

AMENDMENT NO. 1 TO ORDINANCE NO. 06-108

AN AMENDMENT TO AN ORDINANCE ADOPTING PARK AND RECREATIONAL DEVELOPMENT IMPACT FEES; UPDATING PUBLIC SCHOOL IMPACT FEES; IMPOSING FEES ON RESIDENTIAL DEVELOPMENTS ON A “PER SQUARE FOOT” BASIS; AMENDING PROCEDURES FOR THE IMPOSITION, CALCULATION, COLLECTION, EXPENDITURE, CREDIT, AND ADMINISTRATION OF DEVELOPMENT IMPACT FEES TO BE IMPOSED ON NEW DEVELOPMENT; PROVIDING FOR CONFLICT, PROVIDING FOR SEPARABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

PREAMBLE

WHEREAS, pursuant to Article 25B, §13D, Annotated Code of Maryland, the Board of County Commissioners of Queen Anne’s County, Maryland (the “County Commissioners”) has been authorized to fix, impose and provide for the collection of development impact fees to finance, in whole or in part, the capital costs of additional or expanded public works, improvements, and facilities required to accommodate new construction or development; and

WHEREAS, in 2002, the County Commissioners adopted an ordinance imposing public school and fire protection and emergency medical services impact fees; and

WHEREAS, the County Commissioners wish to update public school development impact fees in order to reflect increased land and construction costs required to provide new school capacity needed to serve new residential development; and

WHEREAS, the County Commissioners have studied the necessity for and implications of the adoption of development impact fees for parks and recreational facilities needed in order to serve new residential development; and

WHEREAS, the County has verified that the fire protection and emergency medical services impact fees currently being assessed are adequate and reasonably reflect the current costs to provide fire and emergency services to new residents, however, the County intends within the coming year to undertake a study on appropriate means to improve and upgrade fire protection and emergency medical services in the County, to consider the division of the current fire protection and emergency medical service impact fee into separate fees for fire protection and for emergency medical service; and

WHEREAS, in the interest of the public health, safety, and welfare, the County relies on volunteer fire and EMS districts to ensure the protection of its residents; and

WHEREAS, it is the intent of the County Commissioners that fire impact fees be employed to aid and assist the volunteer companies, and not the Department of Emergency Services.

WHEREAS, the County has coordinated with the fire and EMS districts to ensure compliance with the requirements of law with respect to the matters addressed herein; and

WHEREAS, the County Commissioners have had prepared a report titled, "Public School and Park and Recreational Impact Fees," by Professor James C. Nicholas, dated May 21, 2006 (2006 Impact Fee Report), to update existing public school development impact fees and to establish appropriate new development impact fees for park and recreational facilities; and

WHEREAS, Dr. Nicholas also prepared a report titled "Size-Based Residential Impact Fees, Prepared for Queen Anne's County," dated March 13, 2007; and

WHEREAS, Dr. Nicholas has relied upon the County for the costs of equipment, facilities, buildings, and land acquisition for public facilities to be funded by impact fees; and

WHEREAS, the ~~2006 Impact Fee Report~~ both reports have been presented to, and reviewed by, the County Commissioners, which have determined (1) that impact fees are necessary to offset the costs associated with meeting future public facility and service demands pursuant to the projections set forth in the report; (2) that impact fees bear a reasonable relationship to the burden imposed upon the County to provide public facilities and services to new residents; and impact fees provide a benefit to such new residents, employees, and businesses reasonably related to the impact fee assessed; (3) that an "essential nexus" exists between the projected new development and the need for additional facilities and services to be funded via impact fees, and between the impact fee and the benefits that accrue to new development paying the impact fee; and (4) that the amount of the impact fees is "roughly proportional" to the pro rata share of the additional facilities and services needed to serve new development; and

WHEREAS, the County Commissioners have adopted the Queen Anne's County Comprehensive Plan; and

WHEREAS, pursuant to Article 23A, §8C, Annotated Code of Maryland, the incorporated municipalities within the County are required to assist the County in the collection of public school development impact fees; and

WHEREAS, the park and recreational and fire protection and emergency medical services impact fees imposed by this Ordinance also will be imposed and collected in both the incorporated and unincorporated areas of the County; and

WHEREAS, based on the population, housing unit, and land use projections as well as the public facility needs associated with the projected level of growth, the County Commissioners have determined that development impact fees are an appropriate and necessary technique, to be used in conjunction with other available public facility financing techniques, to ensure that adequate public facilities are provided for new growth; and

WHEREAS, the County Commissioners have found and determined that certain amendments to the existing development impact fee ordinance are necessary in order to provide for the imposition, calculation, collection, expenditure, and administration of park and recreational impact fees and in order to streamline procedures for the imposition, calculation, collection, expenditure, and administration of all adopted development impact fees; and

WHEREAS, the use of uniform procedures for these processes will best ensure that development impact fees are “earmarked” and expended for the public facilities for which they were imposed and collected; and

WHEREAS, all monies collected from development 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; provided, however, that the determination as to whether the accounting requirement shall be by category, account, or fund shall be within the discretion of the County; and

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

WHEREAS, the County Commissioners have determined or will determine, for each development impact fee, that the payment of the development impact fee and its expenditure for needed public facilities will result in a benefit to the development on which it is imposed; and

WHEREAS, the County Commissioners have determined that the development impact fee amounts bear a reasonable relationship to the burden imposed upon the County to provide the additional capital improvement expenditures for such public facilities to serve the new development at the appropriate levels of service; and

WHEREAS, the County Commissioners have developed fee calculation methodologies which will be imposed in an equitable and non-discriminatory manner; and

WHEREAS, the County Commissioners have determined that nonresidential development on farms and certain farm employee dwellings and subsidized housing developments are critical to the economy and wellbeing of the County and that the extent of the development of these types of land uses each year is de minimis; and

WHEREAS, it is the intent of the County Commissioners to apply existing impact fees to applications for new development submitted prior to the effective date of this Ordinance and that this Ordinance apply only to applications for new development submitted after the effective date, as further provided by the Ordinance; and

WHEREAS, the County Commissioners held a duly advertised public hearing on this ordinance _____ and held a second public hearing on April 3, 2007 at which time the public had an opportunity to comment;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of County Commissioners of Queen Anne's County, Maryland that pending County Ordinance No. 06-108 be amended to read as follows:

SECTION 1: THE QUEEN ANNE'S COUNTY CODE, TITLE 18, SUBTITLE 3, DEVELOPMENT IMPACT FEES ORDINANCE ENACTED BY THE BOARD OF COUNTY COMMISSIONERS ON JUNE 18, 1991, AS SUBSEQUENTLY AMENDED, IS HEREBY AMENDED TO READ AS FOLLOWS:

Subtitle 3. Development impact fees

18-301. Definitions.

(a) **In general.**

Unless otherwise defined in this section, terms shall have the meaning set forth in Chapter 18, Appendix A: Glossary. In case of a conflict, terms defined in this subtitle shall have the meaning defined in this §18-301.

(b) **Applicant.**

"Applicant" means an individual, corporation, or other legal entity that applies for a building permit or zoning certificate in the County or a municipal corporation.

(c) **Appropriation or to appropriate.**

"Appropriation" or "to appropriate" means an action by the County Commissioners to identify specific public facilities for which development impact fee funds may be used. Appropriation shall include, but is not limited to:

(1) inclusion of a public facility in the adopted capital budget or capital improvement program;

(2) execution of a contract or other legal encumbrance for construction of a public facility using impact fee funds in whole or in part; and

(3) actual expenditure of impact fee funds through payments made from an impact fee account or subaccount.

(d) **Building permit.**

“Building permit” means a permit, or other final approval required as a condition precedent to the construction, extension, conversion, alteration, or reconstruction of a structure required under:

- (1) §18-1-198 of this title; or
- (2) the applicable zoning ordinance of a municipal corporation.

(e) **Capital budget.**

“Capital budget” means the budget adopted by the County Commissioners from time to time, for the purpose of identifying and financing needed capital improvements.

(f) **Capital improvements.**

(1) “Capital improvements” means land acquisition, purchase of equipment, or construction of structures necessary for the expansion or construction of public facilities in the County.

- (2) “Capital improvements” includes all related costs.

(g) **Capital improvements program.**

“Capital improvements program” means the schedule of capital improvements to be undertaken by the County as determined from time to time by the County Commissioners or as set forth in the capital budget.

(h) **Commercial use.**

“Commercial use” means any development for commercial use of a site as defined under:

- (1) Chapter 18 Appendix A: Glossary, of this Chapter; or
- (2) the applicable zoning ordinance of a municipal corporation.

(i) **Credit agreement.**

“Credit agreement” means an agreement made pursuant to this subtitle, which provides for a credit of certain required development impact fees in exchange for the

provision of dedicated lands or the construction of facilities consistent with the County capital improvement program.

(j) **Department.**

“Department” means the Queen Anne’s County Department of Planning and Zoning.

(k) **Development impact fee or impact fee.**

“Development impact fee” or "impact fee" means a fee levied as a condition of issuance of a building permit or zoning certificate, and which is intended to fund capital improvements and public facilities needed to serve new growth and development activity in the County and municipal corporations.

(l) **Essential public services.**

“**Essential public services**” means services owned, managed, or operated by or in the interest of a governmental entity, which provides a function critical to the health, safety, and welfare of the public, but which is not proprietary in nature. Essential public services may specifically include, but not be limited to, schools, water and sewer services, emergency services, publicly-owned housing, volunteer fire protection and emergency medical services, and law enforcement services.

(m) **Exemption.**

“Exemption” means a waiver, either in whole or in part, in the amount of impact fees assessed against new development pursuant to the terms of this subtitle, and based on the criteria set forth in §18-305(d).

(n) **Finance Director.**

“Finance Director” means the Finance Director of the Queen Anne's County Finance Office.

(o) **Fire protection and emergency medical services impact fee.**

“Fire protection and emergency medical services impact fee” means a development impact fee imposed on new residential and non-residential development to fund the proportionate share of the costs of land acquisition for new stations; facilities, including construction, furniture, fixtures, equipment, and technology; and vehicles, equipment, and apparatus associated with the provision of fire protection and emergency medical services.

(p) **Floor area.**

“Floor area” means the sum of the gross area for each floor of a building’s stories measured from the exterior limits of the faces of the structure, and includes:

(1) habitable basement floor area; and

(2) if the attic meets the Queen Anne’s County Building Code standards for habitable floor area, attic floor area.

(q) **Impact fee subareas.**

“Impact fee subarea” means a geographically defined area in the County that has been designated by the County Commissioners as an area in which new development will create the need for specified capital improvements to be funded in part or in whole by development impact fees.

(r) **Impact fee subarea map.**

“Impact fee subarea map” means the map of impact fee subareas adopted by the County Commissioners in which development impact fees for specified capital improvements are imposed.

(s) **Industrial use.**

“Industrial use” means any development for industrial use of a site as defined under:

(1) Chapter 18 Appendix A: Glossary, of this Chapter; or

(2) the applicable zoning ordinance of a municipal corporation.

(t) **Institutional use.**

“Institutional use” means any development for institutional use of a site as defined under:

(1) Chapter 18 Appendix A: Glossary, of this Chapter; or

(2) the applicable zoning ordinance of a municipal corporation.

(u) **Mixed-use development.**

“Mixed-use development” means a new development consisting of both residential and non-residential uses, or one (1) or more different types of non-residential use, on the same site or part of the same new development.

(v) **Municipal corporation.**

“Municipal corporation” means the towns of Barclay, Centreville, Church Hill, Millington, Queenstown, Queen Anne, Sudlersville, and Templeville.

(w) **New development.**

“New development” means any development or development activity for which a building permit or zoning certificate is ~~issued~~applied for after ~~the effective date of this subtitle, July 1, 2007~~ and which ~~either~~ increases the number of dwelling units or which increases ~~number of dwelling units or which increases~~ total non-residential floor area.

(x) **Nonresidential development.**

“Nonresidential development” means any development for agricultural, commercial, industrial, or institutional use.

(y) **Parks and recreational impact fee.**

“Parks and recreational impact fee” means a development impact fee imposed on residential development to fund the proportionate share of the costs of parks and recreational improvements; including land, buildings, equipment, and improvements to land necessary to provide parks and recreational services and facilities to new development.

(z) **Planning Director.**

“Planning Director” means the Planning Director of the Queen Anne’s County Department of Planning and Zoning.

(aa) **Public facilities.**

“Public facilities” means public improvements, facilities, or services necessitated by new development, including, but not limited to water resources, transportation, law enforcement facilities, public works, fire protection facilities, emergency medical services facilities, medical services, County facilities, water facilities, sewer facilities, flood control and drainage, solid waste disposal, open space, parks and recreational, utilities, and public schools.

(bb) **Public facilities expenditures.**

“Public facilities expenditures” means funds appropriated in connection with the planning, design, engineering, and construction of public facilities; planning, legal, appraisal, and other costs related to the acquisition of land, financing, and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessary or incident to provision of the public facility.

(cc) **Public schools impact fee.**

“Public schools impact fee” means a development impact fee imposed on residential development to fund the proportionate share of the costs of public schools; including land acquisition, buildings, equipment, and relocatable classrooms; and support buildings, vehicles, and major capital equipment.

(dd) **Residential development.**

“Residential development” means any development for residential use, including commercial apartments.

(ee) **Residential use.**

“Residential use” means any development for residential use of a site as defined under:

- (1) Chapter 18 Appendix A: Glossary, of this Chapter; or
- (2) the applicable zoning ordinance of a municipal corporation.

(ff) **Site.**

“Site” means the land on which development takes place.

(gg) **Volunteer district.**

“Volunteer district” means one of the ten (10) volunteer fire and emergency medical districts that provide fire and emergency medical services within Queen Anne’s County.

(hh) **Zoning certificate.**

“Zoning certificate” means a permit:

(1) for the use or occupancy of a structure where a building permit is not required but the development of the structure will produce additional dwelling units or will increase non-residential floor area; and

- (2) that is required under:

- (i) §18-1-138 of this title; or

- (ii) the applicable zoning ordinance of a municipal corporation.

18-302. Purpose of subtitle.

The purpose of this subtitle is to promote the health, safety, and general welfare of the residents of the County and its municipal corporations, by:

- (a) establishing uniform procedures for the imposition, calculation, collection, expenditure, and administration of development impact fees imposed on new development;
- (b) requiring all new residential and nonresidential development to contribute its fair and proportionate share towards the costs of capital improvements reasonably necessitated by such new development;
- (c) providing a means of financing public facilities needed to accommodate new development in a safe and timely manner;
- (d) ensuring that the new development paying development impact fees reasonably benefits from the appropriation of impact fee funds to public facilities provided to accommodate such new development;
- (e) implementing the Queen Anne's County Comprehensive Plan and capital budget by ensuring that adequate public facilities are available in a timely and well-planned manner; and
- (f) ensuring that all applicable legal standards and criteria are properly incorporated in these procedures.

18-303. Effect on other subtitles.

(a) This subtitle may not be construed to alter, amend, or modify any provision of Subtitle 1 of this title. The provisions of Subtitle 1 of this title shall be operative and remain in full force and effect notwithstanding any contrary provisions, definitions, or intentions that are or may be expressed or implied in this subtitle.

(b) The payment of development impact fees shall not entitle the applicant to a building permit ~~or~~, zoning certificate, or certificate of occupancy unless all other applicable land use, zoning, planning, adequate public facilities, forest resource, platting, subdivision, and other related requirements, standards, and conditions have been met. Such other requirements, standards, and conditions are independent of the requirement for payment of a development impact fee.

(c) This subtitle, including the specific development impact fee ordinances for particular public facilities, shall not affect, in any manner, the permissible use of property, density or intensity of development, design and improvement standards, or

other applicable standards or requirements of the land development regulations of the County or any municipal corporation.

18-304. Establishment of impact fee subareas.

An impact fee subarea is established for the purpose of ensuring that the collection of certain development impact fees is more directly tied to the expenditure of such fees, as set forth in the specific development impact fees ordinance, under this subtitle. The impact fee subarea map is incorporated as part of this subtitle by reference. The County Commissioners may amend the boundaries of the impact fee subareas at such times as may be deemed necessary to carry out the purposes and intent of this subtitle and to comply with all applicable legal requirements for use of development impact fees.

18-305. Applicability of development impact fees.

(a) *Affected area.*

This subtitle shall apply to all new development within the County, including new development that takes place within the boundaries of any municipal corporation. Development impact fees for particular public facilities may apply to less than the entire County, as indicated herein.

(b) *Type of development affected.*

Except as provided in subsections (c) and (d), below, or where otherwise specifically exempt by the provisions of this subtitle, this subtitle shall apply to all new development.

(c) *Type of development not affected.*

~~(1) No development impact fee shall be imposed on any new residential development that does not add a new dwelling unit; nor shall a development impact fee be imposed for alteration or expansion of an existing dwelling unit where no additional dwelling unit is created.~~

~~(2) No development impact fee shall be imposed on the alteration of existing non-residential uses where there is no increase in the non-residential floor area.~~

(1) No development impact fee shall be imposed on any new residential development that does not add a new dwelling unit; nor shall a development impact fee be imposed for alteration or expansion of an existing dwelling unit where no additional dwelling unit is created.

(2) No development impact fee shall be imposed on the alteration of existing non-residential uses where there is no increase in the non-residential floor area.

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(3) No development impact fee shall be imposed on the development of essential public services, including those provided by the State of Maryland, the County, any municipal corporation, or the Federal government.

(4) No public school impact fee shall be imposed on age-restricted adult or senior citizen housing, provided that each unit of housing shall contain a deed restriction recorded against the property, in a form satisfactory to the County Attorney, which deed restriction shall provide that:

(i) the housing unit is restricted to occupancy by older persons, in compliance with the terms and provisions of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3607;

(ii) no person under the age of eighteen (18) years shall reside within any such housing unit; and

(iii) the deed restriction shall provide that in the event the above restrictions are ever modified or violated, the owner of the property at the time the restrictions are modified or violated shall pay to the County the then-current public school impact fee.

(d) ***Exempt development.***

(1) The following land use types shall be exempt, either in whole or in part, from the requirements of this subtitle as follows:

(i) No development impact fees shall be imposed on nonresidential development on a farm.

(ii) No development impact fees shall be imposed upon any applicant for a building permit for residential housing units that are subsidized by any municipal corporation, County, State, or the federal government and are intended for low-income owners or tenants.

(iii) No development impact fees shall be imposed on farm employee dwellings that:

a. are proposed within an AG zoning district; and

b. are either subject to a MALPF easement or are located in a MALPF district.

(iv) Development impact fees imposed on non-residential development within a designated growth area or incorporated town shall be imposed in

an amount that is fifty percent (50%) below that required pursuant to §18-315 of this subtitle.

(v) Development impact fees imposed on non-residential development outside of a designated growth area or incorporated town shall be imposed in an amount that is twenty-five percent (25%) below that required pursuant to §18-315 of this subtitle.

(2) On an annual basis, the Finance Director shall transfer funds equal in amount to those exempted or reduced over the previous year, pursuant to subsections (1)(iv) and (1)(v), above, from a source other than impact fees into the appropriate development impact fee account.

(3) In no event shall impact fees be increased or appropriated to offset the impact of an exempt use on public facilities and nor shall the adopted level of service be reduced as a result of an exempt use.

(e) ***Development impact fee subarea.***

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Except as provided by §18-312, impact fees for certain public facilities shall be collected and spent within a defined geographical area. The impact fee subareas are shown on the impact fee subarea map as incorporated by §18-304 of this subtitle.

~~(f) ***Municipal corporations.***~~

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~~Development impact fees on new development within municipal corporations shall be collected by the County prior to issuance of a building permit or zoning certificate as required by this subtitle. No municipal corporation shall issue a building permit or zoning certificate until the applicant demonstrates that all impact fees required by this subtitle have been paid to the County.~~

18-306. Annual review and adjustments.

(a) ***Annual review.***

(1) At least once every year, not later than July 1st of each year, beginning July 1, ~~2007~~2008, and prior to the County Commissioner's adoption of the annual budget and capital improvements program, the Finance Director, or designee, shall coordinate the preparation and submission of an annual report to the County Commissioners on the subject of development impact fees.

(2) The annual report may include any or all of the following:

(i) recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting development impact fees for particular public facilities;

(ii) proposed changes to the Queen Anne's County capital improvements program, including the identification of additional public facility projects anticipated to be funded wholly or partially with development impact fees;

(iii) proposed changes to the boundaries of impact fee subareas;

(iv) proposed changes to development impact fee schedules as set forth in the ordinances imposing and setting development impact fees for particular public facilities;

(v) proposed changes to any development impact fee calculation methodology; and

(vi) any other data, analysis, or recommendations as the Finance Director, or designee, may deem appropriate, or as may be requested by the County Commissioners.

(3) The Finance Director shall submit the annual report to the County Commissioners, which shall receive the annual report and which may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and public hearings.

(b) *Annual adjustment.*

(1) On July 1, ~~2007~~2008, and on July 1st of each year thereafter in which this subtitle is in effect, the amount of any development impact fee may be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent 20-city annual national average data from the Engineering News Record Construction Cost Index.

(2) The Finance Director shall make the automatic annual adjustment unless the County Commissioners have, in their annual review, determined an alternate adjustment.

(c) Nothing herein shall prevent the County Commissioners from electing to retain existing development impact fees or from electing to waive the inflation adjustment for any given fiscal year.

18-307. Imposition and enforcement of development impact fees.

(a) ~~In general~~Unincorporated county.

A building permit or zoning certificate shall not be issued by the County ~~or a municipal corporation~~ for a new development until either:

- (1) the development impact fees required under this subtitle have been calculated and paid; or
- (2) the applicant for a building permit or zoning certificate has executed a promissory note obligating the applicant to pay required impact fees upon the earlier of the following:
 - (i) within ~~six (6)~~sixteen (18) months of the issuance of the building permit or zoning certificate; or
 - (ii) upon issuance of the certificate of occupancy.

In no event shall a certificate of occupancy be issued unless the development impact fees required under this subtitle have been paid. The amount of the development impact fee due is the amount of the fee in effect on the date of ~~issuance of application for~~ the building permit or zoning certificate.

(b) ***Municipal corporations.***

Development impact fees on new development within municipal corporations shall be collected by the County prior to issuance of a building permit or zoning certificate as required by this subtitle. No municipal corporation shall issue a building permit or zoning certificate until the applicant demonstrates that all impact fees required by this subtitle have been paid to the County.

(c) ***Lien.***

In the event new development is undertaken without the payment of all applicable development impact fees, the development impact fees shall:

- (1) be a lien against the site of development;
- (2) be levied, collected, and enforced in the same manner as real property taxes imposed by the County; and
- (3) have the same priority and bear the same interest and penalties as real property taxes.

(ed) ***Actions to recover.***

In the event a development impact fee is not paid as required by this subtitle, the County Attorney may institute an action to recover the fee and enjoin the use of the

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property until the fee is paid. The person who fails so to pay shall be responsible for the costs of such suit, including reasonable attorney's fees

18-308. Calculation of development impact fees - Fee schedule.

(a) *In General.*

An applicant shall be notified by the County or by the municipal corporation within which new development is located, of the applicable development impact fee requirements at the time of application for a building permit or zoning certificate. At such time, the development impact fees shall be calculated by the Planning Director, or designee, and shall be paid by the applicant ~~prior to the issuance of a building permit or zoning certificate~~ as provided in §18-307.

(b) *Calculation.*

(1) Upon receipt of an application for a building permit or zoning certificate, the Planning Director, or designee, shall determine:

(i) whether the proposed new development constitutes a residential or non-residential use;

(ii) the specific type of residential or non-residential development, if applicable;

(iii) if residential, the number of new dwelling units;

~~(iv) if non-residential, if residential, the number of new dwelling units;~~

~~(v) —~~

~~(vi)(iv) — (iv) if non residential, the number of additional square feet of floor area (rounded up to the nearest square foot) and the proposed use; and whether the proposed use is in the same type of non-residential development of non-residential development as the prior use; and~~

(v) if applicable, the development impact fee subarea or subareas in which the new development is located.

(2) For proposed new development for which no specific land use type is listed in §18-315, the Planning Director shall apply the land use type that is most similar to the proposed new development in terms of impact on public facilities, based on the predominant characteristics of the proposed new development.

(3) The calculation of development impact fees due from a mixed-use development shall be based upon the development impact fee for each public facility generated by each land use type in the mixed-use development.

(4) The calculation of development impact fees due from a phased new development shall be based upon the development impact fees due for each specific land use within the phase of development for which building permits or zoning certificates are requested.

(5) After making these determinations, the Planning Director, or designee, shall calculate the applicable development impact fee by multiplying the demand added by the new development, measured by ~~either the number~~amount of ~~new dwelling units or~~ new floor area, by the amount of the applicable development impact fee per ~~unit~~square foot of development, and incorporating any applicable credit made pursuant to §18-310 of this subtitle.

18-309. Site specific analysis.

(a) If the type of land use proposed for new development is not expressly listed in the particular development impact fee ordinance and schedule, the Planning Director, or designee, shall:

(1) identify the most similar land use type listed and calculate the development impact fee based on that land use; or

(2) identify the broader land use category within which the specified land use would apply and calculate the development impact fee based on that land use category; or

(3) at the option of the applicant, determine the basis used to calculate the fee pursuant to an independent impact analysis for development impact fee calculation. This option shall be requested by the applicant on a form provided by the County for such purpose. If this option is chosen, the following shall apply:

(i) The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the Planning Director prior to payment of the fee.

(ii) The independent impact analysis shall measure the impact that the proposed development will have on the particular public facility for which the impact fee is being assessed, and shall be based on the same methodologies used in the development of this subtitle, and shall be in accordance with standard methodologies for the evaluation of impacts upon public facilities created by new development; and shall be performed by a person or firm with sufficient professional training and experience in the preparation of such analyses.

(iii) After review of the independent impact analysis submitted by the applicant, the Planning Director shall accept or reject the analysis and provide written notice to the applicant of its decision within twenty (20) working days. If the

independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.

(4) If the proposed development site is located within a municipal corporation, the Planning Director shall consult with the Planning Director of the municipal corporation prior to making a final decision.

(5) Pursuant to either the analysis of the Planning Director, or designee, or the independent impact analysis submitted by the applicant and accepted by the Planning Director, the Planning Director shall calculate the development impact fee accordingly.

(b) The Planning Director's decision under this section shall constitute a final administrative decision from which an appeal as provided in §18-314 of this subtitle may be filed.

18-310. Development impact fee credits.

(a) *Applicability.*

(1) The ~~Planning Director~~ County Commissioners shall grant a credit against any development impact fee imposed by this subtitle upon any new development where the applicant has entered into a credit agreement with the County Commissioners, as provided herein. Credits may be given for dedications and construction of certain public facilities made prior to construct capital improvements or dedicate land after the effective date of this subtitle, including those made pursuant to a condition of development approval, which:

(i) are consistent with and implement the County capital improvements program,

(ii) are funded by development impact fee revenue,

(iii) are of the same category of public facility impacted by the proposed new development, and

(iv) ~~will be~~ are constructed or dedicated in accordance with the timing schedule set forth in the capital improvement program.

(2) No credit shall exceed development impact fees imposed by this subtitle for the proposed new development.

(b) *Procedure.*

(1) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Planning Director or designee, which agreement shall include the following:

(i) A proposed plan of specific capital improvements, specifically outlining the capital improvements that will be constructed in lieu of the required development impact fee and the time by which the capital improvements will be constructed, or, if provided pursuant to a prior condition of development approval, a description of the required capital improvements, including land dedications and facilities or equipment contributed; and

(ii) The actual or projected costs for the ~~suggested~~ capital improvements, which shall be based on local information for similar capital improvements, along with a construction timetable for the completion thereof. Such estimated costs shall include the cost of construction, labor and materials, lands, easements and rights, surveys, plans and specifications, engineering and legal services, and all other expenses necessary or incident to determining the feasibility of such construction.

(2) The proposed plan and cost estimates shall be prepared by a person or persons qualified in the provision of the particular capital improvement, impact analysis, and economics.

(3) If the development site or the land or dedication of any structure for credit is located within a municipal corporation, the Planning Director of the municipal corporation shall be consulted regarding the proposed conveyance or dedication.

(4) Within twenty (20) working days of the submission of the proposed credit agreement, the Planning Director, or designee, shall determine if the proposed agreement is complete. If it is determined that the proposed credit agreement is not complete, the Planning Director, or designee, shall send a written statement to the applicant outlining the deficiencies and no further action shall be taken until all deficiencies have been corrected.

(5) Once the Planning Director or designee determines the proposed credit agreement is complete, within twenty (20) working days, the Planning Director shall approve the agreement if it is determined that the proposed capital improvements are consistent with and implement the capital improvement program, as it applies to the specific category of capital improvement. If, within this time period, the Planning Director determines that either the suggested capital improvements are not consistent with or do not implement the capital improvement program, or that the proposed costs are not acceptable, the Planning Director, or designee, shall propose changes to the agreement that are consistent with this section.

(6) If the Planning Director approves the proposed credit agreement, or if the changes proposed by the Planning Director, or designee, are acceptable to the applicant, the credit agreement shall be prepared and forwarded ~~to the County Commissioners~~ by legislative act of the County Commissioners.

(7) Upon execution of the credit agreement, the balance of development impact fees due, if any, shall be paid in accordance with this subtitle and any land dedicated pursuant to the credit agreement shall be conveyed in fee simple to the County Commissioners free and clear of all leases and encumbrances.

(8) In the event the credit agreement contemplates the dedication of structures, the person required to pay development impact fees shall execute such easements and other instruments as may be necessary to authorize the County Commissioners to use the structures for public purposes.

(9) Any person may appeal the Planning Director's decision to approve or deny a proposed credit agreement under this section, by filing an appeal in accordance with §18-314 of this subtitle.

(c) ~~*Circumstances when credit not available.*~~

~~Credit may not be given for conveyance of land or construction of facilities required as part of the Planning Commission approval of the project, or any conveyance or construction otherwise required for development under any other provision of State or County law.~~

~~(d) *Timing of conveyance.*~~

Any land or other dedications awarded credit under this section shall be conveyed no later than the time at which development impact fees are required to be paid. The portion of the development impact fee represented by a credit for construction shall be deemed paid when the construction is completed and accepted by the County for maintenance or when adequate security for the completion of the construction has been provided.

18-311. Administration of development impact fees.

(a) ***Collection.***

(1) The Planning Director, or designee, shall collect all applicable development impact fees ~~at the time of issuance of a building permit or zoning certificate~~ as provided in section 18-307 unless:

(i) the applicant is determined to be entitled to a full credit, pursuant to §18-310 of this subtitle; or

(ii) the applicant has been determined to be not subject to the payment of a development impact fee; or

(iii) the applicant has filed an appeal and has posted with the County a letter of credit in the amount of the development impact fee, as calculated by

the Planning Director, or designee. Such letter of credit must first be approved by the County Attorney and Finance Director.

(2) The person required to pay development impact fees shall provide the Department with an accounting of the amount of development impact fees required under this subtitle for each category of public facility.

(b) ***Development impact fee accounts.***

(1) A development impact fee account shall be established by the County Commissioners for each category of public facilities for which development impact fees are imposed. Such account shall clearly identify the category, account, or fund for which the development impact fee has been imposed.

(2) Subaccounts shall be established for individual impact fee subareas. Two separate subaccounts shall be established with respect to the Grasonville volunteer district (District #2), one for fire protection facilities and another for emergency medical services. Impact fees collected within this subarea shall be deposited in equal amounts between the two subaccounts.

(3) All development impact fees collected by the County or a municipal corporation shall be deposited in the appropriate development impact fee account or subaccount, which shall be interest bearing. All interest earned on funds deposited to such account shall be credited to and considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other County funds, over time. The County shall establish and implement necessary accounting controls to ensure that the development impact fee funds are properly deposited, accounted for, and appropriated in accordance with this subtitle, and any other applicable legal requirements.

(c) ***Duties of Finance Director.***

(1) The Finance Director shall maintain and keep accurate financial records for each of the development impact fee accounts that:

- (i) show the source and disbursement of all revenues; and
- (ii) account for all fees received.

(2) The Finance Director shall make its financial records available for public inspection at reasonable times and under reasonable circumstances.

18-312. Appropriation of development impact fees.

(a) ***In General.***

Development impact fee funds may be appropriated for public facilities, for public facility expenditures, and for the payment of principal, interest, and other financing costs on contracts, bonds, notes, or other obligations issued by or on behalf of the County or other applicable local governmental entities to finance such public facilities and public facility expenditures necessitated by new development. All appropriations from development impact fee accounts shall be detailed in a budget adopted by the County Commissioners.

(b) ***Restrictions on appropriations.***

Development impact fees shall be appropriated only:

(1) for the particular category of public facilities for which they were imposed, calculated, and collected. Development impact fees shall not be appropriated for funding any expenditure that would be classified in an accounting as a maintenance or repair expense or for operational or personnel expenses associated with the provision of a public facility;

(2) where applicable, within the impact fee subarea where collected, unless the development impact fee funds will be appropriated for a public facility necessitated by or serving the new development as provided in subsection (c) below; and

(3) within six (6) years of the beginning of the fiscal year immediately succeeding the date of collection, unless the development impact fee funds will be appropriated in accordance with subsection (d) below.

(4) In addition to other applicable criteria, fire protection and emergency medical services development impact fees shall be appropriated only through the volunteer districts, in accordance with the provisions of § 18-320, below.

(c) ***Appropriation of development impact fee funds outside of subarea where collected.***

Notwithstanding §18-312(b)(2) above, and consistent with applicable procedures set forth in § 18-320 below, where the County is divided into impact fee subareas for the payment and expenditure of a particular development impact fee, development impact fee funds may be appropriated for a public facility located outside of the subarea where collected only if the demand for the public facility is generated in whole or in part by the new development and the public facility will benefit the new development that paid the fee, as required by law.

(d) ***Appropriation of development impact fee funds beyond six (6) years of collection.***

Notwithstanding §18-312(b)(3) above, development impact fee funds may be appropriated beyond six (6) years from the beginning of the fiscal year immediately

succeeding the date of collection if the appropriation is for a public facility or capital improvement that requires more than six (6) years to plan, design, and construct, and the demand for the public facility is generated in whole or in part by the new development; or if the public facility will actually serve the new development; or where the capital improvements program prepared by the County for a particular category of public facility has used a longer time frame. The County shall document such appropriations.

18-313. Refund of development impact fees.

(a) *Expiration or revocation of building permit or zoning certificate.*

An applicant who has paid a development impact fee for a new development for which the necessary building permit or zoning certificate has expired or for which the building permit or zoning certificate has been revoked prior to construction shall be eligible to apply for a refund of development impact fees.

(b) *Failure of county to use or appropriate development impact fee funds within time limit.*

The current property owner may apply for a refund of development impact fees paid by an applicant if the County has failed to use or appropriate the development impact fees collected from the applicant within the time limit established in §18-312(b)(3), unless such funds are used or appropriated in accordance with §18-312(d) above.

(c) *Abandonment of development after initiation of construction.*

An applicant who has paid a development impact fee for a new development for which a building permit or zoning certificate has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.

(d) *Administrative fee.*

A 2% administrative fee, not to exceed \$500, shall be deducted from the amount of any refund granted and shall be retained by the County to defray the administrative expenses associated with the processing of a refund application.

(e) *Procedure and submittal requirements.*

(1) Applications for a refund shall be made on a form provided by the County for such purposes and shall include all information required below. Upon receipt of a complete application for a refund, the Planning Director, or designee, shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as

to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Planning Director, or designee. No interest shall be paid by the County in calculating the amount of a refund.

(2) Applications for refunds due to abandonment of a new development prior to completion or due to expiration or revocation of a building permit or zoning certificate shall be made within sixty (60) days following expiration or revocation of the building permit or zoning certificate, or within sixty (60) days following the issuance of a valid County-issued demolition permit. The applicant shall submit:

(i) evidence of the amount of the development impact fees paid by public facilities category and receipts evidencing such payments; and

(ii) documentation evidencing the expiration or revocation of the building permit or zoning certificate prior to construction, or the approval of demolition of the structure pursuant to a valid County-issued demolition permit.

(3) Applications for refunds due to the failure of the County to appropriate development impact fees collected from the applicant within the time limits established in §18-312(b)(3), shall be made by the current property owner on forms provided by the County and shall be made within 180 days of the expiration of such time limit. If a portion of the impact fees collected during a fiscal year have been expended or encumbered before the end of the sixth year following collection, the designated County office shall distribute refunds to the eligible property owner on a pro rata basis. The refund applicant shall submit:

(i) evidence that the refund applicant is the property owner or the designated agent of the property owner;

(ii) the amount of the development impact fees paid by public facility category and receipts evidencing such payments; and

(iii) documentation of the County's failure to appropriate development impact fee funds for relevant public facilities within the time limits established in §18-312(b)(3).

(f) ***Forfeiture of fees.***

Failure to apply for a refund within the deadlines set forth in this section shall constitute a forfeiture of any fees available for refund to the property owner or applicant.

(g) ***Method of refund payment.***

The County may, at its option, make refunds of development impact fees by direct payment, by offsetting such refunds against other development impact fees due for the

same category of public facilities for new development on the same property, or by other means subject to agreement with the property owner or applicant.

(h) **Appeal.**

The decision of the Planning Director shall be a final administrative decision from which an appeal as provided in §18-314 of this subtitle may be taken.

18-314. Appeals.

An appeal may be taken by any person aggrieved by a final decision of a County Official or the County Commissioners. Appeals from decisions of a County Official shall be to the County Board of Appeals and shall be filed and administered in accordance with the provisions of 18-1-179 of this title. Appeals from decisions of the County Commissioners shall be to the Circuit Court for Queen Anne’s County.

18-315. Amount of impact fees.

As required by this subtitle 3, residential and non-residential development impact fees shall be paid in the amounts set forth in (a) and (b) below, or as amended pursuant to section 18-306.

(a) **Residential impact fees.**

Residential new development shall be subject to the following development impact fees.

Land Use by Type	Public Facilities by Type			TOTAL (per d.u.) SE
	Public Schools (per d.u.) SE	Fire Protection/ EMS (per d.u.) SE	Parks & Recreational (per d.u.) SE	
Single Family Detached All Residential Development ¹	\$7,529 \$3.21	\$1,166 \$0.37	\$1,033 \$0.35	\$9,728 \$3.93
Residential other than Single Family Detached ¹	\$5,603	\$952	\$851	\$7,406

¹ Includes mobile homes

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(b) **Non-residential impact fees.**

Non-residential new development shall be subject to the following development impact fees.

Public Facilities by Type

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Land Use by Type	Public School	Fire Protection/EMS (per SF)	Parks & Recreational (per d.u)	TOTAL (per s.f./SF)
Comm/Shop. Ctr.				
50,000 SF or less	N/A	\$1.25	N/A	\$1.25
50,001-100,000 SF	N/A	\$1.09	N/A	\$1.09
100,001-200,000 SF	N/A	\$.97	N/A	\$0.97
200,001 SF or greater	N/A	\$0.87	N/A	\$0.87
Office				
25,000 SF or less	N/A	\$1.75	N/A	\$1.75
25,001-50,000 SF	N/A	\$1.66	N/A	\$1.66
50,001-100,000 SF	N/A	\$1.55	N/A	\$1.55
100,001 or greater	N/A	\$1.46	N/A	\$1.46
Business Park	N/A	\$1.37	N/A	\$1.37
Light Industrial	N/A	\$1.00	N/A	\$1.00
Warehousing	N/A	\$0.55	N/A	\$0.55
Institutional	N/A	\$0.34	N/A	\$0.34

18-316. Public school impact fee - Service area.

The applicable service area for imposition of a Public School Impact Fee is the entire County, including all municipal corporations.

18-317. Same - Amount of impact fee.

All new residential development in the service area shall be subject to the payment of a Public School Impact Fee ~~payable at the time of issuance of a building permit or zoning certificate by the County or a municipal corporation, as provided in §18-307,~~ pursuant to section 18-315 of this subtitle, or as amended pursuant to §18-306.

18-318. Fire protection and emergency medical services impact fee - Service area.

(a) The applicable service areas for imposition of a Fire Protection and Emergency Medical Services Impact Fee is the entire County, including all municipal corporations.

(b) Except as provided by §18-312, the Fire Protection and Emergency Medical Services Impact Fee shall be collected and applied in accordance with the Fire Protection and Emergency Medical Services Impact Fee Subarea Map. Impact fee revenues collected within the Grasonville, District #2 subarea shall be accounted for and allocated equally between fire protection and emergency medical services.

18-319. Same - Amount of impact fee.

All future residential and non-residential development in the service area shall be subject to the payment of a Fire Protection and Emergency Medical Services Impact Fee ~~at the time of issuance of the building permit or zoning certificate by the County or a municipal corporation, as provided in §18-307,~~ pursuant to section 18-315 of this subtitle, or as amended pursuant to §18-306.

18-320. Same – Procedure and eligibility criteria for appropriation of fire protection and emergency medical services impact fees.

Since necessary fire protection and emergency medical services are provided on behalf of the County by the volunteer districts, the following procedures and eligibility criteria shall apply to the appropriation of fire protection and emergency medical services impact fees.

(a) By February 1st of each year, each volunteer district shall submit to the Planning Director an updated five-year capital improvements program, which must include:

(i) all existing capital improvements owned by the volunteer district;

(ii) a list of planned capital improvements for the subsequent five-year period, the estimated cost of each item, and indicate whether and to what extent the improvement adds capacity to the volunteer district's ability to serve additional new development;

(iii) identification of the anticipated funding source for each planned capital improvement; and

(iv) a description of all non-impact fee funding sources available to the volunteer district and the amounts allocated to the funding of planned capital expenditures.

(b) During a year in which the County will appropriate fire protection and emergency medical services impact fee funds:

(i) by February 1st of that year, the Planning Director will notify each volunteer district and the Chairman of the Fire and Emergency Services Commission that expenditure proposals will be accepted;

(ii) the volunteer district shall have until March 1st of that year to submit a proposal to the Director of Planning for impact fee appropriations, which shall include:

a. a capital improvements program as provided in subsection (a) above;

b. a written description regarding the consistency of the proposed expenditures with the eligibility criteria set forth in subsection (d) below.

(iii) At the close of application period, the Planning Director shall provide all capital improvement programs and expenditure proposals to the following personnel or his or her designee: the Chairman of the Fire and Emergency Services Commission, the Finance Director, and the County Administrator.

(iv) Based on the eligibility criteria set forth in subsection (d) below, the above personnel may forward to the Planning Director a written recommendation regarding the appropriation of available impact fee revenues.

(v) By May 1st, and based on the submitted capital improvement programs, the application narratives from the volunteer districts, the recommendations of the personnel listed above, and the criteria set forth in subsection (d) below, a recommended appropriation plan will be forwarded by the Planning Director to the County Commissioners for final approval. In the event that more than one appropriation plan is recommended by the above personnel, the Planning Director may forward more than one recommended appropriation plan to the County Commissioner for consideration.

(vi) The County Commissioners will review and consider and may approve the appropriation of fire protection and emergency medical services impact fee revenues during the immediately subsequent capital budget process.

(c) Each year, not later than the date of submission of the volunteer district's Amoss Fire, Rescue, and Ambulance Fund ("508 funds") report, each volunteer district shall report to the Finance Director the expenditure of impact fees that have occurred over the previous year.

(d) Eligibility Criteria. The appropriation of fire protection and emergency medical services impact fees shall be made in accordance with the following criteria, consistent with applicable law:

(i) In addition to other applicable provisions of this subtitle, appropriations shall be made only for capacity-enhancing fire and emergency service public facilities necessitated by and which will benefit new development.

(ii) Appropriations shall be based on:

- a. countywide growth trends and rates;
- b. areas of greatest facility need throughout the County;

c. the relative financial needs of the individual volunteer districts, based, in part, on alternative funding sources available to a particular district;

d. the continued maintenance of a five-year capital improvement program as described in subsection (a) above; and

e. the inclusion of the proposed appropriation on a timely-submitted five-year capital improvement program.

18-321. Parks and recreational impact fee - Service area.

The applicable service area for imposition of a parks and recreational impact fee is the entire County, including all municipal corporations.

18-322. Same - Amount of impact fee.

All new residential development in the service area shall be subject to the payment of a parks and recreational impact fee ~~payable at the time of issuance of a building permit or zoning certificate by the County or a municipal corporation, as provided in §18-307,~~ pursuant to section 18-315 of this subtitle, or as amended pursuant to §18-306.

SECTION 2. ADOPTION OF IMPACT FEE SUBAREA MAP.

The Impact Fee Subarea Map, a copy of which is attached hereto as Exhibit A, is hereby adopted.

SECTION 3. CONFLICT.

To the extent of any conflict between other County ordinances and this Ordinance, this Ordinance shall be deemed to be controlling; provided, however, that this Ordinance is not intended to amend or repeal any existing County ordinance, resolution or regulation.

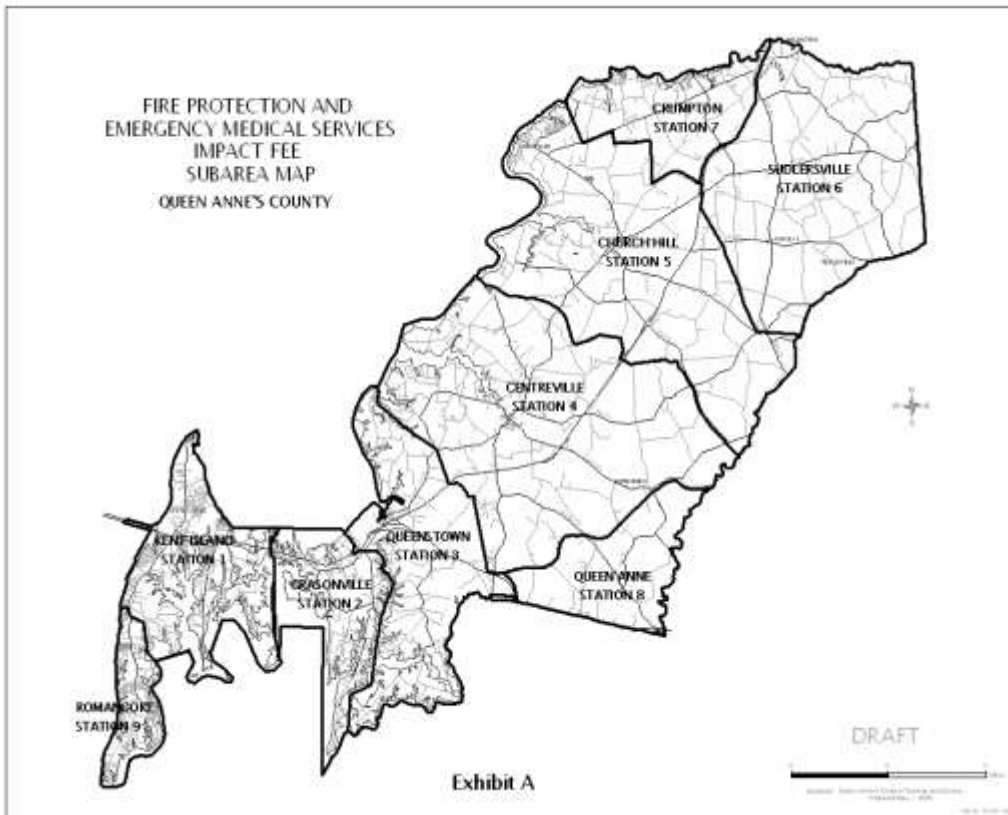
SECTION 4. SEPARABILITY.

1. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of this Ordinance shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of this Ordinance nor impair or nullify the remainder of this Ordinance which shall continue in full force and effect.
2. If the application of any provision of this Ordinance to any new development is declared to be invalid by a decision of any court of

competent jurisdiction, the intent of the Board of County Commissioners is that such decision shall be limited only to the specific new development expressly involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Ordinance as a whole or the application of any provision of this Ordinance to any other new development.

SECTION 5. EFFECTIVE DATE.

This ordinance shall be effective on ~~the 46th day following its adoption by the County Commissioners~~ July 1, 2007, and impact fees shall thereafter be paid as required by this Ordinance.



Introduced by: Commissioner Eric Wargotz
Co-Sponsored by: N/A
Date of Introduction: April 3, 2007
Public Hearing held: N/A
Vote: 4 Yea 1 Nay
Date: May 8, 2007

March 15, 2007

The undersigned hereby certifies that this Ordinance was Approved and Adopted by the Board of County Commissioners of Queen Anne's County, Maryland, on the 1st day of May, 2007.

Margie A. Houck, Clerk

March 15, 2007