

STATE OF SOUTH CAROLINA
CITY OF BEAUFORT

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE CITY OF BEAUFORT; CHAPTER ___, SO AS TO ADD A NEW DIVISION TO BE NUMBERED DIVISION ___, DEVELOPMENT IMPACT FEES FOR FIRE SERVICE; PROVIDING FOR THE ADOPTION OF DEVELOPMENT IMPACT FEES FOR THE CITY OF BEAUFORT; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF; AND OTHER MATTERS RELATED THERETO

Pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BEAUFORT:

SECTION I. The Code of Ordinances for the City of Beaufort Chapter ___; is hereby amended by adding a division, to be numbered Division ___, Development Impact Fees for Fire Service; which division shall read as follows:

DIVISION ___. DEVELOPMENT IMPACT FEES FOR FIRE SERVICES

Title

This ordinance shall be referred to as the “Development Impact Fee Ordinance for Fire Service, City of Beaufort South Carolina.”

Authority

This ordinance is adopted pursuant to and in compliance with the authority of the South Carolina Development Impact Fee Act, Code of Laws of South Carolina, Title 6, Article 9, Chapter 1 (the “Act”), and is to be interpreted in accordance with such Act , or as it may be amended in the future.

Findings

The City of Beaufort Council hereby declares that:

- (a) Fire protection, municipal fire department facilities and fire department equipment are vital and necessary to the health, safety, welfare, and prosperity of the city and its citizens. Substantial growth and new construction is taking place within the municipality and is anticipated to continue. This growth creates substantial need for new infrastructure capacity and maintenance. Meeting these needs is very costly; however, failure to do so will result in an inadequate system of facilities and equipment to accommodate anticipated demand. This would make the City of Beaufort a less desirable place to live and do business and be detrimental to the health, safety, welfare, and prosperity of the city and its citizens.

- (b) To the extent that future growth and new construction in the city places demands on fire protection which should be met by shifting a portion of the capital costs for providing new capacity and maintaining existing capital to serve new development, which creates, in whole or in part, these demands and needs.
- (c) By Joint Resolutions adopted on November 13, 2018, and November 14, 2018, the City of Beaufort and Town of Port Royal Councils directed the Metropolitan Planning Commission to conduct the necessary studies and a recommended development impact fee ordinance in accordance with the requirements of the Act.
- (d) The Metropolitan Planning Commission recommended a *Developmental Fire Impact Fee Study Report for Beaufort/Port Royal Fire Department* dated 8/15/2019, a *Beaufort/Port Royal Capital Improvements Plan* with projects eligible for impact fee funding dated November 2018, which have been adopted by the City Council, as modified.
- (e) This ordinance is enacted to implement the findings and recommendations of the *Development Fire Impact Fee Study Report for Beaufort/Port Royal Fire Department* and endorse the list of capital projects eligible for impact fee funding in the *Beaufort/Port Royal Fire Department Capital Improvement Plan*.
- (f) The impact fees prescribed in this ordinance are equitable, do not impose an unfair or disproportionate burden on developers and new construction, and are in the best interests of the general welfare of City of Beaufort and its citizens.
- (g) New facilities or equipment eligible for development impact fee funding will benefit all new development or redevelopment in city limits. Therefore, it is appropriate to treat the entire city as one service area for calculating, collecting, and spending development impact fees.
- (h) This ordinance provides the procedures for timely processing of applications for determination of appropriate development impact fees applicable to all development inside city limits subject to the impact fees, and for the timely processing of applications for individual assessment of development impact fees, credits, or reimbursements allowed or paid.
- (i) Property for which a valid building permit has been issued prior to the effective date of this ordinance shall not be subject to new or updated development impact fees.

Definitions

The following definitions apply within this ordinance, consistent with the provisions set forth in the South Carolina Development Impact fee Act, or as it may be amended in the future. Where terms are not defined, the definitions used in the City of Beaufort Code of Ordinances shall apply.

- (a) Affordable Housing. Housing that is affordable to families whose incomes do not exceed eighty (80%) percent of the median income for the service zone established for the City of Beaufort.
- (b) Building Permit. A permit issued by the city permitting the construction of a building or structure within city limits.
- (c) Capital Improvement. Improvements with a useful life of five years or more, by new construction or other action, which increase the service capacity of any public facility.
- (d) Capital Improvements Plan (CIP). A multi-year planning tool used to identify capital projects. The Plan also identifies capital improvements for which impact fees may be used as a funding source.
- (e) Certificate of Occupancy. A certificate allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with the City of Beaufort Code of Ordinances and all other applicable regulations.
- (f) Credits. Impact fee deductions allowed to a fee payor for eligible off-site capital improvements funded by the fee payor or other allowance.
- (g) Developer. An individual, corporation, partnership, or other legal entity undertaking new development.
- (h) Development. Construction or installation of a new building or structure, or a change in use of an existing building or structure, any of which creates additional demand and need for public facilities (i.e., parks and recreation, fire protection, municipal facilities and equipment, or transportation). A building or structure shall include, but not be limited to, modular buildings and manufactured housing. Development does not include alterations made to existing single-family homes.
- (i) Development Impact Fee. A financial payment made by a developer to a local government for funding certain off-site capital improvements identified to accommodate future growth. Development impact fees (or “impact fees”) are collected by the municipality for, fire protection, fire department facilities, and fire department equipment.
- (j) Fee Payor. A developer that pays or is required to pay a development impact fee.
- (k) Fire Impact Fee. A payment of money imposed as a condition of approval to pay a proportionate share of the cost for improvements and maintenance of the fire protection system identified to serve new development.

- (l) Level of service. Means a measure of the relationship between service capacity and service demand for public facilities.
- (m) Public Facilities. Public facilities for the purpose of this ordinance shall include fire protection facilities and equipment and/or construction of capital improvements identified in the *Beaufort/Port Royal Fire Department Capital Improvements Plan* and the *Development Impact Fee Study Report for the Beaufort/Port Royal Fire Department*.
- (1) Capital equipment and vehicles, with an individual unit purchase price of not less than \$100,000 dollars including but not limited to, equipment and vehicles used in the delivery of public safety services or emergency preparedness services.
- (n) Square Feet (s.f.). As referred to in Appendix A *Impact Fee Schedule for Fire Protection Facilities and Equipment* of this ordinance, means the sum (in square feet) of the area of each floor level, including cellars, basements, mezzanines, penthouses, corridors, lobbies, stores and offices, that are within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all areas that have floor surfaces with clear standing head room (measured 6 foot, 6 inches minimum) regardless of their use. If a ground-level area of a building, or part thereof, within the principal outside faces of the exterior walls is not enclosed, this square footage definition considers it part of the overall square footage for the building. However, unroofed areas and unenclosed roofed-over spaces, except those contained within the principle outside faces of exterior walls, should be excluded from the area measurement. The area of any parking garage within a building shall not be included in the area measurement.
- (o) System Improvement. A capital improvement to a public facility which is designed to provide service to a service area.
- (p) System Improvement Costs. The costs incurred for construction and reconstruction of system improvements, including design, acquisition, engineering, and other costs attributable to the improvements including the cost of providing additional public facilities needed to serve new growth and development. System improvement costs do not include:
- (1) Construction, acquisition, or expansion of public facilities other than capital improvements eligible for impact fee funding that are identified in the *Beaufort/Port Royal Fire Department Capital Improvement plan*;
- (2) Repair, operation, or maintenance of existing or new capital improvements;
- (3) Upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;

- (4) Upgrading, updating, expanding, or replacing existing capital infrastructure to provide better service to existing development;
- (5) Administrative and operating costs of the governmental entity; or
- (6) Principal payments and interest or other finance charges on bonds or other indebtedness issued by or on behalf of the governmental entity to finance capital improvements eligible for impact fee funding that are identified in the *Beaufort/Port Royal Fire Department Capital Improvement Plan*.

Supporting Documentation

This ordinance is based upon the conclusions and recommendations presented in the *Beaufort/Port Royal Development Fire Impact Fee Study*, prepared with the provisions set forth in the Act and adopted by joint resolutions from the City of Beaufort and Town of Port Royal councils. These documents are and shall remain on file in the City of Beaufort Community and Economic Development department and are hereby incorporated into this ordinance by reference.

All developmental impact fees for fire service collected pursuant to this ordinance shall be used to implement any or all of the public facilities deemed eligible for impact fee funding identified in the *Beaufort/Port Royal Fire Department Capital Improvement Plan*.

Jurisdiction

A development impact fee shall apply to all new development or redevelopment located within municipal boundaries.

Application and Exemptions

The provisions of the ordinance shall apply to all new development or redevelopment within municipal boundaries for which a building permit or development approval is required except for the following:

- (a) Rebuilding the same amount of floor space of a structure that was destroyed by fire or other natural catastrophe;
- (b) Remodeling or repairing a structure with the same land use that does not result in an increase in the number of service units or place new demand on fire protection;
- (c) Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, if the number of service units does not change;
- (d) Placing a construction trailer or temporary office on a lot during the period of construction on the same lot;

- (e) Construction of an addition to a residential structure that does not increase the service units;
- (f) Adding uses that are typically accessory to residential uses, such as a tennis court or a clubhouse, unless it is demonstrated clearly that the use creates new consumption of fire services, municipal facilities and equipment, or the transportation system; and
- (g) All or part of a particular development project determined to create affordable housing.

Provisions for Affordable Housing

Because all or part of any development project may be exempt from development fire impact fees for affordable housing, the following sets forth the administrative standards for determining what constitutes affordable housing and the procedures for exemption.

(a) Median Household Income

Affordable housing is based upon eighty percent (80%) of the median household income for residents living within the City of Beaufort. Median household income shall be determined once a year utilizing the following procedure:

- (1) The most recently available figures from the US Census Bureau American Community Survey will serve as the base year for this evaluation;
- (2) Each subsequent year will be adjusted once annually thereafter during January of the calendar year based upon the previous year's published Consumer Price Index (CPI) increase, until the next US Census Bureau data set is published, and this procedure is replicated.

(b) Maximum Expenditure

The maximum expenditure for housing costs shall correspond to the Fannie Mae Foundation Mortgage Calculator multiplier of thirty percent (30%) of gross household income based upon eighty percent (80%) of median household income is:

- (1) Multifamily rental dwelling units of which the gross monthly rent cost does not exceed thirty percent (30%) of eighty percent (80%) of the gross median household monthly income.
 - maximum monthly rent = $MFI \times 80\% \times 30\% / 12$
 - \$1031.12 max month rent = $\$51,556 \text{ MFI} \times 80\% \times 30\% / 12$
 - MFI (Median Family Income) - \$51,556 This is an average of the U.S. Census Bureau MFI's published for the City of Beaufort and the Town

of Port Royal.

- 80% - The required MFI reduction as defined by the SC State impact fee law, SC Code Section 6-1-920
- 30% - The US Housing and Urban Development's (HUD) criteria that housing cost should be 30% or less of a household's MFI.

(2) Fee for simple ownership dwelling units of which the cost of homeownership for the dwelling unit do not exceed thirty percent (30%) of eighty percent (80%) of the gross median household monthly income as reflected in the sales price using the Fannie Mae Foundation Mortgage Calculator (or comparable methodology) assuming a 10% down payment and a specified interest rate. The specified interest rate shall be determined by selecting the lowest 30-year fixed mortgage rate reported by area lending institutions as of the first week of January for any given year and shall remain so for the balance of the year.

- maximum monthly principle and interest (MMPI) = $MFI \times 80\% \times 30\% / 12$ – expenses
- \$631.12 MMPI = \$51,556 MFI x 80% x 30% /12 - 400
- A 30-year mortgage at 7% and 10% down payment calculates to a purchase price of \$105,400.00 to meet \$631.12 MMPI.
 - MMPI – Maximum monthly Principle and Interest Payment
 - MFI (Median Family Income) - \$51,556 This is an average of the U.S. Census Bureau MFI's published for the City of Beaufort and the Town of Port Royal
 - 80% - The required MFI reduction as defined by the SC State impact fee law, SC Code Section 6-1-920
 - 30% - The US Housing and Urban Development's (HUD) criteria that housing cost should be 30% or less of a household's MFI.
 - Expenses - \$100 per month insurance, \$100 per month taxes, \$200 per month utilities and upkeep.

(c) Procedures for Exemption from Development Impact Fees

(1) A developer seeking exemption from development fire impact fees for the construction of affordable multifamily rental dwelling units, must provide a Rent Control Agreement, approved by the City of Beaufort Community and Economic Development department, restricting the monthly rental cost of each affordable

housing unit for a period of six (6) years in accordance with the maximum expenditure, prior to issuance of the building permit.

- (2) A developer seeking exemption from developmental fire impact fees for the construction of affordable simple ownership dwellings, must provide a letter, approved by the City of Beaufort Community and Economic Development, restricting the sale price of the housing unit.

Credit for Redevelopment

- (a) Properties with existing structures may receive fire impact fee credit for structures to be redeveloped or replaced.
 - (1) The permit applicant is responsible to notify the City of Beaufort Community and Economic Development department of the request for fire impact fee credit prior to presenting application for building permit or development permit and provide documentation necessary to properly assess the impact fee potential of the existing structure.
 - (2) The structure shall be evaluated in the present state to determine the developmental impact fee as if that structure was being constructed at the time of building permit application.
 - (3) The fee calculated for the existing structure will be credited towards to the developmental fire impact fee calculated for the new development building permit.
 - (4) Impact fee credit applied for existing structures shall not result in a developmental fire impact fee of less than Zero.

Determination of Fees

(a) General Provisions

- (1) The Community and Economic Development department shall determine, assess and collect all development impact fees administered within the city limits.
- (2) Upon the effective date of this ordinance, development impact fees shall be charged to new development or redevelopment in accordance with the procedures set forth in this ordinance. Fees to be collected for a development will be determined at the time of application for a building permit. If the development is one that does not require a building permit, the impact fee for the development will be determined at the time of development approval. No building permit or development approval shall be issued for any development requiring the payment of development impact fees until the fees have been assessed by and remitted to the City of Beaufort Community and Economic Development department, or in the case of affordable housing exemptions, the appropriate financial guarantees have been filed with the

Community and Economic Development department. Payment of such fees shall not relieve the developer from obligations to comply with any other applicable city ordinances, regulations, or requirements including, but not limited to, the “Zoning,” “Subdivisions,” or “Buildings and Building Regulations” Chapters of the City of Beaufort Code of Ordinances prior to receiving a Certificate of Occupancy.

- (3) All monies paid by the fee payor pursuant to this ordinance shall be identified as development fire impact fees and promptly deposited in the developmental fire impact fee trust fund described in this ordinance.
 - (4) For the purpose of calculating development impact fees, the land use types assumed in the Development Fire Impact Fee Schedule of this ordinance (i.e., Appendix A) shall be defined in accordance with the definitions contained in the Institute of Transportation Engineers' *Trip Generation Manual*, Ninth Edition (see *Beaufort Port Royal Fire Department Development Impact Fee Study, Appendix B*).
 - (5) Payment of development impact fees according to the Development Fire Impact Fee Schedule (i.e., Appendix A), or independent impact fee calculation reviewed and approved by the City of Beaufort Director of Community and Economic Development, shall constitute full and complete payment of the new development's proportionate share of fire service costs.
 - (6) A developer may negotiate and contract with the city to provide facilities or services in lieu of payment of development impact fees in accordance with Section 6-1-1050 of the Act.
- (b) Fire Protection Impact Fees

(1) Fire Protection Impact Fee Formula

Fire protection impact fees collected within city limits shall be in accordance with one of the following formulas:

a. Residential Development

$$\text{Residential Fire Impact Fee} = (\text{SU}) \times (\text{CPP})$$

Where:

SU (Service Unit) = The amount of net new service units generated by the proposed development. The service unit variable is calculated per Service Unit as annotated by each land use category

CPP (COST PER PERSON) = The cost per person for providing

fire protection services based on information presented in the *Beaufort/Port Royal Fire Department Development Impact Fee Study*. The cost per person is \$305.43.

b. Non-Residential Development

$$\text{Non-Residential Fire Impact Fee} = (\#SU) \times (\text{ESR}) \times (\text{CPE})$$

Where:

SU = The amount of net new service units generated by the proposed development. The service unit variable is calculated per Service Unit as annotated by each land use category.

ESR = Average employee space ratio developed using information published in the Institute of Transportation Engineers *Trip Generation, Ninth Edition* (see *Beaufort/Port Royal Fire Department Development Impact Fee Study, Appendix A*).

CPR (Cost per Employee) = The cost per employee for providing fire protection services is based on information presented in the *Beaufort/Port Royal Fire Department Development Impact Fee Study*. The cost per employee is \$592.34.

(2) Determining Fire Protection Impact Fees

The amount of fire protection impact fees attributable to a specific development shall be determined through the following process:

- a. Verify the use and number of new service units for which the building permit is being sought;
- b. For residential development, determine whether any of the proposed residential dwelling units qualify for exemption of fire protection impact fees as "affordable housing" and, if so, the number and type of such units; and
- c. For residential uses multiply the number of non-exempt service units for the specified land use category by the cost per person.
- d. For Non-residential development, determine the applicable land use type and impact fee per service unit set forth in Appendix A of this ordinance; and
- e. For non-residential uses multiply the number of service units for the specified land use category by the employee space ratio, and then multiply the product by the cost per employee.

(3) Independent Fire Protection Impact Fee Calculation

In the event that a fee payor or city staff contend that the land use for which the building permit is being sought is not within those land uses identified in Appendix A, or if the fee payor contends that the Appendix A calculations are not accurate for its intended use, then the City of Beaufort Director of Community and Economic Development, or its designee, shall make a determination as to the most comparable land use category to assume for calculating fire protection impact fees. If the fee payor disagrees with the determination of the City of Beaufort Director of Community and Economic Development, or if the city otherwise deems it appropriate, an independent impact fee calculation may be performed to quantify the fair share of system improvement costs attributable to the development. Preparation of an independent impact fee calculation will immediately halt the building permit application process until such time that the necessary calculation is deemed complete by the City of Beaufort Director of Community and Economic Development. If an independent calculation is requested, it must accompany the building permit application and be prepared in accordance with the following provisions:

- a. Independent calculations for the determination of fire protection impact fees must be performed by a certified professional engineer, architect, landscape architect, planner or other duly qualified and licensed professional approved by the City of Beaufort Director of Community and Economic Development.
- b. The independent calculation shall be subject to review and approval by the City of Beaufort Director of Community and Economic Development, or its designee. In the event that the City of Beaufort Director of Community and Economic Development elects to contract with a third party to review the independent calculation, the cost of this review shall be borne by the applicant based on the cost of the third-party review, plus a ten percent (10%) administrative fee.
- c. The City of Beaufort Director of Community and Economic Development, shall either approve or provide in writing the reasons for disapproval of the independent calculation study within thirty (30) days of its submittal for review.
- d. Prior to commencing the study, the developer's hired professional and the City of Beaufort Director of Community and Economic Development, or its designee, shall agree upon the relevant factors and values that will be utilized in the independent calculation of impact fee.
- e. The independent impact fee calculation shall be based on one of the following formulas:

Residential Development

$$\text{Residential Fire Impact Fee} = (\text{SU}) \times (\text{CPP})$$

Where:

SU (Service Unit) = The amount of net new service units generated by the proposed development. The service unit variable is calculated per Service Unit as annotated by each land use category

CPP (COST PER PERSON) = The cost per person for providing fire protection services based on information presented in the *Beaufort/Port Royal Fire Department Development Impact Fee Study*. The cost per person is \$305.43.

Non-Residential Development

$$\text{Non-Residential Fire Impact Fee} = (\# \text{SU}) \times (\text{ESR}) \times (\text{CPE})$$

Where:

SU = The amount of net new service units generated by the proposed development. The service unit variable is calculated per Service Unit as annotated by each land use category.

ESR = Average employee space ratio developed using information published in the Institute of Transportation Engineers *Trip Generation, Ninth Edition* (see *Beaufort/Port Royal Fire Department Development Impact Fee Study, Appendix A*).

CPR (Cost per Employee) = The cost per employee for providing fire protection services is based on information presented in the *Beaufort/Port Royal Fire Department Development Impact Fee Study*. The cost per employee is \$592.34.

Impact Fee Trust Funds

Development impact fees collected pursuant to this ordinance shall be kept separate from other revenue of the city. There shall be one trust fund established solely for development fire impact fee funds. All development impact fees collected shall be properly identified by property address noted on the approved building permit and by the appropriate trust account.

Any funds on deposit not immediately necessary for expenditure shall be maintained in an interest-bearing account prior to expenditure on recommended projects. Interest earned on development impact fees in deposit must be considered revenue to the trust fund account for which income is earned and must be subject to all restrictions placed on the use of development impact fees pursuant to this ordinance.

Limitation on Expenditures of Funds Collected

(a) Eligible System Improvement Costs

Funds from development impact fee trust accounts shall be expended only for the public facilities and system improvements identified as eligible for impact fee funding in the *Beaufort/Port Royal Fire Department Capital Improvement plan*, incorporated herein by reference. No funds shall be used for administrative or operating costs associated with imposing any of the development impact fees. Eligible components of a public fire department facility may include, but are not limited to, the following:

- (1) Design and construction plan preparation;
- (2) Construction of new facilities, structures, or amenities that provide additional capacity;
- (3) Purchase of new equipment (>\$100,000 purchase price) that provide additional capacity.
- (4) Principal payments, interest and other finance charges on bonds or other indebtedness issued by or on behalf of the city for financing any or all public fire department infrastructure.

(b) Rational Nexus Test

The City Finance Director, or its designee, shall make an annual report to the City Council and publish this report for access by the general citizenry showing where development fire impact fees have been collected and what projects have been funded with these revenues. The Council shall consider this report and whether the fees are being spent for the benefit of new developments within city limits. If the Council determines that this is not the case, then it shall adjust the *Beaufort/Port Royal Fire Department Capital Improvement plan*, and other projected capital expenditures to correct the condition.

(c) Expenditure of Funds

Development impact fee funds shall be expended in the order in which they were collected. The disbursement of such funds shall require approval of the City Council,

upon recommendation of the City Manager or its designee.

(d) Reimbursement

Impact fee funds not obligated for expenditure within three (3) years of the date that they are scheduled to be expended in the *Beaufort/Port Royal Fire Department Capital Improvement plan*, shall be returned, with actual interest earned, to the record owner of the property for which the fees were collected, on a first-in, first-out basis.

Credits / Reimbursements

(a) General Provisions

- (1) A developer shall be entitled to a credit against development impact fees assessed pursuant to this ordinance for city-approved monetary or in-kind contributions toward some or all expenditures included in the *Beaufort/Port Royal Fire Department Capital Improvement plan*, that are eligible for impact fee funding.
- (2) Development impact fees shall not be imposed on a fee payor or developer who has entered into an agreement with the city for certain contribution, payment, construction, or dedication of land up to the cash value of the specific improvements identified within the agreement. Any difference between total development impact fees due for the development and the cash value of the executed agreement remain eligible for collection pursuant to the rules and requirements of this ordinance.
- (3) A fee payor shall be reimbursed for contributions of land or facilities that exceed his proportionate share of the cost of public facilities when such excess contribution is made at the request of the city.

(b) Application for Credit Agreement

- (1) The determination of the amount of any credit shall be undertaken through submission of an Application for Credit Agreement, which shall be submitted through the City of Beaufort Community and Economic development, for review by the Director of Community and Economic development, or its designee.
- (2) The Application for Credit Agreement shall include the following information:
 - a. The following documentation must be provided if the proposed application involves a credit for any cash contribution:
 1. A certified copy of the development approval in which the contribution was agreed; and
 2. Proof of payment (if already made); or

3. Proposed method of payment (if not already made).
- b. The following documentation must be provided if the proposed application involves credit for dedication of land:
 1. A drawing and legal description of the land;
 2. The appraised fair market value of the land at the date a building permit application is sought for the land use(s), prepared by a professional Real Estate Appraiser who is a member of the member Appraisal Institute (MAL) or who is a member of Senior Residential Appraisers (SRA); and
 3. A certified copy of the development permit in which the land was agreed to be dedicated (if applicable).
 - c. The following documentation must be provided if the proposed application involves credit for construction:
 1. The proposed construction documents of the specific construction project prepared and certified by a duly qualified and licensed engineer in the State of South Carolina;
 2. The projected costs for the suggested improvements, which shall be based on local information for similar improvements, along with the construction schedule for the completion of said improvements. Such estimated cost shall include construction or reconstruction of the project, the cost of labor and materials, the cost of all lands, property, rights, easements, and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction, costs of plans and specifications, surveys of estimates of costs and revenues, costs of professional services, and all of the expenses necessary or incidental to determining the feasibility or practicability of such construction or reconstruction.
- (3) Within fourteen (14) days of receipt of the proposed Application for Credit Agreement, the City of Beaufort Director of Community and Economic development, or its designee, shall determine if the application is complete. If it is determined that the proposed agreement is not complete, the City of Beaufort Director of Community and Economic development shall send written notification to the applicant outlining the deficiencies. The City of Beaufort Director of Community and Economic development shall take no further action on the proposed Application for Credit Agreement until all such deficiencies have been corrected or otherwise settled.

- (4) Once the City of Beaufort Director of Community and Economic development determines that the proposed Application for Credit Agreement is complete, it shall be reviewed within thirty (30) days by a committee of designated staff composed of the City Manager, City Finance Director, City Fire Chief, City Building Official, and City Engineer (together known as the Credit Review Committee).
- (5) If the Application for Credit Agreement is approved by the Credit Review Committee, a Credit Agreement shall be prepared and signed by the applicant and the City Manager. It shall specifically outline the contribution, payment, construction, or land dedication, the time by which it shall be complete, dedicated, or paid, and any extensions thereof, and the dollar credit the applicant shall receive for the contribution, payment, or construction against development impact fees. The agreement may also include provisions for rescinding the credit and issuing stop work orders if the dedication and/or work and/or construction are not timely accomplished.
- (6) A fee payor affected by the decision of the Credit Review Committee regarding credits may appeal such decision pursuant to the Appeal Process as outlined in this ordinance.

Penalties

City Council shall have the following remedies, which may be exercised individually or collectively, for collecting development impact fees. The failure to pursue any remedy at any time shall not be deemed as a waiver of city rights to pursue any remedy at such other time as may be deemed appropriate.

- (a) Interest and Penalties. The City may, at its discretion, add to the amount of calculated development impact fees due prior to award of a Certificate of Occupancy, reasonable interest and penalties for non-payment or late payment of required funds. Penalties for unpaid development impact fees shall be administered consistent with City of Beaufort Code of Ordinances.
- (b) Withholding Certificate of Occupancy. The City may withhold a Certificate of Occupancy until full and complete payment has been made by the developer of development impact fees due for the development.
- (c) Withholding Utility Service. The City may withhold the provision of utility services to a development until the required development impact fees have been paid in full.
- (d) Lien. The City may impose a lien on the developer's property for failure of the developer to pay required development impact fees in full.
- (e) Other. The City may pursue the collection of the development impact fees, including interest, by way of civil process.

Appeal Process

A developer shall have the following rights for appeal of development impact fees imposed by the city on their development pursuant only to this ordinance:

(a) Administrative Appeal

- (1) A developer may file an administrative appeal with the City Manager regarding the payment of development impact fees, independent calculation of impact fees, or credits or reimbursements by filing a written Notice of Appeal. Said Notice shall be filed within thirty (30) days of the decision sought to be appealed. The filing of an appeal will immediately halt the building permit application process, unless the developer posts a bond or submits an irrevocable letter of credit for the full amount of the development impact fees as calculated by the city to be due. All Notices of Appeal shall include a full explanation of the reasons for the appeal, specifying the grounds therefore, and containing any documentation that the developer desires to be considered. The appeal shall contain the name and address of the developer filing the appeal and shall state their capacity to act as a representative or agent if they are not the owner of the property to which impact fees or credits pertain.
- (2) Within thirty (30) days following receipt of the written Notice of Appeal, the City Manager will review the Appellant's written report, supporting documentation and departmental staff reports. The thirty (30) day review period may be extended if additional information is needed from the Appellant in order to render a decision. Upon completion of the administrative review, the City Manager will provide a written response to the Appellant constituting a final administrative determination.
- (3) Any person desiring to appeal the final administrative determination of the City Manager regarding payment of development impact fees or credits shall file a written Notice of Appeal to the City Council. Said Notice of Appeal to City Council shall be filed with the City Clerk of Council within fifteen (15) days following receipt of the final administrative determination. Receipt shall be construed to have occurred when the final administrative decision is deposited in the United States mail postage prepaid to the person whose name and address is identified in the original Notice of Appeal.
- (4) The City Clerk of Council will schedule all impact fee appeals for the first City Council meeting following ten (10) days from receipt of the Written Notice of Appeal to the City Council. Postponements of the City Council appeal date may be granted by the City Manager if they are requested in writing at least ten (10) days in advance of the scheduled City Council meeting date.

- (5) When an Appeal is scheduled for oral presentation before the City Council, the Appellant and city staff shall each be given ten (10) minutes at the oral argument to present the Appeal and to discuss the submitted written record.

(b) Payment Under Protest

A fee payer may pay development impact fees under protest. Payment under protest does not preclude the developer from filing an administrative appeal nor is the fee payer stopped from receiving a refund of an amount considered to have been collected illegally. A fee payor, at his option, may also post a bond or submit an irrevocable letter of credit for the amount of development impact fees due instead of making a cash payment under protest, pending the outcome of an appeal.

(c) Mediation

City Council shall provide for mediation by a qualified independent party, upon voluntary agreement by both the developer and the City, to address a disagreement related to development impact fees calculated by the City. Neither a request for, nor participation in, mediation shall preclude a fee payor from pursuing other developer rights or remedies otherwise available by law.

Refunds

(a) General Provisions

Funds not obligated for expenditure within three (3) years of the date that they are scheduled to be expended in the *Beaufort/Port Royal Fire Department Capital Improvement Plan* shall be refunded to the record owner of property for which the impact fees were paid, with actual interest earned, on a first-in, first-out basis. For the purpose of determining whether fees have been spent or encumbered, the first money placed in a trust fund account shall be deemed to be the first money taken out of that account when withdrawals have been made.

(b) Refund Process

The owner of property eligible for a refund of one or more development impact fee payments shall submit to the City of Beaufort Director of Community and Economic Development:

- (1) a notarized sworn statement that the person is the current owner of the property for which a refund is due, a certified copy of the latest recorded deed, and a copy of the most recent ad valorem tax bill for the property.
- (2) When a right to a refund exists, the city shall send a refund to the current owner of record within ninety (90) days after it is determined by City Council that a refund is due.

- (3) All refunds shall include the pro rata portion of the interest earned while on deposit in the specific development impact fee trust account.
- (4) A record owner of property for which one or more development impact fee refunds are due has standing to sue for such refund pursuant to Section 6-1-1020(D) of the Act if there has not been a good-faith effort towards a timely payment of a refund pursuant to this section.

Review

- (a) City Council shall be responsible for preparing and publishing an annual report describing the amount of development impact fees collected, appropriated, and spent during the preceding fiscal year.
- (b) Metropolitan Planning Commission shall be responsible for a holistic review and update of the *Developmental Fire Impact Fee Study for the Beaufort/Port Royal Fire Department*, *The Beaufort/Port Royal Fire Department Capital Improvement Plan*, and the Affordable Housing Analysis in support of both, in the same manner and on the same review cycle as the City of Beaufort Comprehensive Plan.

Termination of Development Impact Fees

Development impact fees for the City of Beaufort shall be terminated within Twenty (20) years after the effective date of this ordinance, or when sufficient fees have been collected to fund all of the projects eligible for development impact fee funding that are identified in the *Beaufort/Port Royal Fire Department Capital Improvement Plan*, whichever shall first occur, unless:

- (a) City Council adopts a revised *Developmental Fire Impact Fee Study for the Beaufort/Port Royal Fire Department* or amends *The Beaufort/Port Royal Fire Department Capital Improvement* for a subsequent amount of time; or
- (b) City Council adopts and updated *Developmental Fire Impact Fee Study for the Beaufort/Port Royal Fire Department*, pursuant to the substantive and procedural requirements set forth in the South Carolina Development Impact Fee Act, as amended.

Liberal Construction

The provisions of this ordinance shall be liberally construed to effectively carry out its purpose in the interest of further promoting and protecting public health, safety, welfare, and convenience.

SECTION II. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court, such section, subsection, sentence, clause, phrase or portion of this ordinance shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of this ordinance nor impair or nullify the remainder of these provisions which shall continue in full force and effect.

If the application of any provision of this ordinance to any new development is declared to be invalid by a decision of any court, the intent of City Council is that such decision shall be limited only to the specific new development expressly involved in the controversy, action, or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this ordinance as a whole or the application of any provision of this ordinance to any other new development.

Conflicting Ordinances. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Effective Date. This ordinance shall be effective from and after -----.

SIGNED AND SEALED: