ARTICLE VI. - IMPACT FEES ON NEW DEVELOPMENT [39]

(39) Editor's note—Ord. No. 2006-986, adopted on Sept. 25, 2006, did not specifically amend the Code; hence, at the editor's discretion these provisions have been added as §§ 42-502—42-512. See also the Code Comparative Table.

Sec. 42-502. - Findings.
(a) The City of Orange Beach is an Alabama municipal corporation vested with a portion of the state's sovereign power to protect the public, health safety and welfare. The city is authorized to adopt and implement comprehensive plans, zoning ordinances and other land use regulations to assure its orderly development.

(b) Orange Beach is a fast-growing resort island community of over 5,000 full time residents. Visitors are attracted by its beautiful beaches, wetlands and bays. Seasonal population has more than doubled in the past five years and continues to increase.

(c) Orange Beach encourages development that will make Orange Beach a vital, attractive community to serve both residents and the thousands of yearly visitors.

(d) New residential and nonresidential development, however, imposes increased and excessive demands upon public facilities. As demand for public facilities has increased, funding sources for those facilities have decreased at both the state and federal level. In addition, demand for new facilities necessitated by new development impair the ability of the city to maintain existing facilities because funds must be diverted to construction or expansion of new facilities.

(e) The city's comprehensive plan, prepared by the South Alabama Regional Planning Commission, projects that new development will continue and will place ever-increasing demands on the city to provide public facilities to serve new development.

(f) Studies from TischlerBise, the city's consultant, dated August of 2006, show that tax revenues generated from new development do not generate sufficient funds to cover the public cost created by the new development.
(g) To the extent that new development places demands upon public facilities, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public to the development creating the demands.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-503. - Authorization.

This article is enacted pursuant to the city's general police power, land use authority, and Alabama Legislative Act No. 2006-300 approved April 4, 2006.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-504. - Purpose and intent.

The purpose of this article is to establish procedures to:

(a) Determine what local capital improvements are reasonably necessary to serve new development and the cost thereof;

(b) Determine the portion of the demand for local capital improvements created by particular new developments; and to

(c) Assess against new developments an impact fee to finance the cost of local capital improvements proportional to the new developments' demand for the capital improvement.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-505. - Definitions.

When used in this article, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

All other housing means residential units other than single family structures. This definition includes duplexes, tri-plexes and other multi-family developments.

Benefit area means one or more areas, which are used to calculate public service delivery costs for new development. All impact fees collected for a benefit area must be spent in that benefit area.

Building permit means a document issued by the city authorizing construction of new buildings within the corporate limits.

Calculate means to determine the amount of impact fees based upon the type of development, number of units, and the previously assigned city costs per impact fee category.

Capital improvement plan means the five-year plan for capital improvements adopted annually by the city council, describing the approximate location, size and estimated cost of capital improvement projects/purchases and identifying sources of funding for such expenditures, including impact fees.

City means the City of Orange Beach, Alabama.

Estimated fair and reasonable market value means the total of the amount set forth for the issuance of the building permit and the estimated fair and reasonable market value of the land and improvements.
The value of the land can be established by a lender's appraisal or a value by a licensed appraiser or the actual purchase price within 180 days from the date of building permit application.

**Com/shop ctr** means a building or series of buildings in which sales and services will be delivered to the public.

**Impact fee** means the fee imposed pursuant to this article against new development as a condition of or in connection with approval of a building permit for the purpose of funding or recouping the costs of governmental infrastructure necessitated by and attributable directly to new development.

**Impact fee schedule** means schedule of fees adopted by council setting the base fee amount for each impact fee category.

**Impact review committee** means a committee chaired by the city administrator and comprised of the department heads from finance, parks and recreation, library, fire, police and the city engineer.

**Light industrial** means facilities used for the manufacturing or assembly of products to their final form. These uses could be enclosed or could have outside storage of equipment, materials or merchandise. In addition to the actual production of goods, industrial facilities generally also have office, warehouse and associated functions.

**Motel** and **hotel** means a building or group of buildings having five or more guest rooms under a common or individual ownership and single management. These buildings are designed to give, for a fee, transient guests sleeping accommodations with restaurants, cafes, lounges or other guest services. These buildings typically have an inner lobby and furnish a room cleaning service for their paying customers.

**New development** means the construction, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure, or any use or extension of the use of land, any of which increases the demands on governmental infrastructure. The term "new development" does not include public infrastructure, nor does it include the rebuilding, conversion or replacement of any structure that does not increase demand for governmental infrastructure.

**Nonresidential development project** means all development other than residential development projects.

**Public infrastructure** means any facilities, systems, or services that are owned and operated by or on behalf of the city for any of the following purposes:

(a) Roads and bridges;

(b) Capital expenditures related to law enforcement and public safety, fire protection, transportation, emergency medical services, public park and recreational facilities, and public schools or libraries.

In this article, the term "public infrastructure" is synonymous with "governmental infrastructure" and "public facilities."

**Office/inst** means a building used for professional, administrative, financial, clerical and similar uses. This definition includes institutional uses such as churches, schools, hospitals, libraries, clubs, police and fire stations and other public buildings.

**Residential development project** means any development undertaken to create a new dwelling unit,
including single family, multi-family and condominiums.

*Roads* and *bridges* means any public highway, road or bridge in the corporate limits together with all necessary appurtenances. The term includes the city's share of costs for roadways and associated improvements designated on the federal or state highway system including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, white-ways, drainage appurtenances, and rights-of-way.

*Service unit* means all land and improvements comprising new development against which an impact fee may be imposed.

*Single family* means a detached dwelling unit designed for and occupied by one family as a home.

*Warehousing* means the storage of materials, but may also include office and maintenance areas.

(Ord. No. 2006-986, 9-25-2006)

**Sec. 42-506. - Procedure for establishing or increasing impact fees.**

(a) Impact fees may be established by council resolution after providing notice and conducting the public hearing required by this section. The resolution shall contain specific findings that the impact fees will benefit new development. The council may designate one or more benefit areas.

(b) Notice of the time and place of the public hearing, including a general explanation of the matter to be considered, shall be published at least once in a newspaper of general circulation in the city a minimum of 15 days prior to the hearing.

(c) Any costs incurred by the city in preparing for and conducting the public hearing may be recovered as a part of the impact fees which are the subject of the hearing.

(d) An impact fee can be assessed for the maintenance and upkeep of facilities or resurfacing of roadways where needed because of the impact of new development.

(e) If the city does not agree with the estimate fair and reasonable market value submitted by the applicant and the applicant does not accept the city's number, the city may obtain an appraisal by a licensed appraiser. The cost of the appraisal will be borne by the applicant. If the value of the development as submitted by the applicant and the value as set forth in the appraisal obtained by the city are within ten percent of each other, the two values shall be averaged to determine the estimated fair and reasonable market value of the development. If the two values are not within ten percent of each other, the applicant and the city shall together select a licensed appraiser to submit an appraisal that would be binding on both parties.


**Sec. 42-507. - Calculation and collection of impact fees; exceptions.**

(a) Impact fees may be imposed only on new development and only against a particular new development in reasonable proportion to the demand for additional capacity in public facilities that can reasonably attributed to the new development.

(b) The owners, residents, and tenants of a property that was assessed an impact fee and paid it in full shall have the right to make reasonable use of all facilities that were financed by the impact fee;
provided, however, impact fee shall not exceed one percent of the fair market value of each service unit.

(c) Impact fees shall be calculated and collected by the community development department prior to the issuance of a building permit for new development, and in accordance with the impact fee schedule then in effect.

(d) All impact fees shall be paid in cash unless the city accepts an in-kind contribution of public infrastructure as allowed by section 42-512 of this Code.

(e) Impact fees shall be reviewed annually based upon the city’s costs to provide the public facilities established in the city’s comprehensive land use and five year capital improvement plan.

(f) An impact fee:

(1) Is both a personal liability of the owners of property that is the subject of new development and a lien upon the property;

(2) May be levied only once on a service unit;

(3) Shall be paid in full before any building permit may issue for a new development.

(g) Impact fees shall not be assessed against planned unit developments (PUDs) that were approved prior to the date of this article where (a) the approval of the development was conditioned upon the completion of certain public benefits and (b) the promised benefits are paid or provided prior to the issuance of a building permit.

(h) PUD amendments approved after the date of this article shall be subject to impact fees in accordance with the adopted fee schedule.

(i) Impact fees are not refundable unless required by section 42-512 of this Code; provided, however, that refunds may be allowed if no construction occurs and the building permit is voided. A processing fee of $500.00 shall be withheld from any refund allowed pursuant to this section.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-508. - Impact fee accounts.

The funds collected pursuant to this article shall be deposited to a special interest-bearing account of the city. The city shall separately account for fees collected for parks and recreation, fire, police, transportation and libraries. The funds of the account shall not be commingled with other funds of the city.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-509. - Use of impact fee; refunds.

(a) Impact fees may be expended only for the type of capital improvements, for which they were imposed, calculated, and collected and according to the time limits and procedures established in this article.

(b) Impact fees may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the city to finance such improvements.
(c) Impact fees shall be expended or contracted to be expended within five years of the collection of the fees unless the expenditure or contracting for expenditure of the fees is delayed by an Act of God or litigation.

(d) Any impact fee not expended or contracted to be expended within five years shall be refunded to the present owners of record of the property that was the subject of new development and against which the impact fee was assessed and collected. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property within 30 days of the date certain upon which the refund becomes due. The sending by regular mail of such notice to all present owners of record shall be sufficient to satisfy the requirement of notice.

(e) The refund shall be made on a pro rata basis, without interest, and shall be paid in full 90 days of the date certain upon which the refund becomes due.


Sec. 42-510. - Appeals.

Any owner of property against which an impact fee has been assessed may pay the impact fee and preserve the right to review the assessment by paying the impact fee in full as assessed, and submitting with payment a written statement that payment is made “under protest” or that includes other language that would notify a reasonable person that the owner intends to preserve the right of review. The impact review committee shall hear and determine all appeals. If the owner disagrees with the decision, the owner may appeal to the city council.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-511. - Amendment procedures.

Prior to the city council’s adoption of the budget and revisions to the capital improvements project list, the impact review committee shall report at least once each year to the city council with:

(a) Recommendations for amendments to this article;

(b) Identifying capital improvements to be funded in whole or in part by impact fees;

(c) Proposals for changes to impact fee rates and schedules.

(Ord. No. 2006-986, 9-25-2006)

Sec. 42-512. - Credits.

(a) A property owner who dedicates land or otherwise provides funding for public infrastructure as defined in this article may be eligible for a credit for such contribution against the impact fee otherwise due for that service category.

(b) The impact review committee shall determine: (a) the value of the developer contribution; (b) whether the contribution meets capital improvement needs for which the particular impact fee has been imposed; and (c) whether the contribution will substitute or otherwise reduce the need for capital improvements anticipated to be provided with impact fee funds. In no event, however, shall the credit exceed the amount of the otherwise applicable impact fee.
(c) Any application for credit must be submitted on forms provided by the city before development project approval. The application shall contain a declaration under oath of those facts, which qualify the property owner for the credit, accompanied by the relevant documentary evidence.

(Ord. No. 2006-986, 9-25-2006)