

Title 3

BUSINESS AND FINANCIAL REGULATIONS

Chapters:

3.04 Impact Fees for New Development

Chapter 3.04

IMPACT FEES FOR NEW DEVELOPMENT*

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*Prior ordinance history: Ord. passed 5/15/89, 4/2/01, and 6/16/25 eff. 7/15/25.

3.04.010 Authority.

The ordinance codified in this chapter is enacted pursuant to the specific authority granted municipalities to establish impact fees contained in 24 VSA, Chapter 131, the Charter of the town, and the general authority granted to municipalities to enact ordinances in 24 VSA, Chapter 59. The ordinance codified in this chapter shall be a civil ordinance within the meaning of 24 VSA, Chapter 59. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.020 Purposes.

This ordinance is intended to assist in the implementation of the Town Plan and the Capital Budget Program. The purpose of this ordinance is to regulate the use development, and redevelopment of land such that new development bears a proportionate share of the cost of capital expenditures necessary for each cost center to provide and maintain current services standards of public services in the Town of Essex. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.030 Establishment of fees.

An ordinance relating to the regulation of the use, development, and redevelopment of land in the Town of Essex; imposing an impact fee on land development and redevelopment in the Town of Essex for providing capital facilities and equipment for each of the Town's cost centers:

- Fire Department
- Recreation Department

This ordinance shall be known and may be cited as the "Town of Essex Impact Fee Ordinance". This ordinance shall be a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

The Selectboard of the Town of Essex finds, determines, and declares that:

- A. The Vermont State Legislature through the enactment in 1988 and with subsequent revisions of 24 V.S.A. Chapter 117, Section 4302 and 24 V.S.A. Chapter 131, Section 5203 (a) has enabled the Selectboard of the Town of Essex to enact impact fees.
- B. The Town shall expand its capital facilities and equipment in the above mentioned cost center(s) in an effort to maintain the current services standards for each cost center as new development and redevelopment is to be accommodated without decreasing the current services standards for each cost center. This shall be done in order to promote and protect the public health, safety, and welfare.
- C. Land development and redevelopment will create demand for the acquisition of equipment, the expansion of related capital facilities, and the construction of capital facilities for each of the cost centers through the additional demands placed upon the system by the occupants and users of the development.
- D. The impact fees are based upon, and do not exceed the costs of providing the proportionate share of, the cost of equipment, expansion or construction of capital facilities necessitated by the new land development and redevelopment for which the fees are levied.
- E. The following reports set forth a reasonable methodology and the associated analyses for the determination of the impact of new development and redevelopment on the need for and costs of additional equipment and facilities for each of the cost centers in the town.
 - a. "2004 Essex Recreation Impact Fee Analysis: Town of Essex, Vermont" prepared by Burnt Rock Associates, Inc., Michael J. Munson, dated September 29, 2004, which report is incorporated into this chapter by reference.
 - b. "Town of Essex Fire Impact Fee" prepared by VSD Consulting, LLC " dated December 2024.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.040 Imposition of fees.

- A. Any person who, after the effective date of this ordinance, seeks to develop (and redevelop) land within the Town of Essex, by applying for; a building permit for a residential building; for an extension of a building permit issued prior to that date; a permit for an accessory dwelling unit (ADU) or an extension of a building permit for the development of an ADU issued prior to that date; or a permit associated with commercial, institutional, industrial, or other nonresidential improvement to land or buildings which may reasonably be expected to increase the demand for the public services provided by the cost centers is hereby required to pay impact fees for each cost center in the manner and amount set forth in this ordinance.
- B. No new nonresidential permit, residential building permit, or new permit for an ADU for any activity requiring payment of an impact fee pursuant to this ordinance shall be issued unless and until all impact fees hereby required have been paid in full.
- C. No extension of a nonresidential permit, residential building permit or permit for an ADU issued prior to the effective date of this ordinance for any activity requiring payment of an impact fee pursuant to this ordinance shall be granted unless and until all impact fees hereby required have been paid in full.
- D. These fees shall be applicable to so-called “after-the-fact” permits that are deemed necessary by the Zoning Officer for projects of the type(s) described above, regardless of the date of construction of said improvements.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.041 Alternative Fee Schedule.

- A. An alternative impact fee can be requested by the applicant if the land use is a unique and a significantly different land use than what has been considered in the impact fee studies. The applicant must make this request during the development review process.
- B. The applicant must submit an independent fee calculation. The Town shall in no way bear the cost of such a calculation; shall never receive less than \$250 as payment, and may assess the fee payer all of the extraordinary administrative cost for each and every review of an independent fee calculation submitted to the Community Development Department. The alternative fee study shall conform to acceptable professional practices and the demographic and economic documentation shall show both the method and basis upon which the independent fee calculation was made.
- C. The Community Development Department and/or the Fire and Parks & Recreation Departments shall consider the documentation submitted by the applicant, but is not required to accept such documentation as the Departments shall reasonably deem it to be inaccurate or not reliable and may, in the alternative, require the applicant to submit additional or different documentation for consideration. The Town can retain additional council and third party review of the alternative fee calculation at the expense of the applicant.
- D. A recommendation to the Selectboard from appropriate staff regarding the applicant’s request under item B in this section shall be made within 60 days of submittal of the alternative fee study. The Selectboard shall choose to grant or deny acceptance of the alternative fee, and shall render such decision in writing within 21 days of the meeting at which this item is discussed. Every effort shall be made to review and provide a

determination on an applicant's request within 90 days of receipt by the Community Development Department.

- E. If the independent fee calculation study is not accepted, the feepayer shall pay all impact fees based upon the schedules in Schedule A. (Ord. passed 6/16/25 (part), eff. 7/15/25)

3.04.042 Escalation

- A. Fire impact fees are to be escalated in-line with inflation over the life of the study noted in Section 3.04.040.E.b to maintain purchasing power.
- B. The eligible fees may be annually adjusted by the Consumer Price Index for All Urban Consumers (CPI-U) in the Northeast region. Any adjustment shall be approved by the Selectboard. (Ord. passed 6/16/25 (part), eff. 7/15/25)

3.04.050 Accounting and register of payment.

- A. This ordinance authorizes the Finance Director to create an Impact Fee Trust Fund.
- B. This ordinance establishes a separate interest bearing account within the Impact Fee Trust Fund for each cost center as identified in Section 3.04.030 of this ordinance.
- C. The Selectboard hereby authorizes the Impact Fee Administrator to transfer all impact fee balances to the appropriate impact fee fund for the cost centers.
- D. At least once each fiscal year the Impact Fee Administrator shall prepare an annual accounting of all fees paid into and withdrawn from each account, showing the source and amounts collected, and the amounts expended and the projects for which such expenditures were made. Such annual accounting shall be provided to the Selectboard.
- E. The Town Manager appointed Impact Fee Administrator shall maintain a register for this account, indicating the date of payment of each fee, the amount paid and the name of the payer.
- F. Funds withdrawn from these accounts must be used in accordance with the provisions of Section 3.04.060 of this ordinance.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.060 Use of Funds.

- A. All impact fees collected pursuant to this ordinance, and accrued interest, shall be expended only in the manner in which they were calculated in the impact fee study and consistent with state statute. Changes in the quantity, type, and quality of projects shall provide a similar level of service and benefit to the community. Any changes that result in a new impact fee shall be carried forward effective upon approval of a revised impact fee study or addendum.
- B. All impact fees and accrued interest shall be expended within the timeframe specified in state statute as of the date they are received by the Impact Fee Administrator.
- C. The Impact Fee Administrator shall pay, from the appropriate account, expenses associated with the designated projects as they become due and upon receipt of appropriate documentation regarding such expense.
- D. The Town shall be entitled to assess and retain an amount not more than the amount of funds collected as compensation for the expense of collecting these fees and administering

this ordinance, inclusive of costs associated with updating the impact fee study. The annual financial accounting shall identify the portion of fees retained for administrative purposes. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.070 Payment of fees.

- A. Schedule A shows the annual Impact Fees assessed on applicable land development or redevelopment as identified in this ordinance.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.080 Refunds.

- A. If the actual expense to the town of the projects funded at least in part by impact fees is less than anticipated in the analysis on which the fees were based, the town shall refund to the then owner of the property for which the fee was paid, that portion of any impact fee which is in excess of the appropriate amount due to the town. The town shall provide this refund within one year of the date it completes construction of the project.
- B. If the town reduces the amount of an impact fee after some fees have been collected, the town shall refund to the then owner of the property for which a fee was paid, that portion of any impact fee which is in excess of the appropriate amount due to the town. The town shall provide this refund within one year of the date that the impact fee is reduced.
- C. The town shall expend the impact fee within the time limit identified by state statute and refund the impact fees in accordance with state statute. Any accrued interest may be retained by the town to offset administrative costs.
- D. A person who pays an impact fee established under this chapter and receives a zoning permit may request and receive from the town a refund of the impact fee in full in the event that the development covered by the zoning permit is terminated without commencement of construction. A prerequisite to a refund shall be a returned and rescinded zoning permit. Any accrued interest may be retained by the town to offset administrative costs. A person who receives a refund under this provision shall not commence construction of the development for which the refund was made without having again paid the required impact fee and obtained a new zoning permit.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.090 Exemptions.

The following shall be exempted from payment of one or all impact fees as appropriate:

- A. A replacement, alterations or expansion of an existing residential building where no additional residential units (beds, bedrooms, or dwelling units) are created, commercial land use is unchanged, or where no increase in occupancy, intensity, or net occupancy is reasonably expected.
- B. The replacement of a destroyed or partially destroyed building or structure with a new building or structure with a new building or structure of the same size, use, or intensity of transportation demand.
- C. Any claims of exemption must be made no later than the time of application for a zoning permit. Any claim not so made shall be deemed waived and void.

- D. All other impact fee exemptions shall be decided in accordance with the provisions of 24 V.S.A. Section 5205.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.100 Infrastructure credits.

An applicant can make an offer that can be in-lieu or offset the assessed impact fee. The offer must specifically request for an impact fee credit for each cost center for which the feepayer proposes to provide improvements. If the Community Development Director receives such offer, the same process shall apply as that described in Section 3.04.041D of this Ordinance. The credit shall be determined and provided in the following manner:

- A. Credit for the dedication of land shall be valued at: (i) 100% of the most recent assessed value by the Town of Essex Property Appraiser or Lister, or (ii) by such other appropriate method as the Selectboard may have accepted prior to the effective date of this ordinance for the particular cost center(s) in question(s), or (iii) by fair market value established by private appraisers acceptable to the Town. The credit shall be the value as expressed above with the applicant paying for all costs to assess and transfer the land.
- B. Credit for the construction of facilities or improvements identified in the impact fee study shall construct the facility to the standards to which the cost has been estimated to and up to the standards of the Town of Essex and any other appropriate and relevant jurisdiction. The credit shall be held as an unpaid liability until the facility is approved accepted by the administrator of the specific cost center.
- C. Credit may be provided before completion of specified capital projects if adequate assurances are given by the applicant that the standards set out above in subparagraph (c) will be met and if the feepayer posts security as provided below for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit, or escrow agreement shall be posted with and approved by the Town Attorney in an amount determined by the Town Manager. If the capital construction project will not be constructed within one (1) year of the acceptance of the offer by the Selectboard, the amount of the security shall be increased by ten percent (10%) compounded, for each year of the life of the security. The security shall be reviewed and approved by the Selectboard and Town Attorney
- D. Credits shall not be transferable from one project to another without the approval of the Selectboard. The amount of credit shall not exceed the total amount of the impact fee that would otherwise be levied on the proposed project.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.101 Credits for “in-kind” contributions.

- A. “In-kind” contributions shall mean provision, by a person subject to payment of an impact fee, of land, equipment, or construction of facilities, that are related to or part of the projects identified for impact fees in this chapter.
- B. Upon recommendation of the Development Review Board commission, the Selectboard may approve credit against an impact fee levied under this chapter for the value of the “in-kind” contributions. The amount of credit for an “in-kind” contribution shall be based on the

actual cost to the person requesting the credit for providing or creating the facilities. The planning commission shall indicate the basis on which the amount of credit is determined. The amount of credit for an “in-kind” contribution shall not exceed the total amount of the impact fee that would otherwise be levied on the proposed project. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.110 Appeals.

A. An individual or entity required to pay an impact fee under this chapter may challenge the imposition of such fee, or the amount of the fee, by filing a written notice of appeal with the town treasurer, which appeal shall not be filed later than thirty (30) days after payment of the impact fee. Said notice of appeal shall state the basis of the appellant’s challenge to the fee. Within sixty days (60) of the filing of a notice of appeal, the town Selectboard shall hold a public hearing to receive oral and written evidence and argument from the appellant and town representatives. Within forty-five (45) days after the conclusion of the hearing, the Selectboard shall notify the appellant of its decision, in writing. (Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.120 Violation—Penalty.

A person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. The zoning administrator of the Town of Essex shall be authorized to act as an issuing municipal official to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$ 50.00
Second offense	\$100.00
Third offense	\$150.00
Fourth and subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$100.00
Second offense	\$200.00
Third offense	\$300.00
Fourth and subsequent offenses	\$500.00

Offenses shall be counted on a calendar year basis. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy

authorized by law. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

3.04.130 Severability.

In the event that any provision of this chapter is for any reason declared invalid, such invalidity shall not affect the remaining provisions which can be given effect without the invalid provision.

Schedule A: Impact Fees

Section A1: Recreational Impact Fees

Table R-1 in Schedule A presents net recreation impact fees where credits for land or cash contributions are not applicable.

Table R-2 in Schedule A presents additional credits to be deducted if credits for land or cash contributions are applicable.

Table R-1

Total Net Recreation Impact Fees

- Base impact fee for single-family dwelling = \$640.00
- Base impact fee for multiple-family dwelling = \$480.00

Single-Family Dwelling. The impact fee shall be:

$2.967 \times \$215.90$, rounded downwards to \$640.00, minus credits for past and future tax payments used for recreation facility expenditures, and minus credits for land or cash contributions for recreation facilities, if applicable.

Multiple-Family Dwelling (Fee Per Unit). The impact fee shall be: $2.255 \times \$215.90$, rounded downwards to \$480.00, minus credits for past and future tax payments used for recreation facility expenditures, and minus credits for land or cash contributions for recreation facilities, if applicable.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

Table R-2

Recreation Impact Fee Credits for Land or Cash Contributed for Recreation Facilities
(Per Dwelling Unit)

Autumn Knoll	(the maximum value of the computed recreation impact fee)
Forestdale	\$235.00 per unit

Examples of Recreation Impact Fee Calculations. To illustrate how the recreation impact fee formulae work, consider the following examples.

Example 1. A zoning permit for a single-family dwelling is requested on May 3, 2006. The dwelling is not in a subdivision that has previously dedicated land or cash to the town for recreation purposes so no credit from Table R-2 is applicable. The impact fee is determined as follows. First, since the permit was requested in May, it is assumed that the dwelling will enter the grand list in April of the following year, 2007. The net recreation impact fee will be found in Table R-1.

To determine the fee, enter Table R-1 at the row representing the year that the new dwelling goes on the grand list, 2007. Since the dwelling is a single-family dwelling, the fee is found in column 3, and equals \$578.00.

Example 2. In November of 2006, a zoning permit is requested for a ten-unit residential structure. This is clearly a multiple-family project. The impact fee is computed on a per unit basis, and then multiplied by the number of units being constructed. The development is not in a subdivision that has previously dedicated land to the town for recreation purposes so no credit from Table R-2 is applicable. The fee per unit is found in Table R-1.

To determine the fee, enter Table R-1 at the row representing the year that the new dwelling unit goes on the grand list. In this case, the permit was requested in November, and the rule indicates that it will not go on the grand list until April of the year following the next year, or 2008. Since the dwelling is a multiple-family dwelling, the fee is found in column 3, and equals \$454.00 per unit.

For the ten-unit structure, the total recreation impact fee would equal \$4,540.00.

If either of the illustrative developments had been located in one of the subdivisions included in Table R-2, an additional credit would have been deducted. For instance, if the single-family dwelling in Example 1 had been on a lot in Forestdale, an additional credit of \$235.00 would have been deducted, making the total impact fee equal: \$581.00 - \$235.00 = \$346.00.

If the dwelling had been in Autumn Knoll, the additional credit from Table R-2 would equal the total remaining impact fee, with the result that no impact fee would be due.
(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

Section A1: Fire Impact Fees

Section 2 includes the Base Impact Fee for the fire cost center.

**Table F-1
Base Fire Impact Fee Table**

Residential	
Per capita	\$423
0 bedroom (studio)	\$563
1 bedroom	\$710
2 bedroom	\$857

3 bedroom	\$1,004
4 bedroom	\$1,151
5+ bedroom	\$1,408
Nonresidential	
Per job	\$278
Per 1,000 square feet of gross floor area	\$480

(Ord. passed 6/16/25 eff. 7/15/25)