

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2007, Legislative Day No. 6

Bill No. 21-07

Introduced by Mr. Dillon, Chairman
(by request of the County Executive)

By the County Council, March 19, 2007

Introduced and first read on March 19, 2007
Public Hearing set for April 16, 2007
Bill Expires June 22, 2007

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

- 1 AN ORDINANCE concerning: Subdivision and Development – Development Impact
2 Fees
3
4 FOR the purpose of defining certain terms; providing for the use of development impact
5 fees to repay the principal and interest of bonds sold to finance capital improvements;
6 recognizing the substitution of development impact fees for other projected funding
7 sources; establishing the time for determining the availability of refunds of
8 development impact fees; providing for the manner of determining expenditures,
9 encumbrances, and pledges of development impact fees; providing for the retroactive
10 application of this Ordinance; and generally relating to development impact fees.
11
12 BY repealing and reenacting, with amendments: §§ 17-11-209(b); and 17-11-210
13 Anne Arundel County Code (2005, as amended)
14
15 BY renumbering: §§ 17-11-201(2) through (4) and 17-11-211 through 17-11-213 to be §§
16 17-11-201(4), (6), and (7); and 17-11-213 through 17-11-215, respectively
17 Anne Arundel County Code (2005, as amended)
18
19 BY adding: §§ 17-11-201(2), (3), and (5), 17-11-209(f); 17-11-211; and 17-11-212
20 Anne Arundel County Code (2005, as amended)

EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.

1 WHEREAS, it is the intent of the County Council to establish a time for
2 determining the availability of refunds of development impact fees that is
3 consistent with the availability of the financial information necessary to make the
4 required calculation, and to expressly allow the use of development impact fees to
5 repay the principal and interest of bonds sold to finance capital improvements;
6 and

7
8 WHEREAS, it is the further intent of the County Council to codify the definition
9 of and the manner of calculating encumbrances currently used by the County
10 Controller and Budget Officer, and to codify the existing power of the Budget
11 Officer to substitute development impact fees for other funding sources projected
12 in the Capital Budget; now, therefore,

13
14 SECTION 1. *Be it enacted by the County Council of Anne Arundel County,*
15 *Maryland, That §§ 17-11-201(2) through (4); and 17-11-211 through 17-11-213 of the*
16 *Anne Arundel County Code (2005, as amended) are hereby renumbered to be §§ 17-11-*
17 *201(4), (6), and (7); and 17-11-213 through 17-11-215, respectively.*

18
19 SECTION 2. *And be it further enacted, That Section(s) of the Anne Arundel County*
20 *Code (2005, as amended) read as follows:*

21
22 ARTICLE 17 SUBDIVISION AND DEVELOPMENT

23
24 TITLE 11. FEES AND SECURITY

25
26 **17-11-201. Definitions.**

27
28 In this title, the following words have the meanings indicated.

29
30 (2) "ENCUMBRANCE" MEANS A LEGAL COMMITMENT FOR THE EXPENDITURE OF
31 FUNDS, CHARGEABLE AGAINST THE APPLICABLE APPROPRIATION FOR THE
32 EXPENDITURE, THAT IS DOCUMENTED BY A CONTRACT OR PURCHASE ORDER.

33
34 (3) "GENERAL LEDGER" MEANS THE OFFICIAL ACCOUNTING RECORDS WHERE
35 ASSETS, LIABILITIES, REVENUES, EXPENDITURES, BUDGETS, AND ENCUMBRANCES ARE
36 RECORDED.

37
38 (5) "PLEDGE" MEANS OBLIGATE TAXES, FEES, OR OTHER SOURCES OF REVENUE
39 FOR USE IN THE REPAYMENT OF A DEBT.

40
41 **17-11-209. Use of funds.**

42
43 (b) **Use.**

44
45 (1) IN THIS SECTION, "USED FOR" MEANS USED FOR PAYMENT IN ANY MANNER,
46 INCLUDING THE REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS SOLD TO
47 FINANCE CAPITAL IMPROVEMENTS.

48
49 (2) The funds collected from the transportation impact fee shall be used for the
50 collector, arterial, principal arterial, and freeway road network under the jurisdiction of
51 the State, the County, or any incorporated municipality within the County. The funds

1 collected from the school impact fee shall be used for the County public school system.
2 The funds collected from the public safety impact fee shall be used for capital
3 improvements to the Anne Arundel County Police and Fire Departments
4

5 (F) **Substitution for other funding source.** THE BUDGET OFFICER MAY SUBSTITUTE
6 DEVELOPMENT IMPACT FEES FOR ONE OR MORE OF THE PROJECTED SOURCES OF
7 FUNDING FOR A CAPITAL PROJECT THAT WERE IDENTIFIED FOR PURPOSES OF THE
8 CAPITAL BUDGET IN ACCORDANCE WITH § 4-11-102(C)(12) OF THIS CODE, UNLESS SUCH
9 SUBSTITUTION SPECIFICALLY WAS PROHIBITED FOR THE PROJECT BY ORDINANCE OF
10 THE COUNTY COUNCIL. THE BUDGET OFFICER SHALL REPORT THE SUBSTITUTION TO THE
11 COUNTY CONTROLLER AND COUNTY AUDITOR.
12

13 **17-11-210. Refunds.**

14
15 (A) **Determination of refund availability.** A DETERMINATION OF THE AVAILABILITY
16 OF REFUNDS OF FEES SHALL BE MADE BY THE CONTROLLER WITHIN 30 DAYS AFTER
17 COMPLETION OF THE ANNUAL FINANCIAL AUDIT REQUIRED BY § 811 OF THE CHARTER.
18

19 [(a)] (B) **Notice of refund availability.** If fees collected in any district during a fiscal
20 year have not been expended, [or] encumbered, OR PLEDGED FOR THE REPAYMENT OF
21 THE PRINCIPAL AND INTEREST ON BONDS by the end of the sixth fiscal year following
22 collection, AS DETERMINED UNDER § 17-11-211, the [Office of Finance] CONTROLLER
23 shall give notice of the availability of a refund of the fees and refund the fees as provided
24 in this section.
25

26 [(b)] (C) **Publication of notice.** Within [60] 30 days [from the end of a fiscal year
27 during which fees become available for refund] AFTER A DETERMINATION UNDER
28 SUBSECTION (A) THAT FEES ARE AVAILABLE FOR REFUND, the Controller shall cause to
29 be published once a week for two successive weeks in one or more newspapers that have
30 a general circulation in the County, a notice that development impact fees collected
31 within a particular district for a preceding fiscal year are available for refund on
32 application by the current owner of the property for which the fee was originally paid.
33 The notice shall set forth the time and manner for making application for the refund.
34

35 [(c)] (D) **Refund application deadline.** An eligible property owner shall file an
36 application for a refund within 60 days of the last publication of notice. On proper
37 application and demonstration that the fee was paid, the Controller shall refund the fees
38 to the property owner with interest at the rate of 5% per year.
39

40 [(d)] (E) **Refund on pro rata basis.** If only a portion of the fees collected in a district
41 during a fiscal year have been expended, [or] encumbered, OR PLEDGED FOR THE
42 REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS, the portion not expended, [or]
43 encumbered, OR PLEDGED FOR THE REPAYMENT OF THE PRINCIPAL AND INTEREST ON
44 BONDS shall be made available for refund on a pro rata basis to property owners. Each
45 eligible property owner who has properly applied for a refund shall receive a refund in an
46 amount equal to the portion of the original fee that was not expended, [or] encumbered,
47 OR PLEDGED FOR THE REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS.
48

49 [(e)] (F) **Extension.** The Planning and Zoning Officer may extend for up to three years
50 the date at which the funds must be expended, [or] encumbered, OR PLEDGED FOR THE

1 REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS under subsection [(a)] (B). An
2 extension shall be made only on a written finding that within a three-year period certain
3 capital improvements are planned to be constructed that will be of direct benefit to the
4 property against which the fees were charged.

5 [(f)] (G) **Refund upon building permit expiration.** If a building permit expires and
6 construction under the permit has not commenced, the feepayer is entitled to a refund of
7 any development impact fee paid as a condition of the permit's issuance and shall apply
8 to the Department of Inspections and Permits for the refund within 60 days of the
9 expiration of the building permit. The County shall retain 6% of the fee as an
10 administrative fee to offset the costs of collection and refund.

11
12 [(g)] (H) **Retention by County.** Any fees as to which a refund is not sought within the
13 required time, or which the County does not refund for proper cause, shall be retained by
14 the County.

15
16 **17-11-211. Determinations of expenditures and encumbrances of fees.**

17
18 (A) **Expenditures.** AN EXPENDITURE OCCURS WHEN GOODS OR SERVICES ARE
19 RECEIVED AND ACTUAL LIABILITIES ARE INCURRED.

20
21 (B) **Encumbrances.** AN ENCUMBRANCE OCCURS WHEN A CONTRACT IS EXECUTED
22 OR A PURCHASE ORDER ISSUED, AND THE AMOUNT OF THE CONTRACT OR PURCHASE
23 ORDER IS RECORDED IN THE GENERAL LEDGER OF THE COUNTY OR THE BOARD OF
24 EDUCATION.

25
26 (C) **Calculation of encumbrances.** TO DETERMINE WHETHER IMPACT FEES
27 COLLECTED IN AN IMPACT FEE DISTRICT HAVE BEEN ENCUMBERED BY THE END OF THE
28 SIXTH FISCAL YEAR FOLLOWING COLLECTION, THE CONTROLLER SHALL CALCULATE
29 ENCUMBRANCES OF IMPACT FEES FOR EACH OF THE FISCAL YEARS UNDER REVIEW AS
30 FOLLOWS:

31
32 (1) IDENTIFY THE AMOUNT OF ENCUMBRANCES IN CONNECTION WITH EACH
33 CAPITAL PROJECT IN THE DISTRICT THAT IS ELIGIBLE FOR IMPACT FEE USE FROM THE
34 GENERAL LEDGER OF THE COUNTY OR THE BOARD OF EDUCATION; AND

35
36 (2) CALCULATE THE MAXIMUM AMOUNT OF APPROPRIATIONS THAT IS ELIGIBLE
37 FOR IMPACT FEE USE BY MULTIPLYING THE TOTAL AMOUNT OF APPROPRIATIONS FOR
38 THE PROJECT BY THE PERCENTAGE OF THE PROJECT THAT IS ELIGIBLE FOR IMPACT FEE
39 USE AS DETERMINED BY THE PLANNING AND ZONING OFFICER.

40
41 (D) **Amount of encumbrances.**

42
43 (1) IF THE EXPENDITURES ON THE CAPITAL PROJECT, AS SET FORTH IN THE
44 GENERAL LEDGER OF THE COUNTY OR THE BOARD OF EDUCATION, EXCEED THE
45 MAXIMUM AMOUNT OF APPROPRIATIONS FOR THE CAPITAL PROJECT THAT IS ELIGIBLE
46 FOR IMPACT USE, NO IMPACT FEES SHALL BE ENCUMBERED FOR THE CAPITAL PROJECT.

47
48 (2) IF PARAGRAPH (1) DOES NOT APPLY, THE CONTROLLER SHALL CALCULATE
49 THE REMAINING AVAILABLE APPROPRIATIONS FOR EACH CAPITAL PROJECT IN THE
50 DISTRICT THAT IS ELIGIBLE FOR IMPACT FEE USE BY SUBTRACTING THE EXPENDITURES
51 FOR EACH CAPITAL PROJECT, AS SET FORTH IN THE GENERAL LEDGER OF THE COUNTY
52 OR THE BOARD OF EDUCATION, FROM THE MAXIMUM AMOUNT OF APPROPRIATIONS
53 THAT IS ELIGIBLE FOR IMPACT FEE USE.

1 (3) THE AMOUNT OF ENCUMBRANCES OF IMPACT FEES FOR EACH CAPITAL
2 PROJECT IN THE DISTRICT THAT IS ELIGIBLE FOR IMPACT FEE USE SHALL BE THE LESSER
3 OF THE REMAINING AVAILABLE APPROPRIATIONS FOR THE CAPITAL PROJECT OR THE
4 ENCUMBRANCES RECORDED IN THE GENERAL LEDGER OF THE COUNTY OR THE BOARD
5 OF EDUCATION FOR THE CAPITAL PROJECT AS OF THE END OF THE FIS CAL YEAR.
6

7 **17-11-212. Pledges of fees.**

8 (A) **Pledges.** A PLEDGE OF IMPACT FEES FOR THE REPAYMENT OF THE PRINCIPAL AND
9 INTEREST ON BONDS OCCURS UPON THE SALE OF BONDS TO FINANCE IN WHOLE OR IN
10 PART A CAPITAL PROJECT THAT IS ELIGIBLE FOR IMPACT FEE USE.
11

12 (B) **Calculation of amount of pledged fees.** THE OFFICIAL STATEMENT
13 ACCOMPANYING THE SALE OF BONDS SHALL IDENTIFY THE AMOUNT OF BONDS SOLD
14 FOR WHICH THERE WILL BE A PLEDGE OF IMPACT FEES, THE CAPITAL PROJECTS
15 FINANCED BY THOSE BONDS, AND THE IMPACT FEE DISTRICTS FROM WHICH THE FEES
16 WILL BE PLEDGED. THE AMOUNT OF PRINCIPAL AND INTEREST FOR WHICH IMPACT FEES
17 HAVE BEEN PLEDGED SHALL BE CALCULATED BY THE COUNTY CONTROLLER IN
18 PROPORTION TO THE TOTAL PRINCIPAL AND INTEREST AMOUNT FOR THE
19 CONSOLIDATED GENERAL IMPROVEMENT SERIES WITHIN THAT SALE.
20

21 (C) **Limitation on pledged fees.** FOR PURPOSES OF DETERMINING WHETHER IMPACT
22 FEES COLLECTED IN AN IMPACT FEE DISTRICT HAVE BEEN EXPENDED, ENCUMBERED, OR
23 PLEDGED FOR THE REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS BY THE
24 END OF THE SIXTH YEAR FOLLOWING COLLECTION UNDER § 17-11-210(B), THE AMOUNT
25 OF THE IMPACT FEES PLEDGED FOR A CAPITAL PROJECT AS CALCULATED UNDER
26 SUBSECTION (B) SHALL NOT ALSO BE CONSIDERED AS EXPENDED OR ENCUMBERED FOR
27 THE CAPITAL PROJECT.
28

29 SECTION 3. *And be it further enacted,* That this Ordinance shall be construed to
30 apply retroactively and shall be applied to and interpreted to affect all impact fees for
31 which notice of the availability for refund had not been given by the Office of Finance, in
32 accordance with § 17-11-210(a) of the County Code, prior to the effective date of this
33 Ordinance.
34

35 SECTION 4. *And be it further enacted,* That this Ordinance shall take effect 45 days
36 from the date it becomes law.