance of construction services, purchase of equipment, or any combination thereof. The total value of the applicant's contribution shall not be less than the amount of the particular projected fee involved. If the application uses alternative means to satisfy a particular fee, the alternative means cannot partially satisfy the projected fee involved; the particular fee must be entirely satisfied. The value of the applicant's contribution and scope of work shall be determined by the Planning Board, upon the recommendation of the Town Engineer. The Planning Board shall document the value of the applicant's contribution. A copy thereof shall be placed and maintained in the Department of Planning and Development's file for the particular subdivision or land development project.
- H. Construction services performed by applicant. In the event construction services are performed by the applicant or on its behalf, the applicant shall adhere to Town specifications for construction and development. Inspections by Town staff shall be conducted at key points in the construction and development process. In no case shall said inspection be less than those required for road construction as outlined elsewhere in the subdivision and land development regulations. A schedule for inspections shall be agreed to between Town staff and the applicant.
- I. Relationship to Comprehensive Plan. No fees or dedication of land to the public shall be required unless the need for such is documented in the adopted plans of the Town, i.e., the Comprehensive Community Plan or the Capital Improvement Program (CIP). The requirement for dedication of land or fees shall be based upon the policies and standards set forth in the above plans and shall reflect the character defined by the Comprehensive Community Plan for the neighborhood or district in which the subdivision is located. The nature of the land dedication must reflect the character of the land being subdivided and must be suitable for the intended use. Land which is not otherwise developable, i.e., wetlands, slope too steep, etc., shall not apply to this purpose.
- J. Reporting. The Town's Finance Director shall maintain all records of the Capital Improvement Impact Fee Fund in accordance with general accepted accounting principles and practices. A report of the fund balance as well as collections to and disbursements from the fund shall be made annually in the annual Audit Report as well as a report in the annual budget presentation.