



CAPE COD COMMISSION

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CAPE COD COMMISSION

CHAPTER F

Impact Fee Enabling Regulations Barnstable County Ordinance 98-6

May 1998

CHAPTER F - To adopt regulations for the Cape Cod Commission for the purpose of establishing Impact Fee Enabling Regulations

Section 1. General Provisions

(a) Source of Authority

These regulations of the Cape Cod Commission are adopted pursuant to the authority of Sections 6 and 15 of Chapter 716 of the Acts and Resolves of 1989, as amended.

(b) Effective Date

The regulations set forth herein shall become effective upon passage as an ordinance and upon filing with the Clerk of the Commission, the Barnstable County Registry of Deeds and the County Clerk.

(c) Applicability

Nothing herein shall restrict, prohibit, or invalidate the imposition of fees or development exactions, including but not limited to those imposed as conditions on special permits or Development of Regional Impact approvals, or as otherwise allowed by law and/or pursuant to Home Rule; provided, however, that no municipality may impose a fee more than once for the same impact.

(d) Definitions

The definitions contained in Section 2 of the Cape Cod Commission Act and the definition section of the Cape Cod Regional Policy Plan shall apply to these regulations. In addition, the following terms shall have the following meanings:

Act: An Act Establishing the Cape Cod Commission, Chapter 716 of the Acts of 1989, as amended.

Affordable Housing: Dwelling units available at a cost of no more than 30% of gross household income to households at or below 80% of the county median income, as reported by the U.S. Department of Housing and Urban Development, including sites listed under M.G.L. c. 40B and the State's Local Initiative Program.

Clerk: Clerk of the Cape Cod Commission.

Commission: The Cape Cod Commission.

Credit: The present value of past, present, or future payments, or a portion thereof, made by new developments towards the cost of existing or future related capital improvements (i.e. property tax, gasoline tax, or the contribution, payment, development or dedication of land or the payment of other consideration) accepted and received by the municipality and relating to funding the cost of relevant capital improvements.

Executive Director: The Executive Director the Cape Cod Commission.

Fee Payer: An applicant for a development permit.

Offset: System whereby payment of an impact fee is provided through a public or private source other than the project proponent.

RPP: Cape Cod Regional Policy Plan, Chapter B, Code of Cape Cod Commission Regulations of General Application, Barnstable County Ordinance 96-8, as amended.

Section 2. Purpose of Impact Fees

The purpose of impact fee bylaws is to set forth an orderly system for payments to municipalities, paid by a person undertaking a development, which is designed to offset specific impacts of the proposed development. Impact fees may include but are not limited to payments for creation or improvement of public capital facilities including: streets; sewers and sewage treatment facilities; water supply and distribution facilities; drainage facilities; parks; improvements to publicly owned natural resource areas; schools; police and fire facilities; affordable housing and other municipal capital facilities.

Section 3. Requirements for Calculating and Assessing Impact Fees

Any impact fee imposed or permitted pursuant to these regulations shall comply with the following:

- (a) it shall have a rational nexus and be roughly proportional to an impact created by the development;
- (b) it shall reasonably benefit the proposed development;
- (c) it shall be used for the development or improvement of municipal capital facilities in accordance with the agency or municipality's capital facilities planning element of the local comprehensive plan, as said element may be amended from time to time;
- (d) it shall be spent, used, or obligated within a reasonable period of time, not to exceed 10 years, or, any portion, including interest, not spent shall be refunded to the applicant or party legally entitled to it as a result of an assignment from the applicant upon request. The bylaw/ordinance shall include a procedure for the disbursement of refunds;
- (e) it shall be paid to and held in a separate account(s) for each type of impact fee assessed in the municipality in which the proposed development is located;
- (f) In the event that the proposed development is located in or impacts more than one municipality, the impact fee shall be rationally apportioned among the municipalities with a certified comprehensive plan in accordance with the land area of the proposed development in each municipality or in such other allocation as may be jointly agreed upon by the participating municipalities. Impact fee bylaws/ordinances may authorize the creation of a service area/benefit district which encompasses more than one municipality, in which case the bylaw/ordinance shall specify the boundaries of the service area/benefit district and shall further specify that such impact fee shall be administered consistent with a valid intergovernmental agreement;
- (g) Impact fee bylaws/ordinances shall include the type(s) of fee to be collected, the level of service to be obtained, the service area/benefit district to be served, the table or formula establishing fees to be paid by different types and classes of development, and shall designate a municipal officer responsible for accounting for receiving, tracking and spending fees;
- (h) Impact Fee bylaws/ordinances shall include procedures for waiving or offsetting impact fees for affordable housing developments in proportion to the percentage of affordable housing in the project and shall identify one or more sources of funding to offset such fees;
- (i) Impact Fee bylaws/ordinances may include procedures for offsetting impact fees to promote economic opportunities consistent with Sections 3.1.3, 3.1.4, 3.1.5, and 3.1.6 of the RPP adopted in 1996 and shall identify one or more sources of funding to offset such fees;

- (j) Impact Fee bylaws/ordinances shall include procedures to offset impact fees to the extent that a development previously contributed to the cost of relevant capital improvements and qualifies for a Credit;
- (k) Impact fee bylaws/ordinances shall include procedures to offset impact fees to the extent that a development is projected to contribute in the future to the cost of relevant capital improvements and qualifies for a Credit;
- (l) Impact fee bylaws/ordinances shall include a provision for written notice of the assessment of the fee to the Fee Payer, including but not limited to the amount of the fee and the due date, with a copy of such notice to be filed with the town clerk in the municipality where the fee is assessed;
- (m) Impact fee bylaws/ordinances shall set forth the time of collection and method of payment of impact fees and may authorize payment over time;
- (n) Impact fee bylaws/ordinances may authorize credits against the assessed fee for the value of in-kind voluntary improvements to public facilities or payments made by the Fee Payer to the municipality so long as such in-kind improvement or payment was made within 10 years of the assessment of the impact fee and so long as the improvement or payment is for the same impact as the assessed fee. Credit against the impact fee may also be provided for off-site improvements made to public property consistent with a prior written agreement between the Fee Payer and the municipality;
- (o) Impact Fee bylaws/ordinances may include procedures for securing payment of the full impact fee as follows:
 - (1) by a deposit of money or negotiable securities, sufficient in the opinion of the municipality or its designee to secure the full payment of the fee, and the municipality may require that the Fee Payer specify the time within which such fee shall be paid; or
 - (2) by a covenant, executed and duly recorded by the owner of record, running with the land, whereby the impact fee shall be provided before any lot may be built upon or conveyed.
- (p) Impact fee bylaws/ordinances may provide that the entire fee or credit is chargeable to the development at the time of development approval, or, if the development is to be constructed in a phased sequence, the municipality may determine the fee or credit based solely upon that segment of the development for which the developer is about to commence construction;
- (q) Impact fee bylaws/ordinances shall include procedures for adoption and amendment;
- (r) Each municipality which adopts an impact fee bylaw/ordinance shall adopt a bylaw/ordinance or bylaw provision which establishes a procedure by which an aggrieved land owner may apply for an appeal from the amount of the assessed fee, in whole or in part. Such a bylaw/ordinance shall include:
 - i) a description of the manner in which the appeal should be made and the person or persons to whom the request should be directed (i.e., filed in writing with the Town Clerk within 90 days of the assessment or the developer waives his right to protest the fee); and
 - ii) a provision requiring the Fee Payer to provide a statement of the facts setting forth the basis for the appeal, including whether a full or partial relief is sought and an alternative

calculation of the Fee Payer's proper contribution, and requiring the Fee Payer to provide supporting documentation; and

iii) a requirement that a hearing be held on the petition within a specified number of days after the filing of an appeal and to create a detailed description of the nature of the proceedings of the hearing; and

iv) a designation of the entity that will hear any appeal; and

v) the criteria for granting relief, in whole or in part, including:

(i) a determination that the assessed fee is disproportionate to the need for additional services attributable to the proposed development.

Section 4. Procedures for Adopting Impact Fee Bylaws

Municipality(ies) which have local comprehensive plans certified by the Commission may adopt bylaws/ordinances authorizing the imposition of impact fees, in accordance with Sections 9 and 15 of the Act. Nothing contained herein shall require the imposition of impact fees by a municipality. Municipalities which choose to enact impact fees shall adopt or amend an impact fee bylaw or ordinance consistent with these regulations and their usual processes.

(a) Municipalities shall hold at least one public hearing to discuss the proposed Impact Fee bylaw/ordinance;

(b) Municipalities shall submit proposed Impact Fee bylaws/ordinances to the Commission for comment at least 30 days prior to a Town Meeting or Town Council vote;

(c) Impact Fee bylaws/ordinances shall be approved at Town Meeting or, in Barnstable, by the Barnstable Town Council and shall be adopted as a general bylaw/ordinance;

(d) Impact Fee bylaws shall be approved by the Massachusetts Attorney General if required by law.

Section 5. Effect of Decertification of a Local Comprehensive Plan

Revocation of certification of a local comprehensive plan will result in the loss of ability to assess impact fees. Revocation of certification shall not affect the validity or retention of any impact fees collected by a town or required under a binding agreement or development permit fully executed or issued prior to such revocation.

Section 6. Procedure for Commission Imposition of Impact Fees

The Commission may impose impact fees on proposed developments for improvements to capital facilities after holding a public hearing and adopting regulations governing the same. Calculation and assessment of impact fees shall be consistent with the requirements of the Act and Section 3 of these regulations. Nothing herein contained shall require the imposition of impact fees by the Commission.