

RULES OF GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS

CHAPTER 110-12-2

DEVELOPMENT IMPACT FEE COMPLIANCE REQUIREMENTS

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CHAPTER 110-12-2-.01 PURPOSE

110-12-2-.01 Purpose

(1) General: The Georgia Development Impact Fee Act (O.C.G.A. § 36-71-1 *et seq.*), passed during the 1990 session of the General Assembly, sets certain conditions, related to comprehensive planning, which must be met by local governments before an impact fee ordinance can be implemented. The Act requires local governments wishing to impose development impact fees to adopt a comprehensive plan which meets the Minimum Standards and Procedures for Local Comprehensive Planning and which contains the additional planning components outlined at 110-12-2-.03.

(2) Applicability: The comprehensive planning requirements listed in this chapter apply to all local governments intending to implement a development impact fee ordinance pursuant to the Georgia Development Impact Fee Act.

(3) Effective Date: Unless otherwise provided for herein, the planning requirements contained in this chapter shall have an effective date of May 1, 1997, at which time the rules that were adopted for this purpose by the Board of Community Affairs in 1991 shall stand repealed.

CHAPTER 110-12-2-.02 DEFINITIONS

110-12-2-.02 Definitions

(1) General: For the purposes of this chapter, the following words shall have the meaning as contained herein unless the context does not permit such meaning. Terms not defined in this chapter but defined in O.C.G.A. § 36-71-1 *et seq.*, shall have the meanings contained in O.C.G.A. § 36-71-1 *et seq.* Terms not defined in this chapter, nor in O.C.G.A. § 36-71-1 *et seq.*, shall have ascribed to them ordinary accepted meanings such as the context may imply.

(2) Definitions:

(a) 'Capital Improvement' means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility.

(b) 'Capital Improvements Element' means a component of a comprehensive plan adopted pursuant to O.C.G.A § 50-8-1 *et seq.* which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(c) 'Comprehensive Plan' means a 20-year plan by a county or municipality covering such county or municipality or any plan by a regional development center covering the center's region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with O.C.G.A. 50-8-7.1(b) and 50-8-7.2

(d) 'Development Impact Fee' means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(e) 'Level of Service' means a measure of the relationship between service capacity and service demand for public facilities in terms of demand to capacity ratios or the comfort and convenience of use or service of public facilities, or both.

(f) 'Project Improvements' means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement, and the physical location of the improvement on-site or off-site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities approved by the governing body of the municipality or county shall be considered a project improvement.

(g) 'Public Facilities' means:

1. Water supply production, treatment and distribution facilities;
2. Wastewater collection, treatment and disposal facilities;
3. Roads, streets and bridges, including rights of way, traffic signals, landscaping and any local components of state or federal highways;
4. Stormwater collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
5. Parks, open space and recreation areas, and related facilities;
6. Public safety facilities, including police, fire, emergency medical and rescue facilities; and

7. Libraries and related facilities.

(h) 'Service Area' means a geographic area defined by a municipality, county or intergovernmental agreement in which a defined set of public facilities provides service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles, or both.

(i) 'System Improvements' means capital improvements that are public facilities and are designed to provide service to the community at large, in contrast to 'project improvements.'

CHAPTER 110-12-2-.03 COMPREHENSIVE PLANNING REQUIREMENTS

110-12-2-.03 Comprehensive Planning Requirements

(1) Purpose: Linking the implementation of a local development impact fee ordinance to the comprehensive planning process ensures that projected needs for system improvements are consistent with the needs and goals identified in the various other elements of the comprehensive plan. In addition, the identification of projected capital facilities needs based on levels of service established in the comprehensive plan provides a sound foundation for the calculation of impact fees.

(2) Application: The comprehensive planning requirements for compliance with the Georgia Development Impact Fee Act shall consist of: (1) development of a Capital Improvements Element (CIE); (2) a policy statement in support of certain exemptions, as determined by the local government; (3) annual update of the CIE; and (4) amendment of the CIE as necessary.

(a) Capital Improvements Element: The Capital Improvements Element shall include, but not be limited to, the following items:

1. Projection of Needs: A projection of needs for system improvements during a planning horizon established in the comprehensive plan. To ensure consistency, the time frame used for projecting infrastructure needs shall coincide with the planning horizon used for the remainder of the comprehensive plan.

2. Schedule of Improvements: A schedule of capital improvements intended to meet the projected needs for system improvements identified in the comprehensive plan. At a minimum, improvements shall be scheduled over a five-year period, coinciding with the initial Short Term Work Program developed in the comprehensive plan. Thereafter, local governments shall annually update and maintain, at a minimum, a five-year schedule of system improvements within the Capital Improvements Element of their comprehensive plans.

3. Description of Funding Sources: A description of anticipated funding sources for each required improvement.

4. Designation of Service Areas and Levels of Service: The designation of one or more service areas within the community and the assignment of levels of service for public facilities within each service area. Once assigned to each service area, levels of service shall be used as the basis for calculating impact fees.

(b) Policy Statement for Exemptions: Local governments wishing to exempt all or portions of particular development projects from impact fees for the purposes of encouraging economic development and employment growth or affordable housing must include in the comprehensive plan a policy statement

supporting such projects through revenue sources other than development impact fees.

(c) Annual Update of the CIE: Local governments which include CIEs in their comprehensive plans must update their entire Short Term Work Programs annually as specified at 110-12-1-.04(7)(a), Minimum Standards and Procedures for Local Comprehensive Planning, and CIE Updates must be submitted for review concurrently with these Short Term Work Program updates in accordance with the procedures outlined at 110-12-2-.04 (9). CIE updates must include: 1) the Annual Report on impact fees required under O.C.G.A. 36-71-8; and 2) a new fifth year schedule of improvements, and any changes to or revisions of previously listed CIE projects, including alterations in project costs, proposed changes in funding sources, construction schedules, or project scope.

(d) Amendments to the CIE: The CIE must be amended in accordance with the procedures outlined at 110-12-2-.04 (10) whenever it is necessary for a local government to:

1. Redefine growth projections, land use assumptions or community goals that would affect system improvements proposed in the CIE;
2. Add new impact fee service areas or change the boundaries of existing impact fee service areas;
3. Change service levels established for an existing impact fee service area; or
4. Make any other revisions that might have a negative effect or major impact on another jurisdiction or authority.

(3) Support: The department will provide municipalities, counties and regional development centers with general guidance regarding the preparation of the required Capital Improvements Element and its incorporation into the comprehensive plan.

CHAPTER 110-12-2-.04 PROCEDURAL REQUIREMENTS

110-12-2-.04 Procedural Requirements

(1) General: Pursuant to O.C.G.A. 50-8-7.1(b), the Department has established minimum procedural standards for use in the process of developing a CIE. The following procedures are to be used in the preparation, submittal, review, adoption, update, and amendment of a CIE for one of the categories of public facilities described under O.C.G.A. 36-71-2.

(2) Compliance with Standards: All local governments intending to implement a development impact fee ordinance pursuant to O.C.G.A. 36-71-1 shall prepare, submit for review, and subsequently adopt a CIE that meets these planning standards and procedures on or before the date their impact fee ordinance goes into effect.

(3) Public Participation: All local governments must hold a minimum of two public hearings prior to the submittal of their draft CIE to the regional development center for review.

(a) At least one public hearing must be held prior to the development of the CIE to inform the public about the purpose of the CIE and the process to be followed in the preparation of the CIE, as well as to elicit community input on needs and goals. Local governments should follow the public hearing notification procedures they normally use in announcing and conducting public hearings.

(b) At least one additional hearing must be held just prior to the submittal of the draft CIE to the regional development center for review. The purpose of this hearing is to brief the community on the contents of the draft CIE, to provide an opportunity for residents to make suggestions, additions or revisions, and to notify the community of when the draft CIE will be submitted to the regional development center for review.

(4) CIE Submittal: The governing body of the submitting local government must take official action, by resolution, authorizing the transmittal of the draft CIE to the regional development center for review and certifying that the minimum public participation requirements have been met.

(5) Review by Regional Development Center and the Department: The Department shall review local CIEs for compliance with the Development Impact Fee Compliance Requirements. The regional development center shall review CIEs for internal consistency and for any conflicts with plans of local governments within the region, plans of contiguous local governments outside the region, or any regional plans. The procedures to be used in reviewing local CIEs are as follows:

(a) Within ten days after receipt of a draft CIE, the regional development center shall notify the parties listed at 1 through 3, below, of the availability of the CIE for review and comment. This notification shall include, at a minimum, the name(s) of the submitting local government(s), the date of CIE submittal and the general nature of the CIE. Notice shall be provided to:

1. Local governments within the region that are contiguous to the submitting local government, and other local governments within the region that are likely to be affected by the CIE;
2. Local governments outside the region that are contiguous to the submitting local government, and their regional development center(s); and
3. Affected state agencies and the Department.

(b) Within 15 days after notifying the parties listed above, the regional development center shall conduct a hearing at which any local government, regional development center or state agency may present its views on the submitted CIE. The rules for conducting such hearings must be adopted by the board of directors of the regional development center and approved by the Department.

(c) Within 40 days of the date the CIE was originally submitted to the regional development center for review, the Department will provide the regional development center with its findings regarding its review of the CIE for compliance with the Development Impact Fee Compliance Requirements.

(d) Within 50 days of the date the CIE was originally submitted to the regional development center for review, the regional development center must complete its review of the draft CIE and transmit its report of findings and recommendations to the local government. The regional development center's report shall combine the findings of the Department and the regional development center, to include:

1. a copy of the Department's findings from its review of the CIE for compliance with the Development Impact Fee Compliance Requirements;
2. a summary of the regional review hearing on the CIE, detailing any significant issues raised at the hearing or any written comments submitted by parties that reviewed the draft CIE;
3. the regional development center's findings from its review of the draft CIE for: internal consistency, conflicts, or opportunities for cooperation with other governments; and
4. the regional development center's recommendations for addressing any findings identified in its review of the draft CIE.

(a) A complete copy of the regional development center's report of findings and recommendations must be sent to the Department at the same time it is mailed to the local government.

(e) Within ten days after the regional development center's recommendation is made public, a submitting local government that disagrees with the recommendation may petition the regional development center for a "reconsideration hearing." This hearing shall be scheduled and held by the regional development center within 15 days after receipt of such a request. Within ten days after the reconsideration hearing, the Department and the regional development center shall either continue or modify their original recommendations and provide written notice of the decision to the submitting local government.

(g) Informal or formal mediation of conflicts relating to CIEs may be initiated in accordance with the Rules for Mediation of Interjurisdictional Conflicts adopted by the Board of Community Affairs.

(h) In no event shall a local government take any official action to adopt or put into effect a CIE prepared in accordance with the Development Impact Fee Compliance Requirements until at least 60 days after the CIE is first submitted to the regional development center for review. In cases where reconsideration is requested, the period shall be a minimum of 90 days.

(i) The regional development center shall notify the Department within seven days after being notified that the CIE prepared in accordance with the Development Impact Fee Compliance Requirements has been adopted.

(6) Local Government Action:

(a) If the Department determines that the CIE meets the Development Impact Fee Compliance Requirements, the local government may:

1. Adopt the CIE as submitted if no suggestions for improvement are made by the regional development center; or
2. Adopt the CIE, with or without any suggested improvements made by the regional development center.
3. In no event, however, shall a local government adopt a CIE that meets the Development Impact Fee Compliance Requirements until at least 60 days after the CIE is submitted to the regional development center for review.

(b) If the Department determines that the CIE does not meet the Development Impact Fee Compliance Requirements, the local government may:

1. Revise the CIE based upon the Department's comments and submit the proposed revisions to the regional development center for review;
2. Disagree with the recommendation and request a reconsideration hearing; or
3. Disagree with the recommendation and adopt the CIE as originally submitted. However, for a local government to be in compliance with the Development Impact Fee Act, the CIE adopted must be approved by the Department as meeting the Development Impact Fee Compliance Requirements.

(7) Local CIE Adoption: The governing body of the submitting local government shall notify the regional development center, in writing, within seven days of the adoption of the CIE. prepared in accordance with the Development Impact Fee Compliance Requirements. No such adoption shall occur until 60 days after the CIE

is first submitted to the regional development center for review, or 90 days if reconsideration is requested.

(8) Department Action: Once the Department has been notified by the regional development center that a local government has adopted a CIE in accordance with the Development Impact Fee Compliance Requirements, the Department may issue a letter certifying the submitting local government as being in compliance with the Development Impact Fee Act. To retain this certification, a local government must remain in compliance with the requirements outlined in these Development Impact Fee Compliance Requirements.

(9) Updates to CIEs and Short Term Work Programs: Annual CIE and Short Term Work Program updates as described at 110-12-2-.03 (2)(c), Comprehensive Planning Requirements, shall follow the submittal and review procedures outlined at 110-12-2-.04 (3) through (8) with the following exceptions:

(a) Only one public hearing must be held, for the purpose of informing the public of the intent to update the work program and receiving suggestions and comments on the proposed update.

(b) The regional development center will determine, within ten (10) days of submittal, if the short term work program update affects the CIE's compliance with the Development Impact Fee Compliance Requirements:

1. If the regional development center determines that the update does not affect the CIE's compliance with the Development Impact Fee Compliance Requirements, the review process shall omit review by the Department as outlined at 110-12-2-.04 (5)(c), and the regional development center shall complete its review and transmit its report of findings as outlined at 110-12-2-.04 (5)(d) within 40 days of the date the update was originally submitted to the regional development center for review.

2. If the regional development center determines that the annual Short Term Work Program update may affect the CIE's compliance with the Development Impact Fee Compliance Requirements, the review process shall continue as outlined at 110-12-2-.04 (5) through (8).

(c) The regional development center shall maintain a file of annual updates as they are submitted by local governments and shall make them available to interested parties upon request. The regional development center shall notify the Department that the local government has updated its Short Term Work Program in accordance with the requirements for annual Short Term Work Program updates contained in these Development Impact Fee Compliance Requirements.

(10) CIE Amendments:

(a) Proposed amendments to CIEs, as described at 110-12-2-.03(2)(d), Comprehensive Planning Requirements, shall follow the submittal and review procedures outlined at 110-12-2-.04(3) through (8), with the following exceptions:

1. Only one public hearing must be held, for the purpose of informing the public of the intent to amend the CIE and receiving suggestions and comments on the proposed amendment.

2. The regional development center will determine, within ten (10) days of submittal, if the proposed CIE amendment affects the CIE's compliance with the Development Impact Fee Compliance Requirements:

(i) If the regional development center determines that the proposed amendment does not affect the CIE's compliance with the Development Impact Fee Compliance Requirements, the review process shall omit review by the Department as outlined at 110-12-2-.04(5)(c) and the regional development center shall

complete its review and transmit its report of findings as outlined at 110-12-2-.04(5)(d) within 40 days of the date the amendment was originally submitted to the regional development center for review.

(ii) If the regional development center determines that the proposed CIE amendment may affect the CIE's compliance with the Minimum Standards and Procedures, the review process shall continue as outlined at 110-12-2-.04 (5) through (8).