

**ORDINANCE NO. 1331**

**AN ORDINANCE ESTABLISHING IMPACT FEES  
ON NEW DEVELOPMENT IN THE CITY OF FAIRHOPE, ALABAMA**

Be it ordained by the City Council (the “Council”) of the City of Fairhope, Alabama (the “City”) as follows:

**Section 1.**     **Findings.** In accordance with the Act, the City has been authorized by the Legislature of the State of Alabama to adopt and impose impact fees on new development within the City’s corporate limits. In support the adoption and imposition of such impact fees, the Council makes the following findings:

- (A)     The City is a municipal corporation vested with a portion of the state’s sovereign power to protect and provide for the public health, safety, and welfare. The City is authorized to adopt and implement comprehensive plans, zoning ordinances and other land use regulations to assure its orderly development.
- (B)     The City is a fast-growing community of over 15,000 full time residents. In calendar year 2005, approximately 490 new building permits were issued, and in calendar year 2006, approximately 504 new building permits were issued.
- (C)     The City encourages development that will make the City a vital, attractive community to serve both residents of the City and the substantial and significant number of visitors who visit the City on a yearly basis.
- (D)     New residential and nonresidential development, however, imposes increased and excessive demands upon public facilities. As demand for public facilities has increased, funding sources for those facilities have decreased at both the state and federal level. In addition, demand for new facilities necessitated by new development impairs the ability of the City to maintain existing facilities because funds must be diverted to construction or expansion of new facilities.
- (E)     The City’s current Comprehensive Plan projects that new development will continue and will place ever-increasing demands on the City to provide public facilities to serve new development.
- (F)     Following the adoption of the Act by the Legislature of the State of Alabama, the City engaged the consulting firm TischlerBise for purposes of preparing an impact fee study. With input from the City, TischlerBise prepared an “Impact Fee Study” for the City dated March 8, 2007 (the “Study”).
- (G)     The Study demonstrates the monetary needs of the City in adding the additional governmental infrastructure necessary to keep pace with the City’s growth.
- (H)     In accordance with Section 7 of the Act, a public hearing was held on April 10, 2007 at City Hall to address the City’s governmental infrastructure needs as a result of new development. At this public hearing, a representative of TischlerBise presented the Study to the Council and the public, and the public was given the opportunity to provide comments.
- (I)     To the extent that new development places demands upon public facilities, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public to the development creating the demands.

- (J) An impact fee, established in accordance with this Ordinance, will benefit new development.

**Section 2.** **Authorization.** This Ordinance is enacted pursuant to the Act and the City's general police power and land use authority.

**Section 3.** **Purpose and Intent.** The purpose of this Ordinance is to establish procedures to:

- (A) determine what local capital improvements are reasonably necessary to serve New Development and the cost thereof;
- (B) determine the portion of the demand for local capital improvements created by particular types of New Development; and
- (C) assess against New Development an Impact Fee to finance the cost of local capital improvements proportional to the New Development's demand for said capital improvements.

**Section 4.** **Definitions.** Whenever used in this Ordinance, the following capitalized words, terms, and phrases, and their derivations, shall have the meanings ascribed to them below except where the context clearly indicates a different meaning:

“Act” shall mean 2006 *Ala. Acts* 300, as the same may hereafter be altered or amended from time to time.

“All Other Housing” means residential housing units and/or structures other than single-family residential structures, and includes, without limitation, duplexes, triplexes, apartments, condominiums and other multi-family developments.

“Applicant” shall mean any person or entity making an application for a Building Permit with the City.

“Benefit Area” means one or more areas as defined herein which are used to calculate the costs and expenses relative to the Governmental Infrastructure needs created by a particular type of New Development.

“Building Department” means the City's Building and Inspection Department.

“Building Permit” means a document issued by the City authorizing construction of new buildings and/or improvements within the City's corporate limits.

“Business Park” means a cluster of associated businesses, usually in a campus setting, typically consisting of the use of buildings for the administration of business, professional firms and other organizations.

“Calculate” means to determine the amount of the Impact Fees assessed against a particular New Development in accordance with the terms and conditions of this Ordinance and the Act.

“City” means the City of Fairhope, Alabama.

“Com/Shop Ctr” means a building or series of buildings in which retail and/or wholesale sales and services will be delivered to the public.

“Estimated Fair and Reasonable Market Value” shall have the meaning ascribed to such term in Section 5(a)(2) of the Act.

“Fire” means a Benefit Area for (i) the construction, development and/or improvement of fire stations, (ii) the acquisition of fire fighting vehicles, and (iii) the acquisition of fire fighting apparatus, and (iv) the fire component of the Study and/or any other impact fee study obtained by the City in connection with the imposition of Impact Fees.

“Governmental Infrastructure” shall have the meaning ascribed to such term in the Act.

“Impact Fee” shall have the meaning ascribed to such term in the Act.

“Impact Fee Account” means a special interest bearing account of the City established by the City at a banking institution whose deposits are insured by the Federal Deposit Insurance Corporation.

“Impact Fee Committee” means a committee chaired by the Mayor and comprised of the Mayor, the City Treasurer, the City Planning Director, the City Public Works Director and the City’s director of Parks and Recreation.

“Impact Fee Schedule” means the schedule of fees adopted by the Council setting the base fee amount for each Benefit Area and the total Impact Fee for each type of New Development, which schedule is attached hereto as Exhibit “A” and which is incorporated herein by reference.

“Light Industrial” means facilities used for the manufacturing or assembly of products to their final form. These uses could be enclosed or could have outside storage of equipment, materials or merchandise. In addition to the actual production of goods, industrial facilities generally also have incidental office, warehouse and associated functions.

“Lodging” means a building or group of buildings having five (5) or more guest rooms under a common or individual ownership and single management. These buildings are designed to give, for a fee, transient guests sleeping accommodations and may include, as incidental uses, restaurants, cafes, lounges or other guest services. These buildings typically, but do not necessarily have to, have an inner lobby and furnish a room cleaning service for their paying customers.

“Manufacturing” means a building or series of buildings for businesses engaged in economic activity involving construction, production, processing, transformation, warehousing, wholesale, and disposal of goods, products and component parts of goods and products, including related services.

“New Development” shall have the meaning ascribed to such term in the Act.

“Nonresidential Development Project” means all New Development in the City other than Residential Development Projects, and shall include, without limitation, any New Development project consisting of one or any combination of Comm/Shop Ctr, Office/Inst, Business Park, Light Industrial, Warehousing, Manufacturing and Lodging.

“Office/Inst” means a building used for professional, administrative, financial, clerical and similar uses. This definition includes, without limitation, institutional uses such as churches, schools, hospitals, libraries, clubs, police and fire stations and other public buildings.

“Parks and Recreation” means a Benefit Area for (i) the acquisition of new public park lands, (ii) the construction, development and/or improvement of public recreational facilities, (iii) the construction, development and/or improvement of public park amenities, (iv) the acquisition of new park vehicles, and (v) the parks and recreation component of the Study and/or any other impact fee study obtained by the City in connection with the imposition of Impact Fees.

“Police” means a Benefit Area for (i) the cost recovery of the City’s cost and expense related to the construction, development and improvement of its justice center, (ii) the cost recovery of the City’s cost and expense related to the construction, development and improvement of its animal shelter, (iii) the acquisition of police vehicles, and (iv) the acquisition of police-related apparatus and equipment, and (iv) the fire component of the Study and/or any other impact fee study obtained by the City in connection with the imposition of Impact Fees.

“Residential Development Project” means any New Development in the City undertaken with respect to a Single Family development and/or an All Other Housing development.

“Single Family” means a detached residential dwelling unit designed for and occupied by one family as a home.

“Transportation” means a Benefit Area for the cost of intersection improvements made to address additional demand generated by New Development.

“Warehousing” means the storage of materials, but may also include incidental office and maintenance areas.

**Section 5.**        **Imposition of Impact Fees.** The City hereby imposes an Impact Fee in accordance with the Impact Fee Schedule against all New Development constructed within the City’s corporate limits, subject to any limitations on the amount of the Impact Fee set forth in the Act. In the event any appraisal process is commenced in accordance with the Act, the City shall be responsible for the cost of any appraisal required by the City, and the City and the Applicant shall share equally in the cost of any appraisal obtained at the request of both the City and the Applicant. This Ordinance and/or the Impact Fee Schedule may be amended at anytime hereafter and from time to time by the Council in accordance with the procedure set forth in the Act for the adoption of an Impact Fee. The Impact Fee shall be collected and administered as hereinafter provided.

**Section 6.**        **Calculation and Collection of Impact Fees.** Impact Fees may be imposed only on New Development and subject to any limitations on the imposition and collection thereof in the Act. Impact Fees shall be Calculated and collected by the Building Department prior to the issuance of a Building Permit for New Development and in accordance with the Impact Fee Schedule. Except as is hereafter provided in Section 15 hereof, all Impact Fees shall be paid by an Applicant to the City in cash or other immediately available funds.

**Section 7.**        **No Additional Capacity.** No Impact Fee may be assessed for or expended upon the construction, improvement, operation or maintenance of any Governmental Infrastructure that does not create additional capacity for use by the general public.

**Section 8.**        **Nature of Impact Fee.** An Impact Fee is both a personal liability of the Applicant and a lien upon the real property upon which the New Development is to be constructed and/or improved. Said lien may be foreclosed upon in accordance with the procedure for the foreclosure of real estate mortgages in the State of Alabama.

**Section 9.** **Refund of Impact Fee.** Except as is specifically required by the Act, Impact Fees are not refundable, unless the applicable Building Permit is voided in writing by the Applicant and no construction or construction-related activities have taken place. In the event a refund is made pursuant to the foregoing sentence, a processing fee of five hundred and no/100 dollars (\$500.00) shall be withheld by the City from any such refund.

**Section 10.** **Impact Fee Accounts.** The funds collected pursuant to this Ordinance shall be deposited into the Impact Fee Account. The funds of the Impact Fee Account shall not be commingled with other funds of the City. The City shall separately account for fees collected for the Benefit Areas of Parks and Recreation, Fire, Police and Transportation. In the event that less than the full Impact Fee is assessed for any reason, including, without limitation, any cap on such fee contained in the Act, said partial Impact Fee shall be allocated to the applicable Benefit Areas in the same proportion as the full Impact Fee would be allocated to and among the applicable Benefit Areas.

**Section 11.** **Use of Impact Fees.** Impact Fees may be expended only for the Benefit Area for which they were imposed, calculated, and collected and according to the time limits and procedures established in this Ordinance and the Act, if any. All impact fees collected for a Benefit Area must be spent in that Benefit Area. Impact Fees generated by this Ordinance may be used for any purpose permitted by the Act.

**Section 12.** **Time Limitations on Use of Impact Fees.** The City shall expend or contract for the expenditure of all Impact Fees collected in accordance with this Ordinance within any time periods set forth in the Act; provided, however, that in the event the Act does not impose any limitation on the timing of the expenditure of Impact Fees, then the City shall have no obligation to expend any Impact Fees within any specific period of time. In the event it becomes necessary for the City to refund any Impact Fees due to the failure to expend or contract for the expenditure of such Impact Fees within a given period of time as required by the Act, the City shall refund such Impact Fees to the Applicant who paid such Impact Fees. Notwithstanding anything contained herein to the contrary, no party entitled to a refund of any Impact Fee hereunder shall be entitled to any interest on said refunded Impact Fee.

**Section 13.** **Appeals.** In the event the Building Department and an Applicant are unable to agree upon the Estimated Fair and Reasonable Value following the appraisal process set forth in Section 5(a)(2) of the Act, the Applicant against which an Impact Fee has been assessed may pay the Impact Fee as Calculated by the Building Department and preserve the right to appeal the amount of the Impact Fee by submitting with payment a written statement that payment is made "under protest" or that includes other language that would notify a reasonable person that the Applicant intends to preserve its right of appeal. Any Applicant intending to appeal the Calculation of an Impact Fee must file said appeal in writing with the City Clerk of the City within thirty (30) days of the last to occur of the Calculation of the Impact Fee by the Building Department and the payment of the Impact Fee by the Applicant to the City. In the written appeal provided to the City Clerk by the Applicant, the Applicant shall set forth enough detail to allow the City to reasonably determine the basis for the Applicant's appeal. All appeals of Impact Fee assessments shall be heard by the Council at a regularly held meeting of the Council within thirty (30) days of the date of the filing of the notice of appeal by

the Applicant with the City Clerk. At such appeal hearing, the Applicant and the City shall have the right to present evidence relative to the establishment of the Estimated Fair and Reasonable Market Value of a New Development. In making such presentations, each of the Applicant and the City shall be limited to fifteen (15) minutes for the presentation of such evidence. Thereafter, a majority decision by the Council shall be required to overturn the decision of the Building Department with regard to the Calculation of the applicable Impact Fee.

**Section 14.** **Review of Impact Fee Structure.** The Impact Fee Committee shall report at least once every three (3) years to the Council with:

- (A) recommendations, if any, for amendments to this Ordinance;
- (B) proposals identifying capital improvements to be funded in whole or in part by the Impact Fees collected pursuant to this Ordinance;
- (C) proposals for changes to the Impact Fee Schedule.

In connection with the foregoing, the Impact Fee Committee is hereby authorized to engage such consultants as it deems reasonably necessary to prepare additional impact fee studies for purposes of arriving at an appropriate and reasonable impact fee rate structure.

**Section 15.** **Credits.** An Applicant who offers to dedicate land or otherwise provide or provide for the funding of Governmental Infrastructure may be eligible for a credit for such contribution against the Impact Fee otherwise due for that Benefit Area. In the event an Applicant desires to obtain a credit in accordance with the foregoing, the Applicant shall submit its proposal for a credit in writing to the Building Department. To the extent the City prepares forms for the credit process, the Applicant shall make its submittal on said City provided forms. Thereafter, the Building Department shall transmit said proposal to the Impact Fee Committee. The Impact Fee Committee shall make written findings with regard to (a) the value of the Applicant's proposed contribution; (b) whether the proposed contribution meets capital improvement needs for which the particular Impact Fee has been imposed; and (c) whether the proposed contribution will substitute or otherwise reduce the need for Governmental Infrastructure anticipated to be provided with Impact Fees otherwise assessable against the Applicant. The Impact Fee Committee shall transmit said written findings to the Council along with a recommendation for whether to accept or decline the Applicant's offer. The Council shall make the final determination as to whether to accept the Applicant's proposed contribution; provided, however, that in no event shall the credit given to any such Applicant exceed the amount of the otherwise applicable Impact Fee.

**Section 16.** **Recovery of Public Hearing Costs.** Any costs incurred by the City (a) in preparing for and conducting any public hearing required by the Act and (b) in connection with the Study or any similar study hereafter conducted may be recovered as a part of the Impact Fees assessed and collected in accordance with this Ordinance.

**Section 17.** **Severability.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-exemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 18.** **Effective Date.** This Ordinance shall be effective from and after its adoption by the Council.

ADOPTED this 31st day of May, 2007.

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Timothy M. Kant, Mayor

ATTEST:

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Geniece W. Johnson, City Clerk

**EXHIBIT "A"**  
**Impact Fee Schedule**

<b>Residential - Per Housing Unit</b>					
	<i>Parks and Recreation</i>	<i>Fire</i>	<i>Police</i>	<i>Transportation</i>	<i>Total</i>
Single Family	\$2,286	\$805	\$149	\$945	\$4,184
All Other Housing	\$1,846	\$650	\$121	\$663	\$3,280
<b>Non-Residential - Per 1,000 Square Feet of Floor Area</b>					
	<i>Parks and Recreation</i>	<i>Fire</i>	<i>Police</i>	<i>Transportation</i>	<i>Total</i>
Com / Shop Ctr 10,000 SF or less	N/A	\$1,369	\$296	\$6,042	\$7,707
Com / Shop Ctr 10,001-25,000 SF	N/A	\$1,159	\$251	\$5,115	\$6,525
Com / Shop Ctr 25,001-50,000 SF	N/A	\$1,007	\$218	\$4,443	\$5,668
Com / Shop Ctr 50,001-100,000 SF	N/A	\$841	\$182	\$3,711	\$4,734
Com / Shop Ctr 100,001-200,000 SF	N/A	\$720	\$156	\$3,176	\$4,052
Com / Shop Ctr 200,001-400,000 SF	N/A	\$612	\$132	\$2,699	\$3,444
Office / Inst 10,000 SF or less	N/A	\$425	\$92	\$1,876	\$2,393
Office / Inst 10,001-25,000 SF	N/A	\$344	\$74	\$1,519	\$1,938
Office / Inst 25,001-50,000 SF	N/A	\$294	\$64	\$1,296	\$1,653
Office / Inst 50,001-100,000 SF	N/A	\$250	\$54	\$1,104	\$1,409
Office / Inst 100,001 - 200,000 SF	N/A	\$213	\$46	\$941	\$1,201
Business Park	N/A	\$239	\$52	\$1,056	\$1,348
Light Industrial	N/A	\$131	\$28	\$577	\$736
Warehousing	N/A	\$93	\$20	\$411	\$524
Manufacturing	N/A	\$72	\$16	\$316	\$403
<b>Non-Residential - Per Room</b>					
Lodging	N/A	\$106	\$23	\$466	\$595