

Chapter 17 - PLANNING AND DEVELOPMENT<sup>[1]</sup>

Sec. 17-1. - Planning commission—Created; composition; appointment; terms.

There is hereby created a planning commission for the city, to consist of nine (9) members, to be appointed for the terms and in the manner set forth in section 11-52-3, Code of Alabama, 1975, as amended.

(Code 1962, § 2-30)

Sec. 17-2. - Same—Powers generally.

The planning commission is hereby authorized and empowered to exercise all powers and do all things authorized to such commission by section 11-52-6, Code of Alabama, 1975, as amended.

(Code 1962, § 2-31)

Sec. 17-3. - Same—Adoption of master plan; contents.

The planning commission is authorized and empowered to make and adopt a master plan for the physical development of the city, including any areas outside its boundaries which, in the commission's judgment, bear relation to the planning of the city. Such plan, with the accompanying maps, plats, charts and descriptive matter, shall show the commission's recommendations for the development of said territory, including among other things the general location, character, and extent of streets, viaducts, subways, bridges, waterways, water fronts, boulevards, parkways, squares, parks, aviation fields, and other public ways, grounds and open spaces, the general location of public buildings and other public property, and the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; also the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any of the foregoing ways, grounds, open spaces, buildings, property, utilities, or terminals; as well as a zoning plan for the control of the height, area, bulk, location and use of the buildings and premises.

(Code 1962, § 2-32)

**State Law reference**— Similar state law, Code of Ala. 1975, § 11-52-8.

Sec. 17-4. - Same—Publication of parts of master plan.

As the work of making the whole master plan progresses, the planning commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections of divisions of the city, or one or more of the matters mentioned in section 17-3 or other functional matters to

be included in the plan.

(Code 1962, § 2-33)

**State Law reference**— Similar state law, Code of Ala. 1975, § 11-52-8.

Sec. 17-5. - Same—Powers relative to subdivision of unimproved property.

The planning commission is authorized and empowered to exercise all powers and to do all things authorized to the commission by Title 11, Chapter 52, Articles 2 and 3, Code of Alabama, 1975, as amended and to exercise such control as is authorized thereunder with reference to the subdivision of unimproved property within five (5) miles of the corporate limits of the city.

(Code 1962, § 2-34)

Sec. 17-6. - Same—Authority of mayor and council.

The mayor and city council are hereby authorized to make all appointments and exercise all authority as authorized by Title 11, Chapter 52, Code of Alabama, as amended.

(Code 1962, § 2-35)

Sec. 17-7. - Early beginning of required advertisements on zoning ordinance amendments.

Upon communication from the planning and zoning commission chairman to the city clerk that the commission has completed its public hearing for a given zoning ordinance amendment and thereby forwards the amendment to the city council for its deliberation; then the city clerk is authorized to begin the advertising as required by section 11-52-77, Code of Alabama, 1975 et seq., at the earliest possible date and to place the advertised public hearing on the appropriate council agenda following completion of required advertising time.

(Ord. No. 732, § 1, 11-21-83; Ord. No. 1331, §§ 1—16, 5-31-07)

**Editor's note**— Ord. No. 727, adopted Nov. 21, 1983, did not expressly amend the code; hence, inclusion of § 1 as 17-7 was at the editor's discretion.

Sec. 17-8. - Impact fees on development.

- (1) *Findings*. In accordance with the Act [2006 Ala. Acts 300], 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 of 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 fifteen thousand (15,000) full time residents. In calendar year 2005, approximately four hundred ninety (490) new building permits were issued, and in calendar year 2006, approximately five hundred four (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 section, will benefit new development.
- (2) *Authorization.* This section is enacted pursuant to the Act and the city's general police power and land use authority.

- (3) *Purpose and intent.* The purpose of this section 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.
- (4) *Definitions.* Whenever used in this section, the following 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 multifamily developments.

*Applicant* shall mean any person or entity making an application for a building permit with the city.

*Benefit area* means one (1) 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 section 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;
- (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;
- (iv) The acquisition of police-related apparatus and equipment; and
- (v) 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 (1) 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.

- (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 section 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.

- (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 subsection (15) hereof, all impact fees shall be paid by an applicant to the city in cash or other immediately available funds.
- (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.
- (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.
- (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 dollars (\$500.00) shall be withheld by the city from any such refund.
- (10) *Impact fee accounts.* The funds collected pursuant to this section 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.
- (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 section 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 section may be used for any purpose permitted by the Act.
- (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 section 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.

- (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.
- (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 section;
  - (b) Proposals identifying capital improvements to be funded in whole or in part by the impact fees collected pursuant to this section;
  - (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.

- (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.

- (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 section.

(Ord. No. 1331, §§ 1—16, 5-31-07)

**Editor's note**— Exhibit A is attached to Ord. No. 1331 and is on file with the city clerk.