

## ARTICLE 13 TRANSPORTATION DEVELOPMENT FEES

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**13.1. Purpose.** The purpose of this Article is to establish a procedure to assist in the funding of road improvements required by new growth in the Apex Planning Area. This Article is not intended to require developers to pay for all new road construction. This Article provides for new development to pay a prorated share of road costs required to provide adequate road improvements to serve new construction before the new development is completed.

**13.2. Authority.** Pursuant to the powers conferred by the General Assembly of North Carolina under Articles 1, 8, 15, and 19 of Chapter 160A, as well as other applicable sections of the North Carolina General Statutes, the Town of Apex (“the Town”) has authority to regulate development including requiring development to ameliorate the transportation impacts of development through reasonable impact fees.

### **13.3. Findings.**

(a) The Town is experiencing rapid population and employment growth, in part, because of its proximity to regional employment facilities such as the Research Triangle Park and Raleigh Durham International Airport.

(b) The Town’s population and employment growth creates demand for additional capital improvement funds for roadway facilities, which include but are not limited to streets, intersection improvements, culverts and other road related drainage improvements, turn lanes, and signalization.

(c) The Town and the North Carolina Department of Transportation are responsible for and committed to providing road related improvements at a level-of-service necessary to support anticipated residential and employment growth.

(d) The Town has adopted and the North Carolina Department of Transportation has approved, the Town of Apex Official Map of Thoroughfare Plan, which identifies additional road capital improvements necessary to serve new construction.

(e) The transportation development fees established by this Article are proportional to the need for new road improvements caused by new construction and reasonably benefit the new construction that pays the fee.

### **13.4. Definitions.** As used in this Article, the following words shall have the meanings indicated.

*Benefit District:* A defined area within which thoroughfare infrastructure improvements benefit all construction and intensification of use occurring within the defined area.

*Building:* Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other public or private purpose, or accessory thereto, the construction of which requires or would require a building permit under the building code in effect in the Town.

*Building Permit:* A permit issued by the Town Building Official in accordance with the building code then in effect in the Town.

*Construction:* Building, construction, new construction, reconstruction, erection, extension, betterment or improvement of land providing a building or structure or any part thereof, which provides or increases dwelling units or the floor area of a residential or nonresidential use.

*Credit:* A reduction in transportation development fees in accordance with Section 13.15 of this Article.

*Developer:* Any individual, group, or entity proposing development.

*Development:* Any construction or intensification of use as those terms are defined herein.

*Dwelling Unit:* A building or a portion thereof designed, arranged, or used for living quarters for one (1) family.

*Floor Area:* The total of the gross horizontal areas of all floors below the roof and within the outer surface of the main walls and the gross horizontal areas within lines drawn parallel to and 2 feet within the roof line of any building or portion thereof without walls. If the building has party walls, the center line of the party wall is used for the "area" calculation. Useable basements and cellars are included. With respect to nonresidential facilities, the following areas are not included in the area calculation: porticos, arcades, and similar areas open to the outside air, which are not designed or used as sales, display, storage, service, or production areas even if such areas are accessible to the general public.

*Intensification of Use:* A change of use of a property that intensifies its use whether or not construction is involved.

*Land Development Project:* A development or interrelated set of developments, approved by the Town pursuant to a subdivision plat, site plan, planned development, or other development plan.

*Nonresidential Construction:* Construction for any use other than residential use.

*Office Park:* A subdivision or site containing more than one (1) office building.

*Pass-By Trips:* Trips entering and exiting a new development site that are attracted to the site from the existing traffic flow. Pass-by trips are not considered new trips to the road network.

*Pass-Through Trips:* Trips that enter, travel through, and exit the planning area of the Town without stopping at any destination within the Town. Pass-through trips impact the road network, but are not attributable to development within the Town planning area.

*Peak Hour Trips:* The greatest number of vehicle trips generated by a unit of new development during any one (1) hour period.

*Residential Use:* A residential use as defined in the Zoning Ordinance of the Town of Apex.

*Certificate of Occupancy:* The certificate of occupancy required by Section 5-30 of the Town of Apex Code of Ordinances.

*Town:* The Town of Apex, North Carolina.

*Thoroughfare:* A major street, road, or highway which is designated as a thoroughfare on the adopted Thoroughfare Plan.

*Thoroughfare Improvement:* Any improvement to any highway, road, or street designated on the Thoroughfare Plan.

*Thoroughfare Plan:* The Official Map of Thoroughfare Plan, as adopted by the Town of Apex and the NCDOT, which identifies major road improvements necessary to serve projected growth.

**13.5. Applicability.** This Article applies to all construction and intensification of use in the planning area of the Town, and applies uniformly within each benefit district.

**13.6. Condition of Approval.** No subdivision, site plan, other development plan, or certificate of occupancy shall be approved or issued for construction or intensification of use within the Town's

planning jurisdiction unless and until any applicable transportation development fee herein established has been paid in full.

**13.7. Benefit Districts.** The entire planning jurisdiction of the Town constitutes one benefit district for the purposes of this Article.

**13.8. Fees.** All construction and intensification of uses shall be subject to a transportation development fee. Every person seeking approval of a subdivision plan, a site plan, a development plan, or a certificate of occupancy on which the transportation development fee has not already been paid, shall pay the transportation development fee indicated by the Fee Schedule prior to final subdivision plat approval, site plan approval, development plan approval, or certificate of occupancy issuance, as the case may be. Transportation development fees shall not be charged in connection with the upfit of shell buildings.

(a) The fee shall be computed by proposed building use and based on the plans submitted for approval, according to the Fee Schedule, attached hereto and incorporated by reference herein, except for fees computed by an individual assessment in accordance with Sec. 13.9.

(b) If the proposed construction or intensification of use contains a mix of building uses, the development fee shall be calculated separately for each use according to the fee schedule.

(c) The fee shall be collected for additions and remodeling to existing structures for that portion of the structure which represents an increase in the number of dwelling units or the floor area of the building above the number or area prior to the addition or remodeling.

(d) An intensification of use shall be charged based on the net increase in the intensity of use by comparing the present use with the proposed use on the Fee Schedule.

(e) The schedule of transportation development fees may be amended from time to time by ordinance of the Town Council, after a review in accordance with Sec.13.14 and after public hearing.

**13.9. Individual Assessments.** If any person believes that his/her proposed development is so unique in the traffic impacts that it will generate, then such person may request the Town to consider an individual assessment of the traffic impacts of the proposed development. Such person shall obtain the services of a duly qualified person to perform the assessment, and submit the assessment to the Town for consideration. The Town Council shall, at a public hearing, consider the request of the applicant to pay the fee based on the individual assessment. The Town shall assess the fee based on the individual assessment if the Council finds that:

(a) The proposed development is in fact so unique that the application of the fee schedules adopted by the Town would result in the collection of a fee that is not proportionate to the traffic impact of the proposed development; and

(b) There is a difference between the fees computed under the fee schedule and the fees computed in accordance with the individual assessment of at least five thousand dollars (\$5,000.00) or five percent (5%) of the total fees computed under this ordinance, whichever amount is greater.

The Town Council reserves the right to dispute the assumptions, methodology or conclusions of individual assessments and to retain a qualified engineer to review the applicant's assessment.

Fees computed under this section shall be computed in dollars per residential dwelling unit or dollars per 1,000 square feet of non-residential floor area, using the following formula:

***Facility fee = (ADT) X (1.0-P) X Cost per trip end. (The cost per trip end is listed in the Fee Schedule)***

ADT = The number of average daily trips ends of the new construction.

P = The percent of pass-by trips expressed as a decimal. The pass-by trip percent is zero for all uses except retail uses.

Cost = The capital costs of developing thoroughfares less double payment credit, existing lane deficiencies, and pass-through trips.

**13.10. Collection of Fees.**

(a) The transportation development fee for residential subdivisions, condominiums, and townhouses that will create 10 or more lots or units shall be computed in conjunction with the subdivision, condominium, or townhouse application and paid prior to final plat or plan approval.

(b) The transportation development fee for nonresidential construction, apartment construction, or intensification of use shall be computed in conjunction with the site plan application and paid before building permit issuance.

(c) The transportation development fee for all construction or intensification of use for which the transportation development fee has not been paid at the subdivision, site plan, or other prior stage shall be computed in conjunction with the application for a building permit and paid prior to issuance of the certificate of occupancy. Transportation development fees shall not be charged in connection with the upfit of shell buildings.

(d) The transportation development fee for a mixed development shall be paid for the various portions of the plan in accordance with the Subsections of (a) through (c) above that correspond to the portions of the plan.

(e) The transportation development fee shall be calculated and collected by the Town Planning Department or Building Inspections and Permitting Department, as the case may be.

**13.11. Fund Accounting.**

(a) The Town shall establish an account for the benefit district to which development fees collected within the benefit district shall be credited. Interest at the actual rate of return on invested funds of the Town shall be credited to the account periodically (but not less often than quarterly) in accordance with the accounting policies of the Town. Such account need not be segregated from other Town monies for banking purposes.

(b) Interest earned on the account into which the development fees are deposited shall accrue to the account and shall be used for the purposes specified for such account.

(c) The Town shall maintain and keep financial records for the account showing the revenues to the account and the disbursements from the account, in accordance with normal Town accounting practices. The records of the account shall be open to public inspection in the same manner as other financial records of the Town.

**13.12. Use of Funds.**

(a) The revenues from development fees collected for the benefit district pursuant to this Article, and accrued interest on such revenues, may be used to finance direct project costs of thoroughfares shown on the Thoroughfare Plan then in effect and located within the district, including: direct project engineering costs; the acquisition cost of rights-of-way; the construction cost of improvements, including related pedestrian and drainage improvements; and the principal sum and

interest and other financing costs on bonds, notes, or other obligations issued by or on behalf of the Town to finance qualified road improvements.

(b) Development fees collected pursuant to this Ordinance shall not be used to pay for any of the following:

- (1) construction, acquisition or expansion of public facilities other than road improvements;
- (2) repair, operation or maintenance of existing or new road improvements.

**13.13. Refunds.** Any transportation development fee or portion thereof collected pursuant to this Article which has not been expended within ten (10) years from the last day of the fiscal year in which it was paid, shall, upon written application by the record owner, be refunded, with accrued interest at the rate of return on investments earned by the Town on such amount, to the record owner of the property for which the development fee was paid.

To be eligible for consideration, the application for refund must be submitted not less than ninety (90) days from the date upon which the aforementioned ten (10) year threshold occurs.

**13.14. Updates and Revisions.** Following a public hearing, the Town shall recalculate the schedule of development fees as part of the annual budget process. The Town may do so more frequently based upon growth in residential and non-residential construction, road improvements actually constructed, changing levels-of-service, inflation, revised cost estimates for road improvements, changes in the availability of other funding sources and such other factors as may be relevant. Each time the schedule of development fees is recalculated, there shall be a public hearing prior to the adoption of the new fee schedule.

**13.15. Credits.** A fee payor shall be entitled to credits against transportation development fees pursuant to this Article for rights-of-way land dedications, and street construction in excess of the direct need of the development. The credits shall be determined by the Town Manager or his designee.

(a) Rights-of-way: Credits shall be granted for rights-of-way dedicated by the fee payor and accepted by the Town for streets in accordance with the following provisions:

- (1) Credits shall be based on a prorata share of the appraised land value of the parent parcel as determined by calculating 120% of the appraised value according to the Wake County Tax Assessor's Office. Adjustments to the appraised value of property between property revaluations by the County will be made annually based on cumulative changes in the Consumer Price Index since the most recent revaluation.
- (2) Credits shall be granted for any right-of-way in excess of the standard 60-foot right-of-way for any street the development accesses; provided, however, that there shall be no credit for right-of-way dedications necessary to install turn lanes that directly serve the development.
- (3) If a right-of-way is dedicated and accepted for a street to which the development has no direct access, then the entire right-of-way will be included in the credit.

(b) Street construction: Credits shall be granted for street construction approved in advance by the Town for portions of the streets in excess of the direct need of the development as determined by the Town in accordance with the following provisions:

- (1) Credits shall be based on the Town's adopted cost of construction schedule based on recent market information as of the effective date of this Article, and updated annually.

(2) Credits shall be granted for construction of the portion of the street in excess of the standard 35 feet back to back of curb for streets that are directly accessed by the development; provided, however, that there shall be no credit for construction of turn lanes that directly serve the development.

(3) All improvements to streets not directly accessed by the development will be included in the credits.

(c) For rights-of-way dedicated and accepted and streets constructed as a condition of any subdivision or site plan approval by the Town prior to the effective date of this Article, a fee payor shall be entitled to a credit against transportation development fees as provided in this section:

(1) A person owing a transportation fee for construction or intensification of use occurring in a development that involved an excess dedication or excess street construction before the effective date of this Article that would have qualified for a credit if this Article had been in effect at the time of the development shall be entitled to a pro rata portion of the net credit that would have applied to the development in the proportion that the person's part of the development bears to the entire development. "Net credit" means the credit less transportation fees that would have been owed had this Article been in effect. No credit will be granted pursuant to this section unless the dedication of the right-of-way or the street construction acceptance, as applicable, occurred within the past five (5) years immediately preceding the effective date of this Article.

(2) Credits under Sec. 13.15(c) shall be calculated as provided in sections 13.15(a) and 13.15(b), except as follows:

a. The value of land is based on 120% of the Wake County Tax Assessor's appraised value as of January 1st of the year in which the dedication and acceptance occurred.

b. Street construction costs shall be based on the cost of construction based on market information relevant to the twelve-month period prior to when the street improvements were incurred.

(d) Any fee payor seeking a credit against a transportation development fee prescribed by this Article shall submit a petition on a Town approved form to the Department Heads for the Planning Department and the Public Works and Transportation Department. To be eligible for consideration, the petition must be submitted not less than thirty (30) days prior to the date the development fee would otherwise become due pursuant to Sec. 13.10, except that a petition related to a transportation development fee that is due in connection with a certificate of occupancy must be made not more than 10 days after the date of application for the building permit. Petitions must contain:

(1) a notarized sworn statement that the petitioner is the current owner of the property;

(2) a copy of any documentation on which the fee payor relies for the claim which may pertain to the issuance of such credits;

(3) a copy of the latest recorded deed to the property;

(4) a description of land or improvements for which the credit is requested;

(5) for development involving more than one building or phase, a plan for allocating credits among the various buildings or phases proposed; and

(6) such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the Town to evaluate the fee payor's petition.

(e) Credits shall be applied against the payment of transportation development fees for the property being developed. The Town shall render payment for excess credits granted to the fee payor; but such payments shall not be made for dedications until after the dedication is made, and shall not be made for construction until after the construction is completed and the Town has accepted the construction. If a fee in lieu of construction is authorized for a development project, then the fee in lieu shall be reduced by the amount of any construction credit that would have been due if the street improvements had been constructed, and no separate construction credit shall be payable.

**13.16. Developer Agreements.** Where a development includes a thoroughfare shown on the approved Thoroughfare Plan, by mutual consent, the Town and the Developer may enter into an agreement regarding the terms of the participation of the developer in the construction and/or financing of such road. Such agreement may provide for credits or other appropriate compensation to the developer for his participation in the financing and/or construction of the road.

The agreement shall be on a form approved by the Town and shall identify:

- (a) the estimated cost of the road improvement, based on the approved bidding process and using the lowest bid approved by the Town Engineer;
- (b) a schedule for initiation and completion of the improvement;
- (c) a requirement that the improvement be designed and completed to Town standards; and
- (d) such other terms and conditions as deemed necessary by the Town.

**13.17. Other Financing Methods.** The Town may finance road improvements through the issuance of bonds, through the formation of assessment districts or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of transportation development fees.

Except as herein otherwise provided, the collection of a transportation development fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is imposed on and due against the property under the authority granted by the State of North Carolina.

**13.18. Fee as Supplemental Regulation.** The transportation development fee established by this Ordinance is additional and supplemental to, and not in substitution of, any other requirements imposed by the Town on the development of land or the issuance of building permits or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of the Town's comprehensive plan, capital improvements plan, zoning ordinance, subdivision regulations and other Town policies, ordinances and resolutions by which the Town seeks to ensure the provision of road facilities in conjunction with the development of land.

**13.19. Traffic Impact Analysis Required.**

A Traffic Impact Analysis (TIA) shall be prepared by a qualified professional engineer registered to practice in North Carolina and submitted with the initial application for any development that would generate one thousand (1,000) or more vehicular trips per day or 100 a.m. or p.m. peak hour trips, whichever is greater. A TIA is also required for a subdivision that individually or collectively (with the subdivision(s) it has its only access to a thoroughfare through whether that access is at one or more points) generates one thousand (1,000) or more vehicular trips per day or one hundred (100) a.m. or p.m. peak hour trips, whichever is greater. The calculation of vehicular trips per day as used in this section shall be determined according to the current Institute of Transportation Engineers (ITE) Trip Generation

Manual. If an applicable ITE land use is not available or contains limited data, an alternate trip generation rate may be approved by the Town. The TIA shall indicate the average daily and peak hour vehicular trips generated by the proposed development and shall indicate the trip distribution allocation on all roads and intersections within a study area approved by the Town. The recommendations provided in the TIA shall at a minimum be based on the following:

- (a) The TIA shall propose geometric and/or traffic control improvements which will be required to prevent the traffic generated by the proposed development from causing any intersection or roadway approach within the study area to fall below an overall Level of Service (LOS) D, as defined by the latest edition of the Highway Capacity Manual (HCM).
- (b) For intersections projected to operate worse than LOS D for background (future without proposed development) conditions, the TIA shall propose geometric and/or traffic control improvements which will be required to minimize the increase in average overall intersection delay when traffic generated by the proposed development is at least ten (10%) percent of the projected total a.m. or p.m. peak hour traffic at the intersection.
- (c) Stop-controlled minor street approaches to intersections may exceed LOS D provided the addition of development traffic at the intersection is not anticipated to warrant a traffic signal upon build-out and the resulting congestion does not block traffic movements at adjacent intersections.
- (d) At existing or proposed stop-controlled intersections, guidelines provided by the North Carolina Department of Transportation (NCDOT) shall be used in the evaluation of the need for and length of exclusive right and/or left turn lanes to support development traffic.
- (e) For any and all turning movements in the study area where the development is anticipated to add at least ten (10%) percent to the existing a.m. or p.m. peak hour traffic volume, and the existing storage available within the turn bay(s) is shown to be exceeded by existing or projected traffic, the TIA shall propose improvements which may be required to mitigate the impact of development traffic.

The Town Council reserves the right to challenge the assumptions, methodology or conclusions of the study. For the purposes of making an individual assessment of the development traffic impacts on the roadway system, the definitions contained in Section 13.9 of the UDO shall apply to this section also.

**13.20. Appeals.**

- (a) After the amount of a transportation development fee or credit, if any, has been determined, a fee payor may, within ten (10) days, file a written appeal contesting the amount of the development fees or credits by requesting a conference with the Town Manager or his designee. However, individual fee assessments made under Sec. 13.9 are not appealable under this Section. If the fee payor, during the pendency of the appeal before the Town, desires and is otherwise entitled to receive subdivision approval, site plan approval, a building permit, or certificate of occupancy with respect to the development for which the amount of the transportation development fees or credits, if any, has been appealed, then the appealing party shall pay the transportation development fees with such payment clearly marked as paid under protest. The Town Manager or designee shall notify the appealing party of the time and place for the conference. Failure of the appealing party, or representative thereof, to appear at the conference shall be considered an abandonment and withdrawal of the appeal.
- (b) At the conference, the Town Manager or designee shall consider any statements and evidence presented by the appealing party, and any information provided by the applicable Town departments. The Town Manager or designee shall then render a decision amending or confirming the amount of transportation development fees and credits, if any. The Town Manager or designee shall make a record of the conference and of the decision rendered.
- (c) A party may appeal the decision of the Town Manager to the Town Council by notifying

the Town Manager or designee in writing within ten (10) days of the date of the decision.

(d) The Town Manager or designee shall notify the appealing party by registered or certified mail, return receipt requested, at least ten (10) days in advance of the date and time of the Council meeting at which the appeal will be heard. Failure of the appealing party, or representative thereof, to appear at the Council meeting shall be considered an abandonment and withdrawal of the appeal.

(e) At the hearing before the Town Council, the Council shall hear from the appealing party and other interested persons, the Town Manager or designee, and applicable Town departments. The Council shall review the evidence presented, and enter a final decision amending or confirming the amount of transportation development fees and credits, if any. The decision shall include findings of fact and conclusions explaining the basis for the decision. The decision shall be delivered to the appealing party by personal service, or by registered or certified mail, return receipt requested.

(f) Every such decision of the Town Council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review shall be filed with the clerk of superior court within 30 days after the decision of the Town Council is delivered to the appealing party.