
**Effingham County, Georgia
Development Impact Fee Ordinance**

Adopted January 4, 2005

TABLE OF CONTENTS

SEC. 1:	LEGISLATIVE FINDINGS	1
SEC. 2:	AUTHORITY AND APPLICABILITY.....	3
SEC. 3:	INTENT	4
SEC. 4:	DEFINITIONS	4
SEC. 5:	DEVELOPMENT IMPACT FEES TO BE IMPOSED.....	7
SEC. 6:	SERVICE AREAS	11
SEC. 7:	USE OF DEVELOPMENT IMPACT FEE FUNDS.....	11
SEC. 8:	REFUNDS OF DEVELOPMENT IMPACT FEES PAID	13
SEC. 9:	CREDITS AGAINST DEVELOPMENT IMPACT FEES	14
SEC. 10:	APPEALS AND ARBITRARION.....	17
SEC. 11:	MISCELLANEOUS PROVISIONS	19

CHAPTER : DEVELOPMENT IMPACT FEES

SEC. 1: *LEGISLATIVE FINDINGS*

The County Commissioners of Effingham County, Georgia finds that:

- 1.1** Based on the Effingham County Comprehensive Plan adopted by the County pursuant to Title 36, Chapter 70, Official Code of Georgia Annotatated, including but not limited to the Capital Improvements Element of the Comprehensive Plan, and the general governmental goal of protecting the health, safety, and general welfare of the citizens of the County, it is necessary that the County's public facilities for (1) park and recreation facilities, (2) arterial roads and intersections, (3) public safety, (4) water, and (5) sewer be expanded and improved to accommodate new development within the County. Throughout this ordinance, the System Improvements for these six types of public facilities are sometimes collectively referred to as the "County Capital Facilities" and sometimes individually referred to as "County Capital Facility Elements"
- 1.2** New residential and nonresidential development imposes and will impose increasing and excessive demands upon County Capital Facilities.
- 1.3** The revenues generated from new residential and non-residential development often does not generate sufficient funds to provide the necessary improvements of these County Capital Facilities to accommodate new development.
- 1.4** New development is expected to continue, and will place ever-increasing demands on the County to provide and expand County Capital Facilities to serve new development.
- 1.5** The County has planned for the improvement of the County Capital Facilities in the Capital Improvements Element of the Effingham County Comprehensive Plan.
- 1.6** Title 36, Chapter 71, Official Code of Georgia Annotated (the Georgia Development Impact Fee Act) authorizes the County to adopt a Development Impact Fee ordinance to offset, recoup, or reimburse the portion of the costs of needed improvements to the County Capital Facilities caused by new development in the County.
- 1.7** The creation of an equitable Development Impact Fee system would enable the County to impose a proportionate share of the costs of needed improvements to County Capital Facilities to accommodate new development, and would assist the County to implement the Capital Improvements Element of the Comprehensive Plan.

Effingham County, Georgia
Impact Fee Ordinance

- 1.8 In order to implement an equitable Development Impact Fee system for the County Capital Facilities, the County retained Tischler & Associates to prepare an impact fee study for these types of facilities. The resulting document is titled “Effingham County, Georgia, Impact Fees & Capital Improvements Element”, dated November 1, 2004 (the “*Development Impact Fee Study*”), and is on file in the office of the clerk of the Board of County Commissioners.
- 1.9 The *Development Impact Fee Study* is consistent with the Capital Improvements Element of the Effingham County Comprehensive Plan, and uses the Levels of Service (LOS) set forth in the Comprehensive Plan for these County Capital Facilities.
- 1.10 The *Development Impact Fee Study* sets forth reasonable methodologies and analyses for determining the impacts of various types of new development on the County Capital Facilities, and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such facilities created by new development.
- 1.11 In accordance with the Official Code of Georgia Annotated, the *Development Impact Fee Study* was based on actual system improvement costs or reasonable estimates of such costs. In addition, the *Development Impact Fee Study* uses a Fee calculation methodology that is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.
- 1.12 The Development Impact Fees described in this Ordinance are based on the *Development Impact Fee Study*, and do not exceed the costs of System Improvements for County Capital Facilities to serve new development that will pay the Development Impact Fees.
- 1.13 The park and recreation facilities, arterial roads and intersections, and public safety facilities included in the calculation of fees in the *Development Impact Fee Study* will benefit all new residential development throughout the County, and it is therefore appropriate to treat all unincorporated areas of the County as a single service area for purposes of calculating, collecting, and spending the Development Impact Fees collected from residential development for those four Development Impact Fee Elements.
- 1.14 The arterial roads and intersections, and the public safety facilities included in the calculation of fees in the *Development Impact Fee Study* will benefit all new non-residential development throughout the County, and it is therefore appropriate to treat all unincorporated areas of the County as a single service area for purposes of calculating, collecting, and spending the Development Impact Fees collected

from non-residential development for those two Development Impact Fee Elements.

- 1.15 Specific sewer facilities included in the calculation of fees in the *Development Impact Fee Study* will benefit those areas of the County that receive sewer services from those facilities, and it is therefore appropriate to define a single Service Area for purposes of collecting and spending of Sewer Impact Fees.
- 1.16 Specific water facilities included in the calculation of fees in the *Development Impact Fee Study* will benefit those areas of the County that receive water services from those facilities, and it is therefore appropriate to define a single Service Area for purposes of collecting and spending of Water Impact Fees.
- 1.17 There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this Ordinance and the Development Impact Fees that such development will be required to pay.
- 1.18 This Ordinance creates a system by which Development Impact Fees paid by new development will be used to finance, defray, or reimburse a portion of the costs incurred by the County to construct improvements for County Capital Facilities in ways that benefit the development that paid each Fee within a reasonable period of time after the Fee is paid.
- 1.19 This Ordinance creates a system under which Development Impact Fees shall not be used to correct existing deficiencies for these capital facilities, or to replace or rehabilitate existing improvements, or to pay for routine operation or maintenance of those facilities.
- 1.20 This Ordinance is consistent with all applicable provisions of Title 36, Chapter 71, Official Code of Georgia Annotated, concerning Development Impact Fee Ordinances.

SEC. 2: **AUTHORITY AND APPLICABILITY**

- 2.1 This Ordinance is enacted pursuant to the County's general police power, the authority granted to the County pursuant to Title 36, Chapter 71, Official Code of Georgia Annotated, and other applicable laws of the State of Georgia.
- 2.2 This Ordinance shall apply to the unincorporated area of the County, and to any incorporated areas of the County where the municipal government has executed an intergovernmental agreement with the County for purposes of collection or expenditure of Development Impact Fees pursuant to Section 36-71-11, Official Code of Georgia Annotated, and other applicable laws of the State of Georgia.

SEC. 3: INTENT

- 3.1 This Ordinance is adopted to be consistent with, and to help implement, the Effingham County Comprehensive Plan.
- 3.2 The intent of this Ordinance is to ensure that new development bears a proportionate share of the cost of improvements to County Capital Facilities; to ensure that such proportionate share does not exceed the cost of improvements to such facilities required to accommodate new development; and to ensure that funds collected from new development are actually used for improvements to County Capital Facilities that benefit such new development.
- 3.3 It is the further intent of this Ordinance to be consistent with those principles for allocating a fair share of the cost of new capital facilities to new development, and for adopting Development Impact Fee Ordinances, established by Title 36, Chapter 71, Official Code of Georgia Annotated.
- 3.4 It is not the intent of this Ordinance to collect any money from any new development in excess of the actual amount necessary to offset new demands for County Capital Facilities created by such new development.
- 3.5 It is not the intent of this Ordinance that any monies collected from any Development Impact Fee deposited in an Impact Fee Account ever be commingled with monies from a different Impact Fee Account, or ever be used for a Development Impact Fee Component different from that for which the Fee was paid, or ever be used to correct current deficiencies in the County Capital Facilities or ever be used to replace, rehabilitate, maintain, or operate any County facility.

SEC. 4: DEFINITIONS

- 4.1 For the purpose of this Ordinance, the following terms shall have the following meanings, some of which are assigned by Section 36-71-2, Official Code of Georgia Annotated, as indicated:

“Accounts” means the Park Capital Facilities Account, the Arterial Road Capital Facilities Account, the Public Safety Capital Facilities Account, the Water Capital Facilities Account, and the Sewer Capital Facilities Account established as part of the Development Impact Fee Trust Fund established in Section ___ -7 of this Ordinance.

“Building Permit”. A Building Permit issued by the chief building inspector permitting the construction of a building or structure within Effingham County.

"Capital improvement" is defined in Section 36-71-2, Official Code of Georgia Annotated.

"Capital improvements element" is defined in Section 36-71-2, *Official Code of Georgia Annotated*, as supplemented by the *Development Impact Fee Study*.

"County" means Effingham County, Georgia.

"County Commission" means the Board of County Commission of Effingham County, Georgia.

"Developer" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Development" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Development approval" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Development exaction" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Development impact fee" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Development impact fee study" means the document entitled "Effingham County, Georgia, Impact Fees & Capital Improvements Element", dated November 1, 2004, prepared by Tischler & Associates for the County, which sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the County Capital Facilities and determines the cost of expansions to those facilities necessary to meet the demands created by new development.

"Development impact fee trust fund" means the trust fund established by Section ___-7 of this Ordinance that includes (1) a Park Facilities Account, (2) a Road Facilities Account, (3) a Public Safety Facilities Account, (4) a Water Facilities Account, and (5) a Sewer Facilities Account. The Development Impact Fee Trust Fund is also sometimes called the Trust Fund.

"Encumber" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Feepayor" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Impact-Generating Land Development" means land development designed or intended to permit a use of the land that will contain more dwelling units or floor space than the then existing use of the land, or the making of any material change in the use of any structure or land in a manner that increases demand for

Effingham County, Georgia
Impact Fee Ordinance

County Capital Facilities. The type of proposed Impact-Generating Land Development shall be based on the proposed use of the land.

“Individual impact assessment” means a study prepared by a Feepayer, calculating the cost of expansions or improvements to one or more of the County Capital Facility Elements required to serve the Feepayer’s proposed Development, that is based on the established LOS standard, performed on an average cost (not marginal cost) methodology, that uses the service units and unit construction costs stated in the *Development Impact Fee Study*, and is performed in compliance with any criteria for such studies established by this Ordinance or by the County.

"Level of service" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

“Park Capital Facilities” means open space lands, as well as buildings, improvements to land, and related equipment meeting the definition of Capital Improvement, used for public parks, recreation, open space, and trail facilities included in the calculation of the Park Impact Fee in the *Development Impact Fee Study*, and specifically including those related costs included in the definition of System Improvement Costs, but not including maintenance, operations, or improvements that do not expand capacity.

“Person” means an individual, corporation, governmental agency, business trust, estate, partnership, association, two or more persons having a joint or common interest, or any other entity.

"Present value" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Project" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Project improvements" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"Proportionate share" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

“Public Safety Capital Facilities” means lands, as well as buildings, improvements to land, and related equipment and vehicles meeting the definition of Capital Improvement, used for public safety facilities included in the calculation of the Public Safety Impact Fee in the *Development Impact Fee Study*, and specifically including those related costs included in the definition of System Improvement Costs, but not including maintenance, operations, or improvements that do not expand capacity.

“Road Capital Facilities” means lands, as well as roads, intersections, and improvements to land, meeting the definition of Capital Improvement, used for road and intersection facilities included in the calculation of the Road Impact Fee in the *Development Impact Fee Study*, and consistent with the Capital Improvements Element, and specifically including those related costs included in the definition of System Improvement Costs, but not including maintenance, operations, or improvements that do not expand capacity.

"Service area" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

“Sewer Capital Facilities” means lands, as well as improvements to land, and related equipment meeting the definition of Capital Improvement, used for sewer facilities included in the calculation of the Sewer Impact Fee in the *Development Impact Fee Study*, and consistent with the Capital Improvements Element, and specifically including those related costs included in the definition of System Improvement Costs, but not including maintenance, operations, or improvements that do not expand capacity.

“Successor in interest” means a person, as defined by this Ordinance, who gains a fee simple interest in land for which a Development Impact Fee is paid or a credit is approved pursuant to the terms of this Ordinance.

"System improvement costs" is defined in Section 36-71-2, *Official Code of Georgia Annotated*.

"System Improvements" means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements. *Section 36-71-2, Official Code of Georgia Annotated*. For the purposes of this Ordinance, the System Improvements are the Road Capital Facilities, Park Capital Facilities, Public Safety Capital Facilities, Sewer Capital Facilities, and Water Capital Facilities.

“Water Capital Facilities means lands, as well as improvements to land and related equipment meeting the definition of Capital Improvement, used for water facilities included in the calculation of the Water Impact Fee in the *Development Impact Fee Study*, and consistent with the Capital Improvements Element, and specifically including those related costs included in the definition of System Improvement Costs, but not including maintenance, operations, or improvements that do not expand capacity.

SEC. 5: DEVELOPMENT IMPACT FEES TO BE IMPOSED

5.1 Fee Obligation

Effingham County, Georgia
Impact Fee Ordinance

.1 After the effective date of this Ordinance, any person who commences any Impact-Generating Land Development, except those exempted pursuant to Sec. ____-5.2 below, shall be obligated to pay Development Impact Fees upon commencement of such activity. The amount of the Development Impact Fees shall be determined in accordance with this Ordinance.

.2 If the Feepayor is applying for an extension of a permit issued previously, then the Development Impact Fees required to be paid shall be the net increase between the Development Impact Fees applicable at the time of the current permit application and any Development Impact Fees previously paid pursuant to this Ordinance to finance similar types of System Improvements to accommodate demands created by the same development.

.3 If the Feepayor is applying for a permit to allow a change of use or for the expansion, redevelopment, or modification of an existing development, the Development Impact Fees required to be paid shall be based on the net increase in the Development Impact Fees for the new use as compared to the previous use.

5.2 Exemptions

The following types of development shall be exempted from payment of the Development Impact Fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first building permit for the proposed development that creates the obligation to pay the Development Impact Fees, and any claim for exemption not made at or before that time shall have been waived. The Board of Commissioners or a designee shall determine the validity of any claim for exemption pursuant to the standards set forth below.

.1 Reconstruction, expansion, or replacement of a previously existing residential unit that does not create any additional residential units.

.2 The replacement of a destroyed or partially destroyed non-residential building or structure with a new non-residential building or structure of the same use as the original structure and with no more than a five (5%) percent increase in floor area from the original structure.

.3 Construction of unoccupied accessory structures related to a residential unit.

.4 Projects for which a Development Impact Fee for each type of public facility covered by this Ordinance has previously been paid in an amount that equals or exceeds the Development Impact Fee that would be required by this Ordinance.

.5 Projects built by the federal government or the State government.

.6 Public schools.

5.3 Calculation of Amount of Development Impact Fee(s)

.1 Any Person who commences any new Impact-Generating Land Development, except those exempted pursuant to this Ordinance, or those preparing an Individual Impact Assessment pursuant to this Ordinance, shall pay all Development Impact Fees applicable to the proposed development, as determined by the fee schedule set down as Exhibit "A," and incorporated into this Ordinance by reference. Persons choosing to pay applicable Development Impact Fees pursuant to Exhibit "A" shall be deemed to have made a full and complete payment of the project's proportionate share of County Capital Facilities costs for System Improvements, except as noted in Sec. ____11.5 of this Ordinance.

.2 If the proposed development is of a type not listed in Exhibit "A," then the County shall use the Development Impact Fees applicable to the most nearly comparable type of land use listed in Exhibit "A." The determination as to which type of development is most nearly comparable to the proposed development shall be made by the Board of Commissioner or a designee.

.3 If the proposed development includes a mix of those uses listed in Exhibit "A," then the Development Impact Fees shall be determined by adding up the Development Impact Fees that would be payable for each use as if it were a freestanding use pursuant to Exhibit "A."

.4 In lieu of calculating the amount(s) of Development Impact Fees by reference to Exhibit "A," a Feepayor may request that the amount of the required Development Impact Fee be determined through an Individual Impact Assessment for the proposed development. If a Feepayor requests the use of an Individual Impact Assessment, the Feepayor shall be responsible for retaining a qualified professional to prepare the Individual Impact Assessment that complies with the requirements of this Ordinance, at the Feepayor's expense.

.5 Each Individual Impact Assessment shall be based on the same LOS standards and unit costs for System Improvements used in the *Development Impact Fee Study*, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.

.6 Each Individual Impact Assessment shall be submitted to the Board of Commissioners or a designee, and may be accepted, rejected, or accepted with modifications by the Board of Commissioners or a designee as the basis for calculating Development Impact Fees. The criteria for acceptance, rejection, or acceptance with modifications shall be whether the Individual Impact Assessment is a more accurate measure of demand for the County Capital Facilities Element(s) created by the proposed development, or the costs of those facilities, than the applicable fee shown in Exhibit "A." If an Individual Impact Assessment is accepted or accepted with modifications by the Board of Commissioners or a designee then

Effingham County, Georgia
Impact Fee Ordinance

the Development Impact Fees due under this Ordinance for such development shall be calculated according to such Individual Impact Assessment.

5.4 Certification

After the Development Impact Fees due for a proposed development have been calculated pursuant to Exhibit "A" or the Independent Impact Assessment, the Developer may request the Board of Commissioners or a designee for a certification of the amount of Development Impact Fees due for that development. Within thirty (30) days after receiving such request, the Board of Commissioners or a designee shall issue a written certification of the amount of Development Impact Fees due for the proposed development, and the Development Impact Fees for such proposed development shall not be altered for one hundred eighty (180) days following the date of certification.

5.5 Payment of Fees

.1 Development Impact Fees shall be paid to the Board of Commissioners or a designee upon or as a condition of the issuance of the building permit for any Impact-Generating Land Development that creates the obligation to pay the Development Impact Fees, unless the Feepayor requests a payment deferral pursuant to subsection 2 below. The obligation to pay the Fee shall run with the land.

.2 In the case of non-residential development, the landowner may delay payment of the Development Impact Fees by executing a non-interest bearing promissory note payable to the County for the amount of the Fees. The promissory note shall be paid prior to the issuance of a certificate of occupancy for the Impact-Generating Land Development. If the Building Permit is for less than the entire development, the Fee shall be computed separately for the amount of the development covered by the permit.

.3 A Feepayor may pay a Development Impact Fee under protest in order to obtain a Development Approval or Building Permit. A Feepayor making such payment shall notify the County Administrator or a designee in writing at the time of the payment that the payment is being made under protest. A Feepayor making a payment under protest shall be eligible to file an appeal pursuant to Sec. ____-10 of this Ordinance and shall be eligible to receive a refund of any amount later deemed to have been illegally collected, together with actual interest earned on such amount since the payment.

.4 All monies paid by a Feepayor pursuant to this Ordinance shall be identified as Development Impact Fees and shall be promptly deposited in the appropriate Account(s) described in Sec. ____-7.

SEC. 6: SERVICE AREAS

For the purpose of ensuring that Fee payors receive benefit for Development Impact Fees paid, the following service areas are established for each Development Impact Fee Element.

- 6.1 The Park Impact Fee Service Area shall include the entire County, and Park Impact Fees may be expended for Park Capital Facilities located anywhere in the unincorporated areas of the County.
- 6.2 The Public Safety Impact Fee Service Area shall include the entire County, and Public Safety Impact Fees may be expended for Public Safety Capital Facilities located anywhere in the unincorporated areas of the County.
- 6.3 The Road Impact Fee Service Area shall include the entire County, and Road Impact Fees may be expended for Road Capital Facilities located anywhere in the unincorporated areas of the County.
- 6.4 The Sewer Impact Fee Service Area shall include the entire area served by Effingham County sewer services, and Sewer Impact Fees shall be expended only for Sewer Capital Facilities located anywhere in such service area.
- 6.5 There Water Impact Fee Service Areas shall include the entire area served by Effingham County water services, and Water Impact Fees shall be expended only for Water Capital Facilities located in such service area.

SEC. 7: USE OF DEVELOPMENT IMPACT FEE FUNDS

7.1 Establishment of Trust Fund and Accounts

.1 A Development Impact Fee Trust Fund (the "Trust Fund") is hereby established for the purpose of ensuring the Development Impact Fees collected pursuant to this Ordinance are used to address impacts reasonably attributable to new development for which the Development Impact Fees are paid.

.2 The Trust Fund shall be divided into six Accounts: a Park Capital Facilities Account, a Road Capital Facilities Account, a Public Safety Capital Facilities Account, a Sewer Capital Facilities Account, and a Water Capital Facilities Account.

.3 The Development Impact Fee Trust Fund shall be maintained in an interest bearing account, and the interest earned on each Account shall be subject to the same restrictions on uses of funds as the Development Impact Fees on which the interest is generated.

Effingham County, Georgia
Impact Fee Ordinance

.4 Monies in each Account shall be considered to be spent in the order collected, on a first-in/first-out basis.

7.2 Deposit and Management of the Trust Fund

.1 All Development Impact Fees collected by the County pursuant to this Ordinance shall be promptly deposited into the appropriate Account in the Trust Fund.

.2 The County shall maintain accounting records for each Account and for each Service Area in which Development Impact Fees are collected.

.3 As part of its annual audit process, the County shall prepare an annual report describing the amount of any Development Impact Fees collected, encumbered, and used during the preceding year for each Impact Fee Element.

7.3 Limitations on Expenditures of Fees in Accounts

.1 **Park Impact Fee.** The monies collected from the Park Impact Fee shall be used only to plan for and acquire or construct Park Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Park Capital Facilities within the unincorporated areas of the County, or to reimburse the County for such costs.

.2 **Public Safety Impact Fee.** The monies collected from the Public Safety Impact Fee shall be used only to plan for and acquire or construct Public Safety Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Public Safety Capital Facilities within the unincorporated areas of the County, or to reimburse the County for such costs.

.3 **Road Impact Fee.** The monies collected from the Road Impact Fee shall be used only to plan for and acquire or construct Road Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Road Capital Facilities within the unincorporated areas of the County, or to reimburse the County for such costs.

.4 **Sewer Impact Fee.** The monies collected from the Sewer Impact Fee shall be used only to plan for and acquire or construct Sewer Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Sewer Capital Facilities within the County's sewer service area, or to reimburse the County for such costs.

.5 Water Impact Fee. The monies collected from the Water Impact Fee shall be used only to plan for and acquire or construct Water Capital Facilities, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of Water Capital Facilities within the County's water service area, or to reimburse the County for such costs.

.6 Development Impact Fees shall not be used to pay for any purpose that does not involve System Improvements that create additional service available to serve new growth and development.

SEC. 8: REFUNDS OF DEVELOPMENT IMPACT FEES PAID

8.1 Failure to Encumber Trust Funds or Commence Construction

.1 Any Development Impact Fees paid shall be refunded to the Feepayor if (a) capacity is available and service is denied, or (b) the County has failed to commence construction of System Improvements in accordance with this Ordinance, or to Encumber funds for such construction, within six (6) years after the date on which such Fee was paid.

.2 The refund shall include a pro-rata share of interest actually earned on the unused or excess Development Impact Fees collected.

.3 When the right to a refund exists due to a failure of the County to encumber Development Impact Fees, the County shall provide written notice of entitlement to a refund to the Feepayor who paid the Development Impact Fees at the address shown on the application for Development Approval, or to a Successor in Interest who has notified the County of a transfer or assignment of the right or entitlement to a refund and who has provided to the County a mailing address.

.4 When the right to a refund exists due to a failure or the County to encumber Development Impact Fees, the County shall also publish the notice of entitlement to a refund within thirty (30) days after the expiration of the six-year period after the date that the Development Impact Fees were collected. Such published notice shall contain the heading "Notice of Entitlement to Development Impact Fee Refund".

.5 In order to be eligible for a refund, a Feepayor or Successor in Interest shall file a written application for a refund with the Board of Commissioners or a designee within one year of the time such refund becomes payable under subsections 1(a) and (b) above, or within one year of publication of the notice of entitlement to a refund, whichever is later. If a Successor in Interest claims a refund of Development Impact Fees, the Board of Commissioners or a designee may

require written documentation that such rights have been conveyed to the claimant prior to issuing the requested refund.

.6 Refunds shall be paid within sixty (60) days after the date on which the Board of Commissioners or a designee determines that a sufficient proof of claim for a refund has been made.

.7 A Feepayor shall have standing to sue for a refund under the provisions of this chapter if there has been a timely application for a refund and the refund has been denied or has not been made within one year of submission of the application for refund to the County.

8.2 Failure to Initiate Development

If a Feepayor has paid a Development Impact Fee required by this Ordinance and has obtained a Building Permit, and the Building Permit for which the Fee was paid later expires or is abandoned without the possibility of further extension, then the Feepayor or the Feepayor's Successor in Interest shall not be entitled to a refund of Development Impact Fees paid, but shall instead be entitled to credit for the present value of the Development Impact Fee against future Development Impact Fees for the same parcel of land. In order to be eligible to receive this credit for future Development Impact Fees, the Feepayor or a Successor in Interest shall be required to submit an application for such refund to the Board of Commissioners or a designee within thirty (30) days after the expiration of the Building Permit for which the Fee was paid. If a Successor in Interest claims a refund of Development Impact Fees, the Board of Commissioners or a designee may require written documentation that such rights have been conveyed to the claimant prior to issuing the requested refund.

8.3 Limitations

After a Development Impact Fee has been paid pursuant to this Ordinance [chapter?], no refund of any part of such Fee shall be made if the project for which the Fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the project or the number of units in the project.

SEC. 9: CREDITS AGAINST DEVELOPMENT IMPACT FEES

9.1 Credits to be Issued.

When a Developer or his or her predecessor in title or interest has constructed System Improvements for a County Capital Facility Element, or contributed or dedicated land or money towards the completion of System Improvements for a County Capital Facility Element, and the County has accepted such construction, contribution, or dedication, the County shall issue a credit against the Development Impact Fees otherwise due for

Effingham County, Georgia
Impact Fee Ordinance

the same County Capital Facilities Element in connection with the proposed development.

9.2 Limitations

Credits against Development Impact Fees shall not be given for (a) Project Improvements, or (b) any construction, contribution, or dedication not agreed to in writing by the County prior to commencement of the construction, contribution, or dedication.

9.3 Valuation of Credit at Present Value

.1 Land. Credit for qualifying land dedications shall, at the Feepayor's option, be valued at (a) one hundred (100) percent of the most recent assessed value for such land as shown in the records of the County Clerk, or (b) that fair market value established by a private appraiser acceptable to the County in an appraisal paid for by the Feepayor.

.2 Improvements. Credit for qualifying acquisition or construction of System Improvements shall be valued by the County based on complete engineering drawings, specifications, and construction cost estimates submitted by the Feepayor to the County. The County shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the County as a more accurate measure of the value of the offered System Improvements to the County.

9.4 When Credits Become Effective

.1 Approved credits for land dedications shall become effective when the land has been conveyed to the County in a form acceptable to the County at no cost to the County, and has been accepted by the County. When such conditions have been met, the County shall note that fact in its records. Upon request of the Feepayor, the County shall issue a letter stating the amount of credit available.

.2 Approved credits for acquisition or construction of System Improvements shall generally become effective when (a) all required construction has been completed and has been accepted by the County, (b) a suitable maintenance and warranty bond has been received and approved by the County, and (c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the County and the State of Georgia. Approved credits for the construction of System Improvements may become effective at an earlier date if the Feepayor posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement and the amount and terms of such security are accepted by the County Administrator or a designee. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the County to construct the

Effingham County, Georgia
Impact Fee Ordinance

System Improvements for which the credit was given, whichever is higher. When such conditions have been met, the County shall note that fact in its records. Upon request of the Feepayor, the County shall issue a letter stating the amount of credit available.

9.5 Application Procedures

.1 In order to obtain a credit against Development Impact Fees otherwise due, a Feepayor shall submit a written offer to dedicate to the Board of Commissioners or a designee for specific parcels of qualifying land or to contribute or construct specific Improvements to the County Capital Facilities in accordance with all applicable State or County design and construction standards, and shall specifically request a credit against the type of Development Impact Fees for which the land dedication or Improvement is offered. Such written request shall be filed prior to the time the Feepayor applies for the first Building Permit that creates an obligation to pay the type of Impact Fee against which the credit is requested, or the claim for the credit shall be waived.

.2 After receipt of the request for credit, the Board of Commissioners or a designee shall review the request and determine whether the land or Improvements offered for credit will reduce the costs of providing County Capital Facilities by an amount at least equal to the value of the credit. If the Board of Commissioners or a designee determines that the offered credit satisfies these criteria, then the credit shall be issued.

9.6 Transferability of Credit

A credit may only be transferred by the Developer that has received the credit to a Successor in Interest pursuant to the terms of this Ordinance. The credit may be used only to offset Development Impact Fees for the same County Capital Facility Element for which the credit was issued, and within the same Service Area for which the credit was issued. Credits shall be transferred by any written instrument clearly identifying which credits issued under this Ordinance are being transferred, the dollar amount of the credit being transferred, and the County Capital Facilities Element and Service Area for which the credit was issued. The instrument of transfer shall be signed by both the transferor and transferee, and a copy of the document shall be delivered to the County Administrator or a designee for documentation of the change in ownership before it shall become effective.

9.7 Accounting of Credits

Each time a request to use approved credits is presented to the County, the County shall reduce the amount of the Development Impact Fees for the type of fee for which the credit is provided, and shall note in the County's records the amount of credit remaining, if any. Upon request of the Feepayor or Successor in Interest to whom the credit was issued, the County shall issue a letter stating the amount of credit remaining.

9.8 Credits Exceeding Fee Amounts

.1 If a Developer enters into an agreement with the County to dedicate, construct, fund, or contribute System Improvements that qualify for credits pursuant to this Sec. ___-9, and the amount of the credit created by such dedication, construction, funding, or contribution exceeds the Development Impact Fees that would otherwise have been paid for that County Capital Facilities Element, the Developer shall be reimbursed for such excess construction, funding, or contribution from Development Impact Fees paid for such Development Impact Fee Element by other development located in the Service Area that is benefited by such improvements.

.2 To assist in such reimbursement, the County shall continue to collect Development Impact Fees from other Developers whose proposed development will benefit from the dedication, construction, funding, or contribution, and will promptly transfer such funds to the Developer to whom the credit was given, or to a Successor in Interest. If a Successor in Interest claims a reimbursement for the excess credit, the Board of Commissioners or a designee may require written documentation that such rights have been conveyed to the claimant prior to issuing the requested reimbursement.

.3 Credits issued for one County Capital Facilities Element may not be used to reduce Development Impact Fees due for a different Capital Facilities Element, or to reduce Development Fees in a different Service Area.

.4 Unless otherwise stated in an agreement with the Developer, the County shall be under no obligation to use any County funds – other than Development Impact Fees paid by other development for the same County Capital Facility Element in the same Service Area – to reimburse the Developer for any amount by which such Developer's dedication, construction, funding, or contribution exceeds Development Impact Fees otherwise due from such Developer for any Capital Facilities Element.

SEC. 10: APPEALS AND ARBITRARION

Disputes regarding decisions made in the application of this Ordinance shall be resolved through Appeal to the County Commissioners, or through binding arbitration, as set forth below.

10.1 Right to Appeal

.1 Any Developer or Successor in Interest who is or may be obligated to pay a Development Impact Fee, or who claims a right to receive a refund,

Effingham County, Georgia
Impact Fee Ordinance

reimbursement, or credit under this Ordinance, may appeal a decision made by the Board of Commissioners designee in applying this Ordinance, may appeal such decision to the County Commissioners.

.2 In order to pursue such an appeal, the Developer or Successor in Interest shall file a written notice of the appeal with the Board of Commissioners or a designee within thirty (30) days after the date of the decision being appealed, or the date on which the Developer or Successor in Interest submitted a payment of Development Impact Fees under protest, whichever is later. Such written application shall include a statement describing why the applicant believes that the decision was in error, together with copies of any documents that the applicant believes support the claim.

.3 The County Commissioners shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The appellant shall have a right to be present and to present evidence in support of the appeal. The Board of Commissioners or designee who made the decision under appeal shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the County Commissioners shall be whether (a) the decision or interpretation made by the Board of Commissioners or a designee, or (b) the alternative decision or interpretation offered by the appellant, more accurately reflects the intents of this Ordinance that new development in the County pay its proportionate share of the costs of System Improvements to County Capital Facilities necessary to serve new development. The County Commissioners shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

10.2 Binding Arbitration

.1 As an alternative to the appeal process set forth in Section 10.1 above, any Developer or Successor in Interest who is or may be obligated to pay a Development Impact Fee, or who claims a right to receive a refund, reimbursement, or credit under this ordinance, and who is dissatisfied with a decision made by the County Administrator or a designee in applying this Ordinance, may request that the dispute be resolved through binding arbitration. Such arbitration shall be at the Feepayor's expense.

.2 In order to pursue such an appeal, the Developer or Successor in Interest shall file a written request for binding arbitration with the Board of Commissioners or a designee within thirty (30) days after the date of the decision being appealed, or the date on which the Developer or Successor in Interest submitted a payment of Development Impact Fees under protest, whichever is later. Such written application shall include a statement of why the applicant believes that the decision was in error, together with copies of any documents that the applicant believes support the claim.

.3 The County shall then make arrangements for binding arbitration of the dispute pursuant to the rules of the American Arbitration Association for disputes of this type, except that the allocation of the costs of arbitration shall not be subject to such rules, and shall instead be paid by the Developer or Successor in Interest requesting the arbitration.

SEC. 11: MISCELLANEOUS PROVISIONS

- 11.1** Notwithstanding any other provision of this Ordinance, that portion of a project for which a valid Building Permit has been issued prior to the effective date of this Ordinance shall not be subject to the Development Impact Fees imposed by this Ordinance so long as the Building Permit remains valid and construction is commenced and is pursued according to the terms of the permit.
- 11.2** Nothing in this Ordinance shall restrict the County from requiring Developer or an applicant for a Development Approval or Building Permit to construct Project Improvements or other reasonable Project Improvements required to serve the applicant's project, whether or not such improvements are of a type for which credits are available under Sec. __-9 of this Ordinance, provided that such request does not duplicate a System Improvement for which costs were included in the *Development Impact Fee Study*.
- 11.3** At least once during each fiscal year of the County, County Administrator or a designee shall present to the County Commission a proposed Capital Improvements program, and such Capital Improvements program shall assign monies from each Development Impact Fee Trust Fund Account to specific projects and related expenses for the type of System Improvements for which the fees in that Account were paid. Any monies, including any accrued interest not assigned to specific System Improvements within such Capital Improvements program and not expended pursuant to Section 7 of this Ordinance or refunded pursuant to Section 8 of this Ordinance shall be retained in the same Account until the next fiscal year.
- 11.4** The County shall be entitled to retain not more than three (3) percent of the Development Impact Fees collected as payment for the expenses of collecting the fees and administering this Ordinance.
- 11.5** If Development Impact Fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated within ninety (90) days of the issue being raised. Any amounts overpaid by a Feepayor shall be refunded by the County within thirty (30) days after the County's acceptance of the recalculated amount, with interest at the rate of three percent (3%) per annum since the date of such overpayment. Any amounts underpaid by the Feepayor shall be paid to the County within thirty (30) days after the County's acceptance of the

Effingham County, Georgia
Impact Fee Ordinance

recalculated amount, with interest at the rate of three percent (3%) percent per annum since the date of such underpayment. In the case of an underpayment to the County, the County shall not issue any additional Development Approvals or Building Permits for the project for which the Development Impact Fee was paid until such underpayment is corrected, and if amounts owed to the County are not paid within such thirty (30) day period, the County may also repeal any Development Approvals or Building Permits issued in reliance on the previous payment of such Development Impact Fee and refund such Fee to Feepayor who made the payment.

- 11.6** The Development Impact Fees described in this Ordinance and the administrative procedures of this Ordinance shall be reviewed at least once every five (5) years to ensure that (1) the demand and cost assumptions underlying such Fees are still valid, (2) the resulting Fees do not exceed the actual cost of constructing the County Capital Facilities the monies collected or to be collected in each Account have been and are expected to be spent for System Improvements of the type for which such Fees were paid, and (4) such System Improvements will benefit those developments for which the Fees were paid.
- 11.7** Nothing in this Ordinance shall be construed to prevent or prohibit private agreements between property owners or Developers and the County in regard to the construction or installation of System Improvements and providing for credits or reimbursements for System Improvement costs incurred by a Developer, including interproject transfers of credits or providing for reimbursement for Project Improvement costs that are used or shared by more than one development project.
- 11.8** The county may exempt all or part of particular development projects from development fees if:
- .1 Such projects are determined to create extraordinary economic development and employment growth or affordable housing;
 - .2 The public policy which supports the exemption is contained in the county's comprehensive plan;
 - .3 The exempt development's proportionate share of the system improvement is funded through a revenue source other than development impact fees.
- 11.9** Violation of this Ordinance shall be a misdemeanor and shall be subject to those remedies provided in Effingham County Code section 1-19. Knowingly furnishing false information to any official of the County charged with the administration of this Ordinance on any matter relating to the administration of this Ordinance, including without limitation the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this Ordinance.

Effingham County, Georgia
Impact Fee Ordinance

11.10 The section titles used in this Ordinance are for convenience only, and shall not affect the interpretation of any portion of the text of this Ordinance.

11.11 All provisions, terms, phrases and expressions contained in this Ordinance shall be liberally construed in order that the true intent and meaning of the Georgia Development Impact Fee Act and the County Commissioners may be fully carried out.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

This 4th day of January, 2005.

BOARD OF COMMISSIONERS,
EFFINGHAM COUNTY, GEORGIA

BY: /s/ Hubert C. Sapp
CHAIRMAN

ATTEST:

/s/ Sandra Andrews

SANDRA ANDREWS

EFFINGHAM COUNTY CLERK

FIRST READING 12/14/04

SECOND READING 01/04/05

Effingham County, Georgia
Impact Fee Ordinance

EXHIBIT A: DEVELOPMENT IMPACT FEE SCHEDULE

DEVELOPMENT IMPACT FEES						
USES	Parks	Public Safety	Roads	Sewer	Water	TOTAL
RESIDENTIAL (PER UNIT)						
Detached Housing	\$320	\$192	\$988	\$2,500	\$2,000	\$6,000
Attached Housing	\$211	\$127	\$681	\$1,651	\$1,322	\$3,992
NONRESIDENTIAL (PER SQUARE FOOT OF FLOOR AREA UNLESS OTHERWISE STATED)						
Commercial/Retail Centers						
25,000 sf or less	NA	\$.10	\$2.07			\$2.17
25,001 – 100,000 sf	NA	\$.08	\$1.68			\$1.76
100,001 – 400,000 sf	NA	\$.06	\$1.24			\$1.30
General Office						
10,000 sf or less	NA	\$.05	\$1.20			\$1.25
10,001-25,000 sf	NA	\$.03	\$.98			\$1.01
25,001 – 50,000 sf	NA	\$.03	\$.83			\$.86
Medical/Dental Office Bldg	NA	\$.08	\$1.92			\$2.00
Hospital	NA	\$.03	\$.93			\$.96
Nursing Home (per bed)	NA	\$5	\$126			\$131
Business Park	NA	\$.03	\$.68			\$.71
Light Industrial	NA	\$.01	\$.37			\$.38
Warehouse	NA	\$.01	\$.26			\$.27
Mini-Warehouse	NA	\$.00	\$.13			\$.13
Religious institutions without weekday school or day care activities	NA	\$.00	\$.13			\$.13
Lodging (per room)	NA	\$12	\$299			\$311
Day Care (per student)	NA	\$10	\$238			\$248
NON-RESIDENTIAL (PER METER SIZE)						
.75 inch				\$2,500	\$2,000	\$4,500
1 inch				\$4,167	\$3,333	\$7,500
1.5 inches				\$8,333	\$6,667	\$15,000
2 inches				\$13,333	\$10,667	\$24,000
3 inches				\$26,667	\$21,333	\$48,000
4 inches				\$41,667	\$33,333	\$75,000