AMENDED EXHIBIT B FOR PUBLIC REVIEW
"DRAFT IMPACT FEE ORDINANCE UPDATE" (2/8/2021)

Proposed additions to the chapter are underlined with proposed deletions are in ~~strikethrough~~ font:

CHAPTER 1. - DEVELOPMENT IMPACT FEES

Sec. 19-1001. - Short title.

This chapter shall be known and may be cited as the "City of Atlanta Development Impact Fee Ordinance."

Sec. 19-1002. - Authority.

(a) This chapter has been prepared and adopted by the council of the city in accordance with the authority provided by article 9, section 2, paragraph 4 of the Constitution of the State of Georgia and the "Georgia Development Impact Fee Act" (O.C.G.A. title 36, chapter 71), as it may be amended from time to time.

(b) The provisions of this chapter shall not be construed to limit the power of the city to use any other legal methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this chapter, including but not limited to the city's exclusive authority to exercise the power of zoning and adopt plans pursuant to article 9, section 2, paragraph 4 of the Constitution of the State of Georgia and all ordinances and plans adopted pursuant thereto.

Sec. 19-1003. - Declaration of intent and purpose.

(a) *Intent.* This chapter is intended to implement and be consistent with the City of Atlanta Comprehensive Development Plan, as it may be amended in accordance with O.C.G.A. title 36, chapter 70, including the capital improvements program included therein.

(b) *Purpose.*

(1) The purpose of this chapter is to impose development impact fees, as hereinafter defined, only for certain transportation, parks and recreation, fire protection, emergency medical services, and police facilities, as hereinafter set forth.

(2) It is also the purpose of this chapter to ensure that adequate transportation, parks and recreation, fire protection, emergency medical services, and ~~certain~~ police facilities are available to serve new growth and development in the City of Atlanta and to regulate the use and development of land so that new growth and development bears a proportionate share of the cost of such new public facilities needed to serve such new growth and development.

Sec. 19-1004. - Findings.

The council of the city finds and declares:

(1) That land development shall not be allowed in the City of Atlanta unless adequate public facilities are available or are assured to accommodate such development.

(2) That new land development in identified service areas shall bear a proportionate share of the cost of new public facilities necessary to serve such new growth and development.

(3) That the imposition of development impact fees is a preferred method of implementing a fair sharing of the cost of new public facilities necessary to accommodate new growth and development, and to promote and protect the public health, safety and general welfare of the citizens of the City of Atlanta; and

(4) That the City of Atlanta must expand certain of its public facilities in order to maintain current levels of service if new development and growth is to be accommodated without decreasing the current level of service.

Sec. 19-1005. - Rules of construction.

(a) *Liberal Construction.* The provisions of this chapter shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety, and general welfare of the citizens of the city.

(b) *Rules of Construction.* For the purposes of administration and enforcement of this chapter, unless otherwise stated in this chapter, the following rules of construction shall apply to the text of this chapter:

(1) In the case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table or illustrative table, the text shall control.

(2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(3) 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.

(4) The word "person" means any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit or certificate of occupancy has been requested.

(5) Unless the context clearly indicates the contrary where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and," "or" "either/or," the conjunction shall be interpreted as follows:

a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.

b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

c. "Either/or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(6) 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.

(7) The paragraph headings used in this chapter are included solely for convenience and shall not affect the interpretation of this chapter.

(8) Except for the definitions set forth herein, words and phrases set forth herein and in the impact fee study shall have the meaning ascribed to those words in the City of Atlanta Code of Ordinances, part 16, "Zoning," section 16.01.001 et seq., as amended and supplemented.

(9) Impact fee schedules set forth in the impact fee study are incorporated as a part of this ordinance and for the purpose of interpretation shall be considered attached hereto and shall have the full effect of an adopted ordinance of the City of Atlanta.

(10) Where any part of this ordinance conflicts with the provisions of the Georgia Development Impact Fee Act, the ordinance shall be administered in a manner to bring such part into compliance.

Sec. 19-1006. - Definitions.

As used in this chapter, the following terms shall have the meaning set forth below:

Act means O.C.G.A. title 36, chapter 71.

~~*Affordable* means new sales housing or rental housing units that do not exceed the maximum prices and/or maximum rents as defined in sections 19-1006 and 19-1016.~~

~~*Affordable Housing Units* means housing units that are affordable within the meaning of this chapter.~~

~~*Atlanta Empowerment Zone* means that area designated by the U.S. Department of Housing and Urban Development as a federal empowerment zone pursuant to provisions of the Omnibus Budget Reconciliation Act of 1993.~~

~~*Atlanta metropolitan statistical area* means the 18 county areas designated by the U.S. Department of Commerce, Bureau of the Census.~~

Building permit means any official document issued by the City of Atlanta authorizing the construction, repair, alteration or addition to a building or structure, including site work and foundation work related thereto. As used herein, the term shall include conversions, but otherwise shall not include permits required for remodeling, rehabilitation, or other improvements to: (i) an existing residential structure provided there is no increase in the number of dwelling units resulting therefrom; or (ii) an existing nonresidential structure provided there is no increase in the gross square footage.

Capital improvement means an improvement with a useful life of 10 years or more, by new construction or other action, which increases the service capacity of a public facility.

Capital improvements program means that document approved by council which sets out projected needs for system improvements during the planning horizon established therein, which provides a schedule of capital improvements that will meet the anticipated need for system improvements, and which provides a description of anticipated funding sources for each required improvement.

City means the City of Atlanta, Georgia.

Commencement of construction ~~or *Commenced construction*~~ means expenditure or encumbrance of any funds, whether they be development impact fee funds or not, for a public facilities project, or advertising of bids to undertake a public facilities project.

Commercial when used in the impact fee schedules means all retail and service activities as well as all activities within shopping centers.

~~*Completion of construction* shall mean the issuance of the final certificate of occupancy by the city. The date of completion is the date on which such certificate is issued.~~

Comprehensive development plan means the City of Atlanta Comprehensive Development Plan (CDP), that addresses the City's immediate needs and opportunities while moving toward realization of its long-term goals for the future (as defined in the "Atlanta City Design"). The CDP must be updated every five years. ~~as it may be amended from time to time.~~

Conversion means any change in use of an existing building or structure.

Council means the City Council of the City of Atlanta.

Developer means any person or legal entity undertaking development.

Development means 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 requiring the issuance of a building permit, which creates additional demand on or need for public facilities.

Development approval means written authorization, such as approval of a rezoning application or issuance of a building permit or other forms of official action required by local law in the city prior to commencement of construction.

Development impact fee means the payment of money imposed upon and paid by new development as a condition of development approval as its proportionate share of the cost of system improvements needed to serve such development, and includes parks and recreation impact fees, public safety impact fees and transportation impact fees.

Development impact fee advisory committee means a committee appointed by the mayor and council to advise on the expenditure of transportation impact fee funds as outlined in City of Atlanta Code of Ordinances section 6-5006, et al.

Director means the director, ~~bureau~~ office of buildings, and/or such other official designated by the ~~director, bureau of buildings,~~ commissioner of the department of city planning to administer the provisions of this chapter.

Dwelling unit means a room or rooms connected together, constituting a separate housekeeping establishment for a family, for owner occupancy or rental or lease on weekly or longer terms, physically separate from any other rooms or dwelling units which may be in the same structure, and containing independent kitchen and sleeping facilities. When in multifamily buildings, dwelling units may be referred to as apartments.

~~*Economic development project* means any project that meets one or more of the following criteria:~~

~~Any development located within a designated housing, commercial, industrial, or mixed-use enterprise zone(b) Any development located within the Atlanta Empowerment Zone or a Linkage Community; or~~

~~(c) Any commercial development project located outside the Atlanta Empowerment Zone or a Linkage Community but within a community development impact area which, in opinion of the city council as expressed through an appropriate resolution, would either (1) generate annual revenues of $500,000.00 or more, of which at least 75 percent would be derived from the sale of goods and services to residents of the empowerment zone and linkage communities, or (2) create ten or more permanent jobs, of which at least 75 percent would be filled through the first source jobs program by qualified residents of the empowerment zone and linkage communities; or~~

~~(d) The rehabilitation or conversion of any historic building; or~~

~~(e) The construction of any new not-for-profit day care, vocational training, or educational facility located in a community development impact area; or~~

~~(f) The construction of any private not-for-profit recreational facility.~~

~~(g) The construction of any not for profit homeless facility.~~

~~(h) Development projects associated with corporate relocation from outside the city limits into the city limits and which is anticipated to create at least 8,000 new full time jobs and/or $1,000,000,000.00 in new investment.~~

Effective date means the date on which this chapter becomes effective.

Encumber or *encumbered* means to legally obligate by contract or otherwise commit to use by appropriation or other official act of the city.

Equivalent dwelling unit means the demand for travel generated by a typical single-family detached dwelling unit.

Equivalent fire station square feet means the sum of physical, City-owned fire station square feet plus the ratio of the current total replacement cost of City-owned fire protection capital facilities, land and equipment other than fire stations to the average current fire station construction cost per square foot.

Equivalent lane-miles means the total number of through travel lane-miles plus the ratio of the total replacement value of necessary appurtenances and improvements, including medians, curb and gutter, turn lanes, right-of-way, and traffic signals, to the average current replacement cost of a through travel lane-mile.

Equivalent park acres means, for each park impact fee service area, the total number of acres currently occupied or intended for parks and recreation facilities, plus the ratio of the total replacement value of parks and recreation building and other improvements, to the average current cost of an acre of park land.

Equivalent police station square feet means the sum of physical, City-owned police buildings, associated land and support vehicles and equipment to the current average building construction cost per square foot for police buildings.

Excess capacity means that portion of the capacity of a public facility or system of public facilities which is beyond that necessary to provide adequate service to existing development at the ~~then-existing~~ adopted level of service.

~~*Fair market rent* means the monthly rate of rental housing cost, by bedroom size, published periodically by the United States Department of Housing and Urban Development (HUD). In the event that HUD fails to publish said data for a period of one year or more, the commissioner of planning and development shall publish annually a set of fair market rents for new construction by adjusting the most recently published HUD data in proportion to the residential rent component of the consumer price index as published annually by the United States Department of Labor.~~

Feepayor means that person or entity who pays a development impact fee, or his legal successor in interest with the right or entitlement to any refund or reimbursement of previously paid development impact fees which is required by this chapter and which has been expressly transferred or assigned to the successor in interest. In the absence of an 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."

Fire/EMS facilities means fire protection and emergency medical services facilities, including but not limited to fire stations, fire engines and fire fighting equipment, truck and other mobile units, and related facilities.

Functional population means the effective population of the city, including residents and nonresidents, during a given period of time, as used in the calculation of development impact fees and as described in the impact fee study.

Gross floor area means the sum of the gross horizontal area of the several stories of a building measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings or different uses, including attic space with headroom of seven feet or greater and served by a permanent, fixed stair, but not including enclosed off-street parking or loading areas.

~~*Historic building* means any building designated by the City of Atlanta as a "Landmark building or site" (LBS) or "Contributing building" within a "Landmark district" (LD) as those terms are defined in chapter 20 of part 16 of the Code of Ordinances.~~

~~*Homeless facilities* means any not for profit facility for the purpose of housing homeless persons or families, to include but not be limited to: shelters, dormitories, hotels or rooming houses that are federally funded through the city and included in the Comprehensive Development Plan.~~

Impact fee study means that certain report entitled "Impact fee study, City of Atlanta, Georgia," dated ~~March 18, 1993~~2021, as said report may be amended and supplemented from time to time, which is attached hereto as Attachment 3 and which by this reference is incorporated herein.

Independent fee determination means a finding by the director that an independent fee study does or does not meet the requirements for such a study as established by this chapter and, if the requirements are met, the fee calculated by the director therefrom.

Independent fee study means the engineering, financial and/or economic documentation prepared by a feepayor or applicant in accordance with section 19-1009 of this chapter to allow

individual determination of a development impact fee other than by use of the applicable fee schedule, all as required by O.C.G.A. section 36-71-4(g).

Lane-miles means the product of the number of through travel lanes times the length of those lanes in miles.

Level of service means a measure of the relationship between the ratio of service capacity and service demand for specified public facilities in terms of demand to capacity ratios or the comfort and convenience of use or service of such facilities, or both, as established by the council as a matter of policy.

~~*Linkage community* means any census tract outside the Atlanta Empowerment Zone with a poverty rate of 35 percent or more as determined by the U.S. Bureau of the Census in the most recent decennial census.~~

Major road network system means all City arterial and ~~several major~~ collector roads within the city, as shown on the long range road classification map including new arterial and ~~major~~ collector roads necessitated by land development. A list of all roads included in the existing major road network system is included in the impact fee study.

~~*Maximum price* means, in the case of low-income sales housing units, that the pro-forma sales price is equal to or less than one and one-half times median family income, and in the case of moderate-income housing units, that the pro-forma sales price is greater than one and one-half times median family income but does not exceed two and one-half times median family income.~~

~~*Maximum rents* means, in the case of low-income rental housing units, that the pro-forma rental rate is equal to or less than 60 percent times fair market rent, and in the case of moderate-income rental housing units, that the pro-forma rental rate is greater than 60 percent times fair market rent but does not exceed 80 percent times fair market rent.~~

~~*Median family income* means the median income of all families of the Atlanta metropolitan statistical area according to the most recent data published from time to time by the U.S. Department of Housing and Urban Development.~~

Mini-Warehousing when used in the impact fee schedules shall mean those uses defined in the Zoning Code as a self storage facility, secured storage facility or vault storage facility.

Multifamily when used in the impact fee schedules attached hereto means all residential dwelling unit types other than single-family detached dwelling units, as that use is defined in the City of Atlanta Code of Ordinances, part 16, "Zoning," section 16.01.001 et seq.

Nonprofit educational facility means a public or private academic institution, operated for nonprofit and accredited by the State of Georgia, that offers a program or series of programs of academic study.

Nursing home means a residential board and care home appropriately licensed by the State of Georgia.

Office when used in the impact fee schedules attached hereto means all general purpose office buildings, including business, medical and government office uses, as well as ancillary retail and service activities.~~, provided that professional office buildings utilizing at least 75 percent of their floor area for medical offices and clinics shall be included in the "Hospital" category.~~

Parks and recreation facilities means capital improvements consisting of parks, open space, recreation and related facilities, including but not limited to, land, group picnic shelters, gymnasiums, playcourts, ballcourts, ballfields, playgrounds, art centers, swimming pools, golf courses, nature preserves, bike ways and similar facilities.

Parks and recreation impact fees means development impact fees imposed by the city for park and recreation facilities.

Police facilities means capital improvements consisting of buildings and equipment, including precincts, headquarters buildings, training facilities electronic equipment, radio equipment, and certain vehicles or other equipment with a useful life in excess of 10 years.

Present value means the current value of past, present or future payments, contributions or dedications of goods, services, materials, construction, or money, taking into account, when appropriate, depreciation and inflation.

~~*Pro-forma rental rate* means the projected rental rates of rental housing based upon total development costs.~~

~~*Pro-forma sales price* means the projected sales price of sales housing based upon total development costs.~~

Project or *Development project* means a principal building or structure, or group of buildings or structures, planned and designed as an interdependent unit together with all accessory uses or structures, utilities, drainage, access, and circulation facilities, whether built in whole or in phases on an identified parcel of land.

Project improvements means site specific improvements or facilities that are planned, designed or built to provide service for a specific development project and that are necessary for the use and convenience of the occupants or users of that project, and that are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or a 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. No improvement or facility included in a plan for public facilities approved by the council shall be considered a project 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. Direct access improvements to the particular development project are project improvements. Direct access improvements include but are not limited to the following: (1) site driveways and local residential and nonresidential streets, (2) median cuts made necessary by those driveways or local residential and nonresidential streets, (3) right turn and left turn, and deceleration or acceleration lanes leading to or from those driveways or local residential and nonresidential streets, (4) traffic control measures for those driveways or local residential and nonresidential streets, (5) local residential and nonresidential streets that are not shown as publicly-owned roads on the city's long range road classification map, as amended, (6) local residential and nonresidential streets or intersection improvements whose primary purpose at the time of construction is to provide direct access to the development project, and (7) necessary right-of-way dedications required for those items set forth in (1)—(6) above.

Proportionate share means that portion of the cost of system improvements which is reasonably and fairly related to the service demands and needs of a project.

Public facility or *Public facilities* means fire/EMS facilities, police facilities, transportation facilities, and parks and recreation facilities.

Public safety impact fees means development impact fees imposed by the city for fire/EMS facilities and police facilities.

Public/institutional when used in the impact fee schedules attached hereto means a governmental, quasi-public or institutional use, not located in a shopping center or office building. Typical uses include elementary, secondary or higher educational establishments, day care centers, hospitals, mental institutions, nursing homes, assisted living facilities, fire and fire stations, post offices, jails, libraries, museums, places of religious worship, military bases, airports, bus stations, fraternal lodges, parks and playgrounds.

Redevelopment means new construction of one (1) or more buildings or portions thereof on a lot of record upon which ground has been broken for said new construction within one (1) year following demolition of one (1) or more buildings or portions thereof on the same lot of record.

~~*Rental housing* means a newly constructed dwelling unit for which periodic payments are paid by a tenant to a landlord for its use or occupation.~~

Road or *Roads* mean arterial or collector streets or roads which have been designated in the long range road classification map together with all necessary appurtenances, including, but not limited to, right of way, bridges, traffic, signals, and landscaping.

~~*Sales housing* means a newly constructed dwelling unit that is to be transferred from one (1) person to another called respectively the "seller" (or vendor) and the "buyer" (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of real property.~~

Service area means a geographically defined area of the city, designated in the impact fee study ~~City of Atlanta comprehensive development plan or a component thereof~~, in which a defined set of public facilities provides service to development within the area or in which development potential creates the need for the imposition of development impact fees.

System improvements means capital improvements that are public facilities designed to provide service to more than one (1) project or to the community at large, in contrast to "Project improvements."

System improvement costs means costs incurred to provide system improvements needed to serve new growth and development, including the costs of 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, attorney's 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 program, and administrative costs equal to three percent ~~(3%)~~ of the total amount of the costs. 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 city to finance system improvements, but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

~~*Total development costs* means all costs associated with new construction, including construction costs, land costs, and soft costs.~~

Transportation facilities means the components of the major road network system, including travel lanes, rights-of-way and associated facilities within the roadway corridor, such as intersections, curbs, gutters, medians, shoulders, drainage structures, bridges, landscaping, sidewalks, multi-use paths, and traffic signals ~~roads, streets, and bridges, including rights-of-way, traffic signals, sidewalks and landscaping, and any local components of state or federal highways~~.

Transportation impact fee means development impact fees imposed by the city for transportation facilities.

Unit of development as used in the impact fee study means the standard incremental measure of land development activity for a specific type of land use upon which the rate of demand for public facilities is based.

~~*VMC* means vehicle-miles of capacity.~~

~~*VMT* means vehicle-miles of travel.~~

Warehousing when used in the impact fee schedules shall mean that use defined in the Zoning Code as a warehousing facility.

Sec. 19-1007. - Imposition of development impact fees.

(a) *Imposition of Fee.* Any person who, after the effective date, engages in development shall pay development impact fees in the manner and in the amounts required in this chapter. No building permit for any development requiring payment of a development impact fee pursuant to this chapter shall be valid unless and until the required development impact fee has been paid.

(b) *Payment Pursuant to Fee Schedule.* Payment of development impact fees pursuant to the fee schedules attached hereto and incorporated herein shall constitute full and complete payment of the project's proportionate share of system improvements for which such fee was paid and shall constitute compliance with the requirements of this chapter.

(1) The impact fee schedules incorporated in this ordinance were developed to represent as closely as reasonably possible the cost necessary for planning and financing public facilities needed to serve new growth and development to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens.

(2) In recognition of the competitive nature of development as affected by regional or national economic circumstances, the ability of developers to choose to locate in counties and municipalities which appear to offer the most advantageous economic incentives, the presumptions set forth in O.C.G.A. § 36-71-3(c) that payment of a development impact fee shall be deemed to be in compliance with any municipal or county requirement for the provision of adequate public facilities or services in regard to the system improvements for which the development impact fee was paid and the discretion of the city council to choose to impose or not impose

development impact fees: (i) the impact fees imposed on the date this ordinance becomes effective and for the remainder of the first year thereafter will be calculated at 50 percent of the rate set forth in the impact fee schedules; (ii) the impact fees to be charged in the second year after the effective date of this ordinance will be calculated at 75 percent of the rate set forth in the impact fee schedules; and (iii) the impact fees charged in the third and all subsequent years after the effective date of this ordinance will be imposed at 100 percent of the rate set forth in the impact fee schedules. Such rates shall become effective on the dates herein specified without further action of the city council.

(c) *Development Under Existing Permit.* Notwithstanding any other provision of this chapter, that portion of a project for which a valid building permit has been applied for or issued prior to the effective date of this chapter shall not be subject to development impact fees pursuant to this chapter so long as the building permit remains valid and construction is commenced and diligently pursued according to the terms of the building permit. and the development impact fees charged under the prior terms of this chapter have been paid. No amendment to this chapter shall be construed to increase, reduce, exempt or change the amount of development impact fees which were paid under this chapter prior to any such amendment, provided that the permit application has been processed, the permit issued and the fees associated with the issued permit have been paid as required. The acceptance of a building application for a project shall not vest the right to be charged impact fees at any particular rate.

(d) *Project Improvements.* Nothing in this chapter shall prevent the city from requiring a developer to construct reasonable project improvements in connection with a development project.

(e) *Square Feet.* References in the impact fee schedules to square feet refer to gross floor area, as defined herein. ~~*Phasing of Fees.* Anything herein to the contrary notwithstanding, transportation impact fees shall become effective upon adoption and approval of this chapter. Parks and recreation impact fees and public safety impact fees shall become effective on July 1, 1993.~~

(f) *Correction of Errors.* If the impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated. If the original calculation resulted in a fee that was too high, the difference shall be refunded to the feepayor. If additional development impact fees are owed, no permits of any type shall be issued by the city for the building or use in question, or for any other part of a development project of which the building or use in question is a part, while the fees remain unpaid and the director may bring any action permitted by law or equity to collect unpaid fees, including but not limited to revocation of building permits and/or certificates of occupancy.

(g) *Certificate of Occupancy.* No certificate of occupancy may be issued until all impact fees are paid in full, satisfied through the application of validly granted credits, or the funds deposited in the appropriate impact fee account pursuant to an approved exemption.

(h) *Effect of Zoning.* A property's zoning classification may be considered but shall not be conclusive as to a property's classification for purpose of calculation of impact fees. The director shall consider the project's proportionate share of the cost of system improvements based on the established service areas and the level of service established for public facilities by existing development of the same type as the new development.

Sec. 19-1008. - Requirements for assessment and calculation of impact fees—Generally.

(a) *Time of Assessment.* All development impact fees shall be assessed as a part of the building permit application process.

(b) *Basis of Calculation.* Any development impact fee imposed pursuant to this chapter shall not exceed a project's proportionate share of the cost of system improvements, shall be calculated on the basis of the ~~establishment of~~ established service areas, and shall be calculated on the basis of levels of service for public facilities that are the same for existing development as for new growth and development.

(c) *Certification of Fee.* Any person who, after the effective date of this chapter, intends to engage in development may request a certification of fee from the director by submitting plans for the development to the director. The fee so certified by the director shall be based upon submitted development plans and shall be binding upon the parties as to the fee to be assessed for such development for a period of 180 days from the date of certification. Any change in the proposed development plan that in any way effects said fee calculation shall void the certification of the fee. Only one such certification pursuant to this subsection 19-1008(c) may be made for each development project unless the director agrees to perform a certification for the payment of an additional fee.

(d) *Construction/Dedication in Lieu of Fee.* In lieu of all or part of a development impact fee, the city may accept an offer from a developer to construct improvements or to contribute or dedicate land or money as provided in section 19-1014 of this chapter. Any such offer must comply with the requirements of section 19-1014 of this chapter. The "in lieu" portion of any development impact fee represented by construction of improvements shall be deemed paid when the construction is completed and accepted by the city for maintenance or when the person claiming such credit posts security for the cost of such construction as provided in section 19-1014(a)(3) of this chapter. The "in lieu" portion of a development impact fee represented by land dedication shall be deemed paid when the title to said land has been accepted by the city. Where a development has failed to complete an agreed upon improvement, the director is authorized to withhold the certificate of occupancy until completion of the agreed upon improvement, or the payment of the impact fee, provided however that where the completion of the agreed upon improvement is of a character that, in the opinion of the director, is necessary for reasons of public safety, the director may withhold the certificate of occupancy until such time as the unsafe condition is remedied.

~~*Recoupment of Excess Capacity.* In addition to the cost of new or expanded system improvements needed to serve new development, the cost basis of a development impact fee shall also include the proportionate cost of existing system improvements, but only to the extent that such public facilities have excess capacity and new development as well as existing development will be served by such facilities.~~

~~*Effect of Multiple Buildings.* When development for which an application for a building permit has been made includes two (2) or more buildings, structures or other land uses in any combination, including two (2) or more uses within a building or structure, the total development impact fee shall be the sum of the fees for each and every building, structure, or use, including each and every use within a building or structure.~~ *Primary and secondary*

uses. In general, the impact fee imposed pursuant to this chapter shall be assessed based on the primary land use. In many instances, a lot or parcel of land may include auxiliary uses associated with the primary land use. For example, in addition to the actual production of goods, manufacturing facilities usually also have office, warehouse, research, and other associated functions. If the applicant can document that a secondary land use accounts for over twenty five percent of the gross floor area of the structure, and that the secondary use is not assumed in the trip generation or other impact data for the primary use, the impact fee may be assessed based on the disaggregated square footage of the primary and secondary land use.

(e) *Specification of Land Use.* In the event that a building permit application proposes a use that does not directly match an existing land use type upon which fees are based, the director shall assign the proposed use to the existing land use type that most closely resembles the proposed use. The director's assignment of a land use type for the purpose of this chapter shall not be binding as to determinations that may be made elsewhere under this Code.

(f) *Actual Cost Recovery Only.* Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(g) *Redevelopment or Change of Use.* When a change of use, redevelopment, or modification of an existing use or building requires the issuance of a building permit, the development impact fee shall be based on the difference between the impact fee calculated for the previous use and the impact fee calculated for the proposed use. Should a redevelopment or modification of an existing use or building that requires the issuance of a building permit but does not involve a change in use result in a net increase in gross floor area, the development impact fee shall be based on said net increase. Should a change of use, redevelopment, or modification of an existing use or building result in a net decrease in gross floor area or calculated impact fee, no refund or credit for past development impact fees paid shall be made or created. For the purposes of this subsection 19-1008(i), previous use shall mean the most intensive previous use of the site that can be documented by the applicant.

Sec. 19-1009. - Imposition of transportation impact fees.

(a) *Declaration of Service Area and Level of Service.*

~~(1) The service area for transportation facilities with respect to which transportation impact fees are assessed under this section 19-1009 is hereby declared to be all of the territory included within the corporate limits of the city.~~

(1) The service areas for transportation facilities with respect to which transportation impact fees are assessed under this section 19-1009 are hereby declared to be as follows. These service areas are depicted in the map attached as Attachment 2 hereto, which by this reference is incorporated herein, and by the descriptions of such areas included in the impact fee study.

a. The Northside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 1, 2, 4, 5, 6, 10.95, 11, 12, 13,

14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101.01, 102.01, 201, 202.

b. The Southside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 35, 44, 46.95, 48, 49.95, 50, 52, 53, 55.01, 55.02, 56, 57, 58, 63, 64, 65, 66.01, 67, 68.01, 68.02, 69, 70, 71, 72, 73, 74, 75, 203, 204, 205, 206, 207, 208, 209.

c. The Westside Service Area is hereby defined to include all land within the following census tracts as defined by the United States Bureau of the Census: 7, 8, 22, 23, 24, 25, 26, 36, 37, 38, 39, 40, 41, 42.95, 43, 60, 61, 62, 66.02, 76.01, 76.02, 77.01, 77.02, 78.02, 78.03, 78.04, 79, 80, 81.01, 81.02, 82.01, 82.02, 83.01, 83.02, 84, 85, 86.01, 86.02, 87.01, 87.02, 103.

(2) The level of service for transportation facilities is hereby declared to be equal to ~~a VMT/VMC ratio of three-fourths (0.75)~~ 1.513 equivalent lane-miles per equivalent dwelling unit ("EDU") for the major road network system.

(b) *Applicability of Fee.*

(1) Any person who after the effective date engages in development within the service area identified in subsection 19-1009(a) hereof shall pay a transportation impact fee in the manner and in the amount set forth in this chapter.

(2) No building permit for any development requiring payment of a transportation impact fee pursuant to this chapter shall be issued by the city unless and until the transportation impact fee has been paid.

(c) *Calculation: Transportation Impact Fee Schedule.*

(1) *Fee formula.* Transportation impact fees set forth in the schedule provided in paragraph (2) below have been calculated as described in the impact fee study. ~~using the following formula:~~

~~*Formulate to Calculate Net Impact Cost per Unit of Development:*~~

~~Net impact cost~~	=	~~Local impact cost - Property tax credit~~
~~Local impact cost~~	=	~~Travel demand × Local impact cost/VMT~~
~~Travel demand~~	=	~~1-way PM peak hour trips × New trips factor × trip length~~
~~Local impact cost/VMT~~	=	~~Total Impact cost/VMT × local share cost~~
~~Total impact cost/VMT~~	=	~~Capital cost/VMC divided by VMT/VMC ratio~~

~~Property tax credit~~	=	~~Market value × property tax credit rate~~

~~Where:~~

~~Capital cost/VMC is the average capital cost to construct an additional vehicle-mile of capacity at LOS D; it has been calculated to be $1,495.~~

~~VMT/VMC ratio is the adopted level of service, defined as the system-wide ratio of vehicle-miles of travel to vehicle-miles of capacity; the adopted ratio is three-fourths (0.75).~~

~~Local share cost is the share of anticipated local funding to finance roadway system improvement in the 15-year capital improvement program; calculated to be 57.9 percent.~~

~~The terms used in this paragraph (1) are further described in the impact fee study.~~

(2) *Transportation impact fee schedule.* Unless an independent fee determination is requested in accordance with section 19-1012, the transportation impact fee shall be determined by the schedule attached hereto as Attachment 1A, "Transportation impact fee schedule," which by this reference is incorporated herein:

a. The fee shown in Attachment 1A, "Transportation impact fee schedule," shall be reduced by 50 percent to reflect increased transit usage and reduced travel demand in the vicinity of MARTA stations. This fee reduction shall apply only to projects within 1,000 feet of a MARTA station, measured from property line to property line along a legal and practical pedestrian route. To qualify for this reduction, the applicant must demonstrate that the number of parking spaces to be provided does not exceed any required minimum, and is no more than 80 percent of any maximum parking requirement, unless a higher percentage is required to meet the minimum requirement.

~~b. References in the transportation impact fee schedule to square feet refer to gross floor area, as defined herein.~~

~~c. If a building permit is requested for a building with mixed land use types, the transportation impact fee shall be determined according to the transportation impact fee schedule by apportioning the gross floor area committed to each land use type specified in the schedule.~~

~~d. If the type of development for which a building permit is applied is not specified in the fee schedule, the director shall use the fee applicable to the most nearly~~

~~comparable type of land use on the fee schedule. If the director determines that there is no comparable type of land use on the fee schedule, the director shall use the formula set forth in subsection 19-1009(c)(1) above and appropriate travel demand factors (average daily trips, one-way, average trip length and new trips factors) derived from the Institute of Transportation engineers trip generation manual, reports appearing in the Institute of Transportation Engineers Journal, or other reliable sources.~~

~~e. If the transportation impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated. If the original calculation resulted in a fee that was too high, the difference shall be refunded to the feepayor. If additional development impact fees are owed, no permits of any type shall be issued by the city for the building or use in question, or for any other part of a development project of which the building or use in question is a part, while the fees remain unpaid and the director may bring any action permitted by law or equity to collect unpaid fees, including but not limited to revocation of building permits and/or certificates of occupancy.~~

(d) *Eligible improvements.* Transportation impact fees shall be spent only for system improvements as defined in this chapter that are identified in the capital improvements element of the comprehensive development plan, and for improvements consistent with the provisions of this subsection 19-1009(d).

(1) Prior to expending impact fee funds for an improvement or set of improvement projects, the city shall ensure the requirements of O.C.G.A. § 36-71-8(c)(1)(B) are satisfied which require that: a) the projects are in reasonable proximity to the developments that have generated the impact fees, and b) the projects will have the greatest effect on levels of service for transportation facilities that are impacted by the developments that have paid the impact fees. The analysis required by this subsection 19-1009(d)(1) shall not be required for the expenditure of impact fee funds collected from a development project and spent according to the provisions of an agreement between the developer and the city.

(2) Transportation impact fees collected after the effective date of the ordinance creating this subsection 19-1009(d)(2) shall only be used for improvements to City-owned arterial and collector roadways. The costs of local streets and state and federal highways have not been included in the calculation of the transportation impact fee. Developers who make improvements to local streets and state and federal highways after the effective date of the ordinance creating this subsection shall not be eligible for reimbursement credits or for offsets against their transportation impact fees for such improvements.

(3) Transportation impact fees cannot be used to pay for direct access improvements to a particular development project. Direct access improvements include but are not limited to the following: (a) site driveways and local residential and nonresidential streets, (b) median cuts made necessary by those driveways or local residential and nonresidential streets, (c) right turn and left turn, and deceleration or acceleration lanes leading to or from those driveways or local residential and nonresidential streets, (d) local residential and nonresidential streets or intersection improvements

whose primary purpose at the time of construction is to provide direct access to the development project, and (e) necessary right-of-way dedications required for those items set forth in (a)-(d) above.

Sec. 19-1010. - Imposition of parks and recreation impact fees.

(a) *Declaration of Service Areas and Level of Service.*

(1) The service areas for parks and recreation facilities with respect to which parks and recreation impact fees are assessed under this section 19-1010 are hereby declared to be as follows. The service areas are depicted by the map attached as Attachment 2 hereto, which by this reference is incorporated herein, and by the descriptions of such areas included in the impact fee study.

a. The Northside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 1, 2, 4, 5, 6, 10.95, 11, 12, 13, 14, 15, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101.01, 102.01, 201, 202.

b. The Southside Service Area is hereby defined to include all land within the corporate limits of the city and within the following census tracts as defined by the United States Bureau of the Census: 16, 17, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 35, 44, 46.95, 48, 49.95, 50, 52, 53, 55.01, 55.02, 56, 57, 58, 63, 64, 65, 66.01, 67, 68.01, 68.02, 69, 70, 71, 72, 73, 74, 75, 203, 204, 205, 206, 207, 208, 209.

c. The Westside Service Area is hereby defined to include all land within the following census tracts as defined by the United States Bureau of the Census: 7, 8, 22, 23, 24, 25, 26, 36, 37, 38, 39, 40, 41, 42.95, 43, 60, 61, 62, 66.02, 76.01, 76.02, 77.01, 77.02, 78.02, 78.03, 78.04, 79, 80, 81.01, 81.02, 82.01, 82.02, 83.01, 83.02, 84, 85, 86.01, 86.02, 87.01, 87.02, 103.

(2) The levels of service for parks and recreation ~~facilities~~ service areas are ~~is~~ hereby declared to equal the following: ~~to five and seventy-five one hundredths (5.75) acres per 1,000 functional population as described and calculated in the impact fee study.~~

a. Northside: 0.00283 equivalent park acres per functional population;

b. Southside: 0.01254 equivalent park acres per functional population; and

c. Westside: 0.01059 equivalent park acres per functional population.

(b) *Applicability of Fee.*

(1) Any person who after the effective date engages in development within the service areas identified in Attachment 2 shall pay a parks and recreation impact fee in the manner provided in this chapter.

(2) No building permit for any development requiring payment of a parks and recreation impact fee pursuant to this chapter shall be issued by the city unless and until the parks and recreation impact fee has been paid.

(c) *Fee Formula.* Parks and recreation impact fees under this chapter have been calculated as described in the impact fee study. ~~shall be calculated using the following formula, as more fully described in the impact fee study:~~

~~Functional population per unit × 0.00575 acres per functional population × capital cost per acre × discount factor = Development impact fee where the discount factor shall be 0.50 for all service areas~~.

(d) *Parks and Recreation Impact Fee Schedule.* Unless an independent fee determination is requested in accordance with section 19-1012, the parks and recreation impact fee shall be determined by the Parks and Recreation Impact Fee Schedule which is part of the impact fee study and incorporated herein by reference.

~~If a building permit is requested for a building with mixed land use types, the parks and recreation impact fee shall be determined according to the parks and recreation impact fee schedule by apportioning the gross floor area committed to each land use type specified in the schedule.~~

~~If the type of development for which a building permit is applied is not specified in the fee schedule, the director shall use the fee applicable to the most nearly comparable type of land use on the fee schedule. If the director determines that there is no comparable type of land use on the fee schedule, the director shall use the formula set forth in subsection 19-1010(c) above.~~

~~If the parks and recreation impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated. If the original calculation resulted in a fee that was too high, the difference shall be refunded to the feepayor. If additional development impact fees are owed, no permits of any type shall be issued by the city for the building or use in question, or for any other part of a development project of which the building or use in question is a part, while the fees remain unpaid, and the director may bring any action permitted by law or equity to collect unpaid fees, including but not limited to revocation of building permits and/or certificates of occupancy.~~

Sec. 19-1011. - Imposition of public safety impact fees.

(a) *Declaration of Service Area and Level of Service.*

(1) The service area for fire/EMS facilities and police facilities with respect to which public safety impact fees are assessed pursuant to this section 19-1011 is hereby declared to be the entire territory included within the corporate limits of the city as such area is identified in the impact fee study.

(2) The level of service for fire/EMS facilities is hereby declared to be equal to ~~470~~ 0.705 equivalent fire station square feet ~~of fire station area~~ per ~~1,000~~ functional population. The level of service for police facilities is hereby declared to be equal to ~~660~~ 0.737 equivalent police station square feet of building area per ~~1,000~~ functional population, as described and calculated in the impact fee study.

(b) *Applicability of Fee.*

(1) Any person who after the effective date engages in development within the service area identified in subsection 19-1011(a) above shall pay a public safety impact fee in the manner provided in this chapter.

(2) No building permit for any development requiring payment of a public safety impact fee pursuant to this chapter shall be issued by the city unless and until the public safety impact fee has been paid.

(c) *Fee Formula.* Public safety impact fees under this chapter have been calculated as described in the impact fee study. ~~shall be calculated using the following formula:~~

(1) ~~Functional population per unit × Level of service (square feet per functional population) × Capital cost equivalent per square foot = Development impact fee; as described more fully in the impact fee study.~~

(d) *Public Safety Impact Fee Schedule:* Unless an independent fee determination is requested in accordance with section 19-1012, the public safety impact fees shall be determined by the Fire and Police Impact Fee Schedules which are part of the impact fee study and incorporated herein by reference.

~~If a building permit is requested for a building with mixed land use types, the public safety impact fee shall be determined according to the public safety impact fee schedule by apportioning the gross floor area committed to each land use type in the schedule.~~

~~If the type of development for which a building permit is applied is not specified in the fee schedule, the director shall use the fee applicable to the most nearly comparable type of land use on the fee schedule. If the director determines that there is no comparable type of land use on the fee schedule, the director shall use the formula set forth in subsection 19-1011(c) above.~~

~~If the public safety impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated. If the original calculation resulted in a fee that was too high, the difference shall be refunded to the feepayor. If additional development impact fees are owed, no permits of any type shall be issued by the city for the building or use in question, or for any other part of a development project of which the building or use in question is a part, while the fees remain unpaid, and the director may bring any action permitted by law or equity to collect unpaid fees, including but not limited to revocation of building permits and/or certificates of occupancy.~~

Sec. 19-1012. - Independent fee determinations.

At their option, applicants for development approval may petition the director or the director's designee for independent fee determinations of development impact fees due for their project. Independent fee determinations of development impact fees may be established as follows:

~~At their option, applicants for development approval may petition the director or his designee for independent fee determinations of development impact fees due for their project.~~

(a) *Independent Fee Study.* If a feepayor opts not to have the development impact fee determined according to the applicable schedules, then the feepayor shall prepare and submit to the director an independent fee study for the development for which a building permit is sought.

(1) The independent fee study with respect to transportation impact fees shall include documentation of the travel demand characteristics (average daily trips, average trip length and new trips factors) for the proposed use. This documentation shall be according to the prescribed methodology and format established by the director.

(2) The independent fee study ~~may also include documentation of the estimated assessed property value of the development for the purpose of determining appropriate property tax credits. However, if the independent fee study does address assessed property value, the accompanying study of travel demand characteristics shall be based on a survey of projects of comparable property value~~ with respect to parks and public safety impact fees shall include documentation of the functional population characteristics of the proposed use.

(3) The director shall determine the appropriate development impact fee based on the results of the independent fee study and the applicable development impact fee formula established in the chapter.

(4) All independent fee assessments shall be presented for review and claimed at the time of application for a building permit. Any request not so made shall be deemed waived.

(5) Where the director approves the independent fee assessment, the fee so established shall be binding upon the feepayor and all successors in interest to said feepayor.

(6) Upon request for an independent fee determination, a nonprofit educational facility may be constructed, redeveloped, or modified solely for educational uses without payment of development impact fees provided the independent fee study submitted with said request demonstrates that said construction, redevelopment or modification will produce no net increase in that school system's total student enrollment.

(b) *Nature and Source of Data.* Each independent fee study shall:

(1) Be based on relevant and credible information from an accepted standard source of engineering and/or planning data, or be based on actual, relevant, and credible studies or surveys of facility demand conducted in the Atlanta metropolitan statistical area by qualified professionals in the respective fields and shall follow accepted professional practices and methodologies; and

(2) Comply in all respects with the requirements of this chapter and be organized in a manner that will allow the director to readily ascertain said compliance; and

(3) Comply with all other written specifications as may be required by the director from time to time.

(c) *Certification of Fee.* Any development impact fee calculated in accordance with this section 19-1012 and approved and certified by the director shall be valid for 180 days following the date of certification. Following such period, a new application for an independent fee assessment must be made. Any change in the submitted development plan that in any way effects said fee calculation shall void the certification of the fee.

Sec. 19-1013. - Accounting for fees.

(a) *Accounting for Fees.* All development impact fee proceeds collected pursuant to this chapter shall be accounted for and invested as directed by the chief financial officer of the City of Atlanta. Restrictions on the investment of such funds shall be the same that apply to investment of all city funds generally.

(b) *Separate Accounting Required.* Separate accounting records shall be maintained for each service category of impact fees within each service area wherein development impact fees are collected.

(c) *Investment Earnings.* Investment earnings derived from invested development impact fees shall be subject to all restrictions placed on the use of development impact fees under this chapter and under the Act.

(d) *Expenditures.*

(1) Expenditure of development impact fees shall be made only for the category of system improvements within the service area for which the development impact fee was assessed and collected.

(2) Development ~~Except as provided in subsection 19-1013(d)(4) and subsection 19-1013(e) of this section 19-1013, development~~ impact fees shall not be expended for any purpose that does not involve building or expanding system improvements that create additional capacity available to serve new growth and development. ~~Funds shall be expended in the order in which they are collected.~~

(3) No funds shall be used for periodic or routine maintenance or for any purpose not in accordance with the requirements of section 36-71-8 of the Act.

(4) Development ~~Except as set forth in this section 19-1013, development~~ impact fees collected by the city to recover the cost of excess capacity in existing system improvements may be spent only on the same category of public improvements and within the service area in which they were collected.

(5) Ordinances requesting the expenditure of funds deposited in development impact fee accounts maintained by the department of finance shall be presented in the same manner as requests for the expenditure of other funds. The department of finance shall not be required to make a separate determination as to whether such request meets the requirements of this chapter.

(e) *Expenses of Administration.* An amount not to exceed three percent ~~(3%)~~ of the total of all development impact fees collected may be charged ~~allocated and applied~~ for administration of this chapter. Such administrative costs shall include:

a. Salary and benefits for Impact Fee Coordinator position;

b. Training, continuing education, and certifications (including but not limited to, trainings for impact fee reporting database administrator responsibilities and certifications for project management);

c. Printing services;

d. Office supplies;

e. Operating costs necessary to support the Development Impact Fee Advisory Committee (including but not limited to, transcription services for the advisory committee meetings); and

f. Technology services to support annual impact fee reporting and tracking (such funds may be shared with the City's technology trust fund).

(f) *Annual Reports.* By June 30th of each year the department of finance shall prepare and present to the mayor and council an annual report describing the amount of any development impact fees collected, encumbered and spent during the preceding year by category of public facility and service area. The portion of the annual report relating to transportation impact fees shall be referred to the development impact fee advisory committee, which shall report to the mayor and council any perceived inequities in the expenditure of transportation impact fees in accordance with O.C.G.A. § 36-71-8(d)(2).

(g) *Payment of Bonds.* Development impact fees may be used for the payment of principal and interest on bonds, notes or any other obligations issued by or on behalf of the city to finance the category of public facilities in the service area for which such fees were collected. provided that only the portion of such debt attributable to excess capacity of existing facilities or capacity in facilities not included in the calculation of the current level of service shall be eligible for repayment with impact fees.

(h) *Accounting for Recoupment Fees.* That portion of development impact fees imposed by the city pursuant to subsection 19-1008(e) hereof to recoup, on a proportionate basis, improvement costs incurred by the city in the provision of excess capacity, shall be accounted for in a recoupment account and may be applied as necessary to reimburse the city for development impact fees that are waived pursuant to section 19-1016 hereof, with respect to affordable housing units and economic development projects. As initially adopted, parks and recreation impact fees for the Northside, Southside and Westside service areas and public safety impact fees are recoupment fees, and exemptions from these fees shall not require reimbursement of the respective impact fee accounts. At the beginning of each fiscal year, the chief financial officer (CFO) shall determine a percentage of total recoupment fees anticipated to be collected that will be necessary to reimburse nonrecoupment impact fee accounts for anticipated exemptions during the course of the year, and the CFO may periodically revise this percentage. All such recoupment fees collected shall be placed in a recoupment account to cover said exemptions. Provided further that monies accumulated in a recoupment account in excess of what is necessary for reimbursement for waived fees may be used for any public purpose not inconsistent with the provisions of the Act.

(h) Administration. The provisions of this section shall be administered by the department of finance.

Sec. 19-1014. - Credits.

(a) *Policies.* The following requirements shall apply to all credits against development impact fees otherwise permitted by this section:

(1) No credits shall be given for project improvements.

(2) Except for reimbursements allowed pursuant to subsection 19-1014(d)(4), credits shall be allowable and payable only to offset future development impact fees and shall not result in reimbursement from, nor constitute a liability of, the city.

(3) Credits shall be given only for the present value of any construction of improvements or contribution or dedication of land or money by a developer or his predecessor in title or interest for system improvements of the same category and in the same service area for which a development impact fee was imposed, except where further specific restrictions are set forth in this section. Any transfer or assignment of credits shall be expressly stated in writing, and in the absence of an express transfer or assignment of the right to any credit, the credit shall be deemed "not to run with the land."

(4) In the event that any development impact fee schedule is subsequently changed to reflect increases in construction costs or other relevant factors, a credit holder may request a recalculation of credits to fairly reflect such changed circumstances. In the event that any development impact fee schedule is subsequently changed to reflect decreases in construction costs or other relevant factors, the city may recalculate such credits to fairly reflect such changed circumstances.

(5) Any claim for a credit that is based upon any construction of improvements or contribution or dedication of land or money which was required or accepted by the city prior to the effective date shall be treated as a pre-ordinance credit regardless of the actual date of acceptance of the construction, contribution or dedication by the city.

(6) Agreements between the city and a developer regarding the construction or installation of system improvements desired to be voluntarily undertaken by the developer are authorized to the extent permitted by state law. The costs incurred by the developer shall be applied only against the type of impact fee which would be collected for the type system improvement constructed. Such agreement may include interproject transfers of credits for system improvement costs which are used or shared by more than one development project or the use of credits given for the installation of previous system improvements. Credits granted under any agreements shall only be for system improvements for the same type of impact fee to be imposed and must be located in the same service area.

a. Approval by the city council is required for any agreement under which the cost of system improvements incurred or to be incurred by a developer is to be applied against impact fees due on a project, and/or where credits are to be applied against impact fees to be imposed in the future.

b. Agreements where credits must be granted, because the system improvement costs to be incurred exceed the amount of impact fees to be paid on the project, are authorized to the extent allowed by state law. Where the cost of system improvements exceeds the amount of impact fees to be imposed on the project, the agreement shall provide credits only for the type of impact fee imposed for that type of system improvement. Credits granted by such agreements are fully transferrable to other projects for the same

type of impact fee in the same service area even if undertaken by a developer other than the developer originally granted such credit.

c. It shall be the responsibility of any developer wishing to enter into an agreement to provide to the city with a proposal containing all plans and specifications, including information on cost expected to be incurred for the system improvement sought to be constructed. Such proposal shall be transmitted to the director, with oversight from the commissioner of city planning, for a determination as to whether the proposed system improvement is necessary or desirable and should be the subject of legislation seeking approval of the credit agreement. The director's decision to decline to enter into an agreement is not appealable under this chapter but this subsection shall not limit the right of any member of the city council to introduce a personal paper authorizing such agreement. In no case shall the city reimburse any developer for any cost associated with preparation of the proposal unless the agreement is approved and such costs are a necessary and reasonable part of the system improvement costs.

d. Where the reasonable possibility exists that an agreement will be approved by the city council that will allow a developer to construct system improvement in lieu of the payment of impact fees for that type of system improvement, the director is authorized, but not required, to temporarily suspend the payment of the impact fees.

    1. Such authority shall be exercised only for the purpose of reviewing a proposal submitted by the developer before the time such fees would be due.

    2. The decision to suspend the requirement for the payment of impact fees by the director shall not bind the city council to approve or enter into any agreement.

    3. Upon the director's decision not to temporarily suspend the payment of the impact fees such fees shall be due. The director's decision to decline to suspend the payment is not appealable under this chapter but this subsection shall not limit the right of any member of the city council to introduce a personal paper authorizing such agreement and directing that the impact fees paid be refunded upon completion of the system improvement so authorized.

    4. The city has no obligation to reimburse any developer for any cost associated with preparation of the proposal unless the agreement is approved and such costs are a necessary and reasonable part of the system improvement costs.

e. All system improvements which are the subject of any agreement shall be completed, inspected and accepted by the city as meeting city standards before the obligation to pay impact fees shall be fully satisfied or any credits granted or applied.

(b) *Computation of Credits.* All credits shall be computed in accordance with the requirements set forth in this subsection.

(1) The present value of cash contributions shall be based on the face value of the cash payment at the time of contribution.

(2) For the present value of any contribution or dedication of land accepted for system improvements by the city from the developer, or his predecessor in title or interest, the value of contributed land shall be determined by the director based on a review of property appraisals applicable to the date of the dedication prepared by qualified professionals.

(3) The present value of construction of system improvements shall be the present value of the lower of the value of the completed improvements based on an appraisal prepared by qualified professionals acceptable to the city, or the actual construction cost of the improvements. The cost or appraisal basis shall be adjusted to the date of actual construction or dedication.

(4) The person claiming any credit shall be responsible for providing appraisals of land and improvements, construction cost figures, and documentation of all contributions and dedications necessary to the computation of the credits claimed. The city shall have no obligation to grant credit under this section to any person who cannot provide such documentation in such form as the director may reasonably require. The director may accept appraisals from the developer that were conducted contemporaneously with the original dedication or construction if the director determines that said appraisals are reasonably applicable to the computation of credit due. The director shall accept subsequent appraisals only if conducted by a certified appraiser or otherwise approved by the director in accordance with guidelines promulgated by the director.

(5) The city shall give credit only for construction of improvements or contribution or dedication of land or money actually accepted by the city. Deposit of a check shall be deemed acceptance of cash by the city. Only land dedications formally accepted by the city council or accepted by operation of law shall constitute acceptance for purposes of computing credits under this section. System improvements shall be deemed to be accepted only if and when the commissioner of public works or other applicable official has determined that such improvements meet applicable city standards and agreed on behalf of the city to accept such improvements for maintenance. The acceptance of an offer of dedication of land shall not constitute acceptance of any improvements located thereon unless the action accepting the dedication or other applicable city ordinance shall so provide.

(6) For the present value of any previously paid development impact fee, credit shall be equal to the amount of the development impact fee paid.

(7) In making the present value calculation, the percentage rate used shall be that of a State of Georgia "A-rated" or better municipal bond sold at the bond sale nearest the date on which the present value calculation is made.

(c) *Time to Claim Credits.*

(1) Any person claiming a credit shall apply to the director to claim such a credit no later than the date of application for the building permit to which the person applying wishes to have the credit apply. Any portion of a credit not claimed by such date shall be deemed waived.

(2) Any person claiming a pre-ordinance credit for construction, contributions or dedications pursuant to subsection 19-1014(e) shall file an application claiming the full amount of such credit with the director on or before April 1, 1994.

(3) Any person entitled to a pre-ordinance credit for construction, contributions or dedications pursuant to subsection 19-1014(e) must utilize said credit within ten years of the effective date.

(4) No credits of any kind shall be available for construction, contributions or dedications that occurred more than ten years prior to the effective date.

~~(5) The time for persons entitled to a pre-ordinance credit for construction, contributions or dedications pursuant to subsection 19-1014(e), and limited by subsection 19-1014(e)(3) to 10 years from the effective date, is extended until March 26, 2007.~~

~~(d) *Post-Ordinance Credits/Reimbursements.* Credit shall be given for the present value of the construction of improvements or contribution or dedication of land or money by a developer required or accepted by the city from the developer or his predecessor in title or interest for system improvements subsequent to the effective date ("Post-ordinance credits") in accordance with the following requirements:~~

~~(1) A person claiming post-ordinance credits shall submit to the director a project description in sufficient detail to allow the commissioner of the department of public works to prepare an engineering and construction cost estimate. A person proposing credit for system improvements shall present cost estimates and property appraisals prepared by qualified professionals to be used by the director in determining the amount of the credit. All construction must be made in accordance with applicable city development and design standards. A person proposing post-ordinance credits for land dedication shall present the director with property appraisals prepared by qualified professionals to be used by the director in determining the amount of credit. The director retains the right to determine the amount to be credited by causing to be prepared engineering and construction cost estimates and/or property appraisals for those improvements and/or right-of-way dedications.~~

~~(2) All other requirements of this section 19-1014 are met.~~

~~(3) In the event that post-ordinance credits are claimed prior to the completion of construction of the system improvements for which the post-ordinance credits is claimed, security to insure completion of the system improvements in the form of a performance bond, irrevocable letter of credit, or escrow agreement shall be posted with the city, made payable to the city in the amount approved by the director equal to 110 percent of the full cost of the construction of system improvements. If a system improvement will not be constructed within one year of the acceptance of the offer by the city, the amount of the security shall be increased by ten percent compounded, for each year of the life of the~~

security. The security shall be reviewed and approved by the city's chief financial officer prior to the acceptance of the security by the city.

(4) In the event a developer contracts with the city to construct, fund, or contribute toward system improvements so that the amount of the post-ordinance credit created by such construction, funding or contribution is in excess of the development impact fee which would have been otherwise due and owing, the developer shall be reimbursed for such excess contribution, funding, or contribution from, and to the extent that, funds from development impact fees for the same category of system improvements located in the service area which has benefited by such improvements are available, provided such system improvements are included in the capital improvements program of the comprehensive development plan. A developer who is a party to such a contract may apply for reimbursement only after completing all buildings or other private improvements shown on any approved or proposed plans of that developer within the service area and thereby exhausting all available development impact fee credit opportunities. The city shall reimburse the developer within 180 days after the date development impact fees from other development in the service area are received by the department of finance.

(e) *Pre-Ordinance Credits.* Credit shall be given for the present value of the construction of improvements or contribution or dedication of land or money by a developer required or accepted by the city from the developer or his predecessor in title or interest for system improvements prior to the effective date as set forth in subsection 19-1014(a)(5) ("Pre-ordinance credit") in accordance with the following requirements:

(1) Said credits shall be applied only to development impact fees otherwise due for future development within the same service area and within the same category of system improvements.

(2) All other requirements of this section 19-1014 are met.

(3) The director shall deduct from the present value of the pre-ordinance credit the present value of the development impact fee that would have been charged for buildings or improvements within the project had this chapter been in effect on the date that the building permit(s) for construction of said buildings or improvements was filed, provided that said deductions will apply only to buildings or improvements for which a building permit was issued within ten years prior to the effective date.

(4) The time for the director to deduct from the present value of the development impact fee the present value of the development impact fee that would have been charged for buildings or improvements within the project had this chapter been in effect on the date that the building permit(s) for construction of said buildings or improvements was filed and which is limited by subsection 19-1014(e)(4) to permits filed prior to ten years from the effective date is extended until March 26, 2007.

(f) *Abandonment of Building Permit.* In the event that a developer pays a development impact fee and then abandons the building permit or other permit to which it was appurtenant without constructing the building or other improvement, the developer shall receive credit for the present value of any development impact fees paid. These credits shall be available only for

~~use in payment of future development impact fees for the same lot or parcel of land for which they were originally paid.~~

Sec. 19-1015. - Refunds.

(a) *Basis of Refunds.* Upon application to the department of finance by an owner of property on which a development impact fee has been paid, the city shall refund 97 percent of the development impact fee if:

(1) Capacity is available and service is permanently denied; or

(2) If the city, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six (6) years after the date the fee was collected. The city shall retain three percent ~~(3%)~~ of the fee paid as an administration fee to cover the cost of processing the refund.

(b) *Accounting for Receipts.* In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis.

(c) *Notice of Refunds.* When the right to a refund exists due to a failure to encumber development impact fees, the department of finance shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval, or to a feepayor's successor in interest who has given notice to the department of finance of a legal transfer or assignment of the right to entitlement to a refund and who has provided said department with a mailing address. Such notice shall also be published in a newspaper of general circulation within the city within 30 days after the expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading "Notice of entitlement to development impact fee refund."

(d) *Refund Applications.*

(1) A refund application shall be made in writing to the department of finance within one (1) year of the date the refund becomes payable under subsections 19-1015(a), (b) or (c), or within one (1) year of publication of the notice of entitlement to a refund, whichever is later. A refund not applied for within said time period shall be deemed waived.

(2) A refund application shall include information and documentation sufficient to permit the department of finance to determine whether the refund claimed is proper, and, if so, the amount of such refund.

(3) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected.

(e) *Payment of Refund.*

(1) All refunds shall be made to the feepayor within 60 days after it is determined by the department of finance that a sufficient proof of claim for refund has been made.

(2) In no event shall a feepayor be entitled to a refund for development impact fees assessed and paid to recover the cost of excess capacity in existing system improvements.

Sec. 19-1016. - Exemptions.

~~(a) *Exemptions.*~~ Pursuant to the provisions of section 36-71-4(1) of the Act, the public policies expressed in the city's comprehensive development plan, as it may be amended, and in accordance with the policies of the council~~, homeless facilities,~~ affordable housing units and economic development projects shall be exempt from the payment of development impact fees as follows, provided replacement funding is available at levels that are in conformance with O.C.G.A. § 36-71-1, et seq.:

~~(1) Sales housing units which have a pro-forma sales price equal to or less than one and one-half times median family income may receive a 100 percent exemption from the payment of development impact fees.~~

~~(2) Sales housing units which have a pro-forma sales price greater than one and one-half times median family income but not exceeding two and one-half times median family income may receive a 50 percent exemption from the payment of development impact fees.~~

~~(3) Rental housing units which have a pro-forma rental rate equal to or less than 60 percent times fair market rent may receive a 100 percent exemption from the payment of development impact fees.~~

~~(4) Rental housing units which have a pro-forma rental rate greater than 60 percent times fair market rent but not exceeding 80 percent times fair market rent may receive a 50 percent exemption from the payment of development impact fees.~~

(a) Affordable Housing Units. Any residential construction that qualifies as affordable housing and meets the following requirements may receive a 20 percent exemption from the payment of development impact fees subject to available replacement funds from the City. The 20 percent exemption is provided on the impact fees applicable to the affordable housing units:

(1) Affordable housing units for rental units shall mean a development upon which ten or more new residential rental dwelling units will be constructed at one location and shall include either:

a. At least 15 percent of the total residential rental units shall be marketed for lease to households having an income, as certified by the prospective tenant(s) at the time of execution of the applicable lease agreement, that does not exceed 80 percent of the Area Medium Income ("AMI") limits as published by the City of Atlanta Office of Housing and Community Development on an annual basis. The AMI limits will account for household size based on AMI data for the Atlanta-Sandy Springs-Marietta, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the tenant's application). The monthly rent amount (not including utilities and mandatory fees) for each affordable workforce housing unit shall not exceed the limits published by the City of Atlanta Office of

Housing and Community Development on an annual basis. The rental limits will be based on AMI data published periodically by HUD to ensure that tenant households at 80 percent of the AMI pay no more than 30 percent of their household's monthly gross income, adjusting for the number of bedrooms in the units; or

b. At least 10 percent of the total residential rental units shall be marketed for lease to households having an income, as certified by the prospective tenant(s) at the time of execution of the applicable lease agreement, that does not exceed 60 percent of the AMI limits as published by the City of Atlanta Office of Housing and Community Development on an annual basis. The AMI limits will account for household size based on AMI data for the Atlanta-Sandy Springs-Marietta, Georgia HUD Metro Fair Market Rent Area (as published by HUD as of the date of the tenant's application). The monthly rent amount (not including utilities and mandatory fees) for each affordable workforce housing unit shall not exceed the limits published by the City of Atlanta Office of Housing and Community Development on an annual basis. The rental limits will be based on AMI data published periodically by HUD to ensure that tenant households at 60 percent of the AMI pay no more than 30 percent of their household's monthly gross income, adjusting for the number of bedrooms in the units.

(2) Affordable housing for homeownership units shall mean a development upon which ten or more new residential dwelling units will be constructed at one location and shall include either:

a. At least 20 percent of the total dwelling units shall be made available for sale to households having an income, as certified by the buyer or buyer's lender, that does not exceed 120 percent AMI, adjusted for household size, for the Atlanta-Sandy Springs-Marietta Metropolitan Statistical Area published annually by the United States' Department of Housing and Urban Development; or

b. At least 15 percent of the total dwelling units shall be made available for sale to households having an income, as certified by the buyer or buyer's lender, that does not exceed 100 percent AMI, adjusted for household size, for the Atlanta-Sandy Springs-Marietta Metropolitan Statistical Area published annually by the United States' Department of Housing and Urban Development; or

c. At least 10 percent of the total dwelling units shall be made available for sale to households having an income, as certified by the buyer or buyer's lender, that does not exceed 80 percent AMI, adjusted for household size, for the Atlanta-Sandy Springs-Marietta Metropolitan Statistical Area published annually by the United States' Department of Housing and Urban Development.

(3) Any person seeking an affordable housing exemption shall file with the city manager an application for exemption prior to the impact fee payment date for the proposed residential construction. The application for exemption shall contain the following:

a. The name and address of the owner;

b. The legal description of the residential construction;

c. The proposed selling price or the proposed rental price, as applicable;

d. Evidence that the residential construction shall be occupied by residents meeting the appropriate AMI thresholds; and

e. Evidence that the residential construction is part of a multifamily project, which is funded by a governmental affordable housing program, if applicable.

(4) For residential construction to receive an affordable housing exemption, it must meet all the definitions and restrictions of affordable housing as provided herein and these restrictions must continue for a period of at least twenty (20) years from the date of issuance of a certificate of occupancy. Such restrictions must either be contained within the deed for the residential construction in the form of a land use restriction; the terms, restrictions and conditions of a direct government grant or subsidy that will fund the residential construction; or within the terms of a development agreement between the city and the owner.

(5) If the residential construction meets the requirements for an affordable housing exemption, and the state law replacement funding requirements are satisfied, the director shall issue an exemption. The exemption shall be presented in lieu of payment of the impact fees.

(6) In the event the residential dwelling unit fails to meet the restrictions of affordable housing as provided herein within the twenty-year period following the issuance of the certificate of occupancy such that the property no longer qualifies as affordable housing, the impact fees in effect at the time of the change in circumstances shall be immediately due.

(b) *Economic Development.* Economic development projects~~, as defined in section 19-1006 of this chapter,~~ may receive a 100 percent exemption from the payment of development impact fees subject to available replacement funds from the City.

(1) Economic development project means any project that meets one or more of the following criteria:

a. A project that meets the goals and objectives of the 2020 Economic Development and Economic Mobility Strategy including the following;

1. Retention, expansion or location of a business within the city's southside or westside that creates at least 50 or more middle-wage full-time equivalent jobs ($38,000 - $80,000 average annual salary). Provided that the business gives priority job consideration to City of

Atlanta residents based on standards set by the Department of City Planning; or

2. Retention, expansion or location of a business outside of the city's southside or westside that create at least 200 or more middle-wage full-time equivalent jobs ($38,000 - $80,000 average annual salary). Provided that the business gives priority job consideration to City of Atlanta residents based on standards set by the Department of City Planning; or

3. Retention, expansion or location of a business anywhere in the city that creates at least 500 jobs and/or at least $10,000,000 in capital investment. Provided that the business gives priority job consideration to City of Atlanta residents based on standards set by the Department of City Planning.

b. The construction of any not for profit homeless facility. Homeless facilities means any not for profit facility for the purpose of housing homeless persons or families, to include but not be limited to: shelters, dormitories, hotels or rooming houses that are federally funded through the city and included in the comprehensive development plan.

(~~b~~c) *Replacement of Funds.* The proportionate share of any system improvement costs lost because of exempted affordable housing units or economic development projects shall be funded ~~from the recoupment account established pursuant to subsection 19-1013(h) hereof or funded~~ from a revenue source other than development impact fees.

(~~c~~d) *Application for Exemption.* To be eligible for an exemption a developer must file an application for exemption with the director before the time development impact fees are imposed. The application for exemption must contain documentation acceptable to the director showing that the criteria for exemptions will be met as well as all requirements of subsection 19-1016(e).

~~(d) *Basis for Exemptions.* Affordable housing units and economic development projects exempted from the payment of development impact fees shall meet the following standards:~~

~~(1) The maximum price of affordable sales housing shall not exceed the amount specified in subsection 19-1016(a).~~

~~(2) The maximum rents for rental housing units shall not exceed the amount specified in subsection 19-1016(a).~~

~~(3) Economic development projects shall conform to the definitions contained in section 19-1006.~~

(e) *Submission for Approval.* A person claiming exemption(s) shall submit to the director information and documentation sufficient to permit the director to determine whether such exemption claimed meets the requirements of this chapter, and, if so, the extent of such exemption. Exemptions must be applied for at the time of the application for a building permit. Affordable housing developments and economic development projects exempted in accordance with the Act and this section 19-1016 shall be approved by the director. Each application to the director for exemption for affordable housing shall be

accompanied by a certification from the commissioner of the department of city planning attesting that said housing meets the definition of affordable housing units set forth in subsection 19-1016(a) and a certification from the chief financial officer that funds are available, or anticipated to be available during the current fiscal year, to cover the cost of said exemption. Each application to the director for exemption for economic development projects shall be accompanied by ~~a certified copy of the ordinance of the city council creating said housing enterprise zone, commercial enterprise zone, industrial enterprise zone, or designating said historic building,~~ an affidavit from the applicant, or other equivalent evidence from the applicant, that the definition of economic development as defined in section 19-1006 of this chapter is met and a certification from the chief financial officer that funds are available, or anticipated to be available during the current fiscal year, to cover the cost of said exemption.

~~(f) Homeless Facilities Projects as defined in Article V of the Ordinance, may receive a one hundred (100) percent exemption from the payment of Development Impact Fees.~~

Sec. 19-1017. - Review.

(a) *Periodic Review.*

(1) As part of the city's annual capital improvement program process, or comprehensive planning process, or as part of any other planning process which causes the city to evaluate development potential in any area, the city may review the development potential of any area within the city, whether it be a previously designated service area or not, or the city as a whole. Based on such review of development potential, the city may adjust boundaries of service areas or create new service areas.

(2) As part of the city's annual capital improvement program process, or comprehensive planning process, or as part of any other planning process which causes the city to evaluate development potential in any area, the city may review capital facilities plans in service areas and modify such plans as a result of development occurring in the previous year or requests for permission to develop.

(b) *Modification of Schedules.* As a result of modifications to service area boundaries and/or capital facilities plans, the city may modify development impact fee schedules as appropriate and adopt such revised schedules through official action of the council, provided however that where any schedules have been adopted at less than 100 percent of the level of fees set forth in the fee study currently in effect, modifications to service area boundaries and/or capital facilities plans shall not be necessary to adjust the percentage level of fees imposed so long as there is no increase in fees above the level set forth in such study.

(c) *Effect of Failures to Review.* Failure of the city to undertake such a review shall result in the continued use and application of the existing fee schedules and other data. The failure to review such schedules shall not invalidate this chapter.

Sec. 19-1018. - Administrative appeals.

~~(a) Right to Appeal. Only applicants or feepayors who have already been assessed a development impact fee by the city or who have already received a written~~

~~determination of refund, credit or reimbursement amount shall be entitled to an appeal to council.~~

~~(b) Notice of Appeal. The applicant or feepayor must file a written request for an appeal with the municipal clerk within 30 days of the receipt of written determination of the amount of the development impact fee due, or entitlement to an amount of a refund, credit or reimbursement.~~

~~(c) Appeal to Council. Only applicants or feepayors whose request goes to the method, as opposed to the amount, of calculating fees, credits, refunds or reimbursements shall be entitled to appeal to the council. The council shall thereafter establish a reasonable date and time for a hearing on the appeal, give notice thereof to the parties in interest and decide the same within a reasonable time following the hearing. Any party taking an appeal shall have the right to appear at the hearing to present evidence and may be represented by legal counsel. Any person aggrieved by a decision of the council may take an appeal to the Superior Court of Fulton County within 30 days after the decision of the council is rendered.~~

~~(d) Payment Under Protest. A developer may pay a 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 or receiving a refund of any amount deemed to have been improperly collected.~~

~~(e) Effect of Filing Appeal. The filing of an appeal shall not stay the collection of a development impact fee.~~

(a) Right to Appeal. As required by O.C.G.A. § 36-71-10 the commissioner of the department of city planning, or the commissioner's designee, is appointed to hear the administrative appeal. Applicants or feepayors who have been assessed a development impact fee that is due and payable in connection with the issuance of a permit or who have received a written determination of the amount of the development impact fee, credit or refund shall be entitled to an administrative appeal to the commissioner, or the commissioner's designee, as provided in this section.

(b) Notice of Appeal. The appellant shall file a written request with the commissioner, or the commissioner's designee, for an administrative appeal within 30 days of the date of receipt of the written determination of the amount of the development impact fee due, or the amount of a refund, credit or reimbursement. The notice of appeal shall include a short, plain statement of the basis for the appeal and such other documents as set forth in this section. The appeal may be served on the director by certified mail or by presentation to the office of planning during such business hours when the office is open to the general public, provided however that the acceptance of the appeal after the thirty (30) day period has elapsed shall not constitute a waiver of the time limit for

filing such appeal. The notice of appeal shall also contain the address where notices are to be sent.

(c) Appeal Fee. No notice of appeal shall be considered to be filed unless it is accompanied by a certified check or money order for $250.00.

(d) Right to be Heard. The appellant shall have the right to be heard and may so request as a part of the notice of appeal within 15 days after the notice of appeal is submitted. When an appeal hearing is requested, the commissioner, or the commissioner's designee, shall schedule an appeal hearing no sooner than 15 days but within 45 days after the receipt of the notice of appeal and give notice thereof to the parties in interest. Any party requesting an appeal hearing shall have the right to appear before the commissioner, or the commissioner's designee, present evidence and witnesses and may be represented by legal counsel. The commissioner, or the commissioner's designee, may also present evidence and witnesses and may be represented by legal counsel. Any hearing which continues after the first hour shall pay an additional fee of $250.00 for each hour or part thereof.

(1) The hearing may be transcribed at the request of appellant and the appellant shall procure a certified court reporter, pay all costs for takedown and provide a sealed copy of the transcript to the director for inclusion in record. An additional unsealed copy of the transcript shall also be provided to the commissioner, or the commissioner's designee.

(2) The failure of notice caused by missing or incomplete address shall excuse the commissioner, or the commissioner's designee, from meeting any deadline set forth herein.

(e) The Preparation and Composition of the Record. The notice of appeal may refer to any documents submitted as a part of the building permit application that show that the determination of the amount of the development impact fee, credit or refund should be different from that made in the written determination. At the appellant's discretion, the notice of appeal may contain other documents which the appellant believes to be relevant but which are not already a part of the application for building permit.

(1) The record to be considered by the commissioner, or the commissioner's designee, shall consist of all documents submitted as a part of the notice of appeal and any documents which are a part of the building permit application. The City Code is presumed to be a part of the record

(2) The appellant shall at all times be responsible for any costs for the preparation of the additional documents deemed relevant and the submission of such documents to the director within 15 days after the filing of the notice of appeal.

(f) Matters to be Decided on Appeal An appeal goes to the administrative decisions concerning the determination of the amount of the fee, credit or refund but does not determine as a matter of law whether a fee, credit or refund is due; provided however, that where claims of a constitutional nature to the effect that the fee cannot be imposed, or that a credit or refund has been improperly denied are raised, such claims must also be presented to the commissioner, or the commissioner's designee, so that the city council will be on notice thereof. The commissioner, or the commissioner's designee, shall make findings of fact and uphold or amend the administrative decision based on the criteria set forth in this ordinance and shall give written notice of his decision to the appellant. Under no circumstances is the commissioner, or the commissioner's designee, authorized to negotiate or waive the impact fees imposed under this chapter as a part of his decision.

(g) Time for Decision. The commissioner, or the commissioner's designee, shall decide the appeal of such administrative matters within a reasonable time following the submission of the record or the hearing, if one is requested. If the commissioner, or the commissioner's designee, has not decided within 60 days after the date of the hearing, if one is requested, or the date following the final date for submission of documents to be included the record, an appellant may request in writing that a decision be made within 30 days and the commissioner, or the commissioner's designee, shall issue such decision within 30 days, unless a time certain for the decision is agreed to by both parties and set forth in writing.

(h) Superior Court Review of Commissioner's Decision. Any person aggrieved by a decision of the commissioner, or the commissioner's designee, on the administrative matters decided by him may take an appeal to the Superior Court of Fulton County within 30 days after the date that the written decision is sent to the appellant, where such decision shall be reviewed on the evidence in the record before the commissioner, or the commissioner's designee, in the same manner as other administrative appeals. The commissioner, or the commissioner's designee, shall, after being served with notice of the appeal, cause the record to be prepared and sent for review.

(i) Payment Under Protest. A developer may pay a 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 or receiving a refund of any amount deemed to have been improperly collected.

(j) Effect of Filing Appeal. The filing of an appeal shall not stay the collection of a development impact fee.

Sec. 19-1019. - ~~Penalty provision~~ Enforcement.

(a) *Nature of Violation; Action by City.* A violation of this chapter shall be a misdemeanor punishable according to law. However, in addition to or in lieu of any criminal prosecution, the city shall have the power to sue in law or equity for relief in civil court to enforce this chapter, including recourse to such civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of this chapter, including but not limited to injunctive relief to enjoin and restrain any person from violating the provisions of the chapter and to recover such damages as may be incurred by the implementation of specific corrective actions.

(b) *False Information.* Knowingly furnishing false information to the city on any matter relating to the administration of this chapter shall constitute an actionable violation of this chapter but may be subject to prosecution under any other applicable law.

(c) *Withholding or Revocation of Approval.* The director may revoke or withhold the issuance of any building permit or other development permits if the provisions of this chapter have been violated by the owner or his assigns and notice of such violations has been provided or citations have been issued.

(d) *Right to Inspect.* The director shall have the right to inspect the lands affected by this chapter and shall have the right to issue cease and desist orders, stop work orders, and other appropriate citations for violations. Refusal of written notice of violation under this chapter shall constitute legal notice of service.

(e) *Citation by Director.* For any violation, the director shall have the authority to issue a citation. The citation shall be in the form of a written official notice issued in person or by certified mail to the owner of the property, or to his agent, or to the person performing the work. The receipt of a citation shall require that corrective action be taken within ten working days unless otherwise extended at the discretion of the director. If the required corrective action is not taken within the time allowed, the director may use any available civil or criminal remedies to secure compliance, including revoking a permit. Notice of a violation under this chapter shall not prevent the director from issuing violations for the violation of any other section of the city code.

Sec. 19-1020. - Enforcement provision.

The enforcement of this chapter will be the responsibility of the director and such city personnel as the director may designate from time to time.

Sec. 19-1021. - Interlocal government agreement.

The city may enter into interlocal agreements with other municipalities, counties, public authorities or with the State of Georgia for the purpose of assessing, collecting, and expending development impact fees as provided by this chapter.

Sec. 19-1022. - Severability.

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate,

distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Sec. 19-1023. - Effective date; city code.

~~This chapter shall become effective immediately upon its adoption and approval.~~ This chapter shall become part of the official code of the City of Atlanta and was thereafter adopted as Chapter 19 of the 1995 City Code. Amendments to Chapter 19 shall hereafter become effective in the manner set forth in the ordinance which authorized such amendments. No amendment to this chapter shall be construed to increase, reduce, exempt or change the amount of development impact fees which were paid under this chapter prior to any such amendment, provided that the permit application has been processed, the permit issued and the fees associated with the issued permit have been paid as required. The acceptance of a building permit application for a project shall not vest the right to be charged impact fees at any particular rate.

Sec. 19-1024. - Review by city council.

The commissioner of the department of city planning ~~and development~~ and the chief financial officer shall submit a report to the city council at least every five years ~~six months after the effective date of this chapter~~ so as to assist in city council evaluation of this chapter and to determine if an update is needed to the impact fee study or to the language of this chapter.