JEFFERSON COUNTY COMMISSION
124 E WASHINGTON ST
CHARLES TOWN WV 25414-1072

Jefferson County
Jacqueline C Shadle, Clerk
Instrument 201900003658
04/04/2019 @ 01:25:21 PM
ORDINANCE
Book 1220 @ Page 585
Pages Recorded 30

West Virginia

Impact Fee Procedures Ordinance

ADOPTED

November 6, 2003

Amended July 8, 2004
Amended January 20, 2005
Amended February 22, 2007
Amended November 15th, 2012 (added Affordable Housing Discount)
Amended April 7, 2016 (Affordable Housing Discount)
Amended March 21, 2019 (Affordable Housing Discount)

TABLE OF CONTENTS

Section 1. IN GENERAL 6
(A) Purpose and Intent 6
(B) Rules of Construction 6
(C) Definitions 7
(D) General Provisions; Applicability 11

Section 2. PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF IMPACT FEES 14
(A) In General 14
(B) Calculation 14
(C) Offsets/Credits 16
(D) Collection 18
(E) Impact Fee Agreements 18
(F) Affordable Housing Discount 19

Section 3. ESTABLISHMENT OF IMPACT FEE ACCOUNTS; APPROPRIATION OF IMPACT FEE FUNDS; AND REFUNDS 22
(A) Impact Fee Accounts 22
(B) Appropriation of Impact Fee Funds 22
(C) Procedure for Appropriation of Impact Fee Funds 23
(D) Refunds 23

Section 4. APPEALS 25
(A) Initiation 25
(B) Burden of Proof 26
(C) Contents 26
(D) Decision 26
(E) APPEAL OF COUNTY COMMISSION DECISION 26

Section 5. EXEMPTIONS/WAIVERS 27
(A) Filing of Application 27
(B) Effect of Grant of Exemption/Waiver 27
(C) Development Agreements 27

Section 6. ANNUAL REVIEW AND ADJUSTMENTS 27
(A) Annual Review 27
(B) Annual Adjustments 28

Section 7. ENFORCEMENT 29

Section 8. SEPARABILITY AND CONSTRUCTION 30
(A) Liberal Construction 30
(B) Separability 30

WHEREAS, pursuant to the Local Powers Act, West Virginia Code § 7-20-1 *et seq.*, Jefferson County, West Virginia (the "County") is authorized to establish and impose impact fees on new development to offset costs to the County associated with providing necessary public facilities and services, the demand for which is created by new development; and

WHEREAS the Jefferson County Commission (the "County Commission") has studied the necessity for and implications of the adoption of impact fees for various public facilities and retained Tischler & Associates, Inc. to prepare an impact fees report to consider impact fees, and Tischler & Associates, Inc. has prepared an Impact Fees Report, dated June11, 2003; and

WHEREAS

(1) The residents, taxpayers and users of County facilities and services have contributed significant funds in the form of taxes and user charges toward the cost of existing County facilities and services, which represent a substantial and incalculable investment;

(2) The County is experiencing an increased demand for development which is causing a strain on tax revenues and user charges at existing levels and impairing the ability of taxpayers, residents and users to bear the cost of increased demand for County facilities and services; and

(3) Sound fiscal policy in the efficient administration of County government requires that the imposition of taxes and user charges be commensurate to the actual yearly cost of County facilities and services; and

WHEREAS the County Commission adopted a comprehensive plan in 1994 which is currently being updated; and

WHEREAS the County has adopted a comprehensive zoning ordinance and a subdivision control ordinance, and has adopted the state building code as part of the County building permit review system; and

WHEREAS the population growth rate of the County has exceeded one percent (1%) annually, averaged over the years between 1990 and 2000; and

WHEREAS the Impact Fees Report has determined that the population of the County is expected to grow from approximately 44,367 in 2002 to approximately 54,091 in 2012, with a growth in the number of housing units from 18,558 units to 23,198 units over the same period; and

WHEREAS the County Commission has developed a Capital Improvements Program in order to more definitively project the specific public service demands that will be imposed upon the County by the projected growth, and maintains a list of sites within the County with development potential; and

WHEREAS, based on the population, housing units, commercial square footage, and land use projections as well as the public service needs associated with the projected level of growth, the County Commission has determined that impact fees are an appropriate and necessary technique, to be used in conjunction with other available public service financing techniques, to ensure that adequate public facilities are provided to new growth while the County maintains the level of service (LOS) standards for existing County residents; and

WHEREAS the County Commission has determined that impact fees will be necessary for construction of public schools and related facilities and may, in the future, determine that impact fees will be necessary for other public facilities; and

WHEREAS the County Commission has found and determined that impact fees for public facilities, all enacted pursuant to the authority granted by the Local Powers Act, will have certain common characteristics and that the County will, therefore, benefit from the adoption and use of a uniform procedure for the imposition, calculation, collection, expenditure and administration of all of the adopted impact fees; and

WHEREAS the use of uniform procedures, to the extent possible, will be more efficient and expedient for both the County and applicants for development permits than separate procedures for each impact fee; and

WHEREAS the use of uniform procedures will simplify the implementation and administration of impact fees; and

WHEREAS the use of uniform procedures will best ensure that impact fees are earmarked and expended for the public facilities for which they were imposed and collected; and

WHEREAS all monies collected from impact fees shall be deposited in interest-bearing accounts which clearly identify the category, account, fund and public service for which such fee was imposed; and

WHEREAS each such category, fund or account shall be accounted for separately; provided, however, that the determination as to whether the accounting requirement shall be by category, account or fund and whether by aggregate or individual development shall be within the discretion of the County; and

WHEREAS any interest or other income earned on monies deposited in said interest-bearing accounts shall be credited to the applicable account; and

WHEREAS the County Commission has found and determined that impact fees are an appropriate technique for funding public facilities; and
WHEREAS the County Commission has determined that the impact fee amounts to be imposed bear a reasonable relationship and are "roughly proportional" to the impact on public services created by new development; and

WHEREAS the County Commission has found that the public services for which impact fees are collected are necessary to protect the health, safety, and general welfare of the citizens of Jefferson County; and

WHEREAS the County Commission recognizes its obligation and authority to provide the public services for which impact fees are collected;

WHEREAS the County has or will, for each impact fee, determine that the payment of the impact fee and its expenditure for needed public facilities will result in a direct beneficial use to the development on which it is imposed; and

WHEREAS the County has or will develop and adopt a schedule of impact fees for each public service; and

WHEREAS the County has provided a credit (offset) mechanism in cases where the proposed development has been subject to the required dedication of public sites and/or public improvements, or payment in lieu thereof, for which impact fees are also being imposed; and

WHEREAS the County has determined that the impact fee amounts bear a reasonable relationship to the burden imposed upon the County to provide the additional public facilities to serve the new development at the appropriate level of service (LOS) standard; and

WHEREAS the County has developed fee calculation methodologies which will be imposed in an equitable and non-discriminatory manner.

NOW, THEREFORE, BE IT ORDAINED by the County Commission of Jefferson County, West Virginia as follows:

Section 1. IN GENERAL

(A) Purpose and Intent

The purposes and intent of these Impact Fee procedures are:

(1) To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new development;

(2) To ensure that new development contributes its fair share towards the costs of public facilities reasonably necessitated by such new development;

(3) To ensure that new development reasonably benefits from the provision of the public facilities provided with the proceeds of impact fees;

(4) To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

(B) Rules of Construction

(1) The word "shall" is always mandatory and not discretionary and the word "may" is permissive.

(2) Words used in the present tense shall include the future; and words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; use of the masculine gender shall include the feminine gender.

(3) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

(4) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either…or," the conjunction shall be interpreted as follows:

(a) "And" indicates that all the connected terms, conditions, provisions or events shall apply.

(b) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(c) "Either…or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(5) The words "includes" and "including" shall not limit a term to the specific example but are intended to extend its meaning to all other instances or circumstances of like kind or character.

(6) Words not defined in this Ordinance shall have the meaning ascribed to them in the Jefferson County Zoning Ordinance, as amended. Definitions of land use not defined in this ordinance or in the Jefferson County Zoning Ordinance shall have the meaning as defined in the Impact Fee Calculation Methodology Report.
[Amended by Act of the County Commission, effective January 20, 2005]

(C) Definitions

(1) **Accessory Agricultural Dwelling Unit:** a dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building and meets all of the following criteria, unless otherwise approved by the Board of Zoning Appeals: (a) is limited in size to a maximum of 1,700 heated square feet, gross floor area; (b) is located on a property for which the primary use is an agricultural use as defined by the Zoning Ordinance; (c) is located on a property of at least 10 acres in area; and (d) is limited to use by a person (and family) who performs agricultural work on the property or acts as a caretaker for the property. An Accessory Agricultural Dwelling Unit shall have a valid and active Zoning Certificate pursuant to the Jefferson County Zoning and Development Review Ordinance.
[Amended by Act of the County Commission, effective June 20, 2016]

(2) **Applicant:** any person who files an application with the County for a building permit, or for property that is located within a municipality which issues building permits, or any person who files an application with the County for the payment of impact fees.
[Amended by Act of the County Commission, effective November 6, 2003]

(3) **Appropriation or to appropriate:** an action by the County to identify specific public facilities for which impact fee funds may be utilized. Appropriation shall be limited to: Capital Improvements Program; execution of a contract or other legal encumbrance for construction of a public service using impact fee funds in whole or in part; and/or actual expenditure of impact fee funds through payments made from a impact fee account.

(4) **Average Market Value:** The value of a home as determined by the average cost data listed in the Residential Housing Index created pursuant to the provisions of W.Va. Code § 11-1-2b.

(5) **Building Permit:** the official document or certificate issued by the County or any Municipality under the authority of ordinance or law authorizing the commencement of construction of any building or other structure or part thereof, or authorizing a change in use.

(6) **Business Park:** a group of flex-type buildings served by a common roadway system. The tenant space includes a variety of uses with an average mix of 20-30% office/commercial and 70-80% industrial/warehousing.

(7) **Capital Improvement:** as defined in West Virginia Code §7-20-3 (a).

(8) **Commercial (use):** an establishment that engages in the buying and/or selling of commodities and/or services. A shopping center is a subset of this category and is typified as an integrated group of commercial establishments that is planned, developed, owned, and managed as a unit. A shopping center provides on-site parking facilities sufficient to serve its own parking demands.
[Amended by Act of the County Commission, effective January 20, 2005]

(9) **County:** Jefferson County, West Virginia. and/or its County Government.
[Amended by Act of the County Commission, effective November 6, 2003]

(10) **County Attorney:** the Prosecuting Attorney of the County.

(11) **County Commission:** the County Commission of Jefferson County, West Virginia.

(12) **County Government:** the County Commission and all staff of the County.

(13) **Development:** the subdivision of land; or the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure.

(14) **Development Agreement**: a written agreement between the County and a developer regarding the development of a specific parcel of property.
[Amended by Act of the County Commission, effective November 6, 2003]

(15) **District or Impact Fee District:** a defined geographic area or subarea of the County within which particular public facilities are provided and in which impact fees will be collected, appropriated, and expended for public facilities serving new development within such area or subarea.

(16) **Dwelling Unit:** one room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and containing independent cooking, plumbing and sleeping facilities. Dwelling Unit does not include recreational vehicles propelled by an engine on the same chassis.
[Amended by Act of the County Commission, effective November 6, 2003]

(17) **Extreme Hardship** - For the purposes of this ordinance, any one of the following conditions shall qualify as extreme hardship cases and such qualifying cases may be considered by the County Commission as eligible for an extreme hardship exemption:

(1) Cases where the total household income is less than or equal to the Poverty Guidelines applicable to Jefferson County, West Virginia and which are defined by the United States Department of Health and Human Services, and which Poverty Guidelines are adopted by the United States Department Housing and Urban Development. In determining total household income, the Impact Fee Coordinator shall use methods as outlined by the United States Department of Housing and Urban Development; or

(2) Cases where the householder, as defined by the United States Bureau of the Census, has been classified as being totally and/or permanently disabled and is receiving disability payments from the Social Security Administration; or

(3) Cases where at least fifty per cent (50%) of the cost of the applicant's new or replacement home is being funded by a Community Housing Development Organization as recognized by the State of West Virginia Housing Development Fund, or other comparable grant or public funding mechanism. [Amended (by deleting the original Clause 15 and renumbering as Clauses 16-33), by Act of the County Commission, effective February 23, 2007.]

(18) **Impact Fee Calculation Methodology Report:** a report titled Impact Fees prepared by Tischler & Associates, Inc., dated June 11, 2003, and subsequently ammended, which sets forth the methodology and basis for the calculation of the impact of new development and the proper and proportional amount of the impact fee to be assessed against new development.
[Amended (by deleting the original Clause 15 and renumbering as Clauses 15-32), by Act of the County Commission, effective November 6, 2003.]
[Amended by Act of the County Commission, effective January 20, 2005]

(19) **Impact Fee:** the charge or fee levied or imposed on new development on a *pro rata* basis in connection with and as a condition of the issuance of a building permit to fund a portion of the costs of capital improvements for a public facility or service in accordance with the provisions of this Ordinance and the applicable specific Impact Fee Ordinance. [see note clause 15]

(20) **Impact Fee Agreement:** an agreement entered into by and between an applicant and the County Commission at the time the impact fee is paid.[see note clause 15]

(21) **Impact Fee Coordinator:** the person appointed by the County Commission to administer the collection, imposition, management and all other aspects of Impact Fees.[see note clause 15]

(22) **Manufacturing:** any use involving the use of mechanical power and machinery to produce products from raw materials, to prepare or alter materials for use in a finished product, or to assemble parts into products. Light industrial facilities are considered a subset of this category and usually employ fewer than 500 persons and have an emphasis on activities orhter than manufacturing. Typical light industrial activities include, but are not limited to printing plants, material-testing laboratories, and

assembling of data processing equipment. As defined in the Institute of Transportation Engineers *Trip Generation* manual, light industrial facilities generate more vehicular traffic than general manufacturing facilities.
[see note clause 15]
[Amended by Act of the County Commission, effective January 20, 2005]

(23) **Multifamily:** a single building or structure containing three or more dwelling units. but excluding any structure defined as a townhouse.[see note clause 15]

(24) **Municipality:** any and all of the following: Corporation of Charles Town, Corporation of Ranson, Corporation of Bolivar, Corporation of Harpers Ferry, and Corporation of Shepherdstown, or any municipal corporation hereafter established in the County.[see note clause 15]

(25) **New Development:** any new construction, reconstruction, redevelopment, rehabilitation, structural alteration, structural enlargement, structural extension, or new use which requires a building permit; any change in use of an existing non-residential building, structure or lot requiring any form of County approval, and which increases the demand for one (1) or more public facilities or services as herein defined. [see note clause 15]

(26) **Non-Residential:** any use or development that is not a residential use, and includes commercial, industrial and institutional uses.[see note clause 15]

(27) **Office (use):** a building used primarily for offices that may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper, or candy stand.[see note clause 15]

(28) **Offset:** a credit of certain required impact fees in exchange for the provision by the applicant of, among other things, monetary contributions, dedication of land, or actual construction of all or part of a public service consistent with the County's Capital Improvement Program.[see note clause 15]
[Amended twice by Act of the County Commission, effective November 6, 2003.]

(29) **Planning Director:** the Executive Director of Planning, Zoning and Engineering, or his designee.[see note clause 15]

(30) **Public Facility or Service:** public improvements and facilities provided by the County and necessary to accommodate new development and necessary to protect the health, safety and general welfare of the citizens of the County; which public services include, but are not limited to, public schools.[see note clause 15]

(31) **Public Service Expenditures:** amounts appropriated in connection with the planning, design, engineering and construction of public facilities; including planning, legal, appraisal and other costs related to the acquisition of land, financing and development costs; the costs of compliance with purchasing procedures and applicable

administrative and legal requirements; and all other costs necessarily incident to provision of public facilities.[see note clause 15]

(32) **Residential:** any use or development that includes or results in the creation of a Dwelling Unit.[see note clause 15]

(33) **Residential Housing Index:** The single dwelling residential housing index created by the Tax Commissioner in accordance with the provisions of W.Va. Code § 11-1-2b.

(34) **Single-Family Detached Dwelling:** a detached building designed or used exclusively for only one dwelling unit.[see note clause 15]

(35) **Townhouse:** a dwelling unit which is located in a structure which is attached by one or more vertical party walls to one or two other structures, each designed for and occupied exclusively by only one dwelling unit.[see note clause 15]

(36) **Warehousing:** a use engaged in bulk storage of wholesale or distribution materials, inventory, equipment, supplies, or other materials not stored for immediate, on-site retail sale.[see note clause 15]

(D) General Provisions; Applicability

(1) **Term.** This Ordinance and the procedures established herein shall remain in effect unless and until repealed, amended or modified by the County Commission in accordance with applicable state law and the County's code, ordinances and resolutions.

(2) **Affected Area.**

(a) **County Wide Application.** This Ordinance shall apply to all new development within the County, including new development which takes place within the boundaries of any Municipality. Impact fees for particular public facilities may apply to less than the entire County, as set forth in the ordinance adopting each specific Impact Fee.

(b) **Impact Fee District.** Impact fees for certain public facilities shall be collected and spent within a defined geographical area which may be all or less than all of the County, as set forth in the ordinance adopting a specific impact fee.

(c) **Identification.** The affected area, including Impact fee Districts, if applicable, shall be described and/or mapped in the particular impact fee ordinance.

(d) **Change in Boundaries of Impact Fee Districts.** The County Commission may amend the boundaries of the Impact fee Districts at such times as may be deemed necessary to carry out the purposes and intent of this Ordinance and applicable legal requirements for use of the impact fees.
[Amended by Act of the County Commission, effective November 6, 2003]

(3) **Type of Development Affected.** This Ordinance shall apply to all development after the effective date of this Ordinance.

(4) **Type of Development Not Affected.** This Ordinance shall not apply to:

(a) **Previously-Issued Building Permits.** No impact fee shall be imposed on new development for which a building permit has been issued prior to the effective date of this Ordinance.
[Amended by Act of the County Commission, effective November 6, 2003]

(b) **No Net Increase in Habitable Dwellings.** No impact fee shall be imposed on any new residential development that does not result in the creation of one or more additional habitable dwelling units. No impact fee shall be imposed on the replacement of a mobile home or a single-family dwelling unit by another mobile home or single-family dwelling unit. The applicant must demonstrate that the dwelling to be replaced was in habitable condition within 36 months of the date of application for a building permit for the replacement dwelling. [Amended by Act of the County Commission, effective February 23, 2007.]

(c) **No Net Increase in Non-Residential Square Footage.** No impact fee shall be imposed on any new non-residential development that does not result in the creation of new square footage, unless the new non-residential development is to a different category of development, as defined herein, which results in an increase in the demand for public facilities for which impact fees are being imposed.

(d) **Other Uses.** No impact fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in the demand for public facilities.

(e) **Public Facilities Provided By Government.** No impact fees shall be imposed on building permits issued for the construction of public facilities by the State of West Virginia, the County Government or any municipality.

(f) **Development Agreements:** No impact fees shall be imposed on development projects that are the subject of a development agreement containing provisions in conflict with this Ordinance, but only to the extent of the conflict or inconsistency.
[Amended by Act of the County Commission, effective November 6, 2003]

(g) **Extreme Hardship Exemption** – The County Commission may agree to consider exemptions from residential impact fee payments for extreme hardship as defined in Section (1)(C)(15) of this ordinance. An applicant for an extreme hardship waiver shall:

(1) Complete the Hardship Exemption Form available in the Department of Impact Fees;

(2) Provide all documentation requested in the Hardship Exemption Form; and

(3) Be entitled to a Hardship Exemption hearing before the County Commission during which hearing the County Commission shall hear the merits of an exemption application and shall act to:

(a) Grant the exemption;

(b) Deny the exemption based on the evidence provided; or

(c) Direct that the hearing be postponed for the purpose of acquiring additional information and/or documentation.

The County Commission may grant any number of exemptions for extreme hardship *provided* that the total amount of impact fees deferred by such grants in any given fiscal year does not exceed the interest accrued by the appropriate impact fee accounts during that same fiscal year. [Amended by Act of the County Commission, effective February 23, 2007]

(5) **Effect of Payment of Impact Fees on Other Applicable County Land Use, Zoning, Platting, Subdivision or Development Regulations.**
[Amended by Act of the County Commission, effective November 6, 2003]

(a) The payment of impact fees shall not entitle the applicant to a building permit unless all of the applicable land use, zoning, planning, platting, subdivision or other related requirements, standards and conditions of the County Government have been met. Such other requirements, standards and conditions are independent of the requirement for payment of a impact fee.

(b) Neither this Ordinance nor the specific impact fee ordinances for particular public facilities shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the County zoning, subdivision or building ordinances or other development regulations, which shall be operative and remain in full force and effect without limitation.

(6) **Amendments.** This Ordinance, and any ordinance adopting impact fees for any particular public facility pursuant to this Ordinance, may be amended from time to time by the County Commission; provided, however, that no such amendment shall be adopted without a written report detailing the reasons and need for the impact fee revision nor without proper notice and public hearing.
[Amended by Act of the County Commission, effective November 6, 2003]

Section 2. PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF IMPACT FEES

(A) In General

An applicant shall be notified by the County Government of the applicable impact fee requirements at the time of application for a building permit via the issuance of an Impact Fee Calculation Form to the applicant. Impact fees shall be calculated by the County at the time of application for a building permit and shall be paid by the applicant prior to the issuance of a building permit.

(B) Calculation

(1) Upon receipt of an application for a building permit, the Impact Fee Coordinator shall determine (a) whether it is a residential or non-residential use, (b) the specific category of residential or non-residential development, if applicable, (c) if residential, the number of new dwelling units, (d) if non-residential, the number of new or additional square feet of gross floor area of the proposed use, and, (e) the Impact Fee District in which the new development is located, if applicable.

(2) Upon receipt of an application for a building permit, the Impact Fee Coordinator shall determine whether the development involves a change in use. In such cases, the impact fee due shall be based only on the incremental increase in the fee for the additional public facilities needed for the change in use. An applicant shall not be entitled to a refund where the change of use is to a category of development which imposes a lower demand on public facilities.

(3) After making the determinations described in Section 2(B)(1) or (2), the Impact Fee Coordinator shall calculate the impact fee by multiplying the amount of the applicable impact fee times the units of development, incorporating any applicable offset as defined in this procedures ordinance.
[Amended by Act of the County Commission, effective November 6, 2003]

(4) If the type of land use proposed for new development is not expressly listed in the particular impact fee ordinance and schedule, the County Government shall:

(a) identify the most similar land use type listed and calculate the impact fee based on the impact fee for the land use identified; or

(b) identify the broader land use category within which the specified land use would apply and calculate the impact fee based on the impact fee for that land use category; or

(c) at the option of the applicant or Impact Fee Coordinator, determine the basis used to calculate the fee pursuant to an independent impact analysis for impact fee calculation. When initiated by the applicant, this option shall be requested on a form provided by the Impact Fee Coordinator for such purpose. Whether initiated by the applicant or the Impact Fee Coordinator, the following shall apply:

1. The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the Impact Fee Coordinator, and, if appropriate, other County staff or officials, prior to payment of the fee.

2. The independent impact analysis shall measure the impact that the proposed development will have on the particular public service at issue, and shall be based on the same methodologies used in the Impact Fee Calculation Methodology Report, and shall be supported by professionally acceptable data and assumptions.

3. After review of the independent impact analysis submitted by the applicant, the Impact Fee Coordinator shall accept or reject the analysis and provide written notice to the applicant of its decision on a form provided for such purpose within forty-five (45) days. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.

4. The final decision of the Impact Fee Coordinator may be appealed pursuant to Section 4.

5. An applicant may request a non-binding estimate of impact fees due for a particular new development at any time by filing a request on a form provided for such purpose by the Impact Fee Coordinator; provided, however, that such estimate may be subject to change when a formal application for a building permit for new development is made. Such non-binding estimate is solely for the benefit of the prospective applicant and shall in no way bind the County nor preclude it from making amendments or revisions to any provisions of this Ordinance, the specific impact fee implementing ordinances, or the impact fee schedules.

6. The calculation of impact fees due from a multiple-use new development shall be based upon the aggregated demand for each public service generated by each land use type in the new development.

7. The calculation of impact fees due from a phased new development shall be based upon the demand generated by each specific land use within the phase of development for which a separate building permit is requested.

8. Impact fees shall be calculated based on the impact fee amount in effect at the time of application for a building permit.

(C) Offsets/Credits

(1) Offsets or credits against the amount of an impact fee due from a new development shall be provided for, among other things, contributions made concurrently or to be made in the future in cash; or made, prior to the effective date of this ordinance, pursuant to a written agreement entered into with the County Government; or by dedication of land; or by actual construction of all or part of a public service by the affected property owner for public services meeting or exceeding the demand generated by the new development, and the contribution is determined by the Impact Fee Coordinator to be a reasonable substitute for the cost of public facilities which are included in the methodology set forth in the Impact Fee Calculation Methodology Report. Any agreement to make future payments in cash shall be accompanied by a cash bond, letter of credit, or other surety in a form satisfactory to the County Attorney in an amount equal to the offset or credit as laid forth in the written agreement entered into with the County Government. Offsets shall be adjusted for time-price differentials in accordance with the requirements of W.Va. Code § 7-20-5.
[Amended by Act of the County Commission, effective July 8, 2004.]

(2) The amount of the excess contribution shall be determined by the Impact Fee Coordinator upon receipt of an application form requesting an offset; provided, however, that (a) the County Government will make no reimbursement for excess contributions unless and until the particular public service fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the County's Capital Improvements Program and further provided that (b) the excess contribution may not be transferred or credited to any other types of impact fees calculated to be due from that development for other type of public facilities. The determination of the eligibility for and the amount of the credit shall be made by the County on a form provided for such purposes by the Impact Fee Coordinator. If the applicant contends that any aspect of the Impact Fee Coordinator's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to Section 4 of this Ordinance.
[Amended by Act of the County Commission, effective November 6, 2003]

(3) After the effective date of this Ordinance, no offset shall be allowed unless the County Commission has approved and accepted the contribution, dedication or expenditure before it is made.

(4) Where an applicant has dedicated land to the County or constructed a public facility in accordance with the provisions of this Section, the amount of offset or credit shall be determined in accordance with the following:

(a) In order for a credit or offset to be applied for the construction of a public facility or the dedication of land, the applicant must demonstrate that the dedicated land or constructed public facility will reduce the need for the specific

public facility, and that the public facility is consistent with the County's adopted capital improvement plan and the comprehensive plan.

(b) Applications for an offset must be made on a form provided by the Impact Fee Coordinator for such purposes. Upon receipt of a completed application, the Impact Fee Coordinator and other appropriate staff and/or consultants shall review the application, as well as such other information and evidence as may be deemed relevant, and the Impact Fee Coordinator shall forward a report as to whether an offset is proper based on the provisions of this Ordinance to the County Commission.

(c) Based on the report of the Impact Fee Coordinator, the provisions of this Ordinance, the capital improvement plan, comprehensive plan, and the impact fee calculation methodology report, the Impact Fee Coordinator shall make a recommendation to the County Commission whether to accept, reject, or modify the proposed offset/credit.
[Amended by Act of the County Commission, effective July 8, 2004.]

(d) The amount of the offset is to be calculated as follows:

1. For construction of public facilities, the offset shall be equal to the cost of construction as determined by the County using Standard Unit Costs or other such standards-based methodlogy, or the amount of Impact Fees due, whichever is less.
[Amended by Act of the County Commission, effective July 8, 2004.]

2. Where the applicant has dedicated land to the County, the offset is to be based on either the assessed value of the proffered land, based on the most recent County property appraisal, or the fair market value of the land as determined by a certified property appraiser hired and paid for by the applicant. If the latter option is chosen, the Impact Fee Coordinator may reject the applicant's appraisal, in which case the County shall hire and pay for a second appraiser to appraise the property. If either party rejects the second appraisal, a third appraisal shall be performed by an appraiser chosen by the first and second appraisers, the costs of which are to be shared equally by the County and the applicant. The third appraisal is binding on both parties. All appraisals must be consistent with generally-accepted appraisal techniques and the date of valuation must be the date of transfer to the County.
[Amended by Act of the County Commission, effective November 6, 2003]

3. Only the original applicant or the applicant's legal successor in title to the real estate shall be entitled to the offset.
[Amended by Act of the County Commission, effective November 6, 2003]

(5) Offsets for dedication of land or provision of public facilities shall be applicable only as to impact fees imposed for the same types of public facilities that are proposed to be dedicated or provided. Even if the value of the dedication of land or

provision of a public service exceeds the impact fee due for the type of public service, the excess value may not be transferred to impact fees calculated to be due from the applicant for other types of public facilities for which impact fees may be imposed. Offsets may, however, be transferred to the same applicant or to other applicants for new development that are proposed within the final approved platted area of the same development and for the same type of public service.

(D) Collection

(1) The date on which impact fees may first be collected shall not be sooner than the sixty-first (61st) day after the adoption of any impact fee ordinance.
[Amended by Act of the County Commission, effective November 6, 2003]

(2) The County shall collect all applicable impact fees prior to issuance of a building permit, or, for new development on property which is located in a Municipality which issues its own building permits, prior to the issuance of a building permit by such Municipality, and shall issue a receipt to the applicant for such payment unless:
[Amended by Act of the County Commission, effective November 6, 2003]

(a) the applicant is entitled to a full offset;

(b) the applicant is not otherwise subject to the payment of a impact fee; or

(c) the applicant has filed an appeal, and a bond or other surety in the amount of the impact fee, as calculated by the Impact Fee Coordinator and approved by the County Attorney, has been posted with the County.

(3) The County Government shall collect an impact fee prior to issuance of a building permit even if the applicant has paid impact fees at an earlier time in the development approval process, if the amount of the impact fees has increased since such prior payment. The applicant shall only be liable for the difference between the impact fees paid earlier and those in effect at the time of issuance of the subsequent building permit. Upon receipt of payment for an impact fee, the Impact Fee Coordinator, or a designee choosen by the Impact Fee Coordinator shall issue a receipt for impact fee payment.
[Amended by Act of the County Commission, effective November 6, 2003]
[Amended by Act of the County Commission, effective July 8, 2004.]

(4) No building permit shall be issued unless the applicant has complied with the provisions of this Ordinance.

(E) Impact Fee Agreements

(1) The County Attorney shall prepare a form of Impact Fee Agreement which shall contain such provisions of this Ordinance related to the collection and use of impact fees as the County Attorney determines is necessary to comply with the provisions of §7-20-8(c), West Virginia Code.

(2) At the time of payment of Impact Fees, the Impact Fee Coordinator shall prepare an Impact Fee Agreement for the specific development for which impact fees are being paid, and the applicant shall execute such Agreement.

(3) Within thirty (30) days after an Impact Fee Agreement is executed by an applicant, such Agreement shall be executed by the Impact Fee Coordinator, who shall send a copy of the fully executed Impact Fee Agreement to the applicant and retain the original executed Impact Fee Agreement.

(F) Affordable Housing Discount

(1) In accordance with the provisions of W.Va. Code § 7-20-7a, the County Commission shall provide a discounted fee schedule so as not to limit safe, decent and affordable housing.

(2) A new dwelling unit's market value shall be determined by the Assessor, using the same methods and calculations to determine market values for purposes of taxation and shall include both the dwelling and land value. The Assessor's estimate of value shall be based upon information supplied by the homeowner about the new dwelling unit during the affordable housing discount application process. The Assessor's estimate of market value is not subject to appeal and shall not be used at a later date to contest valuation for purposes of taxation.

In the case where a property is assessed as "agricultural" use, and already has a primary dwelling unit on the property, and a second dwelling unit is proposed for the sole purpose of providing an "assessory agricultural dwelling unit" (or more simply known as a farmhand dwelling); then, for the purposes of determining qualification for the Affordable Housing Discount, the assessory agricultural dwelling unit's market value shall be determined as follows:

> The market value of the structure/dwelling without any land value.
> The primary dwelling and all other structures on the property and
> all land shall not be considered.

[Amended by Act of the County Commission, effective June 20, 2016]

(3) The affordable housing discount shall be available by application only. A qualifying applicant shall be required to pay a percentage of the normal impact fee, as outlined in the following sections (4)(c) & (4)(d).

[Amended by Act of the County Commission, effective June 1, 2019]

(4) An applicant for an affordable housing discount shall:

(a) Complete the Affordable Housing Discount Application Form available from the Office of Impact Fees, and pay any applicable application processing fee, as set by the Jefferson County Commission.

(b) Provide all documentation requested on the Affordable Housing Discount Application Form.

(c) Be entitled to an affordable housing discount for a single-family detached, single-family attached, duplex unit, townhouse unit, or manufactured/mobile home, if the new dwelling unit's value is estimated to be equal to or less than 60% of the average market value for a single residential dwelling, as determined by the residential housing index issued by the State Tax Commissioner under West Virginia Code §11-1-2b.

The discounted fee schedule will be based on a lineal scale of the normal impact fee. Dwelling units valued at greater than 60% of the average market value shall pay the full amount of the normal impact fee.

(d) If the new dwelling unit is part of an apartment building or condominium consisting of three or more units, then the applicant for an affordable housing discount shall be entitled to an affordable housing discount if the new dwelling unit's appraised value is equal to or less than 40% of the average market value for a single residental dwelling, as determined by the residential housing index issued by the State Tax Commissioner under West Virginia Code §11-1-2b. The discounted fee shall be 40% of the full fee amount for apartment building and condominium dwelling units. Apartment building and condominium dwelling units valued at greater than 40% of the average market value, as determined by the residential housing index, shall pay the full amount of the normal impact fee.

The applicant shall bear the cost of an independent appraisal (selected by the Jefferson County Commission), of the apartment building or condominium complex, if deemed necessary by the Office of Impact fees. The appraised value shall be used to determine the dwelling unit's eligibility for the affordable housing discount.

[Amended by Act of the County Commission, effective June 1, 2019]

(5) If the value of the dwelling unit, as determined by the Assessor for taxation purposes, far exceeds the estimated market value, as determined by the Assessor for impact fee purposes, and the difference in value is a result of inaccurate information provided by the applicant at the time of applying for the affordable housing discount; then the applicant shall be required to pay the difference between the normal impact fee and the affordable housing impact fee that was actually paid by

the applicant. The additional impact fees due shall be paid within 30 days of written notification.

(6) If an applicant applies for an exemption pursuant to Section 1(D)(4)(b) of this Ordinance and replaces a residential dwelling that received an affordable housing discount with a dwelling unit that does not qualify for the discount within five years of receiving an affordable housing discount, the applicant shall be required to pay the difference between the discounted fee originally paid and the full amount of the impact fee in effect at the time the affordable housing discount was paid.

Section 3. ESTABLISHMENT OF IMPACT FEE ACCOUNTS; APPROPRIATION OF IMPACT FEE FUNDS; AND REFUNDS

(A) Impact Fee Accounts

The County shall establish an impact fee account for each category of public facility for which impact fees are imposed. Such account shall clearly identify the category, account, or fund for which the impact fee has been imposed. Subaccounts may be established for individual Impact Fee Districts. All impact fees collected by the County Government shall be deposited into the appropriate impact fee account or subaccount, which shall be interest bearing. All interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other County Government funds. The County Government shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited, accounted for and appropriated in accordance with this Ordinance Chapter and any other applicable legal requirements.

(B) Appropriation of Impact Fee Funds

(1) **In General.** Impact fee funds may be appropriated for capital improvements and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the County Government to finance such public facilities and public service expenditures. All appropriations from impact fee accounts shall be detailed on a form provided for such purposes and filed in the Jefferson County Sheriff's Tax Collection Office.

(2) **Restrictions on Appropriations.** Impact fees shall not be appropriated for maintenance or repair of public facilities or for operational or personnel expenses associated with the provision of public facilities or for funding any expenditure that would be classified in accounting as a maintenance or repair expense. Impact fees shall be appropriated only:

(a) for the particular public service for which they were imposed, calculated and collected;

(b) within the Impact Fee District where collected; and

(c) within six (6) years after the date of collection, unless such time period is extended as provided herein.

(3) **Appropriation of Impact Fee Funds Outside of District Where Collected.** Where the County is divided into impact fee districts for a particular category of impact fees, impact fee funds may be appropriated for a public service located outside of the District where collected only if the demand for the public service is

generated in whole or in part by the new development or if the public service will actually serve the new development.

(4) **Expenditure of Impact Fee Funds Beyond Six (6) Years of Collection.** Notwithstanding paragraph 2 of this subsection (B), impact fee funds may be expended more than six (6) years from the date of collection if there are extraordinary and compelling reasons for the extension beyond six (6) years. An extraordinary and compelling reason may be found by the County Commission where the appropriation is for a public facility that requires more than six (6) years to plan, design and construct, and the demand for the public facility is generated in whole or in part by the new development, or if the public facility will actually serve the new development. The County Government shall document compliance with the provisions of this paragraph.

(C) Procedure for Appropriation of Impact Fee Funds

(1) Each year the County shall identify public facility projects anticipated to be funded in whole or in part with impact fees. The public facilities shall be so identified based upon the impact fee annual review set forth in Section 6 of this Ordinance, and such other information as may be relevant, and shall be part of the County's capital improvements planning process and may be part of the County's annual budget. Impact fees shall only be collected for projects identified in the County's Capital Improvements Plan.
[Amended by Act of the County Commission, effective July 8, 2004.]

(2) Such identification of public facilities shall be consistent with the provisions of this Ordinance, the particular impact fee ordinances, other applicable legal requirements, and any guidelines adopted by the County Commissioners.

(3) The County Commissioners may include public facilities funded with impact fees in the County's annual budget and Capital Improvements Program. If included, the description of the public facility shall specify the nature of the facility, the location of the public facility, the capacity to be added by the public facility, the service area of the public facility, the need/demand for the public facility and the anticipated timing of completion of the public facility.

(4) The County Commissioners shall verify that adequate impact fee funds are or will be available from the appropriate impact fee account for the particular public facility.
[Amended by Act of the County Commission, effective November 6, 2003]

(D) Refunds

(1) Eligibility for Refund.

(a) **Expiration or Revocation of Building Permit.** An applicant who has paid an impact fee for a new development for which the necessary building permit has expired or for which the building permit has been revoked prior to construction shall be eligible to apply for a refund of impact fees paid. The refund application shall be made on a form provided by the County Government for such purposes.

(b) **Failure of County to Appropriate Impact Fee Funds Within Time Limit.** The current property owner may apply for a refund of impact fees paid by an applicant if the County Government has failed to appropriate the impact fees collected from the applicant within the time limit established in subsection 3(B)1. The refund application shall be made on a form provided by the County for such purposes. If the County Commission has failed to expend any impact fee within the time limits set forth in subsection 3(B)1, the County Commission shall notify the payor of such impact fee, by first class mail in accordance with the provisions of West Virginia Code §7-20-9, at the last known address of such payor, of the right to apply for a refund in accordance with the provisions of this Section 3(D).

(c) **Abandonment of Development After Initiation of Construction.** An applicant who has paid a impact fee for a new development for which a building permit has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.

(2) **To Whom Refunds Paid.** Except as provided in paragraph 1(a) and 1(c) of this subsection, refunds shall be made only to the current owner of property for which impact fees were paid, credited or offset.
[Amended by Act of the County Commission, effective November 6, 2003]

(3) **Processing of Applications for a Refund.** Applications for a refund shall be made on a form provided by the Impact Fee Coordinator for such purposes and shall include all information required in paragraphs 5 or 6 of this subsection, as appropriate. Upon receipt of a complete application for a refund, the Impact Fee Coordinator shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Impact Fee Coordinator.

(4) **Refunds Because of Abandonment.** Applications for refunds due to abandonment of a new development prior to completion shall be made on forms provided by the Impact Fee Coordinator and shall be made within sixty (60) days following expiration or revocation of the building permit. The applicant shall submit the following: (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the impact fees paid by public facility category and receipts evidencing such payments, and (c) documentation evidencing the expiration or

revocation of the building permit or approval of demolition of the structure pursuant to a valid County Government-issued demolition permit. Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the County Government in calculating the amount of the refunds.

(5) **Refunds Due to Failure to Appropriate Funds.** Applications for refunds due to the failure of the County Government to appropriate impact fees collected from the applicant within the time limits established in subsection 3(B)1 shall be made on forms provided by the Impact Fee Coordinator and shall be filed within one (1) year following the expiration of such time limit. The applicant shall submit: (a) evidence that the applicant is the property owner or the duly designated agent of the property owner, (b) the amount of the impact fees paid by public service category and receipts evidencing such payments, and (c) description and documentation of the County's Government failure to appropriate impact fee funds for relevant public facilities.

(6) **Methods of Refunds.** Pursuant to Secton 3 (D)(2), the County Government may, at its option, make refunds of impact fees by (a) direct payment, (b) offsetting such refunds against other impact fees due for the same category of public facilities for new development on the same property, or (c) other means subject to agreement with the property owner.
[Amended by Act of the County Commission, effective November 6, 2003]

Section 4. APPEALS

(A) Initiation

(1) An appeal from any decision of a County official pursuant to this Ordinance shall be made to the County Commission by filing a written appeal on the appropriate County Government form with the County Clerk within thirty (30) days following the decision which is being appealed. The County Commission may appoint a hearing officer to hear the appeal, in which case the hearing officer shall have the authority to conduct hearings as required by this Ordinance. The hearing officer shall take sworn testimony, receive evidence and exhibits, rule on evidentiary objections, cause the testimony to be taken by stenographic reporter or electronic recording device and make proposed findings of fact which the County Commission may adopt or the County Commission may substitute its own findings of fact in support of its decision.

(2) If the notice of appeal is accompanied by a cash bond, letter of credit or other surety in a form satisfactory to the County Attorney in an amount equal to the impact fee calculated by the Impact Fee Coordinator to be due, a building permit may be issued to the new development.

(3) The filing of an appeal shall not stay the imposition or the collection of the impact fee as calculated by the County Government unless a cash bond or other sufficient surety has been provided.

(B) Burden of Proof

The decision of a County official or County Commission pursuant to this ordinance shall enjoy the presumption of correctness. The burden of proof shall be on the appellant to demonstrate that the decision of the County official or County Commission is clearly erroneous or contrary to law.

(C) Contents

All appeals shall detail the specific grounds therefor and all other relevant information and shall be filed on a form provided by the County Government for such purposes.

(D) Decision

(1) The County Commission shall:

(a) determine whether there is an error in an order, requirement or decision made by a County official in the enforcement of this Ordinance, and/or

(b) determine whether the fee would amount to a taking of private property or otherwise violate the State and federal constitutional rights of the applicant.

(2) Based on the information provided at the hearing, the County Commission shall reverse or affirm, in whole or in part, or modify, the order, requirement or decision of the County official appealed from, and make such order, requirement, decision or determination as the County Commission considers necessary.
[Amended by Act of the County Commission, effective November 6, 2003]

(3) The County Commission shall render a decision on the appeal within ninety (90) days after the filing of the appeal.
[Amended by Act of the County Commission, effective November 6, 2003]

(E) APPEAL OF COUNTY COMMISSION DECISION

The applicant may appeal any decision of the County Commission pursuant to this Ordinance, by Writ of Certiorari filed within thirty (30) days of the decision of the County Commission.

Section 5. EXEMPTIONS/WAIVERS

(A) Filing of Application

Petitions for exemptions from the application of the provisions of this Ordinance or for waivers from specific impact fees shall be filed with the Impact Fee Coordinator.

(B) Effect of Grant of Exemption/Waiver

(1) **Grant of Waiver.** If the County Commission grants a waiver in whole or in part of impact fees otherwise due, the amount of the impact fees waived shall be provided by the County from non-impact fee funds, and such funds shall be deposited in the appropriate impact fee account within a reasonable period of time consistent with the applicable County Capital Improvements Program.

(2) **Effect of Exemption.** If an exemption from the application of the provisions of this Ordinance is authorized by the terms of a specific impact fee ordinance, the County Government shall not be required to provide any funds to cover the cost of the impact fee which would have been due without such exemption.

(C) Development Agreements

Nothing herein shall be deemed to limit the County's Government authority or ability to enter into development agreements with applicants for new development who may provide for dedication of land, payments in lieu of impact fees, or actual infrastructure improvements. Such development agreements may allow offsets against impact fees for contributions made concurrently or to be made in the future in cash, or by assessments or dedication of land or by actual construction of all or part of a public facility by the affected property owner.
[Amended by Act of the County Commission, effective November 6, 2003]

Section 6. ANNUAL REVIEW AND ADJUSTMENTS

(A) Annual Review

(1) At least once every year not later than January 31st of each year, beginning in the year 2005, and prior to County Commission's adoption of the Annual Budget and Capital Improvements Program, the Impact Fee Coordinator or a designee chosen by the Impact Fee Coordinator shall coordinate the preparation and submission of an Annual Report to the County Executive and County Commission on the subject of impact fees.
[Amended by Act of the County Commission, effective July 8, 2004.]

(2) The Annual Report may include any or all of the following:

(a) recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting impact fees for particular public facilities;

(b) proposed changes to the County Capital Improvements Program, including the identification of additional public facilities anticipated to be funded wholly or partially with impact fees;

(c) proposed changes to the boundaries or creation of Impact Fee Districts, if applicable;

(d) proposed changes to impact fee schedules as set forth in the ordinances imposing and setting impact fees for particular public facilities;

(e) proposed changes to level of service standards for particular public facilities;

(f) proposed changes to any impact fee calculation methodology;

(g) proposed changes to the population, housing, land use, persons per household or non-residential development projections included in the Impact fee Calculation Methodology Report and upon which the impact fee amounts have been determined; or

(h) other data, analysis or recommendations as the Impact Fee Coordinator or appropriate designee may deem appropriate, or as may be requested by the County Commission.

(3) **Submission of Impact Fee Annual Report and County Commission Action.** The Impact Fee Coordinator or the Impact Fee Coordinator's designee shall submit the Annual Report to the County Commission, who shall receive the Annual Report and which may take such actions as they deem appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

(B) Annual Adjustments

(1) On April 1, 2005, and on April 1 of each year thereafter in which this Ordinance is in effect, the amount of any impact fee may be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent Quantity and Price Indexes for Gross Government Fixed Investment by Type, published by the United States Bureau of Economic Analysis, using the most appropriate type of New Building construction for each specific Impact Fee.

(2) The Impact Fee Coordinator shall make the automatic annual adjustment unless the County Commission, in its Annual Review, determines an alternate adjustment is appropriate.

(3) Nothing herein shall prevent the County Commission from electing to retain existing impact fees, from electing to waive the inflation adjustment for any given fiscal year, or from making any other adjustment in the amount of the impact fee which conforms with the law.

Section 7. ENFORCEMENT

(A) It is unlawful for any person or entity to enlarge, alter or change any use of property or to erect, construct, enlarge, alter, repair, move, improve, make, put together or convert any building in the County, or attempt to do so, or cause the same to be done, without first paying all impact fees imposed by this Ordinance.

(B) In the event a fee is not paid as required hereunder, the County Attorney may institute an action to recover the fee and enjoin the use of the property until the fee is paid. The person who fails so to pay shall be responsible for the costs of such suit, including reasonable attorney's fees.

(C) In the event that a Municipality issues a permit for a development for which the payment of an impact fee is required, without evidence of the payment of such impact fee to the County Government, the County Government may institute an action to recover the fee.

Section 8. SEPARABILITY AND CONSTRUCTION

(A) Liberal Construction

The provisions of this Ordinance shall be liberally construed to effectively carry on its purposes in the interest of further promoting and protecting the public health, safety and welfare.

(B) Separability

(1) If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of this Ordinance shall be deemed to be a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining provisions of this Ordinance nor impair or nullify the remainder of this Ordinance, which shall continue in full force and effect.

(2) If the application of any provision of this Ordinance to any new development is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the County Commissioners is that such decision shall be limited only to the specific new development expressly involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such decision shall not affect, impair, or nullify this Ordinance as a whole or the application of any provision of this Ordinance to any other new development.

The undersigned hereby certifies that this amended Ordinance was approved and adopted by the Jefferson County Commission on the 21st Day of March, 2019, effective June 1, 2019.

JEFFERSON COUNTY COMMISSION

ATTEST:

Jacqueline C. Shadle, County Clerk

By:

Patricia A. Noland, President

COUNTY COMMISSION WEST VIRGINIA JEFFERSON COUNTY