

CITY OF EASLEY ORDINANCE 2021-13

AN ORDINANCE ADOPTING PROCEDURES FOR THE IMPOSITION, CALCULATION, COLLECTION, EXPENDITURE AND ADMINISTRATION OF IMPACT FEES TO BE IMPOSED ON NEW DEVELOPMENT; PROVIDING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; PROVIDING GENERAL PROVISIONS AND APPLICABILITY; PROVIDING FOR THE ESTABLISHMENT OF IMPACT FEE ACCOUNTS; PROVIDING FOR THE APPROPRIATION OF IMPACT FEE FUNDS; PROVIDING FOR REFUNDS; PROVIDING FOR APPEALS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Easley (City) is authorized to establish and impose impact fees on new development to finance public facilities necessitated by such development; and

WHEREAS, the City has studied the necessity for and implications of the adoption of impact fees for various public facilities; and

WHEREAS, the City Council has found and determined that most impact fees will have certain common characteristics and, therefore, will benefit from the adoption and use of a uniform procedure for the imposition, calculation, collection, expenditure, and administration of impact fees; and

WHEREAS, the use of uniform procedures, to the extent possible, will be more efficient and expedient for both the City and development applicants than separate procedures for each impact fee; and

WHEREAS, the use of uniform procedures will simplify the implementation and administration of impact fees; and

WHEREAS, the use of uniform procedures will best ensure that impact fees are "earmarked" and expended for the public facilities for which they are imposed and collected; and

WHEREAS, all monies collected from impact fees shall be deposited in interest-bearing accounts which clearly identify the category, account, fund, and public facility for which such fee was imposed; and

WHEREAS, each such category, fund, or account shall be accounted for separately; and

WHEREAS, any interest or other income earned on monies deposited in the interest-bearing accounts shall be credited to the account; and

WHEREAS, the City Council has determined that impact fees are appropriate for funding public facilities;

NOW, THEREFORE, BE IT ORDAINED that the following impact fee procedures and requirements are set forth and are applicable to new development, as set forth herein:

SECTION I. PURPOSE AND INTENT.

The purposes and intent of the Impact Fee Procedures are to:

- A. Establish uniform procedures for the imposition, calculation, collection, expenditure, and administration of impact fees imposed on new development;
- B. Implement the goals, objectives, and policies of the City of Easley relating to assuring that new development contributes its fair share towards the costs of public facilities reasonably necessitated by such new development;
- C. Ensure that new development is benefitted by the provision of the public facilities funded, in whole or in part by the impact fees;
- D. Ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

SECTION II. DEFINITIONS.

The words or phrases used in this Ordinance shall have the meaning prescribed in the current City of Easley Code except as otherwise indicated in this section. To the extent that the definitions of words, terms or phrases as prescribed in S.C. Gen. Stat. Sec. 6-1-920, as amended, conflict with the definition of words, terms or phrases as defined in this Ordinance or other City ordinances, the former shall control:

- A. **Appropriation or to Appropriate:** An action by the City Council or the applicable service provider to identify specific public facilities for which impact fee funds may be utilized. Appropriation shall include, but shall not necessarily be limited to: inclusion of a public facility in the capital improvements plan for the particular impact fee prepared in accordance with S.C. Gen. Stat. Sec. 6-1-910, *et seq.*, as amended, The South Carolina Development Impact Fee Act; execution of a contract or other legal encumbrance for construction of a public facility using impact fee funds in whole or in part; and actual expenditure of impact fee funds through payments made from an impact fee account for public facilities in the capital improvements plan
- B. **Capital Improvements:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(2), as amended (... improvements with a useful life of five years or more, by new construction or other action, which increase or increased the service capacity of the public facility.)
- C. **Capital Improvements Plan:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(2), as amended (... a plan that identifies capital improvements for which impact fees may be used as a funding source.)
- D. **Developer:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(5), as amended (... an individual, corporation, partnership, or other entity undertaking development.)
- E. **Development:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(6), as amended (... construction or installation of a new building or structure, or a change in use of a building or structure, any of which creates additional demand and need for public facilities. A building or structure shall include but not be limited to, modular buildings and manufactured housing. "Development" does not include alterations made to existing single-family homes.)
- F. **Development Impact Fee or Impact Fee:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(8), as amended.

- G. **Director:** The Director of Planning or a designee.
- H. **District or Impact Fee District:** A defined geographic area or subarea of the City which serves as the service area within which particular impact fees are collected, appropriated, and expended for public facility system improvements that are identified in the capital improvement plan for the public facility.
- I. **Fee payor:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(10), as amended (...the individual or legal entity that pays or is required to pay a development impact fee.)
- J. **Governmental Entity:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(11), as amended. (...a City, as provided in Chapter 9, Title 4, and a municipality, as defined in Section 5-1-20)
- K. **Impact Fee District Map:** The map(s) defining the geographical extent of the impact fee districts and subdistricts for each adopted impact fee, as may be necessary.
- L. **Level of Service:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(14), as amended (...a measure of the relationship between service capacity and service demand for public facilities.)
- M. **Multiple Uses:** A new development consisting of both residential and non-residential uses or one (1) or more different types of non-residential uses on the same site or part of the same new development.
- N. **Proportionate Share:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(17), as amended (that portion of the costs of system improvements determined pursuant to Section 6-1-990 which reasonably relates to the service demands and needs of the project.)
- O. **Public Facilities:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(18), as amended. (... (1) Water supply production, treatment, laboratory, engineering, administration, storage and transmission facilities. (2) Wastewater collection, treatment, laboratory, engineering, administration and disposal facilities. (3) Solid waste and recycling collection, treatment and disposal facilities. (4) Roads, streets and bridges, including, but not limited to, rights-of-way and traffic signals. (5) Stormwater transmission, retention, detention, treatment and disposal facilities and flood control facilities. (6) Public safety facilities, including law enforcement, fire, emergency medical and rescue, and street lighting facilities. (7) Capital equipment and vehicles, with an individual unit purchase price of not less than \$100,000.00 including, but not limited to, equipment and vehicles used in the delivery of public safety services, emergency preparedness services, collection and disposal of solid waste, and stormwater management and control. (8) Parks, libraries and recreational facilities.)
- P. **Service Area:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(19), as amended (...based on sound planning or engineering principles, or both, a defined geographic area in which specific public facilities provide service to development within the area defined. ...)
- Q. **Service Unit:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(20), as amended (... a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.)

- R. **Successor in Interest:** A person who gains a fee simple interest in land for which an impact fee is paid, or an offset is approved pursuant to the terms of this Ordinance.
- S. **System Improvements:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(21), as amended (... capital improvements to public facilities which are designed to provide service to a service area.)
- T. **System Improvements Costs:** Has the meaning established in S.C. Gen. Stat. Sec. 6-1-920(22), as amended.

SECTION III. DEVELOPMENT IMPACT FEE SCHEDULE

A. Residential Development Impact Fee Schedule.

1. Residential Development Impact Fee Schedule Table

Development Type	Parks & Recreation	Police	Fire	Transportation	Maximum Supportable Fee
Residential (per housing unit)					
Single Family	\$1,715	\$406	\$629	\$590	\$3,340
Multifamily	\$1,211	\$287	\$444	\$251	\$2,193

B. Non-residential Development Impact Fee Schedule.

1. Non-residential Development Impact Fee Schedule Table

Development Type	Parks & Recreation	Police	Fire	Transportation	Maximum Supportable Fee
Nonresidential (per 1,000 square feet)					
Retail	\$0	\$574	\$990	\$714	\$2,278
Office	\$0	\$195	\$336	\$268	\$799
Industrial	\$0	\$99	\$171	\$137	\$407
Institutional	\$0	\$214	\$370	\$295	\$879

- C. **Development Impact Fee Implementation Schedule.** The development impact fees shall become effective on January 1, 2022, on any new permits, renewal of expired permits, or any other issuance of construction permits following this date. From January 1, 2022, until December 31, 2022, the Impact Fee shall be 50% of the Fee Schedule adopted by City Council. The fee schedule shall be adjusted on January 1, 2023, to 75% of the Fee Schedule, and on January 1, 2024, to 100% of the Fee Schedule. It will remain at 100% of any Fee Schedule adopted by City Council after this date.
- D. **Development Impact Fee Schedule Annual Update.** The development impact fees shall be adjusted annually to reflect the effects of inflation on the costs for facilities set forth in the Development Impact Fee Study and CIP dated May, 2021. The fee schedule shall be adjusted using the Construction Cost Index calculated by the Engineering News Record (ENR). For each such adjustment, the development impact fees shall be multiplied by a fraction, the numerator of which is the ENR Construction Cost Index for the most recent month for which figures are available, and the denominator of which is the ENR Construction Cost Index for the period one year prior to the period reflected in the numerator.

SECTION IV. GENERAL PROVISIONS; APPLICABILITY.

A. Term. These Procedures shall remain in effect unless and until repealed, amended or modified by the City Council in accordance with applicable State law and City ordinances and resolutions.

B. Annual Review.

1. At least once every year not later than January 1 stand prior to City Council adoption of the Annual Budget and Capital Improvements Program, the City Administrator or a designee shall coordinate the preparation and submission of a report on the subject of impact fees.
2. The report shall include the following:
 - a. recommendations on amendments, if appropriate, to these procedures or to specific ordinances adopting impact fees for particular public facilities;
 - b. proposed changes to the City of Easley policies and/ or an applicable Capital Improvements Program, or the capital improvement plan for the particular public facility, including the identification of public facility system improvements anticipated to be funded wholly or partially with impact fees;
 - c. proposed changes to the boundaries of impact fee districts or subdistricts, as appropriate;
 - d. proposed changes to impact fee schedules as set forth in the ordinances imposing and setting specific impact fees;
 - e. proposed changes to level of service standards;
 - f. proposed changes in the impact fee calculation methodology;
 - g. other data, analysis, or recommendations as the City Administrator or a designee may deem appropriate, or as may be requested by the City Council.
3. **Submission of Impact Fee Annual Report and City Council Action.** The City Administrator or a designee shall submit the Impact Fee Annual Report to the City Council, which shall receive the Report and take such actions as it deems appropriate, including but not limited to requesting additional data or analyses and holding public workshops and/or public hearings.

C. Affected Area.

1. **Impact Fee Districts.** Impact fees may be imposed on new development in City of Easley for particular public facilities authorized by state law. The particular impact fees may be divided into Impact Fee Districts (and subdistricts) by the City Council for purposes of expenditure of impact fees funds.

D. Type of Development Affected. These Procedures shall apply to all new development as defined in this Ordinance and as defined in the applicable Fee-Setting Ordinances.

E. Type of Development Not Affected. The requirements of this Ordinance and the applicable Fee-Setting Ordinances shall not apply to:

1. **Building Permits.** New development for which a building permit has been issued prior to the effective date of these Procedures, as amended.
2. **Previous Payment of Impact Fees.** New development for which impact fees have been paid in full.
3. **Public Facilities Provided By the State of South Carolina or the Federal Government.** The development of public facilities by the State of South Carolina or the Federal government.
4. **No Net Increase in Dwelling Units.** New residential development which does not add a new dwelling unit.
5. **No Net Increase in Non-Residential Square Footage.** New nonresidential development which does not add square footage of floor area.
6. **Construction Trailer or Office during Construction.** The placement of a construction trailer or office on a lot during the period of construction on the lot.
7. **Use Accessory to Residential Uses.** Adding uses that are typically accessory to residential uses, such as a tennis club or clubhouse, unless it is clearly demonstrated that the use creates a significant impact on the demand for a particular public facility.
8. **Other Uses.** A use, development, project, structure, building, fence, sign, or other activity which does not result in an increase in the demand for a public facility system improvements for which impact fees are imposed and collected in accordance with this Ordinance and the applicable Fee-Setting Ordinances.

F. Effect of Payment of Impact Fees on Other Applicable City Land Development Regulations

1. The payment of impact fees shall not entitle the applicant to a development permit unless all other applicable requirements, standards, and conditions of approval have been met. Such other requirements, standards, and conditions of approval are independent of the requirement for payment of impact fees.
2. Neither these Procedures or the applicable Fee-Setting Ordinances shall affect, in any manner, the use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the City of Easley Land Development Regulations.

G. **Amendments.** This Ordinance, and any applicable Fee-Setting Ordinances for any particular public facilities may be amended from time to time by the City Council,

SECTION V. PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF IMPACT FEES.

A. **In General.** An applicant shall be notified by the City of the applicable impact fee requirements at the time of application for a building permit and calculated and paid prior to issuance of a building permit.

B. Calculation.

1. Upon receipt of an application for a building permit, the Director shall determine (a) whether it is a residential or non-residential use; (b) the specific category (type) of residential or non-residential development, if applicable; (c) if residential, the number of new dwelling units; (d) if non-residential, the number of new or additional square feet of floor area and the proposed use; and (e) the Impact Fee District(s) in which the new development is located. After making these determinations, the Director shall calculate the impact fees due. If the applicant has requested an offset pursuant to Section 4. (c), the offset shall be calculated and subtracted from the impact fees due.
2. If the type of land use proposed for new development is not expressly listed in the specific Fee-Setting Impact Fee Ordinance, the Director shall (a) identify the most similar land use type listed and calculate the impact fees based on the fees for that land use, or (b) identify the broader land use category within which the specific land use would apply and calculate the impact fees based on the impact fees for that land use category.
3. An applicant may request a non-binding estimate of impact fees due from the Director for a particular new development at any time. The estimate may change depending on the time a formal application for a building permit is submitted.
4. The calculation of impact fees due from a multiple-use new development shall be based upon the fees due for each use.
5. The calculation of impact fees due from phased development shall be based upon the demand generated by each specific use of the phase of the development.

C. Offsets.

1. Offsets against the amount of impact fees due from a new development may be provided by an applicant for the dedication of land and/or the provision of public facility system improvements that are identified in the capital improvement plan for the particular public facility. If either (a) the costs of such land or public facilities have been included in the capital improvement plan for the public facility or the impact fee calculation methodology, or (b) the land dedicated is determined by the Director to be a reasonable substitute for the cost of public facilities which are included in the capital improvement plan and applicable impact fee calculation methodology.
2. Applications for offsets shall be made on forms provided by the Director and shall be submitted concurrent or prior to an application for building permit. The application for an offset shall be accompanied by evidence establishing the eligibility of the applicant for the offset. The Director shall calculate the applicable impact fees without the offset and then determine whether an offset is due and, if so, the amount of the offset. The offset shall be applied against the impact fees due. In no event shall an offset be granted in an amount exceeding the impact fees due.
3. Offsets for dedication of land or provision of public facility system improvements that are identified in the capital improvement plan shall be applicable only as to impact fees imposed for the same types of public facilities. Even if the value of the dedication of land or provision of a public facility exceeds the impact fees due for the type of public facility, the excess value

may not be transferred to impact fees calculated as due from the applicant for other types of public facilities, nor may the excess value be transferred to other applicants or properties.

D. Collection

1. The Director shall collect all applicable impact fees prior to the issuance of a building permit unless:
 - a. the applicant is determined to be entitled to a full offset; or
 - b. the applicant has been determined to be not subject to the payment of impact fees; or
 - c. the applicant has taken an appeal pursuant to Section VI, and a bond or other surety in the amount of the impact fee, as calculated by the Director, has been posted with the City.

SECTION VI. ESTABLISHMENT OF IMPACT FEE ACCOUNTS; APPROPRIATION OF IMPACT FEE FUNDS; AND REFUNDS.

A. Impact Fee Accounts. An Impact Fee Account is established by the City for each public facility for which impact fees are imposed. Such accounts shall clearly identify the category, account, or fund for which the impact fees are imposed. Subaccounts may be established for individual Impact Fee Districts and subdistricts. All impact fees collected by the City shall be deposited into the appropriate Impact Fee Account or subaccount, which shall be interest bearing. All interest earned or monies deposited to the accounts or subaccounts shall be credited to and be considered funds of the account. The funds of each account shall not be commingled with other funds or revenues of the City. The City shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited, accounted for, and appropriated in accordance with these Procedures, and any other applicable legal requirements.

B. Appropriation of Impact Fee Funds

1. **In General.** Impact fee funds may be appropriated for public facilities identified in the capital improvement plan of the public facility and for the payment of principal, bonds, contracts, and other obligations issued by or on behalf of the City or other applicable service providers to finance such public facilities.
2. **Restrictions on Appropriations.** Impact fees shall be appropriated only (a) for the public facility for which they were imposed, calculated, and collected and (b) within the Impact Fee District or subdistrict where collected. They shall be appropriated and expended within three (3) years of the date they were scheduled to be expended in the capital improvements plan. Impact fees shall not be appropriated or expended for funding maintenance or repair of public facilities nor for operational or personnel expenses associated with the provision of the public facility.
3. **Appropriation of Impact Fee Funds Outside of District or Subdistrict Where Collected.** Impact fee funds may be appropriated for a public facility located outside of the district or subdistrict where collected, if the demand for the public facility is generated in whole or in part by the new development or if the public facility will serve the new development.

C. Procedure for Appropriation of Impact Fee Funds.

1. The City shall each year identify public facility projects anticipated to be funded in whole or in part with impact fees. The public facility recommendations shall be based upon the impact fee annual review set forth in Section 3(b) and such other information as may be relevant, but shall not be part of the annual budget and capital improvements programming process.
2. The recommendations shall be consistent with the provisions of these Procedures, the Fee-Setting Impact Fee Ordinance for the public facility, applicable legal requirements, and any guidelines adopted by the City Council.
3. The City Council may include impact fee funded public facilities in the City's annual budget and capital improvements program. If included, the description of the public facility shall specify the nature of the public facility, the location of the public facility, the capacity to be added by the public facility, the service area of the public facility, the need/demand for the public facility, and the anticipated timing of completion of the public facility
4. The City Council shall verify that adequate impact fee funds are or will be available from the appropriate Impact Fee Accounts for the specific public facility.

D. Refunds

1. Eligibility for Refund.

- a. **Expiration or Revocation of Permit or Approval, or Demolition.** An applicant or a successor-in-interest who paid impact fees for new development for which an approval or permit has expired or been revoked, or which is demolished with five years of payment of the fee, is eligible to apply for a refund of impact fees paid.
 - b. **Failure of City to appropriate Impact Fee Funds Within Time Limit.** The City shall notify the owner of record of a development that has paid impact fees if the City has failed to appropriate and expend the impact fees collected from the applicant within the time limits established in Section 5.B.2, and the owner of record is eligible to apply for a refund of impact fees paid. The accounting shall be based on a first-in, first out basis.
 - c. **Reduction in Density or Intensity of New Development.** An applicant or a successor-in-interest who paid impact fees is eligible for a refund if the density or intensity of the development for which the impact fees are paid is reduced after payment of the fees, and the fees are not appropriated and expended.
2. **Refund Application for Expiration or Revocation of Permit or Approval, or Demolition.** Applications for a refund due to expiration or revocation of a permit or approval, or demolition of the development shall include: (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the impact fees paid and receipts evidencing such payments, and (c) documentation evidencing the expiration or revocation of the permit or approval, or demolition of the structure pursuant to a valid City issued demolition permit. Failure to apply for the refund within sixty (60) days following expiration or revocation of the permit or approval, or demolition of the building or structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the City in calculating the amount of the refunds.

3. **Refund Application for Failure of City to Appropriate and Expend Funds.** Applications for refunds due to City failure to appropriate and expend fees collected from an applicant within the time limits established in Sections 5.B.2. shall be initiated by the owner-of-record within one hundred and twenty (120) days after the City has notified the owner of a right to a refund. To receive the refund, the owner-of-record shall submit (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, and (b) the amount of the impact fees paid and receipts evidencing the payments. Refunds shall include any interest earned on the impact fees being refunded.
4. The City may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same public facility for new development on the same property, or by other means subject to agreement with the person receiving the refund.

SECTION VII. APPEALS.

- A. A fee payor may pay an impact fee under protest. A fee payor making the payment of impact fees is not estopped from exercising the right of appeal under this Ordinance, or estopped from receiving a refund for any overpayment of the fees, if that is determined to be the case on appeal.
- B. An appeal from any decision of the Director pursuant to these Procedures shall be made to the City Council. If the notice of appeal is accompanied by a letter of credit in a form satisfactory to the City Attorney in an amount equal to the impact fees due, the development may be approved. The filing of an appeal shall not stay the imposition or the collection of impact fees unless a bond or other sufficient surety is provided.
- C. The burden of proof shall be on the appellant to demonstrate that the decision of the Director is erroneous.

SECTION VIII. EXEMPTIONS/WAIVERS.

- A. **Filing of Application.** Petitions for exemptions to the application of these Procedures or waivers from specific impact fees shall be filed with the City Council
- B. **Effect of Grant of Exemption/Waiver.** If the City Council grants an exemption or waiver, the amount of the impact fees exempted or waived shall be provided by the City or other appropriate service provider for the particular public facilities, from non-impact fee funds. The funds shall be deposited in the appropriate Impact Fee Account.
- C. **Timing of Provision of Waived/Exempted Impact Fees.** The provision of the amount of exempted or waived impact fees by the City or other appropriate service provider shall be made within a reasonable period of time, consistent with the applicable capital improvements program and the capital improvement plan for the public facility.
- D. **Development Agreements.** Nothing herein shall be deemed to limit the City's authority and ability to enter into development agreements with applicants for new development which provide for payments in-lieu of impact fees.

SECTION IX. MEDIATION.

If there is a dispute between a fee payor and the City about an impact fee amount due, an offset, or a waiver, the City Council and the fee payor may agree to resolve the dispute through mediation, by using a qualified

independent mediator, by mutual agreement. Participation in mediation does not preclude the fee payor from pursuing other remedies provided by law.

SECTION X. CONFLICT.

To the extent of any conflict between other City ordinances and these Procedures, these Procedures shall be deemed to be controlling; provided, however, that these Procedures are not intended to amend or repeal any existing City ordinance, resolution, or regulation.

SECTION XI. SEVERABILITY.

- A. If any section, subsection, sentence, clause, phrase, or portion of these Procedures is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or portion of these Procedures shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of these Procedures nor impair or nullify the remainder of such Procedures which shall continue in full force and effect.
- B. If the application of any provision of these Procedures to any new development is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the City Council is that such decision shall be limited to the specific new development immediately involved in the controversy, action, or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify these Procedures as a whole or the application of any provision of these Procedures to any other new development.

ADOPTED this 12th day of July, 2021

First Reading: 6-14-2021

Second Reading: 7-12-2021

By: Butch Womack
Mayor Butch Womack

ATTEST:

Lisa S. Chapman
Lisa S. Chapman, CMC
City Clerk