

AN ORDINANCE OF THE TOWN OF LEXINGTON, SOUTH CAROLINA, ESTABLISHING DEVELOPMENT IMPACT FEES

ARTICLE I. TITLE

This ordinance shall be referred to as the “Development Impact Fee Ordinance for the Town of Lexington, South Carolina”.

ARTICLE II. 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.

ARTICLE III. FINDINGS

The Lexington Town Council hereby declares that:

- (a) Adequate parks and recreation facilities, municipal facilities and equipment, and transportation system are vital and necessary to the health, safety, welfare, and prosperity of the Town and its citizens. Substantial growth and new construction is taking place within the Town and is anticipated to continue. This growth creates substantial need for new infrastructure capacity. 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 Town a less desirable place to live and do business and be detrimental to the health, safety, welfare, and prosperity of the Town and its citizens.
- (b) To the extent that future growth and new construction in the Town place demands on parks and recreation facilities, municipal facilities and equipment, or the transportation system those demands and needs should be met by shifting a portion of the capital costs for providing new capacity to serve new development, which creates, in whole or in part, these demands and needs.
- (c) By Resolution adopted on March 4, 2019, the Town Council directed the Planning Commission to conduct the necessary studies and develop a recommended development impact fee ordinance in accordance with the requirements of the Act.
- (d) The Planning Commission recommended to Town Council a *Development Impact Fee Study Report for Lexington* dated August 30, 2019, a *Town of Lexington Capital Improvements Plan* with projects eligible for impact fee funding, and a *Housing Affordability Analysis in Support of a Development Impact Fee Study Report in Lexington* dated August 30, 2019, each of which have been adopted by the Town Council, as modified, on December 2, 2019.
- (e) This ordinance is enacted to implement the findings and recommendations of the *Development Impact Fee Study Report for Lexington* and endorse the list of capital projects eligible for impact fee funding in the *Town of Lexington Capital Improvements 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 the Town of Lexington and its citizens.

- (g) New facilities or equipment eligible for development impact fee funding will benefit all new development or redevelopment in Town limits. Therefore, it is appropriate to treat the entire town 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 Town 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) The transportation impact fees presented in Exhibit A of this ordinance reflect the Town's commitment to provide road capacity for future vehicle trips using maximum service capacities defined by the 2013 Florida DOT Quality/Level-of-Serve Handbook and the 2010 Highway Capacity Manual, based on average daily traffic volumes and measurements.
- (j) The maximum allowable parks and recreation impact fee determined in the *Development Impact Fee Study Report for Lexington* has been reduced by ___0___ percent for the General Development Impact Fee Schedule summarized in Exhibit A of this ordinance, setting the fees at 100 percent of the maximum amount to provide a reasonable fee for residential investment and to ensure that the impact fees collected do not exceed the cost to provide capital facilities that accommodate new development.
- (k) The maximum allowable municipal facilities and equipment impact fee determined in the *Development Impact Fee Study Report for Lexington* has been reduced by ___0___ percent for the General Development Impact Fee Schedule summarized in Exhibit A of this ordinance, setting the fees at 100 percent of the maximum amount to provide a reasonable fee for residential and non-residential investments and to ensure that the impact fees collected do not exceed the cost to provide capital facilities and equipment that accommodate new development.
- (l) The maximum allowable transportation impact fee determined in the *Development Impact Fee Study Report for Lexington* has been reduced by ___0___ percent for the General Development Impact Fee Schedule summarized in Exhibit A of this ordinance, setting the fees at 100 percent of the maximum amount to provide a reasonable fee for residential and non-residential investments and to ensure that the impact fees collected do not exceed the cost to provide capital transportation facilities that accommodate new development.
- (m) Property for which a valid building permit or development approval has been issued prior to the effective date of this ordinance shall not be subject to new or updated development impact fees.

ARTICLE IV. 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 Town of Lexington 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 Town of Lexington.
- (b) Building Permit. A permit issued by the Town permitting the construction of a building or structure within Town 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 the public facility. Public facilities for the purpose of this ordinance include parks and recreation facilities, municipal facilities and equipment, and transportation.
- (d) Capital Improvements Plan (CIP). A multi-year planning tool used to identify capital projects and coordinate financing and implementation. 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 Town of Lexington 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. Off-site capital improvements that are a direct result of a specific development are not eligible for credits. An improvement shall be determined to be a direct result if it is required, if it benefits primarily the specific development, and if it is contiguous to or in the immediate proximity of the specific development.
- (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, 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 Town for parks and recreation facilities, municipal facilities and equipment, and transportation.
- (j) Fee payor. A developer that pays or is required to pay a development impact fee.
- (k) Municipal Facilities and Equipment Impact Fee. A payment of money imposed as a condition of approval to pay a proportionate share of the cost for improvements to the municipal facilities and equipment system identified to serve new development.
- (l) Off-Site Improvements. Capital improvements located outside of the boundaries of a development that are required to serve the development's demands and needs.
- (m) Parks and Recreation Impact Fee. A payment of money imposed as a condition of approval to pay a proportionate share of the cost for improvements to the parks and recreation system identified to serve new development.
- (n) Public Facilities. Improvements to and/or construction of capital improvements identified in the *Town of Lexington Capital Improvements Plan* and the *Development Impact Fee Study Report for Lexington* as described in Article V hereof. Public facilities for the purpose of this ordinance shall include parks and recreation facilities, municipal facilities and equipment, and transportation.

- (o) Square Feet (s.f.). As referred to in Exhibit A 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.
- (p) System Improvement. A capital improvement to a public facility which is designed to provide service to a service area.
- (q) System Improvement Costs. The costs incurred for construction and reconstruction of system improvements, including design, acquisition, engineering, and other costs attributable to the improvements, and also 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 *Town of Lexington Capital Improvements 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 improvements to provide better service to existing development;
 - (5) administrative and operating costs of the governmental entity; or
 - (6) principle payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements eligible for impact fee funding that are identified in the *Town of Lexington Capital Improvements Plan*.
- (r) Transportation Impact Fee. A payment of money imposed as a condition of approval to pay a proportionate share of the cost for improvements to the transportation system identified to serve new development.
- (s) Volume to Service Capacity Ratio. A measurement of the relationship between average daily traffic volumes (demand) and average daily maximum service capacities (supply) for transportation facilities in the Lexington Study Area. A volume to service capacity ratio greater than 1.00 identified the need for a capacity-enhancing improvement.

ARTICLE V. SUPPORTING DOCUMENTATION

This ordinance is based upon the conclusions and recommendations presented in the *Development Impact Fee Study Report for Lexington, Town of Lexington Capital Improvements Plan*, and *Housing Affordability Analysis in Support of a Development Impact Fee Study in Lexington* prepared consistent with the provisions set forth in the Act and adopted by

Town Council on December 2, 2019. All three documents are on file in the Town Planning, Building and Technology Department and are incorporated into this ordinance by reference.

All development impact fees 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 *Town of Lexington Capital Improvements Plan* as prioritized therein.

ARTICLE VI. JURISDICTION

A development impact fee shall apply to all new development or redevelopment located within Town limits.

ARTICLE VII. APPLICATION AND EXEMPTIONS

The provisions of the ordinance shall apply to all new development or redevelopment within Town limits 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 parks and recreation facilities, municipal facilities and equipment, or the transportation system;
- (c) replacing a residential unit, including a manufactured home, with another residential unit on the same lot, unless it is demonstrated clearly that the new unit creates new demand for parks and recreation facilities, municipal facilities and equipment, or the transportation system;
- (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 amount of traffic generated by the same land use;
- (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 demand for parks and recreation facilities, municipal facilities and equipment, or the transportation system;
- (g) all or part of a particular development project if:
 - (1) the project is determined to create affordable housing; and
 - (2) the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.
- (h) constructing a new elementary, middle, or secondary school; and
- (i) constructing a new volunteer fire department.

ARTICLE VIII. PROVISIONS FOR AFFORDABLE HOUSING

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

Section 8.1 Median Family Income

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

- (a) the most recently available figures from the US Census Bureau American Community Survey will serve as the base year for this evaluation;
- (b) 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.

Section 8.2 Maximum Expenditure

The maximum expenditure for housing costs shall correspond to the Fannie Mae Foundation Mortgage Calculator multiplier of thirty percent (30%) of gross family income as used in the *Housing Affordability Analysis in Support of a Development Impact Fee Study in Lexington*. Affordable housing based upon eighty percent (80%) of median family income is:

- (a) 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 family monthly income.
- (b) Fee 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 family monthly income as reflected in the sales price using the Fannie Mae Foundation Mortgage Calculator (or comparable methodology) assuming a 20% 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.

Section 8.3 Procedures for Exemption from Development Impact Fees

- (a) A developer seeking exemption from one or more development impact fees for the construction of affordable multifamily rental dwelling units must identify the alternate source of funds for the impact fee and post a financial guarantee suitable to the Town prior to the issuance of a building permit. The amount of the financial guarantee shall reflect the amount of development impact fees due for all affordable housing units as if they were not affordable housing units. No Certificate of Occupancy for any of the units may be issued until the impact fees for the affordable housing units have been paid by the alternate source or from the proceeds of the financial guarantee.

- (b) A developer seeking exemption from one or more development impact fees for construction of a fee simple ownership dwelling unit shall identify the alternate source of funds for the impact fees and post a financial guarantee suitable to the Town prior to the issuance of a building permit. The amount of the financial guarantee shall reflect the amount of development impact fees due for all affordable housing units as if they were not affordable housing units. No Certificate of Occupancy may be issued for the affordable housing dwellings until the impact fees have been paid by the alternate source or from the proceeds of the financial guarantee.

ARTICLE IX. DETERMINATION OF FEES

Section 9.1 General Provisions

- (a) The Town Administrator, or its designee shall determine and collect all development impact fees administered within Town limits.
- (b) 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. The 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 remitted to the Town Administrator, or its designee, or in the case of affordable housing, the appropriate financial guarantees have been filed with the Town Administrator. Payment of such fees shall not relieve the developer from obligations to comply with any other applicable Town ordinances, regulations, or requirements including, but not limited to, the "Zoning", "Land Development", "Subdivisions", or "Buildings and Building Regulations" Chapters of the Town of Lexington Code of Ordinances prior to receiving a Certificate of Occupancy.
- (c) All monies paid by the fee payor pursuant to this ordinance shall be identified as development impact fees and promptly deposited in the appropriate development impact fee trust fund described under Article X of this ordinance.
- (d) For the purpose of calculating development impact fees, the land use types assumed in the General Development Impact Fee Schedule of this ordinance (i.e., Exhibit A) shall be defined in accordance with the definitions contained in the Institute of Transportation Engineers' *Trip Generation Manual*, Tenth Edition (see *Development Impact Fee Study Report for Lexington, Appendix B*).
- (e) Payment of development impact fees according to the General Development Impact Fee Schedule (i.e., Exhibit A), or independent impact fee calculation study accepted by Town Council, shall constitute full and complete payment of the new development's proportionate share of public facilities costs.
- (f) A developer may negotiate and contract with the Town to provide facilities or services in lieu of payment of development impact fees in accordance with Section 6-1-1050 of the Act. These services or facilities are not required to be in the capital improvements plan.

Section 9.2 Parks and Recreation Impact Fee Formula

Parks and recreation impact fees collected within Town limits shall be in accordance with the following formula:

$$\text{Impact Fee} = (\text{NNDU}) \times (\text{P/HH}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNDU = The number of net new dwelling units generated by the proposed development.

P/HH = Average person per household estimate published by the US Census Bureau for various dwelling unit categories (see *Development Impact Fee Study Report for Lexington, Appendix B*).

COST = The cost per capita for providing improvements to parks and recreation facilities based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per capita is \$483.32.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable parks and recreation impact fee determined in the *Development Impact Fee Study Report for Lexington*.

Section 9.3 Determining Park and Recreation Impact Fees

The amount of parks and recreation impact fees attributable to a specific development shall be determined through the following process:

- (a) verify the type and number of new residential dwelling units for which the building permit is being sought;
- (b) determine whether any of the proposed residential dwelling units qualify for a discount on parks and recreation impact fees as "affordable housing" and, if so, the number and type of such units;
- (c) determine the applicable residential dwelling unit category set forth in Exhibit A (as applicable) of this ordinance; and
- (d) multiply the discounted development impact fee rate for the residential dwelling unit category by the number of net new units within the development and the average persons per household estimate.

Section 9.4 Independent Parks and Recreation Impact Fee Calculation

In the event that a fee payor or Town staff contend that the land use for which the building permit is being sought is not within those land uses identified in Exhibit A, or if the fee payor contends that the Exhibit A calculations are not accurate for its intended use, then the Town Administrator, or its designee, shall make a determination as to the most comparable land use category to assume for calculating parks and recreation impact fees. If the fee payor disagrees with the determination of the Town Administrator, or its designee, or if the Town 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 Town Administrator, or its designee. 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 parks and recreation impact fees must be performed by a certified professional engineer, architect, landscape architect, planner or other duly qualified and licensed professional approved by the Town Administrator, or its designee.
- (b) The independent calculation shall be subject to review and approval by the Town Administrator, or its designee.
- (c) The Town Administrator, or its designee, 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 Town Administrator, or its designee, shall agree upon the relevant factors and values that will be utilized in the independent calculation of impact fees.
- (e) The maximum allowable parks and recreation impact fee determined in the *Development Impact Fee Study Report for Lexington* shall be reduced by 0 percent for the purposes of completing an independent impact fee calculation, setting the fees at 100 percent of the maximum amount.
- (f) The independent impact fee calculation shall be based on the following formula:

$$\text{Impact Fee} = (\text{NNDU}) \times (\text{P/HH}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNDU = The number of net new dwelling units generated by the proposed development.

P/HH = Average person per household estimate approved by the Town Administrator.

COST = The cost per capita for providing improvements to parks and recreation facilities based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per capita is \$483.32.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100 % of the maximum allowable parks and recreation impact fee determined in the *Development Impact Fee Study Report for Lexington*.

Section 9.5 Municipal Facilities and Equipment Impact Fee Formula

Municipal facilities and equipment impact fees collected within Town limits shall be in accordance with one of the following formulas:

- (a) Residential Development

$$\text{Impact Fee} = (\text{NNDU}) \times (\text{P/HH}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNDU = The number of net new dwelling units generated by the proposed development.

P/HH = Average person per household estimate published by the US Census Bureau for various dwelling unit categories (See *Development Impact Fee Study Report for Lexington, Appendix B*).

COST = The cost per capita for providing municipal facilities and equipment based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per capita is \$81.39.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable municipal facilities and services impact fee determined in the *Development Impact Fee Study Report for Lexington*.

(b) Non-Residential Development

$$\text{Impact Fee} = ((\text{NNSF})/1000) \times (\text{ESR}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNSF = The amount of net new square footage generated by the proposed development.

ESR = Average employee space ratio developed using information published in the Institute of Transportation Engineers *Trip Generation, Tenth Edition* (see *Development Impact Fee Study Report for Lexington, Appendix B*).

COST = The cost per employee for providing municipal facilities and equipment based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per employee is \$81.39.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable municipal facilities and equipment impact fee determined in the *Development Impact Fee Study Report for Lexington*.

Section 9.6 Determining Municipal Facilities and Equipment Impact Fees

The amount of municipal facilities and equipment impact fees attributable to a specific development shall be determined through the following process:

- (a) verify the type and number of new residential dwelling units or the type and intensity of new non-residential square footage or other land use measuring criteria for which the building permit is being sought;

- (b) for residential development, determine whether any of the proposed residential dwelling units qualify for a discount on municipal facilities and equipment impact fees as "affordable housing" and, if so, the number and type of such units;
- (c) determine the applicable land use type and impact fee per unit set forth in Exhibit A (as applicable) of this ordinance; and
- (d) multiply the discounted development impact fee rate for the specified land use category by the number of net new units or net new square footage within the development (as applicable) and the average persons per household or employee space ratio estimate (as applicable).

Section 9.7 Independent Municipal Facilities and Equipment Impact Fee Calculation

In the event that a fee payor or Town staff contend that the land use for which the building permit is being sought is not within those land uses identified in Exhibit A, or if the fee payor contends that the Exhibit A calculations are not accurate for its intended use, then the Town Administrator, or its designee, shall make a determination as to the most comparable land use category to assume for calculating municipal facilities and equipment impact fees. If the fee payor disagrees with the determination of the Town Administrator, or its designee, or if the Town 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 Town Administrator, or its designee. 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 municipal facilities and equipment impact fees must be performed by a certified professional engineer, architect, landscape architect, planner or other duly qualified and licensed professional approved by the Town Administrator, or its designee.
- (b) The independent calculation shall be subject to review and approval by the Town Administrator, or its designee.
- (c) The Town Administrator, or its designee, 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 Town Administrator, or its designee, shall agree upon the relevant factors and values that will be utilized in the independent calculation of impact fees.
- (e) The maximum allowable municipal facilities and equipment impact fee determined in the *Development Impact Fee Study Report for Lexington* shall be reduced by 0 percent for the purposes of completing an independent impact fee calculation, setting the fees at 100 % of the maximum amount.
- (f) The independent impact fee calculation shall be based on one of the following formulas:

- (1) Residential Development

$$\text{Impact Fee} = (\text{NNDU}) \times (\text{P/HH}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNDU = The number of net new dwelling units generated by the proposed development.

P/HH = Average person per household estimate approved by the Town Administrator, or its designee.

COST = The cost per capita for providing municipal facilities and equipment based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per capita is \$81.39.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable municipal facilities and equipment impact fee determined in the *Development Impact Fee Study Report for Lexington*.

(2) Non-Residential Development

$$\text{Impact Fee} = ((\text{NNSF})/1000) \times (\text{ESR}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNSF = The amount of net new square footage generated by the proposed development.

ESR = Average employee space ratio approved by the Town Administrator, or its designee.

COST = The cost per employee for providing municipal facilities and equipment is based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per employee is \$81.39.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable municipal facilities and equipment impact fee determined in the *Development Impact Fee Study Report for Lexington*.

Section 9.8 Transportation Impact Fee Formula

Transportation impact fees collected within Town limits shall be in accordance with one of the following formulas:

(a) Residential Development

$$\text{Impact Fee} = (\text{NNDU}) \times (\text{TRIPS}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNDU = The number of net new dwelling units generated by the proposed development.

TRIPS = The number of new average daily trips generated by the proposed development taking into account the rate of pass-by capture published in the most current edition of the *Trip Generation Handbook* published by the Institute of Transportation Engineers.

COST = The cost per trip for providing transportation improvements based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per trip is \$87.70.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable transportation impact fee determined in the *Development Impact Fee Study Report for Lexington*.

(b) Non-Residential Development

$$\text{Impact Fee} = ((\text{NNSF})/1000) \times (\text{TRIPS}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNSF = The amount of net new square footage generated by the proposed development.

TRIPS = The number of new average daily trips generated by the proposed development taking into account the rate of pass-by capture published in the most current edition of the *Trip Generation Handbook* published by the Institute of Transportation Engineers.

COST = The cost per trip for providing transportation improvements based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per trip is \$87.70.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable transportation impact fee determined in the *Development Impact Fee Study Report for Lexington*.

Section 9.9 Determining Transportation Impact Fees

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

- (a) verify the type and number of new residential dwelling units or the type and intensity of new non-residential square footage or other land use measuring criteria for which the building permit is being sought;
- (b) for residential development, determine whether any of the proposed residential dwelling units qualify for a discount on transportation impact fees as "affordable housing" and, if so, the number and type of such units;

- (c) determine the applicable land use type and impact fee per unit set forth in Exhibit A (as applicable) of this ordinance; and
- (d) multiply the discounted impact fee rate for the specified land use by the number of units or square footage for the same land use within the development.

Section 9.10 Independent Transportation Impact Fee Calculation

In the event that a fee payor or Town staff contend that the land use for which the building permit is being sought is not within those land uses identified in Exhibit A, or if the fee payor contends that the Exhibit A calculations are not accurate for its intended use, then the Town Administrator, or its designee, shall make a determination as to the most comparable land use category to assume for calculating transportation impact fees. If the fee payor disagrees with the determination of the Town Administrator, or its designee, or if the Town otherwise deems it appropriate, an independent impact fee calculation may be performed to quantify the fair share of transportation 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 Town Administrator, or its designee. 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 transportation impact fees must be performed by a duly qualified and licensed engineer in the State of South Carolina, based upon sound traffic engineering studies utilizing accepted engineering practices and planning principles.
- (b) The independent calculation shall be subject to review and approval by the Town Administrator, or its designee. In the case of large projects involving multiple uses and complex calculations, the Town may seek additional assistance from qualified transportation consultants at the expense of the developer.
- (c) The Town Administrator, or its designee, 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 Town Administrator, or its designee, shall agree upon the relevant factors and values that will be utilized in the independent calculation of impact fees.
- (e) Process for the independent calculation study for determination of transportation impact fees:
 - (1) Determine base trip generation for the proposed land use(s) utilizing the Institute of Transportation Engineers' *Trip Generation Manual*, Tenth Edition (or subsequent editions).
 - (2) Base trip generation may be reduced by rate of pass-by capture using methodology in the most current *Trip Generation Handbook* published by the Institute of Transportation Engineers.
 - (3) Base trip generation may be reduced by rate of internal capture when two or more land uses are proposed and at least one of those land uses is residential in nature and at least one of the other land uses is non-residential in nature using methodology recommended in the most current *Trip Generation*

Handbook published by the Institute of Transportation Engineers, subject to approval for use by the Town Administrator, or its designee.

- (4) The maximum allowable transportation impact fee determined in the *Development Impact Fee Study Report for Lexington* shall be reduced by 0 percent (%) for the purposes of completing an independent impact fee calculation, setting the fees at 100% of the maximum amount.
- (5) The independent impact fee calculation shall be based on one of the following formulas:
 - (a) Residential Development

$$\text{Impact Fee} = (\text{NNDU}) \times (\text{TRIPS}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNDU = The number of net new dwelling units generated by the proposed development.

TRIPS = The number of new average daily trips generated by the proposed development taking into account the rate of internal capture (if applicable) and pass-by capture published in the most current edition of the *Trip Generation Handbook* published by the Institute of Transportation Engineers.

COST = The cost per trip for providing transportation improvements based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per trip is \$87.70.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable transportation impact fee determined in the *Development Impact Fee Study Report for Lexington*.

- (b) Non-Residential Development

$$\text{Impact Fee} = ((\text{NNSF})/1000) \times (\text{TRIPS}) \times (\text{COST}) \times (\text{TDR})$$

Where:

NNSF = The amount of net new square footage generated by the proposed development.

TRIPS = The number of new average daily trips generated by the proposed development taking into account the rate of internal capture (if applicable) and pass-by capture published in the most current edition of the *Trip Generation Handbook* published by the Institute of Transportation Engineers.

COST = The cost per trip for providing transportation improvements based on information presented in the *Development Impact Fee Study Report for Lexington* adopted by Town Council on December 2, 2019. The cost per trip is \$87.70.

TDR = For the purpose of this calculation, it is Town Council policy to charge 100% of the maximum allowable transportation impact fee determined in the *Development Impact Fee Study Report for Lexington*.

Section 9.11 Special Cases

The Town Administrator, or its designee, shall take the following special cases into account when calculating development impact fees for a building permit application:

- (a) When an application for a building permit has been made that contains two or more land uses in any combination, including two or more land uses within a single building or structure, the total development impact fee assessment shall be the sum of the products, as calculated above, for each land use unless an independent impact fee calculation is performed, and approved for use by the Town Administrator, or its designee, consistent with Sections 9.4, 9.7, or 9.10 (as applicable) of this Article.
- (b) In the case of a change, redevelopment, or modification of a land use which requires a building permit, and which is not exempted from development impact fees under Article VII of this ordinance, the impact fee calculation shall be based upon the net increase in new or proposed land use as compared to the existing or previous land use.
- (c) In the case of a demolition or termination of an existing use or structure, development impact fees for future redevelopment shall be based upon the net increase in development impact fees for the new or proposed land use as compared to the existing actual active previous land use since its original occupancy. Credit for the prior use shall not be transferable to another location.
- (d) In the case of relocating an existing land use, development impact fees shall be assessed to the relocated use at its new location. Future redevelopment of the old location from which the use was removed will receive a credit against development impact fees assessed equal to the impact fees that would have been assessed against the relocated use. Credits shall not be transferable to the new location.
- (e) Before a building permit application may become eligible for the provisions set forth in Section 9.11, subparagraphs (b) through (d) of this Article, a developer shall provide reasonably sufficient evidence that a previous land use had been actively maintained on the site within twelve (12) months of the date of application for a building permit. Such evidence may include proof of utility records, records for the use sought to be shown, or other documentation.
- (f) Any claim of existing or previous use must be made no later than the time for application of a building permit. Any claim made after such time shall be deemed invalid. Highest use shall be based upon the highest use established as of the date of the ordinance, or any new use established thereafter.

ARTICLE X. IMPACT FEE TRUST FUNDS

Development impact fees collected pursuant to this ordinance shall be kept separate from other revenue of the Town. There shall be one trust fund established for each development impact fee category depicted in Exhibit A of this ordinance:

parks and recreation, municipal facilities and equipment, and transportation. 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.

ARTICLE XI. LIMITATION ON EXPENDITURES OF FUNDS COLLECTED

Section 11.1 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 *Town of Lexington Capital Improvements 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 facility may include, but are not limited to, the following:

- (a) design and construction plan preparation;
- (b) right-of-way acquisition;
- (c) construction of new facilities, structures, or amenities that provide additional capacity;
- (d) purchase of new equipment (>\$100,000 purchase price) that provide additional capacity;
- (e) construction of new through lanes and/or turn lanes;
- (f) construction of new bridges;
- (g) construction of new drainage facilities associated with capital improvements;
- (h) purchase and installation of traffic signalization;
- (i) construction of new curbs, medians, and shoulders;
- (j) relocating utilities to accommodate new road construction; and
- (k) principle payments, interest and other finance charges on bonds or other indebtedness issued by or on behalf of the Town for financing any or all public facilities.

Section 11.2 Rationale Nexus Test

The Town Finance Director, or its designee, shall make an annual report to the Town Council and publish this report for access by the general citizenry showing where development 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 development within Town limits. If the Council determines that this is not the case, then it shall adjust the *Town of Lexington Capital Improvements Plan* and other projected capital expenditures to correct the condition.

Section 11.3 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 Town Administrator or its designee.

Section 11.4 Reimbursement

Development impact fee funds not obligated for expenditure within three (3) years of the date that they are scheduled to be expended in the *Town of Lexington Capital Improvements 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.

ARTICLE XII. CREDITS / REIMBURSEMENTS

Section 12.1 General Provisions

- (a) A developer shall be entitled to a credit against development impact fees assessed pursuant to this ordinance for Town-approved monetary or in-kind contributions toward some or all of the public facilities included in the *Town of Lexington Capital Improvements Plan* that are eligible for impact fee funding.
- (b) Development impact fees shall not be imposed on a fee payor or developer who has entered into an agreement with the Town for certain contribution, payment, construction, or dedication of land up to the cash value of the specific improvements identified within the agreement (identified improvements are not required to be contained in the capital improvements plan). 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.
- (c) 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 Town.
- (d) No credit shall be given pursuant to this section for construction of sidewalks, or for payment of Water and Sewer fees otherwise required by the Town of Lexington.

Section 12.2 Application for Credit Agreement

- (a) 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 Town Administrator, or its designee, for review by the Town Administrator, or its designee.
- (b) The Application for Credit Agreement shall include the following information:

- (1) The following documentation must be provided if the proposed application involves a credit for any cash contribution:
 - (i) a certified copy of the development approval in which the contribution was agreed; and
 - (ii) proof of payment (if already made); or
 - (iii) proposed method of payment (if not already made).

- (2) The following documentation must be provided if the proposed application involves credit for dedication of land:
 - (i) a drawing and legal description of the land;
 - (ii) 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
 - (iii) a certified copy of the development permit in which the land was agreed to be dedicated (if applicable).

- (3) The following documentation must be provided if the proposed application involves credit for construction:
 - (i) 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;
 - (ii) 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.

- (c) Within fourteen (14) days of receipt of the proposed Application for Credit Agreement, the Town Administrator, or its designee, shall determine if the application is complete. If it is determined that the proposed agreement is not complete, the Town Administrator, or its designee, shall send written notification to the applicant outlining the deficiencies. The Town Administrator, or its designee, shall take no further action on the proposed Application for Credit Agreement until all such deficiencies have been corrected or otherwise settled.

- (d) Once the Town Administrator 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 Town Administrator, Town Finance Director, and Town Director of Streets and Transportation (together known as the Credit Review Committee).

- (e) 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 Town Administrator. 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.
- (f) A fee payor affected by the decision of the Credit Review Committee regarding credits may appeal such decision pursuant to Article XIV, Section 14.1 of this ordinance.

ARTICLE XIII. PENALTIES

Town 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 Town rights to pursue any remedy at such other time as may be deemed appropriate.

- (a) Interest and Penalties. The Town 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 Section 10.99 in the Town of Lexington Code of Ordinances, which declares the violation a penalty subject to a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed thirty (30) days. Each day of violation shall be deemed a separate offense.
- (b) Withholding Certificate of Occupancy. The Town 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 Town may withhold the provision of utility services to a development until the required development impact fees have been paid in full.
- (d) Lien. The Town 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 Town may pursue the collection of the development impact fees, including interest, by way of civil process in the Court of Common Pleas for Lexington County.

ARTICLE XIV. APPEAL PROCESS

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

Section 14.1 Administrative Appeal

- (a) A developer may file an administrative appeal with the Town Administrator 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 Town 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.

- (b) Within thirty (30) days following receipt of the written Notice of Appeal, the Town Administrator 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 Town Administrator will provide a written response to the Appellant constituting a final administrative determination.
- (c) Any person desiring to appeal the final administrative determination of the Town Administrator regarding payment of development impact fees or credits shall file a written Notice of Appeal to the Town Council. Said Notice of Appeal to Town Council shall be filed with the Clerk of Town 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.
- (d) The Town Clerk of Council will schedule all impact fee appeals for the first Town Council meeting following ten (10) days from receipt of the Written Notice of Appeal to the Town Council. Postponements of the Town Council appeal date may be granted by the Town Administrator if they are requested in writing at least ten (10) days in advance of the scheduled Town Council meeting date.
- (e) When an Appeal is scheduled for oral presentation before the Town Council, the Appellant and Town staff shall each be given ten (10) minutes at the oral argument to present the Appeal and to discuss the submitted written record.

Section 14.2 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 estopped 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.

Section 14.3 Mediation

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

ARTICLE XV. REFUNDS

Section 15.1 General Provisions

- (a) Funds not obligated for expenditure within three (3) years of the date that they are scheduled to be expended in the *Town of Lexington Capital Improvements 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.

Section 15.2 Refund Process

- (a) The owner of property eligible for a refund of one or more development impact fee payments shall submit to the Town Administrator 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.
- (b) When a right to a refund exists, the Town shall send a refund to the current owner of record within ninety (90) days after it is determined by Town Council that a refund is due.
- (c) All refunds shall include the pro rata portion of the interest earned while on deposit in the specific development impact fee trust account.
- (d) 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 Subparagraph (b) of this Article.

ARTICLE XVI. REVIEW

Town 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.

Planning Commission shall be responsible for a holistic review and update of the *Development Impact Fee Study Report for Lexington*, *Town of Lexington Capital Improvements Plan*, *Housing Affordability Analysis in Support of a Development Impact Fee Study in Lexington* and the *Development Impact Fee Ordinance for the Town of Lexington* in the same manner and on the same review cycle as the Town of Lexington Comprehensive Plan.

ARTICLE XVII. TERMINATION OF DEVELOPMENT IMPACT FEE

Development impact fees for the Town of Lexington shall be terminated within ten (10) 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 *Town of Lexington Capital Improvements Plan*, whichever shall first occur, unless:

- (a) Town Council adopts a revised *Development Impact Fee Study Report for Lexington* or amends the *Town of Lexington Capital Improvements Plan* for a subsequent amount of time; or

- (b) Town Council adopts an updated *Development Impact Fee Ordinance for the Town of Lexington* pursuant to the substantive and procedural requirements set forth in the South Carolina Development Impact Fee Act, as amended.

ARTICLE XVIII. 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.

ARTICLE XIX. 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 Town 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.

ARTICLE XX. EFFECTIVE DATE

This Ordinance shall become effective February 1, 2020 (it shall not apply to a project for which the property owner established a vested right to develop property, as defined in Town of Lexington Code of Ordinances §154.01.06, prior to this date).

Mayor

Attest: _____
Municipal Clerk

First Reading Approval:

Final Reading Approval:

Public Hearing: