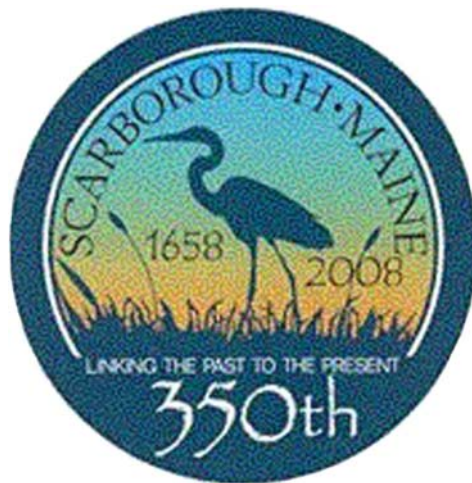


CHAPTER 410

TOWN OF SCARBOROUGH

SCARBOROUGH ROADWAY IMPACT FEE ORDINANCE:

PAYNE ROAD AREA CAPITAL IMPROVEMENT DISTRICTS



**ADOPTED OCTOBER 17, 1990
AMENDED SEPTEMBER 6, 1995
AMENDED DECEMBER 7, 2011**

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**CHAPTER 410
TOWN OF SCARBOROUGH
ROAD IMPACT FEE ORDINANCE**

**BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF
SCARBOROUGH, MAINE, IN TOWN COUNCIL ASSEMBLED:**

Section One: Purpose

This Ordinance imposes an impact fee on land development requiring review under the Town's subdivision or site plan regulations for providing new roads and related facilities necessitated by new development that impacts traffic in the Payne Road Area of the Town as defined herein. It also provides for the placement of impact fee revenues into road impact fee trust funds established for that purpose and for the administration of the impact fee ordinance, including the expenditure of funds derived from road impact fees and the refunds of unexpended funds.

Section Two: Legislative Findings

The Town Council of Scarborough, Maine finds, determines and declares as follows:

A. The Town must expand its road system in order to provide adequate levels of service in the Payne Road Area of the Town if new development in the Payne Road Area and elsewhere that affects traffic in the Payne Road Area is to be accommodated safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare;

B. The State of Maine has authorized municipalities to adopt impact fees for various purposes, including the construction of off-site capital improvements, such as roads and traffic control devices pursuant to 30-A M.R.S.A. 4354;

C. The imposition of impact fees is a preferred method of insuring that new development bears a proportionate share of the cost of capital investments necessary to accommodate such development. Appropriate locations for new development in the Town and the capital improvements necessary to accommodate such development are identified in the Town's Comprehensive Plan and capital improvements program.

D. New development generates additional traffic, necessitating the acquisition of rights-of-way, road construction and road improvements;

E. The fees established by Section Six hereof are derived from, are based upon, and do not exceed the costs of providing additional rights-of-way, road construction and road improvements necessitated by the new developments for which the fees are levied.

F. The report entitled "Scarborough, Maine Road Computation Procedure-Payne Road Area Impact Fee", dated September 11, 1990, sets forth in more detail a reasonable methodology

and analysis for the determination of the impact of new development on the need for an costs of additional rights-of-way, road construction and road improvements in the Town.

Section Three: Title, Authority, and Applicability

A. Title.

This Ordinance shall be known and may be cited as the “Scarborough Road Impact Fee Ordinance”.

B. Authority.

The Town Council of the Town of Scarborough, has the authority to enact this ordinance pursuant to 30-A M.R.S.A. 4354, and its statutory and constitutional home rule powers.

C. Applicability.

This ordinance shall apply to all new development seeking subdivision or site plan approval or the extension of previously approved subdivisions or site plans or to any change in use when the proposed development impacts traffic in the “Payne Road Area” if a building permit is issued on or after the date this Ordinance is enacted.

Section Four: Definitions

A. “Developer”

Is a person commencing a land development activity which generates or attracts traffic in the Payne Road Area and which requires subdivision or site plan approval from the Town of Scarborough.

B. “Capital improvement”

Includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project, including but not limited to:

- (1) construction of new through lanes
- (2) construction of new turn lanes
- (3) construction of new bridges
- (4) construction of new drainage facilities in conjunction with new roadway construction
- (5) purchase and installation of traffic signalization (including new and upgraded signalization)
- (6) construction of curbs, medians, and shoulders
- (7) relocating utilities to accommodate new roadway construction

Capital improvements do not include site-related improvements defined herein.

C. "Development"

Means any change in land use or any construction of buildings or structures or any change in the use of any structure that procedures vehicle trips within the Payne Road Area.

D. "Expansion of road capacity"

Means all road and intersection capacity enhancements, including but not limited to: extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges.

E. "Roads"

Means and includes arterial streets and transportation facilities associated with the arterial and state-aid highway network within the Payne Road Area of the Town and under the jurisdiction of the Town or the State of Maine.

F. "Site-related improvements"

Are capital improvements and right-of-way dedications for direct access improvements to and/or within the development in question. Direct access improvements include but are not limited to the following:

- (1) access roads leading to the development
- (2) driveways and roads within the development
- (3) acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways
- (4) traffic control measures for those roads and driveways

G. "Independent Fee Calculation Study"

Means the traffic engineering and/or economic documentation prepared by a developer to allow the determination of the impact fee other than by the use of the methodology outlined in Section Six of this Ordinance.

H. "Mandatory or Required right-of-way dedications and/or roadway improvements"

Means such non-compensated dedications and/or roadway improvements required by the Town during subdivision or site plan review.

I. "Payne Road Area"

Means the area of Scarborough, including Payne Road and State Route 114 as follows:

District 1 - Payne Road, South Portland line to I-295 Bridge

District 2 - Payne Road, I-295 Bridge through Route 114 intersection

District 3 - Payne Road, South of Route 114 to Holmes Road

District 4 - This District was repealed by the Scarborough Town Council on December 7, 2011, because the improvements in this district were accomplished.

District 5 - Route 114, between Maine Turnpike and Beech Ridge Road

Section Five: Imposition of Road Impact Fee

A. Any person who, after the effective date of this ordinance, seeks to develop land by applying for subdivision or site plan approval, or for an extension of subdivision or site plan approval issued prior to the effective date hereof, to make an improvement to land or to change the use of any land or building which will generate additional traffic in the Payne Road Area, regardless of whether the development itself is located within the Payne Road Area is hereby required to pay a road impact fee in the manner and amount set forth in this ordinance. Preliminary determinations regarding whether a proposed development will generate traffic in the Payne Road Area shall be made by the Town Planner and the Town's consulting traffic engineer. Actual impacts shall be determined by a traffic study prepared by a traffic engineer at the developer's expense and approved by the Town's consulting engineer, unless the developer agrees with the Town's determination.

B. No new building permit for any activity requiring payment of an impact fee pursuant to this Ordinance shall be issued or renewed unless and until the road impact fee hereby required has been paid.

C. No extension of a building permit issued prior to the effective date of this ordinance, for any activity requiring payment of an impact fee pursuant to this Ordinance shall be granted unless and until the road impact fee hereby required has been paid.

Section Six: Computation of Road Impact Fee

A. At the option of the developer, the amount of the road impact fee may be determined by a fee schedule established by the Town Council. The provisions of this paragraph shall govern the setting of the impact fee schedule by the Town Council and the computation of impact fees by the Town, except as expressly provided elsewhere in this Ordinance.

(1) The amount of the impact fee to be paid shall be determined in accordance with the schedule of fees approved by order of the Town Council.

(2) Where a development involves a mixed use, the fees shall be determined in accordance with the applicable schedule by apportioning space to uses specified on the applicable schedule.

(3) Where a development involves an activity not specified on the applicable fee schedule, the Town shall use the fee applicable to the most nearly comparable type of land use on the fee schedule.

(4) Where an extension is sought for a building permit, the amount of the fee shall be the difference between the fee applicable at the time of the extension and any amount previously paid pursuant to this ordinance.

(5) Impact fees for change of use, redevelopment, or expansion or modification of an existing use which has previously paid an impact fee or which did not require payment of an impact fee when originally approved and which requires the issuance of a building permit shall

be based upon the net positive increase in the impact fee for the new use as compared to the previous use.

B. Alternative method for computation of fees

A developer may prepare and submit an independent fee calculation study for the land development activity. The independent fee calculation shall be prepared and presented by professionals and shall establish to a reasonable certainty that the impact of the proposed activity differs substantially from other land use activity for which fees have been established. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable and may require the developer to submit additional or different documentation for consideration. If the independent fee calculation study is approved, the Town shall adjust the fee in accordance with that calculation. Appeals of action of the Town pursuant to this section may be taken to the Town Manager by filing a written request within 10 days of final determination.

Section Seven: Payment of Fee

A. The developer shall pay the road impact fee required by this ordinance to the Building Inspector or his designee prior to the issuance of a building permit.

B. All funds collected shall be properly identified by road impact fee district and promptly transferred for deposit in the appropriate Road Impact Fee Trust Fund to be held in separate accounts as determined in Section Nine of this Ordinance and used solely for the purposes specified in this Ordinance.

Section Eight: Road Impact Fee Districts

A. There are hereby established four (4) road impact fee districts as defined in Section 4(I) of this Ordinance.

Section Nine: Road Impact Fee Trust Funds Established

A. There are hereby established four (4) separate Road Impact Fee Trust Funds, one for each road impact fee district established by Section Eight of this Ordinance.

B. Funds withdrawn from these accounts must be used in accordance with the provisions of Section Ten of this Ordinance.

Section Ten: Use of Funds

A. Funds collected from road impact fees shall be used for the purpose of capital improvements to and expansion of transportation facilities associated with the Payne Road Area.

B. No funds shall be used for periodic or routine maintenance.

C. Funds shall be used exclusively for capital improvements or expansion within the road impact fee district, including district boundary roads, as identified in the Report entitled Computation Procedure, from which the funds were collected or for projects in other road impact districts which are of benefit to the road impact district from which the funds were collected. Funds shall be expended in the order in which they are collected.

D. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which road impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in paragraph A of this section and are located within the appropriate impact fee districts created by this Ordinance or as provided in paragraph C of this section.

E. At least once each fiscal period the Town Manager shall present to the Town Council a proposed capital improvement program for roads, assigning funds, including any accrued interest, from the several Road Impact Fee Trust Funds to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Road Impact Fee Trust Funds until the next fiscal period except as provided by the refund provisions of this Ordinance.

F. Funds may be used to provide refunds as described in Section Eleven.

Section Eleven: Refund of Fees

A. If a building permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition for its issuance except that the Town shall retain three (3) percent of the impact fee paid to offset a portion of the costs of collection. The developer must submit an application for such a refund to the Code Enforcement Officer not later than fifteen (15) days after the expiration of the permit.

B. Any funds not expended or obligated by contract by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall, upon application of the developer, be returned to the developer, provided that the developer submits an application for a refund to the Code Enforcement Officer within 180 days of the ten (10) year period.

Section Twelve: Exemptions

A. Alterations or expansions of an existing building which do not result in the generation of additional vehicle trips shall be exempt from payment of the traffic impact fee.

B. Construction of accessory buildings or structures which do not generate additional vehicle trips shall be exempt from the payment of traffic impact fees.

C. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use shall be exempt from the payment of the impact fee.

Any claim of exemption shall be made prior to the time for payment of the impact fee. Any claim not so made shall be deemed waived.

Section Thirteen: Credits

A. Credit for the dedication of land for rights of way shall be valued at the most recent assessed value by the Town Assessor or by fair market value established by private appraisers acceptable to the Town. Credit for the dedication of land shall be provided when property has been conveyed at no charge to, and accepted by, the Town in a manner satisfactory to the Town Council.

B. Credit for construction of capital improvements shall be given only where:

(1) the Town and applicant agree in writing that it would be more cost effective or expeditious for the applicant to construct improvements authorized for funding under this Ordinance, or

(2) for the cost of constructing capital improvements as a condition of Planning Board approval under the Site Plan or subdivision ordinance of the Town, provided such capital improvements would be eligible for designation by the Town Council for funding under this Ordinance. In such cases, the applicant shall submit acceptable engineering drawings and specifications, and construction cost estimates to the Town which shall determine credit for construction based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates, if the Town determines that estimates submitted by the applicant are either unreliable or inaccurate. Upon final determination of all credits, the Town shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his/her agreement to the terms of the letter or certificate and return such signed document to the Town before credit will be given. The failure of the applicant to sign, date and return such document with the balance of the impact fees and building permit fees within 60 days shall nullify the credit.

C. Except as otherwise provided in subparagraph D, credit against impact fees otherwise due will remain provisional until:

(1) construction is completed and accepted by the Town or the State, whichever is applicable, and

(2) a suitable maintenance and warranty bond is received and approved by the Town, were applicable.

D. Security shall be given for provisional credit in the form of a performance bond, irrevocable letter of credit or escrow agreement posted with and approved by the Town Manager and Town Attorney in an amount determined by the Town Manager. If the Project will not be constructed within two years of the acceptance of the offer by the Town, the amount of the

security shall be increased by 10% compounded for each year of life of the security. If the construction project is not to be completed within five years of the date of the developer's offer, the Town Council must approve the construction project and its scheduled completion date prior to the acceptance of the offer by the Town. The security or replacement shall state the date for commencement of the project and the time period for estimated completion. This date and/or time period may be extended by the Town for good cause shown conditioned upon extension of the security.

E. Credit may also be given for the costs of constructing capital improvements required as a condition of Planning Board subdivision approval or a Department of Environmental Protection Site Location of Development License if the development was approved prior to enactment of this ordinance but building permits are issued after enactment. Credit shall be in an amount determined by the Planning Board, based upon the scope of the development approved by the Planning Board and/or DEP and the value of the capital improvements actually constructed. Credit shall be given only to the extent that the traffic impact of the proposed development, as determined at the time of construction, does not exceed the impacts anticipated by the subdivision or site location of development approval. The developer shall have the burden of establishing the cost of capital improvements constructed.

F. Any claim for credit must be made prior to the time for payment of impact fees. Any claim not so made shall be deemed waived.

G. Credits shall not be transferred from one project or development to another without the approval of the Town Council.

H. Determination pursuant to this Paragraph may be appealed to the Town manager by filing a written request with the Town Manager within 30 days of the determination

ORDER SETTING IMPACT FEES

AND DESIGNATING APPROVED PROJECTS

BE IT ORDERED by the Scarborough Town Council that pursuant to the Town of Scarborough Road Impact Fee Ordinance, the fees and charges shall be as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council for development from the Highway Impact Fee Trust Fund.