

CHAPTER 1. DEVELOPMENT IMPACT FEES

Sec. 19-1001. Short title.

This chapter shall be known and may be cited as the "City of Atlanta Development Impact Fee Ordinance."

Sec. 19-1002. Authority.

(a) This chapter has been prepared and adopted by the city council in accordance with the authority provided by article 9, section 2, paragraph 4 of the Constitution of the State of Georgia and the "Georgia Development Impact Fee Act" (O.C.G.A. title 36, chapter 71), as it may be amended from time to time.

(b) The provisions of this chapter shall not be construed to limit the power of the city to use any other legal methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this chapter, including but not limited to the city's exclusive authority to exercise the power of zoning and adopt plans pursuant to article 9, section 2, paragraph 4 of the Constitution of the State of Georgia and all ordinances and plans adopted pursuant thereto.

Sec. 19-1003. Declaration of intent and purpose.

(a) Intent. This chapter is intended to implement and be consistent with the City of Atlanta Comprehensive Development Plan including, without limitation, the capital improvements program, as it may be amended in accordance with O.C.G.A. Title 36, Chapter 70

(b) Purpose.

(1) The purpose of this chapter is to impose development impact fees, as hereinafter defined, to provide funding for transportation, parks and recreation, fire protection, emergency medical services, and police facilities, as hereinafter set forth and in compliance with applicable law.

(2) It is also the purpose of this chapter to authorize the use of development impact fees in a manner that will, to the extent reasonably and legally possible, ensure that adequate transportation, parks and recreation, fire protection, emergency medical services, and police facilities are available to serve new growth and development in the City of Atlanta and to regulate the use and development of land so that new growth and development bears a proportionate share of the cost of such new public facilities needed to serve such new growth and development.

(c) Any amendments to this ordinance are updates which specifically save the operation of the previous text of the ordinance and do not waive or repeal any obligation of any person or entity to pay development impact fees due under any previous ordinance. No part of any amendment shall be construed to express the intent of the governing authority to provide any cause of action for refund or to reduce any previously paid impact fees which did not exist at the

time of the adoption of such amendment or to reopen or extend the time period under which any previously imposed or paid impact fee could be challenged.

Sec. 19-1004. Findings.

The council of the city finds and declares:

- (1) That land development shall not be allowed in the City of Atlanta unless adequate public facilities are available or are assured to accommodate such development.
- (2) That new land development in identified service areas shall bear a proportionate share of the cost of new public facilities necessary to serve such new growth and development.
- (3) That the imposition of development impact fees is a preferred method of implementing a fair sharing of the cost of new public facilities necessary to accommodate new growth and development, and to promote and protect the public health, safety and general welfare of the citizens of the City of Atlanta; and
- (4) That the City of Atlanta must expand certain of its public facilities in order to maintain current levels of service if new development and growth is to be accommodated without decreasing the current level of service.

Sec. 19-1005. Rules of construction.

- (a) Liberal Construction. The provisions of this chapter shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety, and general welfare of the citizens of the city.
- (b) Rules of Construction. For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply to the text of this chapter:
 - (1) In the case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table or illustrative table, the text shall control.
 - (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive but shall also convey authority to undertake an act or require that an act be taken.
 - (3) Words used in the present tense 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 word "person" means any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit or certificate of occupancy has been requested.

(5) Unless the context clearly indicates the contrary where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and," "or" "either/or," the conjunction shall be interpreted as follows:

- a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
- b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- c. "Either/or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(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 paragraph headings used in this chapter are included solely for convenience and shall not affect the interpretation of this chapter.

(8) Except for the definitions set forth herein, words and phrases set forth herein and in the impact fee study shall have the meaning ascribed to those words in the City of Atlanta Code of Ordinances, including without limitation, part 16, "Zoning," chapter 29, "Definitions," as amended and supplemented.

(9) Impact fee schedules set forth in the impact fee study performed by Duncan Associates and presented as a public review draft dated October 30, 2010 are incorporated as a part of this Ordinance and for the purpose of interpretation shall be considered attached hereto and shall have the full effect of an adopted ordinance of the City of Atlanta.

(10) Where any part of this Ordinance conflicts with the provisions of the Georgia Development Impact Fee Act, the Ordinance shall be administered in a manner to bring such part into compliance.

Sec. 19-1006. Definitions.

As used in this chapter, the following terms shall have the meaning set forth below:

Act means O.C.G.A. title 36, chapter 71 as amended.

Building permit means any official document issued by the City of Atlanta authorizing the construction, repair, alteration or addition to a building or structure, including site work and foundation work related thereto. As used herein, the term shall include conversions, but otherwise shall not include permits required for remodeling, rehabilitation, or other improvements to: (i) an existing residential structure provided there is no increase in the number of dwelling units resulting therefrom; or (ii) an existing nonresidential structure provided there is no increase in the gross square footage. An application for a building permit is not a building permit.

Capital improvement means an improvement with a useful life of 10 years or more, by new construction or other action, which increases the service capacity of a public facility.

Capital improvements program means that document approved by council which sets out projected needs for system improvements during the planning horizon established therein, which provides a schedule of capital improvements that will meet the anticipated need for system improvements, and which provides a description of anticipated funding sources for each required improvement.

City means the City of Atlanta, Georgia.

Code means the Code of Ordinances of the City of Atlanta

Commencement of construction or *Commenced construction* means expenditure or encumbrance of any funds, whether they be development impact fee funds or not, for a public facilities project, or advertising of bids to undertake a public facilities project. When a similar term is used elsewhere in this chapter or the Code with reference to development on private property, this definition shall not be deemed to limit the regulation based on actions taken by private parties or limit the enforcement of the Code as to those actions.

Commercial when used in the impact fee schedules means all retail and service activities as well as all activities within shopping centers.

Commissioner means the commissioner of the department of planning and community development or such other official designated by the commissioner to administer the provisions of this chapter.

Completion of construction shall mean the issuance of the final certificate of occupancy by the city. The date of completion is the date on which such certificate is issued.

Comprehensive development plan means the City of Atlanta Comprehensive Development Plan, developed in accord with applicable law as it may be amended from time to time without regard to identification of the comprehensive development plan by another name.

Conversion means any change in use of an existing building or structure.

Council or *City Council* means the City Council of the City of Atlanta.

Developer means any person or legal entity undertaking development.

Development means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land requiring the issuance of a building permit, which creates additional demand on or need for public facilities.

Development approval means written authorization, such as approval of a rezoning application or issuance of a building permit or other forms of official action required by local law in the city prior to commencement of construction.

Development impact fee means the payment of money imposed upon and paid by new development as a condition of development approval as its proportionate share of the cost of system improvements needed to serve such development, and includes parks and recreation impact fees, public safety impact fees and transportation impact fees.

Development impact fee advisory committee means a committee appointed by the mayor and/or the city council to advise on issues concerning development impact fees, including without limitation the expenditure of transportation impact fees, and consisting of not less than five nor more than ten members, at least 50 percent of whom shall be representatives from the development, building or real estate industries. The development impact fee advisory committee may perform other duties in addition to those required by the Act so long as it is constituted in accordance with the Act and performs the duties required by the Act and this chapter.

Director means the director of the office of buildings or such other official designated by the director or the commissioner to administer the provisions of this chapter.

Dwelling unit means a room or rooms connected together, constituting a separate housekeeping establishment for a family, for owner occupancy or rental or lease in a manner allowed by applicable law, physically separate from any other rooms or dwelling units which may be in the same structure, and containing independent kitchen and sleeping facilities. When in multifamily buildings, dwelling units may be referred to as apartments.

Economic development project means a project found by the city council (i) to offer significant potential for increased employment and/or improve the city's economy or livability through features that, without limitation, contribute to revitalization of blighted areas, redevelop brownfield areas, rehabilitate historic buildings or preserve of significant open space from development; and (ii) to be a type of project contained in the city's comprehensive development plan as promoting a public policy which supports the exemption; and (iii) to merit funding by a revenue source other than development impact fees through an ordinance which authorizes the transfer of such revenue into the accounts in which such development impact fees would otherwise be paid at the time when such fees would be due.

Effective date means the date on which this chapter becomes effective.

Encumber or encumbered means to legally obligate by contract or otherwise commit to use by appropriation or other official act of the city.

Equivalent fire station square feet means the sum of physical, City-owned fire station square feet plus the ratio of the current total replacement cost of City-owned fire protection capital facilities, land and equipment other than fire stations to the average current fire station construction cost per square foot.

Equivalent lane-miles means, for each transportation impact fee service area, the total number of physical lane-miles plus the ratio of the total replacement value of necessary appurtenances and improvements, including medians, curb and gutter and traffic signals, to the average current replacement cost of a through travel lane-mile.

Equivalent park acres means, for each park impact fee service area, the total number of acres currently occupied or intended for parks and recreation facilities, plus the ratio of the total replacement value of parks and recreation building and other improvements, to the average current cost of an acre of park land.

Equivalent police precinct square feet means the sum of physical, City-owned police precinct station square feet plus the ratio of the current total replacement cost of City-owned police capital facilities, land and equipment other than precinct stations to the average current police precinct construction cost per square foot.

Excess capacity means that portion of the capacity of a public facility or system of public facilities which is beyond that necessary to provide adequate service to existing development at the adopted level of service.

Fee payor means that person or entity who pays a development impact fee, or his legal successor in interest with the right or entitlement to any refund or reimbursement of previously paid development impact fees which is required by this chapter and which has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed "not to run with the land."

Fire/EMS facilities means fire protection and emergency medical services facilities, including but not limited to fire stations, fire engines and fire fighting equipment, truck and other mobile units, and related facilities.

Functional population means the effective population of the city, including residents and nonresidents during a given period of time, which attempts to measure the expected usage of public facilities and infrastructure by estimating the presence of individuals through consideration of generally understood concepts concerning the time spent on employment, leisure activities and in their residences in proper proportions such that facility and infrastructure planning can be more closely approximate the actual usage.

Gross floor area means the sum of the gross horizontal area of the several stories of a building measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings or different uses, including attic space with headroom of seven feet or greater and served by a permanent, fixed stair, but not including enclosed off-street parking or loading areas.

Historic building means any building designated by the City of Atlanta as a "Landmark building or site" (LBS) or "Contributing building" within a "Landmark district" (LD) as those terms are defined in chapter 20 of part 16 of the Code of Ordinances.

Impact fee study means that certain report entitled "Impact fee study, City of Atlanta, Georgia," dated October 30, 2010. Where reference to the previous impact fee study for the city is necessary, it shall mean that certain report entitled "Impact fee study, City of Atlanta, Georgia," dated March 18, 1993.

Independent fee determination means a finding by the director that an independent fee study does or does not meet the requirements for such a study as established by this chapter and, if the requirements are met, the fee calculated by the director therefrom.

Independent fee study means the engineering, financial and/or economic documentation prepared by a fee payor or applicant in accordance with section 19-1009 of this chapter to allow individual determination of a development impact fee other than by use of the applicable fee schedule, all as required by O.C.G.A. section 36-71-4(g).

Industrial means those uses which would be permitted only in the zoning category of I-1 or I-2 and not in other zoning districts except where such industrial use is legally non-conforming. The location of a permitted use in I-1 or I-2 that would be permitted in other zoning districts shall not cause such uses to be classified as industrial for the purposes of the impact fee ordinance.

Lane-miles means the product of the number of roadway lanes, including both through travel lanes and turn lanes, times the length of those lanes in miles.

Level of service means a measure of the relationship between the ratio of service capacity and service demand for specified public facilities in terms of demand to capacity ratios or the comfort and convenience of use or service of such facilities, or both, as established by the council as a matter of policy.

Major road network system means all City arterial and collector roads within the city, as shown on the long range road classification map including new arterial and collector roads necessitated by land development. A list of all roads included in the existing major road network system is included in the impact fee study.

Mini-Warehousing when used in the impact fee schedules shall mean those uses defined in the Zoning Code as a self storage facility, secured storage facility or vault storage facility

Multifamily when used in the impact fee schedules incorporated in this ordinance means all residential dwelling unit types other than single-family detached dwelling units, as that use is defined in the City of Atlanta Code of Ordinances, part 16, "Zoning," Section 16.29.001.

Nonprofit educational facility means a public or private academic institution, operated for nonprofit and accredited by the State of Georgia that offers a program or series of programs of academic study.

Nursing home means a residential board and care home appropriately licensed by the State of Georgia.

Office when used in the impact fee schedules incorporated in this ordinance means all general purpose office buildings, including business, medical and government office uses, as well as ancillary retail and service activities,

Parks and recreation facilities means capital improvements consisting of parks, open space, recreation and related facilities, including but not limited to, land, group picnic shelters, gymnasiums, playcourts, ballcourts, ballfields, playgrounds, art centers, swimming pools, golf

courses, nature preserves, bike ways, multi-use trails and similar facilities that are open to the public on a permanent basis.

Parks and recreation impact fees means development impact fees imposed by the city for park and recreation facilities.

Police facilities means capital improvements consisting of buildings and equipment, including precincts, headquarters buildings, training facilities electronic equipment, radio equipment, and certain vehicles or other equipment with a useful life in excess of 10 years.

Present value means the current value of past, present or future payments, contributions or dedications of goods, services, materials, construction, or money, taking into account, when appropriate, depreciation and inflation.

Project or Development project means a principal building or structure, or group of buildings or structures, planned and designed as an interdependent unit together with all accessory uses or structures, utilities, drainage, access, and circulation facilities, whether built in whole or in phases on an identified parcel of land.

Project improvements means site specific improvements or facilities that are planned, designed or built to provide service for a specific development project and that are necessary for the use and convenience of the occupants or users of that project, and that are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or a system improvement, and the physical location of the improvement on-site or off-site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. No improvement or facility included in a plan for public facilities approved by the council shall necessarily be considered a project improvement even where located on private property. If an improvement or facility provides or will provide substantially more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility may be a system improvement rather than a project improvement.

Proportionate share means that portion of the cost of system improvements which is reasonably and fairly related to the service demands and needs of a project.

Public facility or Public facilities means fire/EMS facilities, police facilities, transportation facilities, and parks and recreation facilities.

Public safety impact fees means development impact fees imposed by the city for fire/EMS facilities and police facilities.

Public/institutional when used in the impact fee schedules incorporated in this ordinance means a governmental, quasi-public or institutional use, not located in a shopping center or office building. Typical uses include elementary, secondary or higher educational establishments, day care centers, hospitals, mental institutions, nursing homes, assisted living facilities, fire and fire stations, post offices, jails, libraries, museums, places of religious worship, military bases, airports, bus stations, fraternal lodges, parks and playgrounds.

Road or Roads mean arterial or collector streets or roads which have been designated in the long range road classification map together with all necessary appurtenances, including, but not limited to, right of way, bridges, traffic, signals, and landscaping.

Service area means a geographically defined area of the city, designated in the City of Atlanta comprehensive development plan or a component thereof, in which a defined set of public facilities provides service to development within the area or in which development potential creates the need for the imposition of development impact fees. Individual service areas may be specifically defined by the use of additional text such as set forth in this chapter or maps. For the purpose of this chapter, service areas have been described and defined by reference to census tracts and in the Service Area Map as set forth in that certain report entitled "Impact fee study, City of Atlanta, Georgia," dated October 30, 2010, which is incorporated as a part of this ordinance and as each may be from time to time amended.

System improvements means capital improvements that are public facilities designed to provide service to more than one (1) project or to the community at large, in contrast to "Project improvements."

System improvement costs means costs incurred to provide system improvements needed to serve new growth and development, including the costs of planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorney's fees and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement program, and administrative costs equal to three percent (3%) of the total amount of the costs. Projected interest charges and other finance costs may be included if the development impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the city to finance system improvements, but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

Transportation facilities means roads, streets, and bridges, including rights-of-way, traffic signals, sidewalks and landscaping.

Transportation impact fee means development impact fees imposed by the city for transportation facilities.

Unit of development means the standard incremental measure of land development activity for a specific type of land use upon which the rate of demand for public facilities is based.

VMT means vehicle-miles of travel.

Warehousing when used in the impact fee schedules shall mean that use defined in the Zoning Code as a warehousing facility.

Sec. 19-1007. Imposition of development impact fees.

(a) *Imposition of Fee.* Any person who, after the effective date, engages in development shall pay development impact fees in the manner and in the amounts required in this chapter. No building permit for any development requiring payment of a development impact fee pursuant to this chapter shall be considered to be validly issued unless and until the required development impact fee has been paid or an approved agreement for construction of system improvement is in place.

(b) *Payment Pursuant to Fee Schedule.* Payment of development impact fees pursuant to the fee schedules incorporated in this ordinance shall constitute full and complete payment of the project's proportionate share of system improvements for which such fee was paid and shall constitute compliance with the requirements of this chapter.

(1) The impact fee schedules incorporated in this ordinance were developed to represent as closely as reasonably possible the cost necessary for planning and financing public facilities needed to serve new growth and development in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens.

(2) In recognition of the competitive nature of development as affected by regional or national economic circumstances, the ability of developers to choose to locate in counties and municipalities which appear to offer the most advantageous economic incentives, the presumptions set forth in O.C.G.A. § 36-71-3(c) that payment of a development impact fee shall be deemed to be in compliance with any municipal or county requirement for the provision of adequate public facilities or services in regard to the system improvements for which the development impact fee was paid and the discretion of the governing authority to choose to impose or not impose development impact fees: (i) the impact fees imposed on the date this ordinance becomes effective and for the remainder of the first year thereafter will be calculated at sixty per-cent (60%) of the rate set forth in the impact fee schedules; (ii) the impact fees to be charged in the second year after the effective date of this ordinance will be calculated at seventy-five per-cent (75%) of the rate set forth in the impact fee schedules; and (iii) the impact fees charged in the third and all subsequent years after the effective date of this ordinance will be imposed at one-hundred per-cent (100%) of the rate set forth in the impact fee schedules. Such rates shall become effective on the dates herein specified without further action of the governing authority.

(c) *Permits Already Issued and Pending Applications.* Notwithstanding any other provision of this chapter, that portion of a project for which a valid building permit has been issued prior to the effective date of the amendments to this chapter shall not be subject to development impact fees pursuant to the amendments to this chapter so long as the building permit remains valid and construction is commenced and diligently pursued according to the terms of the building permit and the development impact fees charged under the prior terms of this chapter have been paid. No amendment to this chapter shall be construed to increase, reduce, exempt or change the amount of development impact fees which were paid under this chapter prior to any such amendment, provided that the permit application has been processed, the permit issued and the fees associated with the issued permit have been paid as required. The acceptance of a building application for a project shall not vest the right to be charged impact fees at any particular rate.

(d) *Project Improvements.* Nothing in this chapter shall prevent the city from requiring a developer to construct reasonable project improvements in connection with a development project.

(e) *Square Feet.* References in the impact fee schedules to square feet refer to gross floor area, as defined herein

(f) *Correction of Errors.* If the impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated upon a showing by the feepayor of manner in which the calculation was in error, or if recalculated by the city, upon the discovery of the misrepresentation. If the original calculation resulted in a fee that was too high, the difference shall be refunded to the feepayor. If additional development impact fees are owed, no permits of any type shall be issued by the city for the building or use in question, or for any other part of a development project of which the building or use in question is a part, while the fees remain unpaid and the director may bring any action permitted by law or equity to collect unpaid fees, including but not limited to revocation of building permits and/or certificates of occupancy.

(g) *Certificate of Occupancy.* No certificate of occupancy may be issued until all impact fees are paid in full, satisfied through the application of validly granted credits, or the funds deposited in the appropriate impact fee account pursuant to an approved exemption.

(h) *Effect of Zoning.* A property's zoning classification may be considered but shall not be conclusive as to a property's classification for purpose of calculation of impact fees. The commissioner shall consider the project's proportionate share of the cost of system improvements based on the established service areas and the level of service established for public facilities by existing development of the same type as the new development.

Sec. 19-1008. Requirements for assessment and calculation of impact fees--Generally.

(a) *Time of Assessment.* All development impact fees shall be assessed as a part of the building permit application process and shall be collected no earlier than the time of the issuance of a building permit authorizing construction of a building or structure.

(b) *Basis of Calculation.* Any development impact fee imposed pursuant to this chapter shall not exceed a project's proportionate share of the cost of system improvements, shall be calculated on the basis of the established service areas, and shall be calculated on the basis of levels of service for public facilities that are the same for existing development as for new growth and development.

(c) *Certification of Fee.* Any person who intends to engage in development may request a certification of fee from the director by submitting plans for the development to the director. The fee so certified by the director shall be based upon submitted development plans and shall be binding upon the parties as to the fee to be assessed for such development for a period of 180 days from the date of certification. Any change in the proposed development plan that in any way effects said fee calculation shall void the certification of the fee. Only one such certification pursuant to this subsection 19-1008(c) may be made for each development project unless the director agrees to perform a certification for the payment of an additional fee.

(d) *Construction/Dedication in Lieu of Fee.* In lieu of all or part of a development impact fee, the city may accept an offer from a developer to construct improvements or to contribute or dedicate land or money as provided in section 19-1014 of this chapter. Any such offer must comply with the requirements of section 19-1014 of this chapter. The "in lieu" portion of any development impact fee represented by construction of improvements shall be deemed paid when the construction is completed and accepted by the city for maintenance or when the person claiming such credit posts security for the cost of such construction as provided in section 19-1014(a)(3) of this chapter. The "in lieu" portion of a development impact fee represented by land dedication shall be deemed paid when the title to said land has been accepted by the city. Where a development has failed to complete an agreed upon improvement, the director is authorized to withhold the certificate of occupancy until completion of the agreed upon improvement, or the payment of the impact fee, provided however that where the completion of the agreed upon improvement is of a character that, in the opinion of the director, is necessary for reasons of public safety, the director may withhold the certificate of occupancy until such time as the unsafe condition is remedied.

(e) *Recoupmnt of Excess Capacity.* In addition to the cost of new or expanded system improvements needed to serve new development, the cost basis of a development impact fee may also include the proportionate cost of existing system improvements, but only to the extent that such existing public facilities have excess capacity and new development as well as existing development will be served by such facilities.

(f) *Primary and secondary uses.* In general, the impact fee imposed pursuant to this chapter shall be assessed based on the primary land use. In many instances, a lot or parcel of land may include auxiliary uses associated with the primary land use. For example, in addition to the actual production of goods, manufacturing facilities usually also have office, warehouse, research, and other associated functions. If the applicant can document that a secondary land use accounts for over twenty five percent of the gross floor area of the structure, and that the secondary use is not assumed in the trip generation or other impact data for the primary use, the impact fee may be assessed based on the disaggregated square footage of the primary and secondary land use.

(g) *Specification of Land Use.* In the event that a building permit application proposes a use that does not directly match an existing land use type upon which fees are based, the director shall assign the proposed use to the existing land use type that most closely resembles the proposed use. The director's assignment of a land use type for the purpose of this chapter shall not be binding as to determinations that may be made elsewhere under this Code.

(h) *Actual Cost Recovery Only.* Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(i) *Redevelopment or Change of Use.* When a change of use, redevelopment, or modification of an existing use or building requires the issuance of a building permit, the development impact fee shall be based on the difference between the impact fee calculated for the previous use and the impact fee calculated for the proposed use. Should a redevelopment or modification of an existing use or building that requires the issuance of a building permit but does not involve a change in use result in a net increase in gross floor area, the development

impact fee shall be based on said net increase. Should a change of use, redevelopment, or modification of an existing use or building result in a net decrease in gross floor area or calculated impact fee, no refund or credit for past development impact fees paid shall be made or created. For the purposes of this subsection 19-1008(i), previous use shall mean the most intensive previous use of the site that can be documented by the applicant.

Sec. 19-1009. Imposition of transportation impact fees.

(a) *Declaration of Service Area and Level of Service.*

(1) The service areas for transportation facilities with respect to which transportation impact fees are assessed under this section 19-1009 are hereby declared to be follows. The service areas are depicted by the map attached as Attachment 2 hereto, which by this reference is incorporated herein, and by the descriptions of such areas included in the impact fee study.

a. The Northside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 1, 2, 4, 5, 6, 10.95, 11, 12, 13, 14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101.01, 102.01, 201, 202.

b. The Southside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 35, 44, 46.95, 48, 49.95, 50, 52, 53, 55.01, 55.02, 56, 57, 58, 63, 64, 65, 66.01, 67, 68.01, 68.02, 69, 70, 71, 72, 73, 74, 75, 203, 204, 205, 206, 207, 208, 209.

c. The Westside Service Area is hereby defined to include all land within the following census tracts as defined by the United States Bureau of the Census: 7, 8, 22, 23, 24, 25, 26, 36, 37, 38, 39, 40, 41, 42.95, 43, 60, 61, 62, 66.02, 76.01, 76.02, 77.01, 77.02, 78.02, 78.03, 78.04, 79, 80, 81.01, 81.02, 82.01, 82.02, 83.01, 83.02, 84, 85, 86.01, 86.02, 87.01, 87.02, 103.

(2) The level of service for transportation facilities is hereby declared to be equal to 3.33 equivalent lane-miles per 1,000 VMT for the major road network system.

(b) *Applicability of Fee.*

(1) Any person who after the effective date engages in development within the service areas identified in subsection 19-1009(a) hereof shall pay a transportation impact fee in the manner and in the amount set forth in this chapter.

(2) No building permit for any development requiring payment of a transportation impact fee pursuant to this chapter shall be issued by the city unless and until the transportation impact fee has been paid.

(c) *Calculation: Transportation Impact Fee Schedule.*

(1) *Fee formula.* Transportation impact fees set forth in the schedule provided in paragraph (2) below have been calculated using the following formula:

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Formulate to Calculate Net Impact Cost per Unit of Development:

$$\begin{aligned} \text{Net impact cost} &= \text{VMT} \times \text{Net cost/VMT} \\ \text{VMT} &= \text{1-way PM peak hour trips} \times \text{New trips factor} \times \text{trip length} \\ \text{Net cost/VMT} &= \text{Cost/VMT} - \text{Revenue credit/VMT} \\ \text{Cost/VMT} &= \text{Cost/lane-mile} \times \text{Equivalent lane-miles per VMT} \end{aligned}$$

The terms used in this paragraph (1) are further described in the impact fee study.

(2) *Transportation impact fee schedule.* Unless an independent fee determination is requested in accordance with section 19-1012, the transportation impact fee shall be determined by the schedule set forth in Table 1 under "Transportation" which by this reference is incorporated herein and fees shall be charged based on calculation of the number of Units at the appropriate Unit rate.

a. The fee as calculated based on Table 1 shall be reduced by 50 percent to reflect increased transit usage and reduced travel demand in the vicinity of MARTA stations. This fee reduction shall apply only to projects within 1,000 feet of a MARTA station, measured from property line to property line along a legal and practical pedestrian route. To qualify for this reduction, the applicant must demonstrate that the number of parking spaces to be provided does not exceed any required minimum, and is no more than 80 percent of any maximum parking requirement, unless a higher percentage is required to meet the minimum requirement.

(d) *Eligible improvements.* Transportation impact fees shall be spent only for system improvements as defined in this chapter that are identified in the capital improvements element of the comprehensive development plan, and for improvements consistent with the provisions of this subsection 19-1009(d).

(1) Prior to the adoption of an ordinance committing impact fee funds for a system improvement or set of system improvement projects, the city shall prepare a written analysis that demonstrates: (a) that the projects are in reasonable proximity to the developments that have generated the impact fees, and (b) that the projects will have the greatest effect on levels of service for transportation facilities that are impacted by the developments that have paid the impact fees. The analysis required by this subsection 19-1009(d)(1) shall not be required for the expenditure of impact fee funds collected from a development project for the installation of system improvements and spent according to the provisions of an agreement between the developer of such development project and the city.

(2) Transportation impact fees collected after the effective date of the ordinance creating this subsection 19-1009(d)(2) shall only be used for improvements to City-owned arterial and collector roadways. The costs of local streets and state and federal highways have not been included in the calculation of the transportation impact fee. Developers who make improvements to local streets and state and federal highways after the effective date of the ordinance creating this subsection shall not be eligible for reimbursement credits or for offsets against their transportation impact fees for such improvements.

(3) Transportation impact fees collected after the effective date of the ordinance creating this subsection 19-1009(d)(3) shall not be used to purchase right-of-way, since right-of-way costs have not been included in the calculation of the transportation impact fee. Developers who dedicate right-of-way after the effective date of the ordinance creating this subsection shall not be eligible for reimbursement credits or for offsets against their transportation impact fees for such dedication.

(4) Transportation impact fees cannot be used to pay for direct access improvements to a particular development project. Direct access improvements include but are not limited to the following: (a) site driveways and local residential and nonresidential streets, (b) median cuts made necessary by those driveways or local residential and nonresidential streets, (c) right turn and left turn, and deceleration or acceleration lanes leading to or from those driveways or local residential and nonresidential streets, (d) traffic control measures for those driveways or local residential and nonresidential streets, (e) local residential and nonresidential streets that are not shown as publicly-owned roads on the city's long range road classification map, as amended, (f) local residential and nonresidential streets or intersection improvements whose primary purpose at the time of construction is to provide direct access to the development project, and (g) necessary right-of-way dedications required for those items set forth in (a)-(g) above.

Sec. 19-1010. Imposition of parks and recreation impact fees.

(a) Declaration of Service Areas and Level of Service.

(1) The service areas for parks and recreation facilities with respect to which parks and recreation impact fees are assessed under this section 19-1010 are hereby declared to be as follows. The service areas are depicted by the map attached as Attachment 2 hereto, which by this reference is incorporated herein, and by the descriptions of such areas included in the impact fee study.

a. The Northside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 1, 2, 4, 5, 6, 10.95, 11, 12, 13, 14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101.01, 102.01, 201, 202.

b. The Southside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 35, 44, 46.95, 48, 49.95, 50, 52, 53, 55.01, 55.02, 56, 57, 58, 63, 64, 65, 66.01, 67, 68.01, 68.02, 69, 70, 71, 72, 73, 74, 75, 203, 204, 205, 206, 207, 208, 209.

c. The Westside Service Area is hereby defined to include all land within the following census tracts as defined by the United States Bureau of the Census: 7, 8, 22, 23, 24, 25, 26, 36, 37, 38, 39, 40, 41, 42.95, 43, 60, 61, 62, 66.02, 76.01, 76.02, 77.01, 77.02, 78.02, 78.03, 78.04, 79, 80, 81.01, 81.02, 82.01, 82.02, 83.01, 83.02, 84, 85, 86.01, 86.02, 87.01, 87.02, 103.

(2) The level of service for parks and recreation facilities is hereby declared to equal to three and three one hundredths (3.03) equivalent park acres per 1,000 functional population, as described and calculated in the impact fee study.

(b) *Applicability of Fee.*

(1) Any person who after the effective date engages in development within the service areas identified in Attachment 2 shall pay a parks and recreation impact fee in the manner provided in this chapter.

(2) No building permit for any development requiring payment of a parks and recreation impact fee pursuant to this chapter shall be issued by the city unless and until the parks and recreation impact fee has been paid.

(c) *Fee Formula.* Parks and recreation impact fees under this chapter shall be calculated using the following formula, as more fully described in the impact fee study:

$$\text{Functional population per unit} \times 0.00303 \text{ equivalent acres per functional population} \times \text{capital cost per acre} = \text{Development impact fee};$$

(d) *Parks and Recreation Impact Fee Schedule.* Unless an independent fee determination is requested in accordance with section 19-1012, the parks and recreation impact fee shall be determined by the schedule set forth in Table 1 under "Parks" which by this reference is incorporated herein and fees shall be charged based on calculation of the number of Units at the appropriate Unit rate.

Sec. 19-1011. Imposition of public safety impact fees.

(a) *Declaration of Service Area and Level of Service.*

(1) The service area for fire/EMS facilities and police facilities with respect to which public safety impact fees are assessed pursuant to this section 19-1011 is hereby declared to be the entire territory included within the corporate limits of the city as such area is identified in the impact fee study.

(2) The level of service for fire/EMS facilities is hereby declared to be equal to 650 equivalent fire station square feet per 1,000 functional population. The level of service for police facilities is hereby declared to be equal to 541 equivalent police precinct square feet of building area per 1,000 functional population, as described and calculated in the impact fee study.

(b) *Applicability of Fee.*

(1) Any person who after the effective date engages in development within the service area identified in subsection 19-1011(a) above shall pay a public safety impact fee in the manner provided in this chapter.

(2) No building permit for any development requiring payment of a public safety impact fee pursuant to this chapter shall be issued by the city unless and until the public safety impact fee has been paid.

(c) *Fee Formula.* Public safety impact fees under this chapter shall be calculated using the following formula:

Functional population per unit × Level of service (equivalent square feet per functional population) × Capital cost per equivalent square foot = Development impact fee; as described more fully in the impact fee study.

(d) *Public Safety Impact Fee Schedule:* Unless an independent fee determination is requested in accordance with section 19-1012, the public safety impact fees shall be determined by the schedule set forth in Table 1 under "Fire" and "Police" which by this reference is incorporated herein and fees shall be charged based on calculation of the number of Units at the appropriate Unit rate for each fee category.

Sec. 19-1012. Independent fee determinations.

At their option, applicants for development approval may petition director or his designee for independent fee determinations of development impact fees due for their project. Independent fee determinations of development impact fees may be established as follows:

(a) *Independent Fee Study.* If a feepayor opts not to have the development impact fee determined according to the applicable schedules, then the feepayor shall prepare and submit to the director an independent fee study for the development for which a building permit is sought.

(1) The independent fee study with respect to transportation impact fees shall include documentation of the travel demand characteristics (morning peak hour trips evening peak hour trips, average trip length and new trips factors) for the proposed use. This documentation shall be according to the prescribed methodology and format established by the director.

(2) The independent fee study-with respect to parks and public safety impact fees shall include documentation of the functional population characteristics of the proposed use.

(3) The director shall determine the appropriate development impact fee based on the results of the independent fee study and the applicable development impact fee formula established in the chapter.

(4) All independent fee assessments shall be presented for review and claimed at the time of application for a building permit. Any request not so made shall be deemed waived.

(5) Where the director approves the independent fee assessment, the fee so established shall be binding upon the feepayor and all successors in interest to said feepayor.

(6) Upon request for an independent fee determination, a nonprofit educational facility may be constructed, redeveloped, or modified solely for educational uses without payment of development impact fees provided the independent fee study submitted with said request

demonstrates that said construction, redevelopment or modification will produce no net increase in that school system's total student enrollment.

(b) *Nature and Source of Data.* Each independent fee study shall:

(1) Be based on relevant and credible information from an accepted standard source of engineering and/or planning data, or be based on actual, relevant, and credible studies or surveys of facility demand conducted in the Atlanta metropolitan statistical area by qualified professionals in the respective fields and shall follow accepted professional practices and methodologies; and

(2) Comply in all respects with the requirements of this chapter and be organized in a manner that will allow the director to readily ascertain said compliance; and

(3) Comply with all other written specifications as may be required by the director from time to time.

(c) *Certification of Fee.* Any development impact fee calculated in accordance with this section 19-1012 and approved and certified by the director shall be valid for 180 days following the date of certification. Following such period, a new application for an independent fee assessment must be made. Any change in the submitted development plan that in any way effects said fee calculation shall void the certification of the fee.

Sec. 19-1013. Accounting for fees.

(a) *Accounting for Fees.* All development impact fee proceeds collected pursuant to this chapter shall be accounted for and invested as directed by the chief financial officer of the City of Atlanta for each category of system improvements and the service area in which the fees are collected. Restrictions on the investment of such funds shall be the same that apply to investment of all city funds generally.

(b) *Separate Accounting Required.* Separate accounting records shall be maintained by the chief financial officer for each service category of impact fees within each service area wherein development impact fees are collected.

(c) *Investment Earnings.* Investment earnings derived from invested development impact fees shall be subject to all restrictions placed on the use of development impact fees under this chapter and under the Act.

(d) *Expenditures.*

(1) Expenditure of development impact fees shall be made only for the category of system improvements within the service area for which the development impact fee was assessed and collected.

(2) Development impact fees shall not be expended for any purpose that does not involve building or expanding system improvements that create additional capacity available to serve new growth and development.

(3) No funds shall be used for periodic or routine maintenance or for any purpose not in accordance with the requirements of section 36-71-8 of the Act.

(4) Development impact fees collected by the city to recover the cost of excess capacity in existing system improvements may be spent only on the same category of public improvements and within the service area in which they were collected.

(5) Ordinances requesting the expenditure of funds deposited in development impact fee accounts maintained by the department of finance shall be presented in the same manner as requests for the expenditure of other funds and other than the form of the ordinance, the department of finance shall not be required to make a separate determination as to whether such request meets the requirements of this chapter.

(e) *Expenses of Administration.* An amount not to exceed three percent (3%) of the total of all development impact fees collected may be charged for administration of this chapter and shall be applied to expenses incurred by the commissioner.

(f) *Annual Reports.* By June 30th of each year the department of finance shall prepare and present to the mayor and council an annual report describing the amount of any development impact fees collected, encumbered and spent during the preceding year by category of public facility and service area. The portion of the annual report relating to transportation impact fees shall be referred to the development impact fee advisory committee, which shall report to the mayor and council any perceived inequities in the expenditure of transportation impact fees.

(g) *Payment of Bonds.* Development impact fees may be used for the payment of principal and interest on bonds, notes or any other obligations issued by or on behalf of the city to finance the category of public facilities in the service area for which such fees were collected, provided that only the portion of such debt attributable to excess capacity of existing facilities or capacity in facilities not included in the calculation of the current level of service shall be eligible for repayment with impact fees.

Sec. 19-1014. Credits.

(a) *Policies.* The following requirements shall apply to all credits against development impact fees otherwise permitted by this section:

(1) No credits shall be given for project improvements.

(2) Except for reimbursements allowed pursuant to subsection 19-1014(d)(4), credits shall be allowable and payable only to offset future development impact fees and shall not result in reimbursement from, nor constitute a liability of, the city.

(3) Credits shall be given only for the present value of any construction of improvements or contribution or dedication of land or money by a developer or his predecessor in title or interest for system improvements of the same category and in the same service area for which a development impact fee was imposed, except where further specific restrictions are set forth in this section. Any transfer or assignment of credits shall be expressly stated in writing,

and in the absence of an express transfer or assignment of the right to any credit, the credit shall be deemed "not to run with the land." All letters documenting credits shall specify the location of the project generating the credits so that the future use of the credits for system improvements of the same category and in the same service area for which a development impact fee was imposed.

(4) In the event that any development impact fee schedule is subsequently changed to reflect increases in construction costs or other relevant factors, a credit holder may request a recalculation of credits to fairly reflect such changed circumstances. In the event that any development impact fee schedule is subsequently changed to reflect decreases in construction costs or other relevant factors, the city may recalculate such credits to fairly reflect such changed circumstances.

(5) Any claim for a credit that is based upon any construction of improvements or contribution or dedication of land or money which was required or accepted prior to the amendment of this ordinance shall remain in effect until their expiration date. Nothing in the amendment to this ordinance shall applied to reinstate those credits granted by the city for construction of improvements or contribution or dedication of land or money granted by application made prior to April 1, 1994 and which expired on March 26, 2007.

(6) Agreements between the city and a developer in regard to the construction or installation of system improvements desired to be voluntarily undertaken by the developer are authorized to the extent permitted by state law. The costs incurred by the developer shall be applied only against the type of impact fee which would be collected for the type system improvement constructed. Such agreement may include interproject transfers of credits for system improvement costs which are used or shared by more than one development project or the use of credits given for the installation of previous system improvements. Credits granted under any agreements shall only be for system improvements for the same type of impact fee to be imposed and must be located in the same service area.

a. Approval by the governing authority is required for any agreement under which the cost of system improvements incurred or to be incurred by a developer is to be applied against impact fees due on a project, and/or where credits are to be applied against impact fees to be imposed in the future.

b. Agreements where credits must be granted, because the system improvement costs to be incurred exceed the amount of impact fees to be paid on the project, are authorized to the extent allowed by state law. Where the cost of system improvements exceeds the amount of impact fees to be imposed on the project, the agreement shall provide credits only for the type of impact fee imposed for that type of system improvement. Credits granted by such agreements are fully transferrable to other projects for the same type of impact fee in the same service area even if undertaken by a developer other than the developer originally granted such credit.

c. It shall be the responsibility of any developer wishing to enter into an agreement to provide to the city with a proposal containing all plans and specifications, including information on cost expected to be incurred for the system improvement sought to be constructed. Such proposal shall be transmitted to the commissioner for a

determination as to whether the proposed system improvement is necessary or desirable and should be the subject of legislation seeking approval of the credit agreement. The commissioner's decision to decline to enter into an agreement is not appealable under this chapter but this subsection shall not limit the right of any member of the city council to introduce a personal paper authorizing such agreement. In no case shall the city reimburse any developer for any cost associated with preparation of the proposal unless the agreement is approved and such costs are a necessary and reasonable part of the system improvement costs.

d. Where the reasonable possibility exists that an agreement will be approved by the governing authority that will allow a developer to construct system improvement in lieu of the payment of impact fees for that type of system improvement, the commissioner is authorized, but not required, to temporarily suspend the payment of the impact fees.

i. Such authority shall be exercised only for the purpose reviewing a proposal submitted by the developer before the time such fees would be due.

ii. The decision to suspend the requirement for the payment of impact fees by the commissioner shall not bind the governing authority to approve or enter into any agreement.

iii. Upon the commissioner's decision not to proceed with the agreement such fees shall be due. The commissioner's decision to decline to enter into an agreement is not appealable under this chapter but this subsection shall not limit the right of any member of the city council to introduce a personal paper authorizing such agreement and directing that the impact fees paid be refunded upon completion of the system improvement so authorized.

iv. The city has no obligation to reimburse any developer for any cost associated with preparation of the proposal unless the agreement is approved and such costs are a necessary and reasonable part of the system improvement costs.

e. All system improvements which are the subject of any agreement shall be completed, inspected and accepted by the city as meeting city standards before the obligation to pay impact fees shall be fully satisfied or any credits granted or applied.

(b) *Computation of Credits.* All credits shall be computed in accordance with the requirements set forth in this subsection.

(1) The present value of cash contributions shall be based on the face value of the cash payment at the time of contribution.

(2) For the present value of any contribution or dedication of land accepted for system improvements by the city from the developer, or his predecessor in title or interest, the value of contributed land shall be determined by the director based on a review of property appraisals applicable to the date of the dedication prepared by qualified professionals.

(3) The present value of construction of system improvements shall be the present value of the lower of the value of the completed improvements based on an appraisal prepared by qualified professionals acceptable to the city, or the actual construction cost of the

improvements. The cost or appraisal basis shall be adjusted to the date of actual construction or dedication.

(4) The person applying for a credit shall be responsible for providing appraisals of land and improvements, construction cost figures, and documentation of all contributions and dedications necessary to the computation of the credits claimed. The city shall have no obligation to grant credit under this section to any person who cannot provide such documentation in such form as the director may reasonably require. The director may accept appraisals from the developer that were conducted contemporaneously with the original dedication or construction if the director determines that said appraisals are reasonably applicable to the computation of credit due. The director shall accept subsequent appraisals only if conducted by a certified appraiser or otherwise approved by the director in accordance with guidelines promulgated by the director.

(5) The city shall give credit only for construction of improvements or contribution or dedication of land or money actually accepted by the city. Deposit of a check shall be deemed acceptance of cash by the city. Only land dedications formally accepted by the city council or accepted by operation of law shall constitute acceptance for purposes of computing credits under this section. System improvements shall be deemed to be accepted only if and when the commissioner of public works or other applicable official has determined that such improvements meet applicable city standards and agreed on behalf of the city to accept such improvements for maintenance. The acceptance of an offer of dedication of land shall not constitute acceptance of any improvements located thereon unless the action accepting the dedication or other applicable city ordinance shall so provide.

(6) For the present value of any previously paid development impact fee, credit shall be equal to the amount of the development impact fee paid.

(7) In making the present value calculation, the percentage rate used shall be that of a State of Georgia "A-rated" or better municipal bond sold at the bond sale nearest the date on which the present value calculation is made.

(8) No credit shall be given for the value of sidewalks which are required to be constructed by the Code.

(c) *Time to Claim Credits.*

(1) Any person claiming a credit shall apply to the director to claim such a credit no later than the date of application for the building permit to which the person applying wishes to have the credit apply. Any portion of a credit not claimed by such date shall be deemed waived.

(2) No credits of any kind shall be available for construction, contributions or dedications that occurred more than ten years prior to the effective date of such credit.

(d) *Abandonment of Building Permit.* In the event that a developer pays a development impact fee and then abandons the building permit or other permit to which it was appurtenant without constructing the building or other improvement, the developer shall receive credit for 97 percent of the present value of any development impact fees paid upon the presentation of documentation of the entitlement to such credit in a form acceptable to the commissioner. These credits shall be

available only for use in payment of future development impact fees in the same service area and may only be applied against the type of fee which was originally imposed.

Sec. 19-1015. Refunds.

(a) *Basis of Refunds.* Upon application to the department of finance by an owner of property on which a development impact fee has been paid, the city shall refund 97 percent of the development impact fee if:

(1) Capacity is available and service is permanently denied; or

(2) If the city, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six (6) years after the date the fee was collected. The city shall retain three percent (3%) of the fee paid as an administration fee to cover the cost of processing the refund.

(b) *Accounting for Receipts.* In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis.

(c) *Notice of Refunds.* When the right to a refund exists due to a failure to encumber development impact fees, the department of finance shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval, or to a feepayor's successor in interest who has given notice to the department of finance of a legal transfer or assignment of the right to entitlement to a refund and who has provided said department with a mailing address. Such notice shall also be published in a newspaper of general circulation within the city within 30 days after the expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading "Notice of entitlement to development impact fee refund."

(d) *Refund Applications.*

(1) A refund application shall be made in writing to the department of finance within one (1) year of the date the refund becomes payable under subsections 19-1015(a), (b) or (c), or within one (1) year of publication of the notice of entitlement to a refund, whichever is later. A refund not applied for within said time period shall be deemed waived.

(2) A refund application shall include information and documentation sufficient to permit the department of finance to determine whether the refund claimed is proper, and, if so, the amount of such refund.

(3) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected.

(e) *Payment of Refund.*

(1) All refunds shall be made to the feepayor within 60 days after it is determined by the department of finance that a sufficient proof of claim for refund has been made.

(2) In no event shall a fee payor be entitled to a refund for development impact fees assessed and paid to recover the cost of excess capacity in existing system improvements.

Sec. 19-1016. Exemptions.

Pursuant to the provisions of O.C.G.A. 36-71-4(1) of the Act, the public policies expressed in the city's comprehensive development plan, as it may be amended, and in accordance with the policies of the council, affordable housing units and economic development projects may be exempted from the payment of development impact fees, in part or in whole, provided replacement funding is available and authorized for transfer into the accounts in which such development impact fees would otherwise be paid:

(a) *Affordable Housing.* Any residential construction that qualifies as affordable housing and meets the following requirements may receive a 100 percent exemption from the payment of development impact fees:

(1) Affordable housing shall mean a dwelling unit that is offered for sale or rent to low-income persons and which monthly rent or monthly mortgage payments, including taxes and insurance, do not exceed thirty (30) percent of the amount that represents 80% of the median adjusted gross income for households within the Atlanta, Georgia metropolitan statistical area as reported by the U.S. Department of Housing and Urban Development or its governmental successor in function.

(2) Low-income persons shall mean one or more natural persons, the total adjusted gross household income of which does not exceed eighty (80) per cent of the median adjusted gross income for households within the Atlanta, Georgia metropolitan statistical area as reported by the U.S. Department of Housing and Urban Development or its governmental successor in function.

(3) Any person seeking an affordable housing exemption shall file with the city manager an application for exemption prior to the impact fee payment date for the proposed residential construction. The application for exemption shall contain the following:

- (i). The name and address of the owner;
- (ii). The legal description of the residential construction;
- (iii). The proposed selling price or the proposed rental price, as applicable;
- (iv). Evidence that the residential construction shall be occupied by low income persons; and
- (v). Evidence that the residential construction is part of a multifamily project, which is funded by a governmental affordable housing program, if applicable.

(4) For residential construction to receive an affordable housing exemption, it must meet all the definitions and restrictions of affordable housing as provided herein and these restrictions must continue for a period of at least twenty (20) years from the date of issuance of a certificate

of occupancy. Such restrictions must either be contained within the deed for the residential construction; the terms, restrictions and conditions of a direct government grant or subsidy that will fund the residential construction; or within the terms of a development agreement between the city and the owner.

(5) If the residential construction project meets the requirements for an affordable housing exemption, the commissioner shall issue an exemption. The exemption shall be presented in lieu of payment of the impact fees.

(6) In the event that any residential dwelling unit, which is part of a project for which exemptions have been given, fails to meet the restrictions of affordable housing as provided herein within the twenty-year period following the issuance of the certificate of occupancy such that the project no longer qualifies as affordable housing and is no longer occupied by low-income persons or very-low-income persons, the impact fees in effect at the time of the change in circumstances shall be immediately due and may be collected from the owner of the property if the applicant for the exemption cannot be located.

(b) *Economic Development.* Economic development projects, as defined in section 19-1006 of this chapter, may receive a 100 percent exemption from the payment of development impact fees.

(c) *Replacement of Funds.* The proportionate share of any system improvement costs lost because of exempted affordable housing units or economic development projects shall be funded from the recoupment account established pursuant to subsection 19-1013(h) hereof or funded from a revenue source other than development impact fees.

(d) *Application for Exemption.* To be eligible for an exemption a developer must file an application for exemption with the director before the time development impact fees are imposed. The application for exemption must contain documentation acceptable to the director showing that the criteria for exemptions will be met as well as all requirements of subsection 19-1016(e).

(e) *Submission for Approval.* A person claiming exemption(s) shall submit to the commissioner information and documentation sufficient to permit the director to determine whether such exemption claimed meets the requirements of this chapter, and, if so, the extent of such exemption. Exemptions must be applied for at the time of the application for a building permit. Each application to the director for exemption for economic development projects shall be accompanied by an affidavit showing entitlement to the exemption and a certification from the chief financial officer that funds are available, or anticipated to be available during the current fiscal year, to cover the cost of said exemption.

Sec. 19-1017. Review.

(a) *Periodic Review.*

(1) As part of the city's annual capital improvement program process, or comprehensive planning process, or as part of any other planning process which causes the city to evaluate development potential in any area, the city may review the development potential of any area

within the city, whether it be a previously designated service area or not, or the city as a whole. Based on such review of development potential, the city may adjust boundaries of service areas or create new service areas.

(2) As part of the city's annual capital improvement program process, or comprehensive planning process, or as part of any other planning process which causes the city to evaluate development potential in any area, the city may review capital facilities plans in service areas and modify such plans as a result of development occurring in the previous year or requests for permission to develop.

(b) *Modification of Schedules.* As a result of modifications to service area boundaries and/or capital facilities plans, the city may modify development impact fee schedules as appropriate and adopt such revised schedules through official action of the council, provided however that where any schedules have been adopted at less than 100% of the level of fees set forth in the fee study currently in effect, modifications to service area boundaries and/or capital facilities plans shall not be necessary to adjust the percentage level of fees imposed so long as there is no increase in fees above the level set forth in such study.

(c) *Effect of Failures to Review.* Failure of the city to undertake such a review shall result in the continued use and application of the existing fee schedules and other data. The failure to review such schedules shall not invalidate this chapter.

Sec. 19-1018. Appeals.

(a) *Right to Appeal.* As required by O.C.G.A. § 36-71-10 the commissioner is appointed to hear the administrative appeal. Applicants or feepayors who have been assessed a development impact fee that is due and payable in connection with the issuance of a permit or who have received a written determination of the amount of the development impact fee, credit or refund shall be entitled to an administrative appeal to the commissioner as provided in this section.

(b) *Notice of Appeal.* The appellant shall file a written request with the commissioner for an administrative appeal within 30 days of the date of receipt of the written determination of the amount of the development impact fee due, or the amount of a refund, credit or reimbursement. The notice of appeal shall include a short, plain statement of the basis for the appeal and such other documents as set forth in this section. The appeal may be served on the director by certified mail or by presentation to the office of planning during such business hours when the office is open to the general public, provided however that the acceptance of the appeal after the thirty (30) day period has elapsed shall not constitute a waiver of the time limit for filing such appeal. The notice of appeal shall also contain the address where notices are to be sent.

(c) *Appeal Fee.* No notice of appeal shall be considered to be filed unless it is accompanied by a certified check or money order for \$250.00.

(d) *Right to be Heard.* The appellant shall have the right to be heard and may so request as a part of the notice of appeal within fifteen (15) days after the notice of appeal is submitted. When an appeal hearing is requested, the commissioner shall schedule an appeal hearing no sooner than fifteen (15) days but within forty-five days (45) days after the receipt of the notice of appeal and give notice thereof to the parties in interest. Any party requesting an appeal hearing shall have

the right to appear before the commissioner, present evidence and witnesses and may be represented by legal counsel. The commissioner may also present evidence and witnesses and may be represented by legal counsel. Any hearing which continues after the first hour shall pay an additional fee of \$250.00 for each hour or part thereof.

(i) The hearing may be transcribed at the request of appellant and the appellant shall procure a certified court reporter, pay all costs for takedown and provide a sealed copy of the transcript to the director for inclusion in record. An additional unsealed copy of the transcript shall also be provided to the commissioner.

(ii) The failure of notice caused by missing or incomplete address shall excuse the commissioner from meeting any deadline set forth herein.

(e) *The Preparation and Composition of the Record.* The notice of appeal may refer to any documents submitted as a part of the building permit application that show that the determination of the amount of the development impact fee, credit or refund should be different from that made in the written determination. At the appellant's discretion, the notice of appeal may contain other documents which the appellant believes to be relevant but which are not already a part of the application for building permit.

(i) The record to be considered by the commissioner shall consist of all documents submitted as a part of the notice of appeal and any documents which are a part of the building permit application. The City Code is presumed to be a part of the record

(ii) The appellant shall at all times be responsible for any costs for the preparation of the additional documents deemed relevant and the submission of such documents to the director within fifteen (15) days after the filing of the notice of appeal.

(f) *Matters to be Decided on Appeal* An appeal goes to the administrative decisions concerning the determination of the amount of the fee, credit or refund but does not determine as a matter of law whether a fee, credit or refund is due; provided however, that where claims of a constitutional nature to the effect that the fee cannot be imposed, or that a credit or refund has been improperly denied are raised, such claims must also be presented to the commissioner, so that the governing body will be on notice thereof. The commissioner shall make findings of fact and uphold or amend the administrative decision based on the criteria set forth in this ordinance and shall give written notice of his decision to the appellant. Under no circumstances is the commissioner authorized to negotiate or waive the impact fees imposed under this chapter as a part of his decision.

(g) *Time for Decision.* The commissioner shall decide the appeal of such administrative matters within a reasonable time following the submission of the record or the hearing, if one is requested. If the commissioner has not decided within sixty (60) days after the date of the hearing, if one is requested, or the date following the final date for submission of documents to be included the record, an appellant may request in writing that a decision be made within thirty (30) days and the commissioner shall issue such decision within thirty (30) days, unless a time certain for the decision is agreed to by both parties and set forth in writing.

(g) *Superior Court Review of Commissioner's Decision.* Any person aggrieved by a decision of the commissioner on the administrative matters decided by him may take an appeal to the Superior Court of Fulton County within 30 days after the date that the written decision is sent to the appellant, where such decision shall be reviewed on the evidence in the record before the commissioner in the same manner as other administrative appeals. The commissioner shall, after being served with notice of the appeal, cause the record to be prepared and sent for review.

(h) *Payment Under Protest.* A developer may pay a development impact fee under protest to obtain a building permit, and by making such payment shall not be estopped from exercising the right of appeal or receiving a refund of any amount deemed to have been improperly collected.

(i) *Effect of Filing Appeal.* The filing of an appeal shall not stay the collection of a development impact fee.

Sec. 19-1019. Enforcement

(a) *Nature of Violation; Action by City.* A violation of this chapter may be punished in the same manner as any other violation of the city code. However, in addition to or in lieu of any prosecution pursuant to an issued citation, the city shall have the power to sue in law or equity for relief in civil court to enforce this chapter, and seek recourse through all civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of this chapter, including but not limited to injunctive relief to enjoin and restrain any person from violating the provisions of the chapter and to recover such damages as may be incurred by the implementation of specific corrective actions.

(b) *False Information.* Knowingly furnishing false information to the city on any matter relating to the administration of this chapter shall not only be a violation of this chapter but may be subject to prosecution under any other applicable law.

(c) *Withholding or Revocation of Approval.* The director may revoke or withhold the issuance of any building permit or other development permits if the provisions of this chapter have been violated by the owner or his assigns and notice of such violations has been provided or citations have been issued.

(d) *Right to Inspect.* The director shall have the right to inspect the lands affected by this chapter and shall have the right to issue cease and desist orders, stop work orders, and other appropriate citations for violations. Refusal of written notice of violation under this chapter shall constitute legal notice of service.

(e) *Citation by Director.* For any violation, the director shall have the authority to issue a citation. Prior to citation the director may but is not required to give written official notice issued in person or by certified mail to the owner of the property, or to his agent, or to the person performing the work. The receipt of a notice shall require that corrective action be taken within ten working days unless otherwise extended at the discretion of the director. If the required corrective action is not taken within the time allowed in the notice, the director may cause citation to be issued and use any available civil or criminal remedies to secure compliance, including revoking a permit. Notice of a violation under this chapter shall not prevent the director from issuing violations for the violation of any other section of the city code.

Sec. 19-1020. Enforcement agent.

The enforcement of this chapter will be the responsibility of the director and such city personnel as the director may designate from time to time.

Sec. 19-1021. Interlocal government agreement.

The city may enter into interlocal agreements with other municipalities, counties, public authorities or with the State of Georgia for the purpose of assessing, collecting, and expending development impact fees as provided by this chapter.

Sec. 19-1022. Severability.

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Sec. 19-1023. Effective date; city code.

Pursuant to § 19-1023 of the 1977 City Code, the chapter containing the original impact fee ordinance as codified in Chapter 19 became effective immediately as part of the official code of the City of Atlanta and was thereafter adopted as Chapter 19 of the 1995 City Code. Amendments to Chapter 19 shall hereafter become effective in the manner set forth in the ordinance which authorized such amendments. No amendment to this chapter shall be construed to increase, reduce, exempt or change the amount of development impact fees which were paid under this chapter prior to any such amendment, provided that the permit application has been processed, the permit issued and the fees associated with the issued permit have been paid as required. The acceptance of a building permit application for a project shall not vest the right to be charged impact fees at any particular rate.

Sec. 19-1024. Review by city council.

The commissioner of the department of planning and community development and the chief financial officer shall submit a report to the city council at least every three (3) years so as to assist in city council evaluation of this chapter.

TABLE 1

Land Use Type	Unit	Impact Fee Per Unit				
		Transportation	Parks	Fire	Police	Total
Single-Family Detached	Dwelling	\$2,571	\$762	\$213	\$87	\$3,633
Multi-Family	Dwelling	\$1,485	\$580	\$162	\$66	\$2,293
Hotel/Motel	Room	\$857	\$287	\$80	\$33	\$1,257
Shopping Center/Commercial	1,000 sq. ft.	\$2,914	\$807	\$226	\$92	\$4,039
Office	1,000 sq. ft.	\$2,171	\$401	\$112	\$46	\$2,730
Institutional/Public	1,000 sq. ft.	\$1,085	\$224	\$63	\$26	\$1,398
Industrial	1,000 sq. ft.	\$1,885	\$170	\$48	\$19	\$2,122
Warehouse	1,000 sq. ft.	\$800	\$90	\$25	\$10	\$925
Mini-Warehouse	1,000 sq. ft.	\$628	\$64	\$18	\$7	\$717