

**ORDINANCE 21-2015**  
**AN ORDINANCE CREATING IMPACT FEES**  
**TO BE CHARGED NEW DEVELOPMENTS**  
**TO FUND CITY PARK, RECREATION, AND**  
**TRANSPORTATION INFRASTRUCTURE**

BE IT ORDAINED by the City Council of the City of Foley as follows:

1. That the Code of the City of Foley be amended to add the following article and sections pertaining to impact fees:

**Sec. 1. – Findings.** The City Council of the City of Foley hereby makes the following findings of fact:

(a) ~~That the 2010 Census reported a population of 14,616 residents, and the estimated 2020 population is over 21,000 which is a growth rate of around 59%. From 2019 to 2020 Foley had the highest growth rate of any city in the State of Alabama. A very high rate of growth is expected to continue over the next ten years.~~ The City of Foley continues to be recognized as one of the most rapidly growing Cities in the State of Alabama and the Nation, with this substantial rate of growth projected to persist for a minimum of the next five years.

(b) That rapid growth imposes increased demands upon public facilities and requires that new capacity be added to public facilities to maintain current levels of service.

(c) That changes and enhancements to transportation infrastructure will be needed to accommodate the increased traffic generated by new developments to maintain at least the same level of service as today.

(d) That changes, additions, and modifications to the City's Parks and Recreation facilities will be needed to add capacity and facilities to serve new developments to maintain at least the same level of services and facilities as today.

(e) That traditional funding sources have decreased at both the state and federal level, and traditional municipal taxes and funding sources are not adequate to make all the transportation, park and recreation changes needed to maintain the level of service while also attending to other municipal needs.

(f) That the City's traditional tax revenues from new developments will not generate enough revenue in time to cover the City of Foley's costs to add the capacity needed to serve the new developments with adequate parks, recreation and transportation facilities.

(g) That the City engaged a consultant firm to perform an impact fee study, and that study demonstrated and quantified the need for the City to charge impact fees on new developments to help fund some of the governmental infrastructure projects needed as a consequence of the new developments that are anticipated.

(h) That the impact fees charged under this ordinance will benefit the new developments by funding a portion of the park, recreation, and/or transportation improvements that will be needed to add the capacity needed to serve the new developments with the same level of service that the City currently provides.

(i) That the impact fees collected by this ordinance will be proportional to the impacts created by new developments which will be charged the fees, and the impact fee will be appropriate for the benefits the new development will receive.

(j) That the impact fees created and imposed by this ordinance are reasonable, ~~be~~ appropriate and necessary.

## **Sec. 2. – Authorization.**

This Ordinance is enacted pursuant to the City's general police power, its general power to raise revenues, its authority to regulate land use and development, and under the authority granted to it under Code of Alabama, Sections 45-2-243.80, et seq.

## **Sec. 3. – Definitions.**

When used in this ordinance, the following words, terms, and phrases, and their derivations, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

a) **Assisted living:** Establishments primarily providing either routine general protective oversight, assistance with activities necessary for independent living to mentally or physically limited persons, or establishments providing care for persons who are unable to care for themselves. By way of example, Assisted Living includes assisted living facilities, nursing homes, rest homes, chronic care homes, and convalescent homes.

b) **Building permit:** means a document issued by the City's ~~Community Development~~ **Building** Department authorizing construction or development activities within the corporate limits of the City.

c) **Commercial:** Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. By way of example, Commercial includes shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, gas stations, automobile dealerships, and movie theaters. Commercial also includes any non-residential development that does not fit in any other development type.

d) **Certificate of Occupancy:** A certificate issued by the City's ~~Community Development~~ **Building** Department allowing a structure to be occupied and used for a particular type of use.

e) **Hotel:** A hotel is a place of lodging that provides sleeping accommodations and may include supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops. The term Hotel also includes motels and extended stay hotels.

f) **Industrial:** Establishments primarily engaged in the production, transportation, or storage of goods. By way of example, Industrial includes manufacturing plants, distribution warehouses, trucking companies, utility substations, power generation facilities, and telecommunications buildings.

g) **Institutional:** Public and quasi-public buildings providing educational, social assistance, or religious services. By way of example, Institutional includes schools, universities, churches, daycare facilities, hospitals, and government buildings, however the City of Foley is exempt.

h) **Office & Other Services:** Establishments providing management, administrative, professional, or business services. By way of example, Office & Other Services includes banks, business offices, medical offices, and veterinarian clinics.

i) **City:** The City of Foley, Alabama.

j) **Developer:** ~~An applicant for a building permit with the City.~~ A building permit applicant to the City

k) **Impact fee:** The fee imposed pursuant to this ordinance against certain new developments as a condition of, or in connection with, approval of a building permit application for the purpose of funding or recouping the costs of governmental infrastructure necessitated by and proportionally attributable directly to this type of new development.

l) **Multi-Family:** All residential new developments that are not Single Family or Hotel. This definition includes ~~duplexes~~ two family dwellings, ~~triplexes~~ townhouse buildings, apartments, condominiums, and any other residential developments intended to be occupied by more than one ~~single family unit~~.

m) **New development:** The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land, any of which increases the demands on governmental infrastructure, for which a building permit or a certificate of occupancy is required.

n) **Single family:** A ~~dwelling unit~~ residential building designed for occupancy by one family. This includes manufactured houses, modular dwellings, site-built structures, and any other form of structure, or addition to a structure, intended for use as a residence. Manufactured houses used for business office purposes instead of for residences are treated as Office & Other Services. Manufactured houses that are for sale on a dealer's lot, or in storage, are excluded until they are sold or moved into residential use.

o) **Fair and reasonable market value:** Development, construction, and land value shall be determined by an appraisal prepared by a licensed appraiser, the Baldwin County Revenue Department's appraised value, the most current edition of the International Code Council Building Valuation Data, and executed contracts. When comparing the stated valuation with the calculated valuation, the higher of the two shall be utilized for the purpose of fee calculation.

#### Sec. 4. Impact Fees Imposed; Impact Fee Schedule

The City hereby imposes an impact fee to be charged on all new developments constructed within the City's corporate limits in accordance with the following Impact Fee Schedule:

Development Type	Parks & Recreation	Transportation	Total Impact Fee
Single Family	\$2,477	\$497	\$2,974 each
Multi-Family	\$1,432	\$286	\$1,718 per unit
Industrial	\$0	\$0.11	\$0.11 per SF

Commercial	\$0	\$0.69	\$0.69 per SF
Office & Other Services	\$0	\$0.26	\$0.26 per SF
Institutional	\$0	\$0.19	\$0.19 per SF
Hotel	\$0	\$251	\$251 per Room
Assisted Living	\$0	\$70	\$70 per Bed

#### **Sec. 5 – Impact Fee Cap; Procedure for determining Estimated Fair Market Value.**

(a) The maximum impact fee shall be the lesser of (i) the amount called for in the Impact Fee Schedule or (ii) one percent (1%) of the estimated fair and reasonable market value of the new development after completion of the work called for in the building permit. In no event shall the City collect an impact fee in excess of one percent (1%) of the estimated fair and reasonable market value of the new development.

(b) To determine the estimated fair and reasonable market value of a new development, the sum of the amount set forth for the issuance of the building permit plus the value of the land, or an estimated fair and reasonable market value based on information submitted by the developer, shall be considered. For the land valuation component, when available, the Baldwin County Revenue Department's fair market value for ad valorem property tax purposes shall be used unless the developer of City submits an alternative appraisal. If the City's ~~Community Development Office~~ **Building Department** does not agree with the developer on the estimated fair and reasonable market value, then the City may obtain an appraisal by a licensed appraiser at the City's cost. If the value of the development as submitted by the developer and the value as set forth in the appraisal obtained by the City are within ten percent (10%) of each other, then the two values shall be averaged to determine the estimated fair and reasonable market value of the development. If the two values are not within ten percent (10%) of each other, then the developer and the City shall together select a licensed appraiser to submit an appraisal that would be binding on both parties, and both parties would equally share the cost of this appraisal.

#### **Sec. 6 – Collection of Impact Fees; Exceptions.**

(a) Impact fees may be imposed only on new developments and only against a particular new development in reasonable proportion to the demand for additional capacity in transportation, park and recreation public facilities that can reasonably **be** attributed to the new development.

(b) Impact fees shall be calculated and collected by the ~~Community Development Office~~ **Building Department** prior to the issuance of a building permit for new developments.

(c) All impact fees shall be paid in cash or readily available funds and not by in kind services or work.

(d) An impact fee is both a personal liability of the owners of property that is the subject of the new development and a lien upon the property.

(e) An impact fee may be levied only once on a service unit, but if that same service unit is the subject of a later new development, an incremental future impact fee may be charged in the future if required by City ordinance.

(f) Impact fees shall be paid in full before any building permit is issued for a new development.

(g) Impact fees are only refundable if no construction activity has occurred; the building permit has been terminated or expired; and the developer files a written request with the ~~Community Development~~ **Building** Department for an impact fee refund within 60 days of the termination or expiration of the building permit. A processing fee of \$200.00 shall be withheld from any refund allowed pursuant to this section.

(h) Should Impact Fees be remitted and construction not commence prior to the permit expiration, the paid Impact Fees may be transferred as credit to a different developer upon approval by the Building Department.

#### **Sec. 7 – Impact Fee Accounts.**

The impact fees collected pursuant to this Ordinance shall be deposited into special accounts of the City, with the transportation funds separated from the parks and recreation funds. The City shall separately account for fees collected in each account. The funds of the accounts shall not be commingled with each other or with any other funds or accounts of the City.

#### **Sec. 8 – Use of Impact Fees; Refunds of Unused Impact Fees.**

(a) Impact fees may be expended only for the type of governmental infrastructure for which they were imposed, calculated, and collected (e.g. transportation impact fees may only be expended for transportation projects), or to recover the City's costs in preparing any impact fee studies or the City's costs in administering and enforcing this ordinance, including any appraisals or studies required.

(b) Impact fees collected shall be expended within the time limits established by State law.

(c) Impact fees may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the city to finance the improvements for which the impact fees were charged.

(d) Any impact fees collected that the City does not later use for the type of governmental infrastructure projects of the type for which they were collected, and any impact fees collected but not expended or contracted to be expended within any time limits required by State law, shall be refunded by the City to the developer who paid the fee, or their designee. Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent in writing to the developer within a reasonable time after the refund becomes due. Any refund shall be made on a pro rata basis, without interest, upon satisfactory documentation from the developer of the full legal names and tax identification numbers of the payee.

## **Sec. 9 – Impact Fee Review Committee; composition; duties.**

(a) There is hereby created an Impact Fee Review Committee which shall be chaired by the Mayor and ~~comprised~~ **composed** of the Mayor, the City Clerk (**serving as the recording secretary and voting member**), the City Administrator, the City Engineer, **Finance Director, Public Works Director, Parks & Recreation Director**, and the ~~department heads from Finance, parks, recreation, and public works.~~ **Executive Directors of Leisure Services, General Government & Administration, Public Safety, and Infrastructure & Development. A minimum of six members shall constitute a quorum.**

(b) The Impact Fee Review Committee shall report at least once each year to the City Council with:

1. Recommendations for amendments to this article;
2. Identifying capital improvements to be funded in whole or in part by impact fees;
3. Proposals for changes to impact fee rates and schedules;
4. Current impact fee balances in each different account; and
5. Proposed or possible uses of impact fees.

(c) The Impact Fee Review Committee shall also hear appeals of impact fee calculations and consider and rule on impact fee credit requests.

## **Sec. 10 – Appeals of Impact Fees.**

Any owner of property against which an impact fee has been assessed, or any developer seeking a building permit for a new development on property, may appeal the imposition of the impact fee. The owner or developer's appeal will first go to the Impact Fee Review Committee which shall conduct a hearing and issue a ruling. If the owner or developer disagrees with the decision of the Impact Fee Review Committee, then the owner or developer may appeal to the City Council. The City Council shall conduct its own hearing and make the final decision on any appeal. No building permit shall be issued until the appeal is resolved and any impact fee owed is paid unless the developer elects to pay the City's calculated fee and submits a written statement that payment is made "under protest" or that includes other language that would notify a reasonable person that the owner or developer intends to preserve the right of review.

## **Sec. 11 – Impact Fee Credits.**

(a) A property owner or developer who dedicates land or otherwise provides some material assistance to the City to add capacity to the parks, recreation, or transportation infrastructure needs **above and beyond that of** which would otherwise be funded by the impact fees under this ordinance may apply for and be eligible for a credit against the impact fees that would otherwise be charged to the developer. The work or assistance **that pertains to the definition of governmental infrastructure** must be something **of reasonably measurable greater value** than what is normally required of new developments **as required in existing city ordinances and resolutions, and the improvement shall provide general benefits**

for all citizens of Foley that exceed the requirements necessary to obtain approval; such as adjacent new road right of way to serve a new subdivision (*credit for a road right of way may violate the Impact Fee definition of Part 2, subpart b, of § 45-2-243.81?*) or common area amenities in a new subdivision, which are normal conditions of approval or voluntary measures by the developer and are not eligible for impact fee credits. For consideration of impact fee credits towards transportation infrastructure, the applicant shall provide a summary of quantities itemized list indicating each pay item of infrastructure, unit cost, unit quantity, and total cost prepared on a standard bid form. These quantities must be certified by the licensed civil engineer of record for the governmental infrastructure. The City Engineer will review the summary of quantities' submittal documents to ensure the items are within reasonable agreement with the construction plans for the governmental infrastructure that is proposed within the right of way. The applicant will be required to provide as-built documents construction is completed. The design engineer of record will be required to certify the improvements were built according to the approved plans and specifications prior to the City approval of impact fee credit.

(b) The Impact Fee Review Committee shall determine: (a) the value of the developer contribution; (b) whether the contribution meets capital improvement needs for which the particular impact fee has been imposed; and (c) whether the contribution will substitute or otherwise reduce the need for capital improvements anticipated to be provided with impact fee funds. In no event, however, shall the credit exceed the amount of the otherwise applicable impact fee. Any application for credit must be submitted on forms provided by the city before development project approval. The application shall contain a declaration under oath of those facts which qualify the property owner for the credit, accompanied by the relevant documentary evidence. If a credit is issued, then the impact fee due shall be reduced; however, if the developer's contribution is not finished, the City may withhold certificates of occupancy until the contribution is completed or the developer pays the balance of the impact fee due without credit.

## **Sec. 12 - Existing Structures.**

A credit against impact fees for existing structures may be granted if impact fees are assessed for new development on a property where the existing structure(s) will be demolished as part of the development. This credit is subject to two conditions: first, the City Building Department must have adequate information to accurately determine the fair market value of the original structure(s); and second, the structure(s) shall not be demolished before the impact fee credit is calculated.

**Art. 2. Severability.** If any portion or provision of this Ordinance, or its application to any person or circumstance, shall be declared unconstitutional or otherwise declared void, voidable, or invalid for any reason, or should any portion be pre-empted by state or federal law or regulation, such portion or provision shall be deemed severed, and any such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Art. 3. Effective date.** This ordinance shall become effective immediately upon its adoption and publication as required by law.

Adopted this the 6th day of July, 2021.

*/s/ J. Wayne Trawick, President*

*/s/ Kathryn Taylor, MMC*

City Clerk

*/s/ Ralph G. Hellmich, Mayor*