

ARTICLE 18
PARK AND RECREATION DEVELOPMENT IMPACT FEES

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Sec. 18-1. Legislative Findings.

The City Council of the City of Powder Springs has considered the feasibility of imposing development impact fees and finds, determines and declares that:

- (a) The Georgia Legislature, through the enactment of the Georgia Development Impact Fee Act, Georgia Code Title 36-71-1 through 36-71-13, has authorized the City of Powder Springs to enact development impact fees;
- (b) The City of Powder Springs established a development impact fee advisory committee pursuant to the Georgia Development Impact Fee Act, Georgia Code Title 36-71-5, and that committee has served in an advisory capacity and assisted and advised the City of Powder Springs with regard to the development and adoption of this development impact fee ordinance;
- (c) The City of Powder Springs comprehensive plan contains within it land use categories, a capital improvement element for public safety and parks and recreation impact fees, and the establishment of a level of service standard for public safety and parks and recreation for the planning horizon to 2026; and the City of Powder Springs comprehensive plan, including the amendment to include a capital improvement element for public safety and parks and recreation impact fees, has been submitted to the Atlanta Regional Commission and determined by the Georgia Department of Community Affairs to be in compliance with the rules of the Georgia Department of Community Affairs, Chapter 110-12-2, Development Impact Fee Compliance Requirements;

- (d) The City of Powder Springs must expand its park and recreation system in order to maintain the level of service standard established in the City of Powder Springs comprehensive plan if new development is to be accommodated without decreasing the current standard. This must be done in order to promote and protect the health, safety, morals, convenience, order, prosperity, and the general welfare of the City of Powder Springs, Georgia;
- (e) The imposition of development impact fees is a preferred method of ensuring the availability of capital facilities necessary to accommodate new development;
- (f) Each of the types of land development described in this article, will create a need for the construction, equipping, or expansion of the City of Powder Springs's park and recreation improvements;
- (g) The fees established by this article are derived from, are based upon, and do not exceed a proportionate share of the costs of providing additional park and recreation land and park and recreation improvements necessitated by the new land developments for which the fees are levied;
- (h) The report entitled "A Report on Public Safety and Park & Recreational Development Impact Fees Prepared for Powder Springs, Georgia," dated March 19, 2006, sets forth a reasonable methodology and analysis for the determination of the development impact of new development on the need for and costs for additional park and recreation land and park and recreation improvements in the City of Powder Springs.

Sec. 18-2. Short Title and Applicability.

- (a) This article shall be known and may be cited as the "The City of Powder Springs park and recreation development impact fee ordinance."
- (b) This article shall apply throughout the incorporated area of the City of Powder Springs.

Sec. 18-3. Intent and Purposes.

- (a) This article is intended to assist in the implementation of the City of Powder Springs's comprehensive plan.
- (b) The purpose of this article is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide park and recreation land and park and recreation improvements in the City of Powder Springs.
- (c) This article is intended to comply fully with each and every relevant provision of the Georgia Development Impact Fee Act, Georgia Code Title 36-71-1 through 36-71-13, and shall be interpreted and implemented to so comply.

Sec. 18-4. Rules of Construction.

The provisions of this article shall be liberally construed so as to effectively carry out its purpose to promote and protect the health, safety, morals, convenience, order, prosperity, and the general welfare of the City of Powder Springs, Georgia. For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of construction shall apply to the text of this article:

- (a) In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
- (b) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- (c) Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- (d) The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".
- (e) The word "person" includes an individual, a corporation, a partnership, an incorporated association, a limited liability company or limited liability partnership, or any other similar entity.
- (f) Unless the context clearly indicates the contrary, where a regulation involves 2 or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "either...or", the conjunction shall be interpreted as follows: "And" indicates that all the connected terms, conditions, provisions or events shall apply. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- (g) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

Sec. 18-5. Definitions.

The following definitions are hereby adopted and shall be applied to this article. Where the provisions of this Section conflict with terms defined in any other article of this development code, the definitions of this section shall control unless the context clearly indicates otherwise.

Applicant: A person applying for the issuance of a building permit.

Building permit: The approval issued by the City of Powder Springs that authorizes the construction or permanent placement of a building, dwelling or other structure on a site.

Capital equipment: Buildings, vehicles, weapons, and communications equipment, all with an expected use life of ten years or more.

Capital improvement: Park and recreation planning, land acquisition, site improvements, and capital equipment, but excludes maintenance and operation.

Developer: Any person or legal entity undertaking development.

Development: Any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for park and recreation facilities.

Development approval: Any written authorization from the City of Powder Springs which authorizes the commencement of construction.

Development impact fee: A payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of park and recreation system improvements needed to serve new growth and development.

Dwelling unit: One or more rooms connected together and constituting a separate, independent housekeeping establishment with complete provisions for cooking, eating, sleeping, bathing and personal hygiene, and physically set apart from any other dwelling unit in the same structure.

Encumber: To legally obligate by contract or otherwise commit to use by appropriation or other official act of the City of Powder Springs.

Feepayer: That person who pays a development impact fee or his/her successor in interest. In the absence of any express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed “not to run with the land.”

Impact fee administrator: The City of Powder Springs community development director or other municipal official designated to carry out the administration of this development code.

Present value: The current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

Private park and/or recreational facility: An area which is not owned by or dedicated to any governmental entity and is an area designed and equipped for sports and leisure activities but does not include areas not readily accessible for such activities.

Project: A particular development on an identified parcel of land.

Project improvements: Site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

Proportionate share: That portion of the cost of system improvements which is reasonably related to the service demands and needs of the project.

Service area: A geographic area defined by the City of Powder Springs in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

System improvement costs: Cost incurred to provide additional public facilities capacity needed to serve growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of development impact fee receipts. Projected interest charges and other finance costs may be included if the development impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

System improvements: Capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to "project improvements."

Sec. 18-6. Imposition of Park and Recreation Development Impact Fee.

- (a) Any person who, after the effective date of this article seeks to develop land within the City of Powder Springs, Georgia, by applying for a building permit, is hereby required to pay a park and recreation development impact fee in the manner and amount set forth in this article.

certification shall establish the applicable development impact fee for a period of 180 days from the date thereof.

Sec. 18-8. Payment of Fee.

- (a) The applicant shall pay the park and recreation development impact fee required by this article to the impact fee administrator or his/her designee prior to the issuance of a building permit.
- (b) All funds collected shall be properly identified by and promptly transferred for deposit in the park and recreation development impact fee trust fund to be held in separate accounts as determined in this article and used solely for the purposes specified in this article.

Sec. 18-9. Park and Recreation Service Area Established.

There is hereby established one park and recreation service area which shall be the entirety of the incorporated area of the City of Powder Springs.

Sec. 18-10. Park and Recreation Development Impact Fee Trust Fund Established.

- (a) There is hereby established one park and recreation development impact fee trust fund for the park and recreation service area established in this article.
- (b) Development impact fees placed in this fund shall be maintained in an interest bearing account.
- (c) All park and recreation development impact fees collected shall be promptly deposited in the park and recreation development impact fee trust fund and maintained there, including interest thereon, until withdrawn pursuant to this article.
- (d) Funds withdrawn from this account must be used in accordance with the provisions of Sec. 18-11 of this article.

Sec. 18-11. Use of Funds.

- (a) Funds collected from park and recreation development impact fees shall be used solely for the purpose of acquiring, and/or making capital improvements to park and recreation facilities under the jurisdiction of the City of Powder Springs, Cobb County, or the State of Georgia, and related expenses as permitted by the Georgia Development Impact Fee Act, and shall not be used for maintenance or operations.
- (b) Funds shall be used exclusively for acquisitions, expansions, or capital improvements within the park and recreation development impact fee service area from which the funds were collected.

- (c) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which park and recreation development impact fees may be expended, development 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) and (b) above.
- (d) In the event a developer enters into an agreement with the City to construct, fund or contribute system improvements such that the amount of the credit created by such construction, funding or contribution is in excess of the development impact fee otherwise due, the developer shall be reimbursed for such excess construction funding or contribution from development impact fees paid by other development located in the service area which is benefited by such improvements.
- (e) At least once each fiscal period the impact fee administrator shall present to the City Council a report describing the amount of development impact fees collected, encumbered and used, and a proposed capital improvement program for park and recreation, assigning funds, including any accrued interest, from the park and recreation development impact fee trust fund to specific park and recreation improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the park and recreation development impact fee trust fund until the next fiscal period except as provided by the refund provisions of this article.
- (f) Funds may be used to provide refunds as described in Sec. 18-12 of this article.
- (g) Funds shall be considered expended on a first in, first out basis.

Sec. 18-12. Refund of Fees Paid.

- (a) If a building permit expires without commencement of construction, then the feepayor shall be entitled to a refund, without interest, of the development impact fee paid as a condition for its issuance except that the City shall retain 3% of the fee to offset a portion of the costs of collection and refund. The feepayor must submit an application for such a refund to the impact fee administrator within 30 days of the expiration of the permit.
- (b) In the event that development impact fees have not been not expended or encumbered by the end of the calendar quarter immediately following 6 years from the date the development impact fee was paid, the impact fee administrator shall provide written notice of entitlement to a refund to feepayors or their successors in interest.
- (c) If funds are not expended or encumbered by the end of the calendar quarter immediately following 6 years from the date the park and recreation development impact fee was paid, upon application of the then current landowner, they must be returned to such feepayor with interest that is a pro rata share of the interest earned by the fund. A feepayor must submit an application for a refund to the impact fee administrator within one year of the expiration of the 6-year period or the publication of the notice of entitlement, whichever

is later. Refunds shall be made to the feepayor within 60 days after it is determined that a sufficient proof of claim for a refund has been made.

Sec. 18-13. Exemptions.

The following shall be exempted from payment of the development impact fee:

- (a) Alterations of an existing building where use and size are not changed.
- (b) The construction of residential accessory buildings or structures.
- (c) The replacement of a building or structure with a new building or structure of the same size and use. As provided in the case of a change of use, redevelopment, or expansion or modification of an existing use which requires the issuance of a building permit, the development impact fee shall be based upon the net positive increase in the development impact fee for the new use as compared to the previous use.

Any claim of exemption must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

Sec. 18-14. Credits.

Park and recreation land and/or capital improvements may be offered by the applicant as total or partial payment of the required park and recreation development impact fee. The applicant must request a park and recreation development impact fee credit. If the impact fee administrator accepts such an offer the credit shall be determined and provided in the following manner:

- (a) Credit for the dedication of land shall be valued at: 115% of the most recent assessed value by the property appraiser, or by fair market value established by private appraisers acceptable to the City. Credit for the dedication of park and recreation land shall be provided when the property has been conveyed at no charge to, and accepted by, the City in a manner satisfactory to the impact fee administrator.
- (b) Applicants for credit for construction of park and recreation improvements shall submit acceptable engineering drawings and specifications, and construction cost estimates to the impact fee administrator. The impact fee administrator shall determine credit for construction based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the impact fee administrator determines that such estimates submitted by the applicant are either unreliable or inaccurate. The impact fee administrator 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 impact fee administrator before credit will be given. The failure of the applicant to sign, date, and return such document within 60 days shall nullify the credit.

- (c) Except as provided in subparagraph (d), credit against development impact fees otherwise due will not be provided until: the construction is completed and accepted by the City, the County, or the State, whichever is capable; and a suitable maintenance and warranty bond is received and approved by the impact fee administrator, when applicable.
- (d) Credit may be provided before completion of specified park and recreation improvements if adequate assurances are given by the applicant that the standards set out above will be met and if the applicant posts security as provided below for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with and approved by the impact fee administrator in an amount determined by the impact fee administrator. If the park and recreation construction project will not be constructed within one year of the acceptance of the offer by the impact fee administrator, the amount of the security shall be increased by 10% compounded, for each year of the life of the security.
- (e) Applicant may apply for credit against park and recreation development impact fees otherwise due for private park and/or recreation facilities. In no circumstance shall credit for private park and/or recreation facilities exceed 50% of the park and recreation development impact fees otherwise due. An applicant requesting credit must show that: the private park and/or recreation facility for which credit is sought serves a public recreational need; the private park and/or recreation facility for which credit is sought is consistent with the park and recreation capital improvement element of the City of Powder Springs's comprehensive plan; and the request complies with the security provisions set forth in this section.
- (f) Any claim for credit must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.
- (g) Credits shall not be transferable from one project or development to another unless so provided in a development impact fee credit agreement.

Sec 18-15. Appeals.

Notwithstanding the provisions of article 14 of this development code, the following provisions shall apply with regard to appeals of decisions made under the terms of this article:

- (a) Any applicant or feepayor aggrieved by a decision of the impact fee administrator made pursuant to this article shall have the right to appeal to the Mayor and City Council. Prior to any such appeal the aggrieved applicant or feepayor shall file a request for reconsideration with the impact fee administrator who shall act upon such request within 15 days.
- (b) All appeals shall be taken within 15 days of the impact fee administrator's decision on the request for reconsideration, by filing with the impact fee administrator a notice of appeal specifying the grounds therefor. The impact fee administrator shall forthwith

transmit to the Mayor and City Council all papers constituting the record upon which the action appealed from is taken. The Mayor and City Council shall thereafter establish a date and time for a hearing on the appeal (said hearing date to be not more than 30 days from the date the Notice of Appeal is filed), and the aggrieved party shall be given at least 15 days notice of said hearing. The Mayor and Council shall decide said appeal within 15 days following the hearing. Any applicant or feepayor taking an appeal shall have the right to appear at the hearing, to present evidence and may be represented by counsel.

- (c) All appeals of the Mayor and Council's decision(s) shall be taken by petition for writ of certiorari to the Cobb County Superior Court.
- (d) An Applicant may pay a park and recreation development impact fee under protest to obtain a building permit, and by making such payment, shall not be estopped from exercising the right of appeal provided for in this Section or receiving a refund of any amount deemed to have been illegally collected.

Sec. 18-16. Review and Automatic Update of Fee Schedule.

- (a) The fee schedule contained in this article shall be reviewed by the City Council at least once every 2 years.
- (b) Unless otherwise resolved by the City Council, the impact fee schedule shown in this article shall be adjusted by the impact fee administrator in March of each calendar year based on the methodology described in paragraph (c) of this section. Any adjustments to the impact fee schedules, made pursuant to this section, shall be effective the following first day of May.
- (c) The base for computing any adjustment is the January construction cost index for the United States, published by McGraw-Hill. For the purpose of this Section the initial index to be referenced is January of the last year when the impact fees were updated with cost or demographic data.
- (d) If the index is changed so that the base year is different, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the construction cost index is discontinued or revised, the consumer price index or such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the construction cost index had not been discontinued or revised.

Sec. 18-17. Penalty Provision.

A violation of this article shall be prosecuted in the same manner as specified in Article 16 of this development code, and violations of this article shall be punishable according to law; however, in addition to or in lieu of any criminal prosecution the City of Powder Springs shall have the power to sue in civil court to enforce the provisions of this article.