

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2007, Legislative Day No. 8

Bill No. 27-07

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

By the County Council, April 16, 2007

Introduced and first read on April 16, 2007
Public Hearing set for May 7, 2007
Bill Expires July 20, 2007

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

1 AN EMERGENCY ORDINANCE concerning: Subdivision and Development –
2 Development Impact 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 calculating and determining
9 expenditures, encumbrances, and pledges of development impact fees; making this
10 bill an emergency measure and providing for the retroactive application of this
11 Ordinance; and generally relating to development impact fees.

12
13 BY repealing and reenacting, with amendments: §§ 17-11-209(b); and 17-11-210
14 Anne Arundel County Code (2005, as amended)

15
16 BY renumbering: §§ 17-11-201(2), (3) and (4); and 17-11-211 through 17-11-213 of the
17 Anne Arundel County Code (2005, as amended) to be §§ 17-11-201(4), (6), and (7);
18 and 17-11-213 through 17-11-215, respectively
19 Anne Arundel County Code (2005, as amended)

20
21 BY adding: §§ 17-11-201(2), (3), and (5); 17-11-209(f); 17-11-211; and 17-11-212
22 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 and manner of calculating encumbrances currently used by the County Controller
10 and Budget Officer, and to codify the existing power of the Budget Officer to
11 substitute development impact fees for other funding sources projected in the
12 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), (3) and (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

1 the State, the County, or any incorporated municipality within the County. The funds
2 collected from the school impact fee shall be used for the County public school system.
3 The funds collected from the public safety impact fee shall be used for capital
4 improvements to the Anne Arundel County Police and Fire Departments.
5

6 **(F) Substitution for other funding source.** THE BUDGET OFFICER MAY SUBSTITUTE
7 DEVELOPMENT IMPACT FEES FOR ONE OR MORE OF THE PROJECTED SOURCES OF
8 FUNDING FOR A CAPITAL PROJECT THAT WERE IDENTIFIED FOR PURPOSES OF THE
9 CAPITAL BUDGET IN ACCORDANCE WITH § 4-11-102(C)(12) OF THIS CODE, UNLESS SUCH
10 SUBSTITUTION SPECIFICALLY WAS PROHIBITED FOR THE PROJECT BY ORDINANCE OF
11 THE COUNTY COUNCIL. THE BUDGET OFFICER SHALL REPORT THE SUBSTITUTION TO THE
12 COUNTY CONTROLLER AND COUNTY AUDITOR.
13

14 **17-11-210. Refunds.** 15

16 **(A) Determination of refund availability.** A DETERMINATION OF THE AVAILABILITY
17 OF REFUNDS OF FEES SHALL BE MADE BY THE CONTROLLER WITHIN 30 DAYS AFTER
18 COMPLETION OF THE ANNUAL FINANCIAL AUDIT REQUIRED BY SECTION 311 OF THE
19 COUNTY CHARTER.
20

21 [(a)] **(B) Notice of refund availability.** If fees collected in any district during a fiscal
22 year have not been expended, [or] encumbered, OR PLEDGED FOR THE REPAYMENT OF
23 THE PRINCIPAL AND INTEREST ON BONDS by the end of the sixth fiscal year following
24 collection, AS DETERMINED UNDER § 17-11-211, the [Office of Finance] CONTROLLER
25 shall give notice of the availability of a refund of the fees and refund the fees as provided
26 in this section.
27

28 [(b)] **(C) Publication of notice.** Within [60] 30 days [from the end of a fiscal year
29 during which fees become available for refund] AFTER A DETERMINATION UNDER
30 SUBSECTION (A) THAT FEES ARE AVAILABLE FOR REFUND, the Controller shall cause to
31 be published once a week for two successive weeks in one or more newspapers that have
32 a general circulation in the County, a notice that development impact fees collected
33 within a particular district for a preceding fiscal year are available for refund on
34 application by the current owner of the property for which the fee was originally paid.
35 The notice shall set forth the time and manner for making application for the refund.
36

37 [(c)] **(D) Refund application deadline.** An eligible property owner shall file an
38 application for a refund within 60 days of the last publication of notice. On proper
39 application and demonstration that the fee was paid, the Controller shall refund the fees
40 to the property owner with interest at the rate of 5% per year.
41

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

1 [(e)] (F) **Extension.** The Planning and Zoning Officer may extend for up to three years
2 the date at which the funds must be expended, [or] encumbered, OR PLEDGED FOR THE
3 REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS under subsection [(a)] (B). An
4 extension shall be made only on a written finding that within a three-year period certain
5 capital improvements are planned to be constructed that will be of direct benefit to the
6 property against which the fees were charged.

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

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

18
19 **17-11-211. Determinations of expenditures and encumbrances of fees.**

20
21 (A) **Expenditures.** AN EXPENDITURE OCCURS WHEN GOODS OR SERVICES ARE
22 RECEIVED AND ACTUAL LIABILITIES ARE INCURRED.

23
24 (B) **Determination of expenditures.** TO DETERMINE WHETHER IMPACT FEES
25 COLLECTED IN AN IMPACT FEE DISTRICT HAVE BEEN EXPENDED BY THE END OF THE
26 SIXTH FISCAL YEAR FOLLOWING COLLECTION, THE CONTROLLER SHALL:

27
28 (1) IDENTIFY EACH CAPITAL PROJECT IN THE DISTRICT THAT IS ELIGIBLE FOR
29 IMPACT FEE USE; AND

30
31 (2) DETERMINE THE AMOUNT OF IMPACT FEES DISBURSED FROM THE IMPACT FEE
32 SPECIAL FUND TO THE CAPITAL PROJECTS FUND TO PAY THE COSTS OF THE CAPITAL
33 PROJECT, AS RECORDED IN THE GENERAL LEDGER OF THE COUNTY OR THE BOARD OF
34 EDUCATION.

35
36 (C) **Amount of expenditures.** THE TOTAL AMOUNT OF IMPACT FEES COLLECTED IN
37 AN IMPACT FEE DISTRICT THAT HAS BEEN EXPENDED BY THE END OF THE SIXTH FISCAL
38 YEAR FOLLOWING COLLECTION IS THE SUM OF THE AMOUNTS CALCULATED IN
39 ACCORDANCE WITH SUBSECTION (B)(2).

40
41 (D) **Encumbrances.** AN ENCUMBRANCE OCCURS WHEN A CONTRACT IS EXECUTED
42 OR A PURCHASE ORDER ISSUED, AND THE AMOUNT OF THE CONTRACT OR PURCHASE
43 ORDER IS RECORDED IN THE GENERAL LEDGER OF THE COUNTY OR THE BOARD OF
44 EDUCATION.

45
46 (E) **Calculation of encumbrances eligible for impact fee use.** TO DETERMINE
47 WHETHER IMPACT FEES COLLECTED IN AN IMPACT FEE DISTRICT ARE ENCUMBERED BY
48 THE END OF THE SIXTH FISCAL YEAR FOLLOWING COLLECTION, THE CONTROLLER
49 SHALL:

50
51 (1) IDENTIFY EACH CAPITAL PROJECT IN THE DISTRICT THAT IS ELIGIBLE FOR
52 IMPACT FEE USE;

1 (2) DETERMINE THE ENCUMBRANCES FOR THE CAPITAL PROJECT AS RECORDED
2 IN THE GENERAL LEDGER OF THE COUNTY OR THE BOARD OF EDUCATION;
3

4 (3) CALCULATE THE MAXIMUM AMOUNT OF APPROPRIATIONS ELIGIBLE FOR
5 IMPACT FEE USE BY MULTIPLYING THE TOTAL AMOUNT OF APPROPRIATIONS FOR THE
6 CAPITAL PROJECT BY THE PERCENTAGE OF THE CAPITAL PROJECT THAT IS ELIGIBLE FOR
7 IMPACT FEE USE AS DETERMINED BY THE PLANNING AND ZONING OFFICER; AND
8

9 (4) SUBTRACT THE EXPENDITURES FOR THE CAPITAL PROJECT DETERMINED IN
10 ACCORDANCE WITH SUBSECTION (B)(2) FROM THE MAXIMUM AMOUNT OF
11 APPROPRIATIONS ELIGIBLE FOR IMPACT FEE USE CALCULATED IN ACCORDANCE WITH
12 PARAGRAPH (3).
13

14 **(F) Amount of encumbrances.**
15

16 (1) IF THE AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION (E)(4) IS \$0
17 OR LESS, NO IMPACT FEES ARE ENCUMBERED FOR THE CAPITAL PROJECT.
18

19 (2) IF THE AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION (E)(4) IS
20 GREATER THAN \$0, THE AMOUNT OF IMPACT FEES ENCUMBERED FOR THE CAPITAL
21 PROJECT IS THE LESSER OF THE AMOUNT CALCULATED IN ACCORDANCE WITH
22 SUBSECTION (E)(4) OR THE ENCUMBRANCES DETERMINED IN ACCORDANCE WITH
23 SUBSECTION (E)(2).
24

25 (3) THE TOTAL AMOUNT OF IMPACT FEES COLLECTED IN AN IMPACT FEE DISTRICT
26 THAT IS ENCUMBERED BY THE END OF THE SIXTH FISCAL YEAR FOLLOWING
27 COLLECTION IS THE SUM OF THE AMOUNTS CALCULATED IN ACCORDANCE WITH
28 PARAGRAPH (2).
29

30 **17-11-212. Pledges of fees.**
31

32 (A) **Pledges.** A PLEDGE OF IMPACT FEES FOR THE REPAYMENT OF THE PRINCIPAL AND
33 INTEREST ON BONDS OCCURS UPON THE SALE OF BONDS TO FINANCE IN WHOLE OR IN
34 PART A CAPITAL PROJECT THAT IS ELIGIBLE FOR IMPACT FEE USE.
35

36 (B) **Calculation of amount of pledged fees.** THE OFFICIAL STATEMENT
37 ACCOMPANYING THE SALE OF BONDS SHALL IDENTIFY THE AMOUNT OF BONDS SOLD
38 FOR WHICH THERE WILL BE A PLEDGE OF IMPACT FEES, THE CAPITAL PROJECTS
39 FINANCED BY THOSE BONDS, AND THE IMPACT FEE DISTRICTS FROM WHICH THE FEES
40 WILL BE PLEDGED. THE AMOUNT OF PRINCIPAL AND INTEREST FOR WHICH IMPACT FEES
41 HAVE BEEN PLEDGED SHALL BE CALCULATED BY THE COUNTY CONTROLLER IN
42 PROPORTION TO THE TOTAL PRINCIPAL AND INTEREST AMOUNT FOR THE
43 CONSOLIDATED GENERAL IMPROVEMENT SERIES WITHIN THAT SALE.
44

45 (C) **Limitation on pledged fees.** FOR PURPOSES OF DETERMINING WHETHER IMPACT
46 FEES COLLECTED IN AN IMPACT FEE DISTRICT HAVE BEEN EXPENDED, ENCUMBERED, OR
47 PLEDGED FOR THE REPAYMENT OF THE PRINCIPAL AND INTEREST ON BONDS BY THE
48 END OF THE SIXTH YEAR FOLLOWING COLLECTION UNDER § 17-11-210(B), THE AMOUNT
49 OF THE IMPACT FEES PLEDGED FOR A CAPITAL PROJECT AS CALCULATED UNDER
50 SUBSECTION (B) SHALL NOT ALSO BE CONSIDERED AS EXPENDED OR ENCUMBERED FOR
51 THE CAPITAL PROJECT.
52

53 SECTION 3. *And be it further enacted,* That this Ordinance shall be construed to
54 apply retroactively and shall be applied to and interpreted to affect all impact fees for
55 which notice of the availability for refund had not been given by the Office of Finance, in

1 accordance with § 17-11-210(a) of the County Code, prior to the effective date of this
2 Ordinance.

3

4 SECTION 4. *And be it further enacted*, That this Ordinance is hereby declared to be
5 an emergency ordinance and necessary for the immediate preservation of the public
6 peace, health, safety, welfare, and property, and being passed by the affirmative vote of
7 five members of the County Council, the same shall take effect from the date it becomes
8 law.