

City of Ellsworth

Chapter [54] DEVELOPMENT FEE ORDINANCE

Section 1. TITLE

This ordinance shall be known and cited as the “Development Fee Ordinance” of the City of Ellsworth, Maine.

Section 2. AUTHORITY

This ordinance is adopted pursuant to Title 30A M.R.S.A. §4354, and its statutory and constitutional home rule provisions.

Section 3. PURPOSE

The purpose of the Development Fee Ordinance is to ensure the health, safety, and welfare of the residents of the City of Ellsworth by:

- A. Requiring development to pay for its proportionate share of costs associated with new, expanded, or modified infrastructure necessary to service the development, as described in the specific Infrastructure Financing Plan; and
- B. Setting forth standards and procedures for assessing development fees and administering the Development Fee Program.

Section 4. EFFECTIVE DATE

This ordinance, enacted on the 20th day of June 2005 by the Ellsworth City Council, shall take effect immediately.

Section 5. RELATIONSHIP WITH OTHER ORDINANCES

Whenever a provision of this ordinance is inconsistent with another provision of the ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall control.

Section 6. VALIDITY AND SEVERABILITY

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

Section 7. AMENDMENTS

Before consideration of adoption or amendment of the ordinance and of any Infrastructure Financing Plan, the City Council shall hold a public hearing. Said public hearing shall be published in a newspaper of general circulation in the municipality at least seven (7) days before the hearing.

Section 8. DEFINITIONS

Capital Facilities: Necessary public services that are permanent additions to the City's assets and are primarily financed by long-term debt instruments or a capital improvement plan but not primarily from the City's annual municipal operating budget. Capital facilities and infrastructure are terms that may be used interchangeably.

Construction Permit: Includes a building permit, plumbing permit, electrical permit, or any other land use permit or license issued by the Ellsworth Code Enforcement Officer.

Developer: A person, corporation, organization, or other legal entity constructing or creating development.

Development Fee: The charge imposed upon development by the City of Ellsworth to fund all or a portion of the public facilities capital improvements required by the development from which it is collected.

District: A designated area identified in an Infrastructure Financing Plan for which public facility needs have been determined upon assumptions made in accordance with generally accepted planning practices and engineering standards.

Infrastructure Financing Plan: The plan that sets out the need for public facility capital improvements, and proposed funding sources. The time period covered by the plan shall not be less than five (5) years or exceed ten (10) years.

Development: The construction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; extension or change of any existing use; or any of which increases the need for services.

Section 9. APPLICABILITY

This ordinance shall apply to all development within the City of Ellsworth at such time as a specific Infrastructure Financing Plan has been adopted pursuant to Section 10 of this ordinance.

Section 10. INFRASTRUCTURE FINANCING PLANS

Prior to assessment of a development fee, the City of Ellsworth shall adopt a specific Infrastructure Financing Plan. Each Infrastructure Financing Plan shall comply with the following requirements:

- A. The plan shall estimate the total cost of capital facilities needed to serve the anticipated future development of the identified district.

- B. The plan shall specify needs for one or more of the following categories of capital facilities:
 - i. Water facilities
 - ii. Solid waste facilities;
 - iii. Police and fire protection facilities and equipment;
 - iv. Roads and traffic control devices;
 - v. Public parks and other open space or recreation areas; and
 - vi. Public Schools.

- C. The following costs may be included in the capital cost of the infrastructure improvements: land or easement acquisition; studies leading to design; engineering, surveying, and environmental assessment services directly related to the design, construction, and oversight of the construction of the improvement; the actual construction of the improvement including, without limitation, demolition costs, clearing and grading of the land, and necessary capital equipment; mitigation costs; legal and administrative costs associated with construction of the improvement including any borrowing necessary to finance the project; debt service costs including interest if the City borrows for the construction of the improvement; relocation costs; and similar costs that are directly related to the project.

- D. No portion of the development fee shall be used for routine maintenance or operation activities.

Section 11. ADMINISTRATION OF DEVELOPMENT FEES

- A. This ordinance shall be administered by the Ellsworth Code Enforcement Officer.

- B. The development fees shall be assessed by the Code Enforcement Officer, as determined from the applicable Infrastructure Financing Plan.

- C. The Code Enforcement Officer may charge the developer a review fee, not to exceed \$500 per development per Infrastructure Financing Plan, to contract professional services to assist with development fee assessments.

- D. All development which increases the need for services shall pay a development fee. If the development consists of an expansion of an existing use or a change of use type, the fee shall be assessed only for the additional impact of the expansion or change.

E. The development fee shall be paid by the developer as follows:

1. If a construction permit is required, fifty (50) percent of the applicable development fees shall be paid at the time of the issuance of the permit and fifty (50) percent at the time of issuance of the Certificate of Occupancy or final inspection.
2. In the event no construction permit is needed for a development that increases the need for services, the developer is responsible to notify the Code Enforcement Officer of the development and to pay the development fee in whole.
3. The City of Ellsworth retains the right to collect unpaid development fees up to five (5) years after the substantial or total completion of the development. The unpaid development fees shall be paid together with interest, compounded annually, and calculated as simple interest at three (3) percent per year.
4. The City Council may approve the payment of a development fee over time in accordance with an approved payment schedule provided that the Council finds, by formal vote, that the payment of the development fee per sections 11.E.1 and 11.E.2 will create a financial hardship for the developer and appropriate arrangements are in place to guarantee the collection of the fee in a timely manner.

F. The City Council shall periodically review each specific Infrastructure Financing Plan established under this ordinance. If the City Council finds that the anticipated cost of the improvement has changed or that the identification of developments subject to the fee is no longer appropriate, the City Council may adopt changes in the Plan. Any changes adopted as a result of such review shall apply to all future development but shall not be applied retroactively to projects that have already paid a development fee.

Section 12. DEVELOPMENT FEE ACCOUNTS

All development fees collected under the provisions of this ordinance shall be segregated and accounted for in separate development fee accounts designated for each specific Infrastructure Financing Plan.

Section 13. REFUND OF DEVELOPMENT FEES

Development fees shall be refunded in the following cases:

- A. Any fees collected that are not spent or obligated by contract for the specified improvements by the end of the calendar quarter immediately following ten (10) years from the date the fee was paid shall be returned to the payer of the fee together with interest compounded annually calculated as simple interest at three (3) percent per year from the date of the payment of the fee.

- B. Any development fees actually paid that exceed the City's actual costs shall be returned to the current owner of the property for which the fee was paid together with interest calculated at three (3) percent per year from the date of the payment of the fee.

Section 14. MODIFICATION OF DEVELOPMENT FEES

- A. The City Council may, by formal vote following a public hearing, waive the payment of a required development fee, in whole or in part, if it finds that:
 - 1. The developer or property owner who would otherwise be responsible for the payment of the development fee voluntarily agrees to construct the improvement for which the development fee would be collected or an equivalent improvement approved by the City Council. The pre-funding of a capital projects shall be allowed; or
 - 2. The project subject to the development fee involves the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development, U.S. Department of Agriculture Rural Development Agency, or the Maine State Housing Authority. If only part of the project is affordable housing, the Council may waive only the portion of the fee attributable to the affordable units; or
 - 3. The project subject to the development fee involves a non-retail use that will create a significant number of new jobs or investment that is consistent with the City's economic development objectives and will not result in an unfair competitive advantage for the project vis-à-vis other local businesses; or
 - 4. The project subject to the development fee will create significant public recreational amenities or create quality of life components that the City Council deems to be essential to the fulfillment of the City's adopted vision, as described in the 2004 Comprehensive Plan.

- B. A waiver decision by the City Council cannot be appealed.

Section 15. APPEAL

Any person aggrieved by a decision of the Ellsworth Code Enforcement Officer may appeal said decision to the Ellsworth City Council in writing within seven (7) days after said decision and provide the grounds for such appeal. The City Council may affirm, modify, or reverse the decision of the Code Enforcement Officer in accordance with the terms of this ordinance.

Section 16. PENALTY

Any person violating the provisions shall be liable to a civil penalty in accordance with 30A M.R.S.A. §4452.