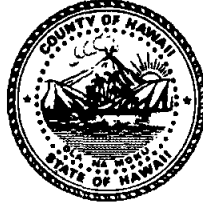


Pete Hoffmann
Council Chair
District 9 - North and South Kohala



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TO: Council Members
Hawai'i County Council

FROM:  Pete Hoffmann, Council Chair

Date: October 2, 2008

Subject: Proposed Amendments to Bill 324 Amending the Hawai'i County Code 1983
(2005 Edition, as amended) by Adding a New Chapter Relating to Impact Fees

Please find attached proposed amendments to Bill 324 relating to impact fees.

The proposed amendments are in response to specific requests by the departments of finance and planning and to bring clarity to the bill as requested by the public in the two public hearings held on August 11, 2008, and August 20, 2008. Proposed amendments are illustrated via Ramseyer format with bolding for emphasis only.

1. Bill 324, section 36-1 relating to "Findings and purpose" is amended to read as follows:

"New developments and construction, whether they be resorts, residential dwellings, commercial or industrial units, have substantial impacts on the quality of life, social welfare, and environment in Hawai'i County. The purpose of an impact fee is to ensure that the person or persons responsible for impact-generating developments and construction bear a proportionate share of the cost of improvements to **[the] Hawai'i County's public facilities necessitated by such developments and construction, including** major roadway, park, fire/emergency medical service (EMS), police, solid waste, and wastewater facilities **[that are necessitated by such developments and construction]**. The creation of an impact fee system would enable the County to impose a more proportionate share of the costs of required system improvements, based on the County's General Plan and Community Development Plans, on the developments that create the need, as well as assure that the development that pays each fee will receive a corresponding benefit within a reasonable period of time after the fee is paid.

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The authority to impose impact fees is granted to counties by the Hawai‘i Revised Statutes, section 46-141 through 46-148.”

2. Bill 324, section 36-2 relating to “Definitions” is amended by amending the following definitions and by adding new definitions for “Dwelling unit” and “wastewater”, to read as follows:

““Community development plan” means ~~[any plan]~~ **a county comprehensive plan for an area within the County** adopted by ordinance pursuant to section 15.1 of the General Plan.

“Dwelling unit” means any separate or attached unit that is designated to function as a separate residential unit, such as where the unit contains separate bathroom and kitchen facilities.

“Impact fee fund administrator” means ~~[the finance director]~~ **an administrator appointed by the mayor as responsible for the provisions of article 3 of this chapter.**

“Major roadway system improvements” means improvements that expand the capacity of major roadway facilities, including but not limited to the acquisition of right-of-ways, construction of new roads, addition of lanes, widening of existing roads, improvement of intersections, and installation of traffic signals. Lane reconstruction, sidewalk construction, median construction, landscaping, street lighting installation and other ~~[ancillary]~~ **customarily related** components of a capacity-expanding road improvement shall not be considered system improvements when they are not an integral part of a capacity-expanding improvement.

“Wastewater” means water mixed with waste matter, also known as sewer water.”

3. Bill 324, section 36-4 relating to “Violations” is amended to read as follows:

“Section 36-4. Violations and fines.

Furnishing false information on any matter relating to the administration of this chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts of a proposed development, shall be a violation of this chapter. **The administrative fine for each violation of this chapter shall be determined by the impact fee administrator and shall not exceed twice the amount of the fee that would have been assessed had the relevant information been accurately provided minus the impact fee previously paid. The collected fine is to be deposited into the corresponding benefit district fund.”**

4. Bill 324, section 36-8 relating to "Impact fees required" is amended to read as follows:

"Section 36-8. Impact fees required.

- (a) On and after the effective date of this chapter, any person who causes the commencement of impact-generating development shall be obligated to pay impact fees, pursuant to the terms of this chapter. The obligation to pay the impact fees shall run with the land.
- (b) The impact fees for roads, parks, fire/EMS, police and solid waste shall be determined and paid at the time of issuance of a building permit for the development ~~[, provided that for small lot subdivisions, which receive final subdivision approval after the effective date of this chapter, such fees shall be paid at the time of final subdivision approval. The impact fees for small lot subdivisions shall completely satisfy the impact fee requirement otherwise owing for the subsequent construction of one dwelling on each lot in the subdivision].~~

(c) For small lot subdivisions, which receive final subdivision approval after the effective date of this chapter, impact fees for roads, parks, fire/EMS, police and solid waste shall be paid at the time of final subdivision approval. The impact fees for small lot subdivisions shall completely satisfy the impact fee requirement otherwise owing for the subsequent construction of one dwelling on each lot in the subdivision.

[(e)](d) The impact fees for wastewater shall be determined and paid in accordance with the following:

- (1) ~~[Except for small lot subdivisions, wastewater impact fees shall be determined and paid at time of the purchase of a water meter for the development. If no water meter is obtained, fees shall be paid prior to physical connection to the County's wastewater line serving the property.]~~ **When connection to the County wastewater system is required, wastewater impact fees shall be paid at the time of final subdivision approval.**
- (2) ~~[For small lot subdivisions, when connection to the County wastewater system is required, wastewater impact fees shall be paid at the time of final subdivision approval. If connection to the County wastewater system is required after final subdivision approval for individual lots, the wastewater impact fee shall be paid~~

~~prior to physical connection with the County's wastewater line serving the property.]~~ If connection to the County wastewater system is required after final subdivision approval for individual lots, the wastewater impact fee shall be paid at time of the purchase of a water meter for the development.

(3) Under no circumstances shall a physical connection to the County's wastewater line serving the property be permitted unless the applicable wastewater impact fee has been paid."

5. Bill 324, section 36-10(c)(1)(C) relating to "Affordable Housing" is amended to read as follows:

"(C) The [home] home's gross floor area does not exceed 1400 square feet in size, excluding carport or garage; and"

6. Bill 324, section 36-12(a) relating to "Pre-calculated fees by land use type", specifically the table that specifies the amount of impact fees to pay for a single-family home is amended to read as follows:

Land Use Type	Unit	Roads	Parks	Fire/EMS	Police	Solid Waste	Wastewater	TOTAL**
Single-Family	Dwelling	\$2,379	\$3,283	\$275	\$329	\$121	\$1,892	[\$6,386] <u>\$6,387</u>

7. Bill 324, section 36-12(i) relating to "Pre-calculated fees by land use type", is amended to read as follows:

"(i) Square feet in the fee schedule refer to gross floor area as ~~herein~~ defined in this chapter."

8. Bill 324, section 36-13(d) relating to "Fees calculated by independent fee calculation study" is amended to read as follows:

"(d) Within ten days of the administrator's acceptance of the independent fee calculation study for review, the applicant shall publish a notice in at least two newspapers of general circulation in the County that an independent fee calculation study has been submitted and that it may be reviewed in the office of the administrator. The notice shall list the land use(s) and TMK number for which the independent fee calculation is proposed."

9. Bill 324, the table associated with section 36-14(c)(3), specifically EDUs/UNIT, is amended to read as follows:

“(3) The fire/EMS impact fees shall be calculated according to the following formula:

FIRE/EMS IMPACT FEE = EDUs x NET COST/EDU		
<u>Where:</u>		
EDUs	=	UNITS X EDUs/UNIT
UNITS	=	Number of dwelling units of each housing type in the development or thousands of square feet of nonresidential buildings of each land use type
EDUs/UNIT	=	<p>Equivalent Dwelling Units represented by one dwelling unit of a given housing type or 1,000 square feet of nonresidential floor area of a given land use type, Calculated calculated as the ratio of the functional population per dwelling unit or per 1,000 square feet to the functional population of the typical single family detached unit[;].</p> <p>For residential development, functional population per unit is one-half the average household size for that housing type[;].</p> <p>For nonresidential development, the functional population per unit is determined by the following formula: Functional population/1000 sf = (employee hours/1000 sf + visitor hours/1000 sf) ÷ 24 hours/day</p> <p>Where: Employee hours/1000 sf = employees/1000 sf x 10 hrs/day Visitor hours/1000 sf = visitors/1000 sf x 1 hour/visit Visitors/1000 sf = weekday ADT/1000 sf x avg, vehicle occupancy - employees/1000 sf Weekday ADT/1000 sf = one-way average daily trips (total trip ends ÷ 2)</p>
NET COST/EDU	=	COST/EDU - CREDIT/EDU
COST/EDU	=	Total replacement cost of existing fire/EMS facilities divided by total existing residential and nonresidential development in the County, expressed in terms of EDUs
CREDIT/EDU	=	DEBT/EDU + PAST/EDU + GRANT/EDU
DEBT/EDU	=	Outstanding debt on existing fire/EMS facilities divided by total existing EDUs
PAST/EDU	=	The net present value of property taxes paid over the last five years by vacant land for fire/EMS capacity improvements, including general fund expenditures as well as debt service payments, per EDU
GRANT/EDU	=	The net present value of future Federal and State grant funding anticipated to be forthcoming per EDU over the next 20 years”

10. Bill 324, section 36-14(c) relating “Independent fee calculation formulae” is amended by adding a sixth paragraph and corresponding table relating to the independent calculation of wastewater impact fees, to read as follows:

“(6) The wastewater impact fees shall be calculated according to the following formula:

WASTEWATER IMPACT FEE = SFEs x NET COST/SFE		
<u>Where:</u>		
<u>SFEs</u>	=	<u>UNITS x SFEs/UNIT</u>
<u>UNITS</u>	=	<u>Number of dwelling units of each housing type in a residential development or the number of water meters of various sizes in a non-residential development</u>
<u>SFEs/UNIT</u>	=	<u>Number of Single-Family Equivalents represented by one dwelling unit of a given housing type or by a water meter of a particular size</u>
<u>NET COST/SFE</u>	=	<u>COST ÷ CAPACITY x GPD/SFE – CREDIT/SFE</u>
<u>COST</u>	=	<u>Total replacement cost of existing major wastewater facilities, excluding lines less than 12" in diameter typically installed by developers</u>
<u>CAPACITY</u>	=	<u>Capacity of existing treatment plants in gallons per day</u>
<u>GPD/SFE</u>	=	<u>230 gallons per day per SFE</u>
<u>CREDIT/SFE</u>	=	<u>DEBT/SFE + PAST/SFE</u>
<u>DEBT/SFE</u>	=	<u>DEBT ÷ CAPACITY x GPD/SFE</u>
<u>DEBT</u>	=	<u>Outstanding debt on existing major wastewater facilities and equipment</u>
<u>PAST/SFE</u>	=	<u>PAST ÷ CAPACITY x GPD/SFE</u>
<u>PAST</u>	=	<u>The net present value of property taxes paid over the last five years by vacant land for wastewater capacity improvements, including general fund expenditures as well as debt service payments</u>

11. Bill 324, section 36-16(a) relating to “Refunds” is amended to read as follows:

“(a) If a building permit, for which an impact fee was paid as a condition for its issuance, expires, is revoked, or is voluntarily surrendered, and no construction or improvement of land has commenced, then the person or persons who paid the fee shall be entitled to a refund of a portion of the impact fee paid. The refund amount shall consist of the amount of impact fee paid minus ~~up to~~ three percent of the impact fee paid. The withheld amount will be retained as an administrative fee to offset the cost of processing

the refund. No interest will be paid on refunds issued pursuant to this subsection.”

12. Bill 324, section 36-17(a) and (b) relating to “Post-ordinance credits” are amended to read as follows:

- “(a) After the effective date of this ordinance, credit from impact fees shall be provided for system improvements for the same type of facility built by private parties, or for land dedicated to and accepted by the County in lieu of the impact fee payments.
- (1) Approved credits shall **[generally]** become effective when the improvements have been completed and have been accepted by the County, or their construction secured by bond or other equivalent security.
 - (2) No credit will be applied to either the road impact fee for improvements to the major roadway facilities that primarily serve traffic generated by the applicant’s project, such as **roads within a development or** acceleration/deceleration lanes into and out of the project, or to the parks impact fee for parks that are not available for use by the general public.
 - (3) Approved credits for land dedication shall become effective when the land has been conveyed to and has been accepted by the County.
- (b) To receive credit for system improvements, the developer shall submit construction drawings, specifications, and construction cost estimates or property appraisals to the impact fee administrator. The impact fee administrator shall determine the amount of credit due based on the information submitted, or where such information is inaccurate or unreliable, then, on alternative engineering or construction costs acceptable to the impact fee administrator. The impact fee administrator may independently determine the amount of credit to be approved for land dedication by securing other property appraisals, or requiring submittal of other relevant information, and may consult with the department of public works **or other relevant county departments**. The impact fee administrator shall make a recommendation to the council on whether or not to accept a request for in-lieu credit. The council shall, by resolution, decide whether to accept the request.”

13. Bill 324, section 36-17 relating to “Post-ordinance credits” is amended by adding a new subsection (f) to read as follows:

- “(f) **The applicant shall bear the burden of proof that an impact fee credit is appropriate for a system improvement.**”

14. Bill 324, section 36-18(b) relating to “Pre-ordinance offsets” is amended to read as follows:

“(b) When the payment of the fair share or the acceptance of facilities or land in lieu of fair share was accepted by the County in complete satisfaction of the fair share requirement for a type of development, such as the residential or hotel units allowed within a project, no impact fees for that type of development in the project shall be assessed, provided that the number of units is not increased[~~, but~~]. **However**, impact fees shall be assessed against other impact-generating development for which no fair share was contributed.”

15. Bill 324, section 36-18 relating to “Pre-ordinance offsets” is amended by adding a new subsection (f) to read as follows:

“(f) **The applicant shall bear the burden of proof that an impact fee credit is appropriate for a system improvement.**”

16. Bill 324, section 36-19(b)(1) relating to “Recalculation due to mistake or misrepresentation” is amended to read as follows:

“(b) Overpayments
(1) Any amounts overpaid by an applicant shall be refunded by the impact fee administrator to the applicant within thirty days after the acceptance of the recalculated amount, with interest, **determined by the impact fee fund administrator** since the date of such overpayment.”

17. Bill 324, section 36-24 relating to “Use of fees” is amended to add a new subsection (d) to read as follows (current subsection (d) and remaining subsections are to be re-lettered accordingly):

“(d) **Pursuant to section 46-144(5), Hawai‘i Revised Statutes, within six years of the date of collection the impact fees shall be expended or encumbered for the construction of the public facility capital improvements for which they were collected.**”

18. The signature line of Bill 324 is amended to read as follows:

“INTRODUCED BY:

[PETE HOFFMANN] COUNCIL MEMBER, COUNTY OF HAWAI‘I”

A draft of Bill 324, Draft 2, is attached with the proposed amendments contained in this communication incorporated. Bolding has been retained for illustrative purposes where material has been proposed for addition or alteration.

Thank you.

PH/kf
Att.

AN ORDINANCE AMENDING THE HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), BY ADDING A NEW CHAPTER RELATING TO IMPACT FEES.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. The Hawai'i County Code 1983 (2005 Edition, as amended), is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER 36. IMPACT FEES.

Article 1. General Provisions.

Section 36-1. Findings and purpose.

New developments and construction, whether they be resorts, residential dwellings, commercial or industrial units, have substantial impacts on the quality of life, social welfare, and environment in Hawai'i County. The purpose of an impact fee is to ensure that the person or persons responsible for impact-generating developments and construction bear a proportionate share of the cost of improvements to Hawai'i County's **public facilities necessitated by such developments and construction, including** major roadway, park, fire/emergency medical service (EMS), police, solid waste, and wastewater facilities. The creation of an impact fee system would enable the County to impose a more proportionate share of the costs of required system improvements, based on the County's General Plan and Community Development Plans, on the developments that create the need, as well as assure that the development that pays each fee will receive a corresponding benefit within a reasonable period of time after the fee is paid.

The authority to impose impact fees is granted to counties by the Hawai'i Revised Statutes, section 46-141 through 46-148.

Section 36-2. Definitions.

As used in this chapter, unless otherwise specified:

"Applicant" means the applicant for final plan approval, final subdivision approval, a building permit or a connection to the wastewater system for which an impact fee is due pursuant to the provisions of this chapter.

"Community development plan" means **a county comprehensive plan for an area within the County** adopted by ordinance pursuant to section 15.1 of the General Plan.

"**Dwelling unit**" means **any separate or attached unit that is designated to function as a separate residential unit, such as where the unit contains separate bathroom and kitchen facilities.**

"Equivalent dwelling unit (EDU)" means a measurement of the impact of a typical single-family dwelling. A typical single-family detached dwelling unit represents, on average, one EDU.

"Fair share" means a condition of zoning enacted prior to this ordinance which requires payment of fees, based on the extent of the development allowed, for roads, parks, police, fire, or solid waste facilities, or any combination of these facilities. It may also allow a developer to provide land or facilities in lieu of paying the fair share fee.

"Fire/EMS facilities" means land, buildings, vehicles and capital equipment owned by the County and used for providing fire and emergency medical services, including fire stations,

fire department administrative offices, training facilities, fire-fighting apparatus and support vehicles, and fire-fighting equipment.

“Fire/EMS system improvements” means capital improvements that result in a net expansion of the capacity of fire/EMS facilities to serve new development. Remodeling, replacement, or maintenance of existing equipment or facilities does not constitute fire/EMS system improvements, except to the extent that such improvement has the net effect of adding capacity.

“Functional population” means the number of people occupying space at the site of a land use on a twenty-four hour per day, seven day per week basis.

“General plan” means the County of Hawai‘i 2005 general plan, and any revisions or amendments thereto adopted by ordinance, including any revision resulting from a comprehensive review.

“Gross floor area” means the total area within the perimeter of the outside walls of a building as measured from the inside surface of the exterior walls, with no deduction for hallways, stairs, closets, thickness of walls, columns, or other interior features. This is also the total of the gross horizontal area of all floors below the roof and:

- 1) Within the outer surface of the main walls of principal or accessory buildings;
- 2) Within the outer surface of the main walls and the centerlines of a party wall separating such buildings or portions thereof; or
- 3) Within lines drawn parallel to and two feet within the roof line of any building or portions thereof without walls.

Gross floor area excludes unscreened residential porches or balconies, vehicle parking garages, accessory or commercial vehicular parking areas and structures, and nonresidential arcades and similar open areas that are accessible to the general public, and are not designed for or used as sales, display, storage, service or production areas.

“Impact fee administrator” or “administrator” means the planning director.

“Impact fee fund administrator” means **an administrator appointed by the mayor as responsible for the provisions of article 3 of this chapter.**

“Impact fees” means the road, park, fire/EMS, police, solid waste, and wastewater impact fees.

“Impact-generating development” means any land development designed or intended to permit a use of land that will increase the number of service units, including the types of developments listed in the table contained in section 36-12(a).

“Impact-generating development, commencement of” means for the purposes of roads, parks, fire/EMS, police and solid waste impact fees, commencement occurs upon final subdivision approval for a new small lot subdivision, or upon final plan approval or obtaining a building permit for a single-family development on existing lots of record or for other types of development. For the purposes of wastewater impact fees, except for small lot subdivisions, commencement occurs upon the purchase of a water meter or, if no water meter is required, upon physical connection to the County’s wastewater line serving the property. For small lot subdivisions, when connection to the County wastewater system is required, commencement occurs at final subdivision approval, or if connection to the County wastewater system is required after final subdivision approval for individual lots, commencement occurs at time of the physical connection with the County’s wastewater line serving the property.

“Major roadway facilities” means arterials (roads providing the highest level of service at the greatest speed for the longest uninterrupted distance, with some degree of access control) and

collectors (roads providing a less highly developed level of service at a lower speed for shorter distances by collecting traffic from local roads and connecting them with arterials), including state roads and federal highways located within the County.

“Major roadway system improvements” means improvements that expand the capacity of major roadway facilities, including but not limited to the acquisition of right-of-ways, construction of new roads, addition of lanes, widening of existing roads, improvement of intersections, and installation of traffic signals. Lane reconstruction, sidewalk construction, median construction, landscaping, street lighting installation and other **customarily related** components of a capacity-expanding road improvement shall not be considered system improvements when they are not an integral part of a capacity-expanding improvement.

“Needs assessment study” means the Infrastructure and Public Facilities Needs Assessment: Impact Fee Study prepared for Hawai‘i County by Duncan Associates in September 2006, or a subsequent similar report.

“OHCD” means the office of housing and community development or its designated agents and contractors.

“Park facilities” means land, buildings and improvements to County-owned or County-maintained land used for recreational purposes, and recreational facilities and improvements made or installed by the County on property not owned by the County and available for public use.

“Park system improvements” means capital improvements that result in a net expansion of the capacity of park facilities to serve new development. Remodeling, replacement, or maintenance of existing equipment or facilities does not constitute park system improvements.

“Person” means an individual, corporation, governmental agency or body, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity.

“Police facilities” means land, buildings, vehicles, and capital equipment owned by the County and used for providing police services, including police stations, police department administrative offices, training facilities, patrol vehicles, and police equipment.

“Police system improvements” means capital improvements that result in a net expansion of the capacity of the police facilities to serve new development. Remodeling, replacement, or maintenance of existing equipment or facilities does not constitute police system improvements, except to the extent that they have the net effect of adding capacity.

“Service units” means roadway “vehicle-miles or travel,” park “equivalent dwelling units” (EDUs), fire/EMS EDUs, police EDUs, solid waste EDUs, or wastewater “single-family equivalents.”

“Single-family equivalent (SFE)” means the wastewater demand associated with a typical single-family detached unit.

“Small lot subdivision” means a subdivision of lots for single-family residential dwellings or for fee simple agricultural lots of two acres or less, on which dwellings may be constructed.

“Solid waste facilities” means land, buildings, vehicles, and capital equipment owned by the County and used for providing solid waste services to self-haul residential customers. Solid waste facilities shall include landfill improvements and equipment, transfer stations and equipment, and vehicles.

“Solid waste system improvements” means capital improvements that result in a net expansion of the capacity of the solid waste facilities to serve new development. Remodeling,

replacement, or maintenance of existing equipment or facilities does not constitute solid waste system improvements, except to the extent that they have the net effect of adding capacity.

“System improvements” means major roadway system improvements, park system improvements fire/EMS system improvements, police system improvements, solid waste system improvements, or wastewater system improvements. System improvements do not include land dedications or capital improvements for the exclusive use or benefit of a particular development.

“Vehicle-miles of travel (VMT)” means the product of the number of vehicles traveling during a given time period multiplied by the distance in miles that these vehicles travel.

“Vehicle-miles of capacity (VMC)” means the product of the maximum number of vehicles that can be accommodated on a roadway multiplied by the length of the roadway in miles.

“Wastewater” means water mixed with waste matter, also known as sewer water.

“Wastewater facilities” means the land and improvements associated with a wastewater plant, including effluent outfall to receiving waters, and the wastewater collection system, excluding portions of the collection system typically installed by developers.

“Wastewater system improvements” means capital improvements that result in a net expansion of the capacity of the wastewater facilities to serve new development. Gravity lines less than twelve inches in diameter are not considered system improvements. Remodeling, replacement, or maintenance of existing equipment or facilities does not constitute wastewater system improvements, except to the extent that they add capacity.

Section 36-3. Appeals.

Any final determination made by the impact fee administrator may be appealed to the Board of Appeals within thirty days from the date of the decision appealed.

Section 36-4. Violations and fines.

Furnishing false information on any matter relating to the administration of this chapter, including without limitation the furnishing of false information regarding the expected size, use, or impacts of a proposed development, shall be a violation of this chapter. **The administrative fine for each violation of this chapter shall be determined by the impact fee administrator and shall not exceed twice the amount of the fee that would have been assessed had the relevant information been accurately provided minus the impact fee previously paid. The collected fine is to be deposited into the corresponding benefit district fund.**

Section 36-5. Reasonable project improvements.

Nothing in this chapter shall restrict the County from requiring the construction of reasonable project improvements required to serve the development project, whether or not such improvement are of a type for which credits are available under section 36-12, post-ordinance credits.

Section 36-6. Review.

The impact fees and the administrative procedures established by this chapter shall be reviewed at least once every three years.

Section 36-7. Reserved.

Article 2. Impact Fees.

Division 1. Impact Fee Requirements.

Section 36-8. Impact fees required.

- (a) On and after the effective date of this chapter, any person who causes the commencement of impact-generating development shall be obligated to pay impact fees, pursuant to the terms of this chapter. The obligation to pay the impact fees shall run with the land.
- (b) The impact fees for roads, parks, fire/EMS, police and solid waste shall be determined and paid at the time of issuance of a building permit for the development.
- (c) **For small lot subdivisions, which receive final subdivision approval after the effective date of this chapter, impact fees for roads, parks, fire/EMS, police and solid waste shall be paid at the time of final subdivision approval. The impact fees for small lot subdivisions shall completely satisfy the impact fee requirement otherwise owing for the subsequent construction of one dwelling on each lot in the subdivision.**
- (d) The impact fees for wastewater shall be determined and paid in accordance with the following:
 - (1) **When connection to the County wastewater system is required, wastewater impact fees shall be paid at the time of final subdivision approval.**
 - (2) **If connection to the County wastewater system is required after final subdivision approval for individual lots, the wastewater impact fee shall be paid at time of the purchase of a water meter for the development.**
 - (3) **Under no circumstances shall a physical connection to the County's wastewater line serving the property be permitted unless the applicable wastewater impact fee has been paid.**

Section 36-9. Impact fee exemptions.

- (a) The following shall be exempt from the terms of this chapter:
 - (1) A single-family detached unit on a lot for which impact fees had been paid at time of final subdivision approval shall be exempt from any increase in impact fees of the types already paid, but shall be subject to any new impact fees for additional facilities if the council enacts an amendment to this ordinance requiring impact fees for other types of facilities;
 - (2) Alterations of an existing single-family detached dwelling unit where no additional dwelling units are created;

- (3) Replacement of a destroyed or partially destroyed residential building or structure that has been moved, with a new building or structure of the same use, and with the same number of dwelling units;
 - (4) Replacement of destroyed, partially destroyed, or nonresidential buildings or structure that have been moved, with a new building or structure of the same use and not exceeding the gross floor area of the original building or structure; or
 - (5) Any development for which a completed application for a building permit was submitted prior to the effective date of this chapter, provided that the construction proceeds according to the provisions of the permit and the permit does not expire prior to the completion of the construction;
- (b) An exemption must be claimed at the time of application for a building permit;
 - (c) The impact fee administrator shall determine the validity of any claim for exemption pursuant to the criteria set forth in this chapter; or
 - (d) In order to promote the economic development of the County or the public health, safety, and general welfare of its residents, the County council may authorize by ordinance payment of some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the County that are not restricted to other uses and are not derived from impact fees. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the County council and shall be made pursuant to goals and objectives articulated by the County council.

Section 36-10. Affordable Housing.

- (a) Designated affordable housing units.
 - (1) The County shall fund the impact fee for new affordable housing units that are restricted for sale or rent to qualified households and eligible buyers. It is the intent of this subsection that the funding of the impact fee by the County shall apply to new units that are recognized by OHCD as satisfying affordable housing requirements pursuant to chapter 11, or which earn excess credits pursuant to section 11-5.
 - (2) To qualify the units for County funding, OHCD shall certify that the units qualify as affordable housing under chapter 11, and that OHCD will monitor compliance with price and eligibility restrictions, and restrictions on the subsequent transfer of the units, consistent with the requirements of chapter 11. If certification occurs after the issuance of the building permit and payment of the impact fee by the developer, the County shall reimburse the impact fee to the developer.
 - (3) If the unit is released from affordability restrictions on price or buyer eligibility prior to the initial sale of the unit, the developer shall reimburse the affordable housing trust fund for the amount of the impact fee funded by the County. If a rental unit is released from limitations on lease rent prior to the expiration of the

term initially agreed upon by OHCD, the owner shall reimburse the affordable housing trust fund for the amount of the impact fee funded by the County.

(b) Eligible buyers of other units.

- (1) A buyer who purchases a new dwelling unit for which an impact fee had previously been paid, which is not covered under subsection (a), shall be eligible for a zero-interest loan from the affordable housing trust fund in an amount equal to the impact fee, provided that:
 - (A) The buyer has been qualified by OHCD as an eligible buyer under the applicable affordable housing guidelines;
 - (B) The dwelling unit is sold at a price which is affordable for families earning no more than 140% of the median income for a family of four on the island of Hawai'i, as determined by OHCD; and
 - (C) The buyer has never previously received a loan under this subsection or under subsection (c).
- (2) The loan shall be provided at the closing of the sale of the unit and shall reduce the amount of the principal mortgage. The loan shall be a recorded lien on the property but shall be subordinated to the principal mortgage.
- (3) For the purposes of this subsection, the unit does not have to meet the standards of section 11-5(b), provided it has completed final building inspection as a dwelling unit.
- (4) The loan shall be repaid to the affordable housing trust fund upon any subsequent transfer of title, provided that repayment shall be deferred if the subsequent transfer complies with the provisions of paragraphs (b)(1)(A) through (b)(1)(C).

(c) Owner-builders.

- (1) A person who builds a home on a parcel owned by that person for their personal residence shall be eligible for a zero-interest loan from the affordable housing trust fund to pay for the impact fee, provided that:
 - (A) The person would, except for the ownership of the parcel, qualify as an eligible buyer;
 - (B) The tax-assessed value of the land does not exceed \$100,000;
 - (C) The **home's gross floor area** does not exceed 1400 square feet in size, excluding carport or garage; and
 - (D) The person has not previously received a loan under this subsection or subsection (b).
- (2) The loan shall be a recorded lien against the property but shall be subordinated to any mortgage on the property.
- (3) The loan shall be repaid to the affordable housing trust fund upon any subsequent transfer of title, provided that repayment shall be deferred if the subsequent transfer complies with the provisions of paragraphs (b)(1)(A) through (b)(1)(C).

- (d) OHCD shall verify eligibility of buyers and renters, sales prices, and other restrictions, in a manner consistent with chapter 11. Calculations of income eligibility shall include the income of all persons to be included on the title of the property, and if a buyer is married, shall include the income of the spouse.
- (e) An affordable housing trust fund shall be created to provide funding for the payments and loans referred to herein. The affordable housing trust fund shall not be funded by impact fee receipts. Any reimbursements shall be re-deposited to the affordable housing trust fund.

Section 36-11. Reserved.

Division 2. Amount of fees.

Section 36-12. Pre-calculated fees by land use type.

- (a) Any person or group of persons who commence an impact-generating development, except those exempted or preparing an independent fee calculation study, shall pay impact fees, in accordance with the following fee schedule:

Land Use Type	Unit	Roads	Parks	Fire/EMS	Police	Solid Waste	Wastewater	TOTAL**
Single-Family	Dwelling	\$2,379	\$3,283	\$275	\$329	\$121	\$1,892	\$6,387
Duplex or Multi-Family	Dwelling	\$1,669	\$2,594	\$215	\$256	\$0	\$1,495	\$4,734
Hotel / Motel	Room	\$2,383	\$1,543	\$129	\$155	\$0	*	\$4,210
Retail / Commercial	1,000 sq. ft.	\$4,057	\$0	\$415	\$496	\$0	*	\$4,968
Office	1,000 sq. ft.	\$3,094	\$0	\$234	\$279	\$0	*	\$3,607
Industrial	1,000 sq. ft.	\$1,955	\$0	\$146	\$174	\$0	*	\$2,275
Warehouse	1,000 sq. ft.	\$1,144	\$0	\$94	\$112	\$0	*	\$1,350
Church / Synagogue	1,000 sq. ft.	\$1,561	\$0	\$234	\$279	\$0	*	\$2,074
School / College	1,000 sq. ft.	\$567	\$0	\$234	\$279	\$0	*	\$1,080
Hospital	1,000 sq. ft.	\$4,938	\$0	\$234	\$279	\$0	*	\$5,451
Nursing Home	1,000 sq. ft.	\$1,390	\$0	\$234	\$279	\$0	*	\$1,903
Other Institutional	1,000 sq. ft.	\$3,094	\$0	\$234	\$279	\$0	*	\$3,607

* See wastewater impact fees by water meter size below for non-residential development.

** Does not include wastewater impact.

Water Meter Size	Wastewater Impact Fee
5/8" x 3/4" Meter	\$1,892
1" Meter	\$4,731
1-1/2" Meter	\$9,463
2" Meter	\$15,140
3" Meter	\$30,281
4" Meter	\$47,315
6" Meter	\$94,629
8" Meter	\$151,407
10" Meter	\$274,425

- (b) The fees set out in subsection (a) shall be adjusted annually to account for inflation. At the end of each calendar year, the impact fee administrator shall prepare an adjusted fee schedule, which will be posted on the County's web site and be made publicly available. The adjusted fee schedule will go into effect on January 1 of the following year.
- (c) The adjustment factor shall be the ratio of the appropriate cost index for the quarter during which the adjustment is made (even if projected) to the same cost index for the quarter during which the fees were last adopted, updated or adjusted. The appropriate cost indices shall be as follows from the most recent edition of the U.S. Army Corps of Engineers, Civil Works Construction Cost Index System, utilizing the Hawai'i adjustment factors:
- (1) For road impact fees, the roads, railroads and bridges index;
 - (2) For park impact fees, the recreation facilities index; and
 - (3) For fire/EMS, police and solid waste impact fees, the buildings, grounds and utilities index.
- In the event that the referenced cost indices are not available, the updates shall be based on reasonable alternative indices as determined by the impact fee administrator.
- (d) Impact fees due and payable shall be net of any approved offsets available pursuant to section 36-16, post-ordinance credits, and section 36-17, pre-ordinance offsets. It shall be the responsibility of the applicant to claim offsets prior to payment of impact fees. Any offsets not claimed shall be deemed waived.
- (e) If the type of impact-generating development is not specified on the above schedule, the impact fee administrator shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule. In the case of road impact fees, the impact fee administrator shall be guided in the selection of a comparable type of land use by trip generation rates contained in the most current edition of the report titled "Trip Generation," prepared by the Institute of Transportation Engineers (ITE), or articles or reports appearing in the ITE Journal.
- (f) In general, impact fees shall be assessed based on the principal use of a building or lot. For example, a warehouse that contained a small administrative office would be assessed at the warehouse rate for all of the square footage. Shopping centers are assessed at the retail/commercial rate, regardless of the type of tenants. For a true mixed-use development, such as one that includes both residential and nonresidential development,

the fee shall be determined by adding up the fees that would be payable for each use as if it was a free-standing land use type pursuant to the fee schedule.

- (g) If the type of impact-generating development is for a change of land use type or for the expansion, redevelopment, or modification of an existing development, the fee shall be based on the net increase in the fee for the new land use type as compared to the previous land use type.
- (h) In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.
- (i) Square feet in the fee schedule refer to gross floor area as defined in this chapter.

Section 36-13. Fees calculated by independent fee calculation study.

- (a) The impact fee may be calculated using an independent fee calculation study at the election of the applicant or upon the request of the impact fee administrator, in the following circumstances:
 - (1) For any proposed land development not listed on the land use fee schedule; or
 - (2) For any proposed land development activity that the impact fee administrator concludes will likely generate impacts costing substantially more to mitigate than the amount of the fee that would be generated by the use of the fee schedule due to the nature, timing or location of the proposed development.
- (b) Payment of costs for the preparation of the independent fee calculation study shall be the sole responsibility of the applicant.
- (c) Any person who applies to perform an independent fee calculation study shall pay an application fee of \$3,000 for administrative costs associated with the review and decision on such study.
- (d) Within ten days of the administrator's acceptance of the independent fee calculation study for review, the applicant shall publish a notice in at least two newspapers of general circulation in the County that an independent fee calculation study has been submitted and that it may be reviewed in the office of the administrator. **The notice shall list the land use(s) and TMK number for which the independent fee calculation is proposed.**
- (e) The final decision on whether to accept payment of the independent fee based on an independent fee calculation shall be made by the council, by resolution, after recommendation by the impact fee administrator. The impact fee administrator shall make the recommendation to the council within ninety days after accepting a completed application for an independent fee calculation.

Section 36-14. Independent fee calculation formulae.

- (a) The independent fee calculation study shall be based on the same service standards and unit costs for facilities used in the needs assessment study (as adjusted by the same cost inflation factors used in annual adjustments since the study was prepared), and shall document the methodologies and assumptions used.
- (b) An independent fee calculation study submitted for the purpose of calculating a road impact fee may be based on data, information or assumptions from independent sources, provided that:
 - (1) The independent source is an accepted standard source of transportation engineering or planning data; or
 - (2) The independent source is a local study on trip characteristics carried out by a qualified transportation planner or engineer pursuant to an accepted methodology of transportation planning or engineering.
- (c) The independent fee calculation is the sum of the road impact fees, the park impact fees, the fire/EMS impact fees, police impact fees, and solid-waste impact fees. The formulae for calculation of these fees are listed below.
 - (1) The road impact fees shall be calculated according to the following formula:

ROAD IMPACT FEE = VMT x NET COST/VMT		
<u>Where:</u>		
VMT	=	TRIPS x % NEW x LENGTH ÷ 2
NET COST/VMT	=	COST/VMC x VMC/VMT - CREDIT/VMT
TRIPS	=	Trip ends during an average weekday
% NEW	=	Percent of trips that are primary trips, as opposed to pass-by or diverted-link trips
LENGTH	=	Average length of a trip on the major roadway facilities
÷ 2	=	Avoids double-counting trips for origin and destination
COST/VMC	=	Average cost to add a new daily vehicle-mile of capacity
VMC/VMT	=	System-wide ratio of VMC to VMT on the major roadway facilities (assumed 1:1)
CREDIT/VMT	=	DEBT/VMT + PAST/VMT + GRANT/VMT
DEBT/VMT	=	Outstanding debt used for capacity improvements on existing road facilities divided by total existing VMT
PAST/VMT	=	The net present value of property taxes paid over the last five years by vacant land for road capacity improvements, including general fund expenditures as well as debt service payments, per VMT
GRANT/VMT	=	The net present value of future Federal and State roadway capacity funding anticipated to be forthcoming per VMT over the next 20 years

(2) The park impact fees shall be calculated according to the following formula:

PARK IMPACT FEE = EDUs x NET COST/EDU		
<u>Where:</u>		
EDUs	=	UNITS x EDUs/UNIT
UNITS	=	Number of dwelling units of each housing type in the development
EDUs/UNIT	=	Number of Equivalent Dwelling Units represented by one dwelling unit of a given housing type
NET COST/EDU	=	COST/EDU – CREDIT/EDU
COST/EDU	=	Total replacement cost of existing park facilities divided by total existing residential development in the County, expressed in terms of EDUs
CREDIT/EDU	=	DEBT/EDU + PAST/EDU + GRANT/EDU
DEBT/EDU	=	Outstanding debt on existing park facilities divided by total existing EDUs
PAST/EDU	=	The net present value of property taxes paid over the last five years by vacant land for park capacity improvements, including general fund expenditures as well as debt service payments, per EDU
GRANT/EDU	=	The net present value of future Federal and State grant funding anticipated to be forthcoming per EDU over the next 20 years

(3) The fire/EMS impact fees shall be calculated according to the following formula:

FIRE/EMS IMPACT FEE = EDUs x NET COST/EDU		
<u>Where:</u>		
EDUs	=	UNITS X EDUs/UNIT
UNITS	=	Number of dwelling units of each housing type in the development or thousands of square feet of nonresidential buildings of each land use type
EDUs/UNIT	=	<p>Equivalent Dwelling Units represented by one dwelling unit of a given housing type or 1,000 square feet of nonresidential floor area of a given land use type, calculated as the ratio of the functional population per dwelling unit or per 1,000 square feet to the functional population of the typical single family detached unit.</p> <p>For residential development, functional population per unit is one-half the average household size for that housing type.</p> <p>For nonresidential development, the functional population per unit is determined by the following formula: Functional population/1000 sf = (employee hours/1000 sf + visitor hours/1000 sf) ÷ 24 hours/day</p> <p>Where: Employee hours/1000 sf = employees/1000 sf x 10 hrs/day Visitor hours/1000 sf = visitors/1000 sf x 1 hour/visit Visitors/1000 sf = weekday ADT/1000 sf x avg, vehicle occupancy - employees/1000 sf Weekday ADT/1000 sf = one-way average daily trips (total trip ends ÷ 2)</p>
NET COST/EDU	=	COST/EDU - CREDIT/EDU
COST/EDU	=	Total replacement cost of existing fire/EMS facilities divided by total existing residential and nonresidential development in the County, expressed in terms of EDUs
CREDIT/EDU	=	DEBT/EDU + PAST/EDU + GRANT/EDU
DEBT/EDU	=	Outstanding debt on existing fire/EMS facilities divided by total existing EDUs
PAST/EDU	=	The net present value of property taxes paid over the last five years by vacant land for fire/EMS capacity improvements, including general fund expenditures as well as debt service payments, per EDU
GRANT/EDU	=	The net present value of future Federal and State grant funding anticipated to be forthcoming per EDU over the next 20 years

(4) The police impact fees shall be calculated according to the following formula:

POLICE IMPACT FEE = EDUs x NET COST/EDU		
Where:		
EDUs	=	UNITS X EDUs/UNIT
UNITS	=	Number of dwelling units of each housing type in the development or thousands of square feet of nonresidential buildings of each land use type
EDUs/UNIT	=	Equivalent Dwelling Units represented by one dwelling unit of a given housing type or 1,000 square feet of nonresidential floor area of a given land use type, calculated as the ratio of the functional population per dwelling unit or per 1,000 square feet to the functional population of the typical single-family detached unit. For residential development, functional population per unit is one-half the average household size for that housing type. For nonresidential development, the functional population per unit is determined by the following formula: Functional population/1000 sf = (employee hours/1000 sf + visitor hours/1000 sf) ÷ 24 hours/day Where: Employee hours/1000 sf = employees/1000 sf x 10 hrs/day Visitor hours/1000 sf = visitors/1000 sf x 1 hour/visit Visitors/1000 sf = weekday ADT/1000 sf x avg, vehicle occupancy - employees/1000 sf Weekday ADT/1000 sf = one-way average daily trips (total trip ends ÷ 2)
NET COST/EDU	=	COST/EDU - CREDIT/EDU
COST/EDU,	=	Total replacement cost of existing police facilities divided by total existing residential and nonresidential development in the County, expressed in terms of EDUs
CREDIT/EDU	=	DEBT/EDU + PAST/EDU + GRANT/EDU
DEBT/EDU	=	Outstanding debt on existing police facilities divided by total existing EDUs
PAST/EDU	=	The net present value of property taxes paid over the last five years by vacant land for police capacity improvements, including general fund expenditures as well as debt service payments, per EDU
GRANT/EDU	=	The net present value of future Federal and State grant funding anticipated to be forthcoming per EDU over the next 20 years

- (5) The solid waste impact fees shall be calculated according to the following formula:

SOLID WASTE IMPACT FEE = EDUs x NET COST/EDU		
Where:		
EDUs	=	UNITS X EDUs/UNIT
UNITS	=	Number of dwelling units of each housing type in the development
EDUs/UNIT	=	Number of Equivalent Dwelling Units represented by one dwelling unit of a given housing type
NET COST/EDU	=	COST/EDU - CREDIT/EDU
COST/EDU	=	Total replacement cost of existing solid waste facilities that serve residential development utilizing transfer stations divided by all existing single-family detached units
CREDIT/EDU	=	DEBT/EDU + PAST/EDU + GRANT/EDU
DEBT/EDU	=	Outstanding debt on existing solid waste facilities attributable to residential development utilizing transfer stations divided by all existing single-family detached units
PAST/EDU	=	The net present value of property taxes paid over the last five years by vacant land for solid waste capacity improvements attributable to residential development utilizing transfer stations, including general fund expenditures as well as debt service payments, per EDU
GRANT/EDU	=	The net present value of future Federal and State grant funding anticipated to be forthcoming for solid waste capital improvements attributable to residential development per EDU over the next 20 years

(6) The wastewater impact fees shall be calculated according to the following formula:

WASTEWATER IMPACT FEE = SFEs x NET COST/SFE		
Where:		
SFEs	=	UNITS x SFEs/UNIT
UNITS	=	Number of dwelling units of each housing type in a residential development or the number of water meters of various sizes in a non-residential development
SFEs/UNIT	=	Number of Single-Family Equivalents represented by one dwelling unit of a given housing type or by a water meter of a particular size
NET COST/SFE	=	COST ÷ CAPACITY x GPD/SFE – CREDIT/SFE
COST	=	Total replacement cost of existing major wastewater facilities, excluding lines less than 12" in diameter typically installed by developers
CAPACITY	=	Capacity of existing treatment plants in gallons per day
GPD/SFE	=	230 gallons per day per SFE
CREDIT/SFE	=	DEBT/SFE + PAST/SFE
DEBT/SFE	=	DEBT ÷ CAPACITY x GPD/SFE
DEBT	=	Outstanding debt on existing major wastewater facilities and equipment
PAST/SFE	=	PAST ÷ CAPACITY x GPD/SFE
PAST	=	The net present value of property taxes paid over the last five years by vacant land for wastewater capacity improvements, including general fund expenditures as well as debt service payments

Section 36-15. Reserved.

Division 3. Refunds, credits, off-sets, and recalculations.

Section 36-16. Refunds.

- (a) If a building permit, for which an impact fee was paid as a condition for its issuance, expires, is revoked, or is voluntarily surrendered, and no construction or improvement of land has commenced, then the person or persons who paid the fee shall be entitled to a refund of a portion of the impact fee paid. The refund amount shall consist of the amount of impact fee paid minus three percent of the impact fee paid. The withheld amount will be retained as an administrative fee to offset the cost of processing the refund. No interest will be paid on refunds issued pursuant to this subsection.
- (b) Any monies in the impact fee fund that have not been spent or encumbered within six years after the date on which such fee was paid shall be returned to the current owners with interest since the date of payment.

- (c) Written notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent to or served upon the present owners of the property within thirty days from the date the refund becomes due. Sending notices by regular mail to all present owners of record shall be sufficient to satisfy this notice requirement.
- (d) Application for a refund shall be submitted to the County within one year of the date on which the right to a refund arises. Following approval of the refund application by the impact fee administrator, the refund shall be paid in full. Any unclaimed refund shall be retained in the appropriate account and expended as provided in section 36-24.
- (e) In the event that the County terminates impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in this section. The County shall give public notice of termination and availability of refunds at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to the County's general fund and expended for any public purpose not involving water supply or service as determined by the County council.

Section 36-17. Post-ordinance credits.

- (a) After the effective date of this ordinance, credit from impact fees shall be provided for system improvements for the same type of facility built by private parties, or for land dedicated to and accepted by the County in lieu of the impact fee payments.
 - (1) Approved credits shall become effective when the improvements have been completed and have been accepted by the County, or their construction secured by bond or other equivalent security.
 - (2) No credit will be applied to either the road impact fee for improvements to the major roadway facilities that primarily serve traffic generated by the applicant's project, such as **roads within a development** or acceleration/deceleration lanes into and out of the project, or to the parks impact fee for parks that are not available for use by the general public.
 - (3) Approved credits for land dedication shall become effective when the land has been conveyed to and has been accepted by the County.
- (b) To receive credit for system improvements, the developer shall submit construction drawings, specifications, and construction cost estimates or property appraisals to the impact fee administrator. The impact fee administrator shall determine the amount of credit due based on the information submitted, or where such information is inaccurate or unreliable, then, on alternative engineering or construction costs acceptable to the impact fee administrator. The impact fee administrator may independently determine the amount of credit to be approved for land dedication by securing other property appraisals, or requiring submittal of other relevant information, and may consult with the department of public works **or other relevant county departments**. The impact fee administrator shall make a recommendation to the council on whether or not to accept a request for in-lieu credit. The council shall, by resolution, decide whether to accept the request.

- (c) Once approved by the council, the credits shall be applied to offset or eliminate the impact fees subsequently owing for the same types of system improvements.
- (d) If the credit only partially offsets the impact fee in a particular category for a project where the impact fees are collected at the time of subdivision, the credit shall be applied against the impact fees due and payable at the time of subdivision.
- (e) If the credit only partially offsets the impact fee for a particular category for a project where the impact fees are not collected at the time of subdivision, that will generate a number of individual building permits, such as an industrial subdivision, the impact fee administrator shall determine a pro-rata reduction in the future impact fees based upon the expected development of the property and thereafter apply the pro-rata reduction when the impact fees are collected. The property owner may, with the consent of the impact fee administrator, designate a portion of the property for which the credit will apply in which case the credit shall offset the impact fees on that portion of the property until the credit is exhausted.
- (f) **The applicant shall bear the burden of proof that an impact fee credit is appropriate for a system improvement.**

Section 36-18. Pre-ordinance offsets.

- (a) Owners of property for which fair share payments have been made, or for which the County had accepted facilities or land in lieu of the payment of fair share, shall be entitled to offset such fair share payments or amounts accepted in lieu of fair share pursuant to subsections (b) and (c).
- (b) When the payment of the fair share or the acceptance of facilities or land in lieu of fair share was accepted by the County in complete satisfaction of the fair share requirement for a type of development, such as the residential or hotel units allowed within a project, no impact fees for that type of development in the project shall be assessed, provided that the number of units is not increased. **However**, impact fees shall be assessed against other impact-generating development for which no fair share was contributed.
- (c) When the payment of fair share was only in partial satisfaction of the fair share requirement, it shall offset the impact fees owed on a dollar-for-dollar basis against the type of development. The impact fee administrator shall determine a pro-rata reduction in the future impact fees based upon the expected development of the property and thereafter apply the pro-rata reduction when the impact fees are collected.
- (d) After the enactment of this ordinance, but prior to its effective date, owners of property who owe fair share may elect to make payments under the terms of the fair share condition in the zoning ordinance, or under the payment schedule contained in this ordinance. Such property owners may also apply for in-lieu credit under the terms of this ordinance.

- (e) The offset shall be applied against the impact fees due for building permits issued on the property until the amount of the offset is exhausted or the development project for which the capital contribution was made is completed. In no case shall any offset be transferred from the development project for which the capital contribution was made.
- (f) **The applicant shall bear the burden of proof that an impact fee credit is appropriate for a system improvement.**

Section 36-19. Recalculation due to mistake or misrepresentation

- (a) If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated by the impact fee administrator.
- (b) Overpayments
 - (1) Any amounts overpaid by an applicant shall be refunded by the impact fee administrator to the applicant within thirty days after the acceptance of the recalculated amount, with interest, **determined by the impact fee fund administrator** since the date of such overpayment.
 - (2) A claim for overpayment shall be made within one year of the date of the payment.
- (c) Underpayments
 - (1) Any amounts underpaid by the applicant shall be paid to the impact fee administrator within thirty days after the acceptance of the recalculated amount, with interest since the date of such underpayment.
 - (2) The County shall not issue any additional permits or approvals for any project for which the impact fee was previously underpaid until such underpayment is corrected. If amounts owed to the County are not paid within the-thirty day period mentioned in paragraph (1), the County may also rescind any permits issued in reliance on the previous payment of such impact fee.

Section 36-20. Reserved.

Article 3. Impact Fee Fund.

Section 36-21. Establishment and creation of an impact fee revolving fund.

The department of finance is hereby authorized to establish an impact fee program to ensure that the person or persons responsible for impact-generating developments and construction bear a proportionate share of the cost of improvements to the Hawai'i County's major roadway, park, fire/emergency medical service (EMS), police, solid waste and wastewater facilities that are necessitated by such developments and construction.

Pursuant to section 10-12, Hawai'i County Charter, a special revolving fund to be known as the impact fee revolving fund is hereby created. This fund shall be interest bearing, distinct from the general fund, and administered by the department of finance.

Section 36-22. Impact fee fund administrator.

- (a) The impact fee fund administrator shall be responsible to:
 - (1) Receive impact fees from the departments of planning and public works and place the fees into the impact fee fund corresponding to the benefit district;
 - (2) Maintain accurate records of the impact fees paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the County deems appropriate or necessary to the accurate accounting of such fees;
 - (3) Manage the funds in terms of fee renewal, reimbursement, and use as described in sections 36-24, 36-16, and 36-17; and
 - (4) Perform related duties as required to implement the provisions of this chapter.
- (b) Annually, the impact fee fund administrator shall present to the County council a proposed capital improvements program that shall assign monies from each impact fee fund to specific projects and related expenses for eligible improvements of the type for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended pursuant to section 36-16, shall be retained in the same impact fee fund until the next fiscal year.

Section 36-23. Funding.

- (a) The impact fee program shall be funded by proceeds from the following sources:
 - (1) Impact fees from any person who causes or persons who cause the commencement of impact-generating development and is obligated at that time to pay impact fees, pursuant to the terms of this chapter; and
 - (2) Other sources of revenue, including but not limited to, general obligation bonds and transfers from the general fund.
- (b) The impact fee fund shall be subdivided into the following accounts:
 - (1) Road impact fee;
 - (2) Park impact fee;
 - (3) Fire/EMS impact fee;
 - (4) Police impact fee; and
 - (5) Solid waste impact fee.
- (c) Each account shall contain only those impact fees collected pursuant to this chapter for the type of facility reflected in the title of the account plus any interest that may accrue

from time to time on such amounts. Any accrued interest shall be subject to the same restrictions as other funds in the account.

Section 36-24. Use of fees.

- (a) The monies in each impact fee account shall be used only for the following:
 - (1) To acquire or construct system improvements of the type reflected in the title of the account;
 - (2) To pay debt service on any portion of any current or future general obligation bond or revenue bond that was used to create capacity of the type reflected in the title of the account that will be available to serve development occurring after the effective date of this chapter;
 - (3) For refunds as described in section 36-16; or
 - (4) For post-ordinance credits as described in section 36-17.
- (b) The monies in each impact fee account shall not be used for the following:
 - (1) Rehabilitation, reconstruction, replacement or maintenance of existing facilities; or
 - (2) Ongoing operational costs.
- (c) Monies of each impact fee account shall be used in accordance with the capital improvements program established by the planning department and in compliance with the community development plan of each district, when available, and approved by the County council.
- (d) **Pursuant to section 46-144(5), Hawai'i Revised Statutes, within six years of the date of collection the impact fees shall be expended or encumbered for the construction of the public facility capital improvements for which they were collected.**
- (e) The sub-area benefit zones are hereby created and consist of the following aggregations of judicial districts:
 - (1) North Kohala/South Kohala;
 - (2) North Hilo/South Hilo and Hāmākua;
 - (3) Puna;
 - (4) Ka'ū; and
 - (5) North Kona/South Kona.
- (f) With the exception of solid waste, up to twenty percent of the impact fee revenues collected within a benefit zone may be used to fund improvements located adjacent to the

benefit zone in which the fees were collected, provided that the County council makes a finding that the improvement will provide significant benefit to new development in the collecting zone. For solid waste impact fees, the percentage shall be forty percent.

- (g) Five impact fee improvement plans per each sub-area benefit zone are created, as follows:
- (1) North Kohala/South Kohala benefit zone:
 - (A) North Kohala/South Kohala road impact fee improvement plan;
 - (B) North Kohala/South Kohala park impact fee improvement plan;
 - (C) North Kohala/South Kohala fire/EMS impact fee improvement plan;
 - (D) North Kohala/South Kohala police impact fee improvement plan; and
 - (E) North Kohala/South Kohala solid waste impact fee improvement plan.
 - (2) North Hilo/South Hilo and Hāmākua benefit zone:
 - (A) North Hilo/South Hilo and Hāmākua road impact fee improvement plan;
 - (B) North Hilo/South Hilo and Hāmākua park impact fee improvement plan;
 - (C) North Hilo/South Hilo and Hāmākua fire/EMS impact fee improvement plan;
 - (D) North Hilo/South Hilo and Hāmākua police impact fee improvement plan; and
 - (E) North Hilo/South Hilo and Hāmākua solid waste impact fee improvement plan.
 - (3) Puna benefit zone:
 - (A) Puna road impact fee improvement plan;
 - (B) Puna park impact fee improvement plan;
 - (C) Puna fire/EMS impact fee improvement plan;
 - (D) Puna police impact fee improvement plan; and
 - (E) Puna solid waste impact fee improvement plan.
 - (4) Ka‘ū benefit zone:
 - (A) Ka‘ū road impact fee improvement plan;
 - (B) Ka‘ū park impact fee improvement plan;
 - (C) Ka‘ū fire/EMS impact fee improvement plan;
 - (D) Ka‘ū police impact fee improvement plan; and
 - (E) Ka‘ū solid waste impact fee improvement plan.
 - (5) North Kona/South Kona benefit zone:
 - (A) North Kona/South Kona road impact fee improvement plan;
 - (B) North Kona/South Kona park impact fee improvement plan;
 - (C) North Kona/South Kona fire/EMS impact fee improvement plan;
 - (D) North Kona/South Kona police impact fee improvement plan; and
 - (E) North Kona/South Kona solid waste impact fee improvement plan.

Section 36-25. Records.

Records shall be available for review by the public during normal business hours and with reasonable advance notice.”

SECTION 2. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall take effect one year following the date of its approval.

INTRODUCED BY:

COUNCIL MEMBER, COUNTY OF HAWAII