

Sign Ordinance - City of Alpharetta

## Chapter 16 - PLANNING AND DEVELOPMENT

### FOOTNOTE(S):

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**Editor's note**— Res. No. 1477, adopted May 3, 2010, provides for the deactivation of the downtown development authority.

**Charter reference**— Planning and zoning authority, § 1.13(14); urban redevelopment, § 1.13(38). ([Back](#))

### ARTICLE I. - IN GENERAL

#### Sec. 16-1. - City planning commission—Created and established.

In order to guide and accomplish a coordinated and harmonious development of the municipality which will, in accordance with existing and future needs, best promote the public health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, the Alpharetta Planning Commission, hereinafter referred to as the planning commission, is hereby created and established.

(Ord. No. 79, 7-31-61)

**Cross reference**— Administration generally, Ch. 2.

#### Sec. 16-2. - Same—Membership.

The planning commission shall consist of seven (7) members, who shall be residents of the city, appointed by the city council. The terms of the members shall be for four (4) years, except that in the appointment of the first planning commission, the first member shall be appointed for a term of one (1) year, the second member shall be appointed for a term of two (2) years, the third member shall be appointed for a term of three (3) years, and the remaining members for terms of four (4) years each. Any vacancy in membership shall be filled for the unexpired term by the city council who shall also have the authority to remove any member for cause, on written charges, after a public hearing. All members shall serve without compensation, but may be reimbursed for actual expenses incurred in connection with their official duties.

(Ord. No. 79, § 1, 7-31-61; Ord. No. 264, § 1, 10-23-89)

#### Sec. 16-3. - Same—Organization; rules; staff; finances.

- (a) The planning commission shall elect its chairman from among its members. The term of the chairman shall be one (1) year with eligibility for re-election. The planning commission shall appoint a secretary, who may be an officer or employee of the municipality. The planning commission shall make its own rules of procedure and determine its time of meeting. All meetings of the planning commission at which official action is taken shall be open to the public and all records of the planning commission shall be a public record.
- (b) The planning commission may appoint such employees and staff as it may deem necessary for its work and may contract with the state planning agency and city planners and other consultants for such services as it may require. The expenditures of the planning commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the city council.

(Ord. No. 79, § 2, 7-31-61)

Sec. 16-4. - Same—Powers and duties.

From and after the time the planning commission shall have organized and selected its officers and shall have adopted its rules of procedure, then the planning commission shall have all the powers, duties and responsibilities provided by law.

(Ord. No. 79, § 3, 7-31-61)

**State law reference**— Zoning procedures, O.C.G.A. § 36-66-1 et seq.

Sec. 16-5. - Determination of fees.

The following fees shall be administratively determined by the director of planning and community development and may be changed from time to time as determined by the director of planning and community development without further approval by the city council:

- (1) Building permit.
- (2) Certificate of occupancy.
- (3) Heating and/or air-conditioning permit.
- (4) Plumbing permit.
- (5) Demolition permit.
- (6) Development permit.
- (7) Zoning application and filing.
- (8) Preliminary and final plat.
- (9) Conditional use permit.
- (10) Special use permit.
- (11) Annexation application.
- (12) Variance request.
- (13) Sewer tap inspection.
- (14) Sign permit.
- (15) Temporary certificate of zoning compliance.
- (16) Master plan review.

(Ord. No. 213, 8-12-85)

Sec. 16-6. - Major thoroughfare plan—Adopted.

The major thoroughfare plan is hereby adopted. It shall be known as the "City of Alpharetta Major Thoroughfare Plan—August, 1987".

(Ord. No. 230, § 1, 9-28-87)

**Cross reference**— Traffic, Ch. 18.

Sec. 16-7. - Same—Application to development.

- (a) The road improvements set forth in the major thoroughfare plan shall constitute required improvements with respect to the development of residential subdivisions and all commercial developments within

the city, including, but not limited to, the development of offices, institutions, shopping centers, retail sales facilities, manufacturing facilities, apartment complexes, hotel and motel developments, and mixed-use developments.

- (b) All development plans presented to the city, including but not limited to preliminary and final plats, and engineering design plans, shall, with respect to any existing or proposed road identified in the major thoroughfare plan, provide for the dedication and construction by the developer (at no cost to the city) of those road improvements identified in the major thoroughfare plan which abut or are contained within the development. The inclusion of such provisions within any plan submitted to the city shall be a precondition to the approval of such plans and the issuance of any city permit pertaining to the development.

(Ord. No. 230, § 2, 9-28-87)

Sec. 16-8. - Same—Enforcement officer; appeals.

The provisions of sections 16-6 through 16-10 and the major thoroughfare plan shall be enforced by the director of planning and community development. The director, or the director's duly authorized representative, may enter upon any premises to perform any duty imposed upon the director by such sections. Any person aggrieved by a decision of the director may appeal such decision to the board of appeals.

(Ord. No. 230, § 3, 9-28-87)

Sec. 16-9. - Same—Additional remedies.

- (a) Upon notice from the director, work on any required improvements that is being done contrary to the provisions of the plan shall immediately cease. Such notice shall be in writing and should go to the owner of the property, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (b) When an emergency exists, the director shall not be required to give written notice prior to stopping the work.
- (c) Further, in the event that the required improvements are being done contrary to the provisions of the plan, the director may revoke any permit previously issued by the city or any department of the city, and may refuse to issue any further permit until, in the discretion of the director, the work on the development is brought into compliance with the provisions of sections 16-6 through 16-8

(Ord. No. 230, § 4, 9-28-87)

Sec. 16-10. - Same—Interpretation, purpose and conflict.

The provisions of sections 16-6 through 16-8 and the major thoroughfare plan shall be considered as the minimum requirements for the promotion of the public safety, health, morals and general welfare. The provisions thereof are not intended to abrogate or eliminate other required improvements which may be set forth in the zoning ordinance, the subdivision regulations, the design standards, or other such ordinances; provided, however, where such sections impose greater requirements with respect to required improvements, the provisions of such sections shall govern.

(Ord. No. 230, § 5, 9-28-87)

Secs. 16-11—16-30. - Reserved.

ARTICLE II. - DESIGN STANDARDS

FOOTNOTE(S):

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**Editor's note**— Ordinance No. 230-A, adopted Sept. 14, 1987, did not specifically amend this Code; hence, inclusion of §§ 1—5 as Art. II, §§ 16-31—16-35, was at the discretion of the editor. Exhibit "A", which sets out the design standards is not printed herein, but is on file, together with Ord. No. 230-A, in the city clerk's office.

**Cross reference**— Building, construction and related activities, Ch. 5. [\(Back\)](#)

## DIVISION 1. - GENERALLY

### Sec. 16-31. - Adoption by reference.

The "Design Standards," attached as Exhibit "A" to Ordinance No. 230-A and incorporated herein by reference, are hereby adopted as the design standards for development within the city.

(Ord. No. 230-A, § 1, 9-14-87)

### **Editor's note**—

Exhibit "A," attached to Ord. No. 230-A, is not printed herein, but is on file and available for public inspection in the city clerk's office.

### Sec. 16-32. - Scope.

The design standards shall apply to the development of residential subdivisions and all commercial developments within the city, including, but not limited to, the development of offices, institutions, shopping centers, retail sales facilities, manufacturing facilities, apartment complexes, hotel or motel developments, and mixed-use developments.

(Ord. No. 230-A, § 2, 9-14-87)

### Sec. 16-33. - Enforcement officer.

The provisions of this article and the design standards shall be enforced by the director of the department of engineering (the city engineer), and the city engineer, or the city engineer's duly authorized representative, may enter upon any premises to perform any duty imposed upon the city engineer by this article. The city engineer may require tests or test reports as proof of compliance. Required tests are to be made at the expense of the owner, or his agent, by an approved testing laboratory or other approved agency.

(Ord. No. 230-A, § 3, 9-14-87; Ord. No. 276, § 1, 6-11-90)

### Sec. 16-34. - Remedies.

Upon notice from the city engineer, work on any development that is being done contrary to the provisions of this article shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which the work may be resumed. When an emergency exists, the city engineer shall not be required to give written notice prior to stopping the work. Further, in the event that work on any development is being done contrary to the provisions of this article, the city engineer may revoke any permit previously issued by the city or any department of the city, and may refuse to issue any further permit until, in the discretion of the city engineer, the work on the development is brought into compliance with the provisions of this article. Any person aggrieved by a decision of the city engineer may appeal such decision to the board of zoning appeals.

(Ord. No. 230-A, § 4, 9-14-87; Ord. No. 276, § 1, 6-11-90)

### Sec. 16-35. - Alternative materials and methods.

The provisions of this article and the design standards are not intended to prevent the use of any material or standard not specifically prescribed by this article, provided that any such alternative has been approved by the city engineer. The city engineer may, in its discretion, approve any such alternate, provided the city engineer finds that the alternate for the purpose intended is at least the equivalent of that prescribed in this article. The city engineer shall require that sufficient evidence or proof be submitted to substantiate any claim made regarding the alternate.

(Ord. No. 230-A, § 5, 9-14-87; Ord. No. 276, § 1, 6-11-90)

Sec. 16-36. - Conflict regarding construction standards in subdivision regulations.

If, and to the extent, there exists any conflict between the construction standards specified in the city's subdivision regulations and Ordinance No. 230-A to adopt design standards for development within the city, it shall be the right and responsibility of the city engineer to specify the standard that shall apply with respect to the development under review, and the development and/or owner of the development shall adhere to the standard selected and specified by the city engineer.

(Ord. No. 276, § 2, 6-11-90)

### **Editor's note—**

Ordinance No. 276, § 2, adopted June 11, 1990, did not specifically amend this Code; hence, inclusion of § 2 as § 16-36 was at the discretion of the editor.

DIVISION 2. - DESIGN REVIEW BOARD

### FOOTNOTE(S):

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**Editor's note—** Ordinance No. 437, adopted Dec. 20, 1999, did not specifically amend the Code; hence, inclusion of §§ 1—10 as Div. 2, §§ 16-37—16-46, was at the discretion of the editor. The maps referred to throughout this division are not set out herein, but are on file in the city clerk's office.

Sec. 16-37. - Finding of fact and determination of city council.

The historical, cultural and aesthetic heritage of the city are among the city's most valued and important assets, and the preservation of this heritage is essential to the promotion of the health, safety, education, prosperity and general welfare of the people.

(Ord. No. 437, § 1, 12-20-99; Ord. No. 473, § 1, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

Sec. 16-38. - Purpose and declaration of public policy.

- (a) *Purpose.* The city council finds that many places, districts, sites, buildings, structures, objects, landscape features and works of art, having a special character or a special historic or aesthetic interest or value, or representing the finest architectural products of distinct periods in the history of the city have been destroyed or uprooted, notwithstanding the feasibility or preserving and continuing the use of such places, districts, sites, buildings, structures, objects, landscape features and works of art, and without adequate consideration of the irreplaceable loss to the people of the city of the aesthetic, educational, economic and historic values represented by such places, districts, sites, buildings, structures, objects, landscape features and works of art. In addition, distinct areas may be similarly uprooted or may have their distinctiveness destroyed, although the preservation thereof may be both feasible and desirable. It is the finding of the council that the standing of this city must be maintained and enhanced by preserving the historical and architectural heritage of the city and preventing the destruction of such cultural assets. The council further finds that certain aspects of

development, such as the spatial relationships of structures and open spaces to each other and the appearance of buildings and open spaces as they contribute to the attractiveness, function, and character of a district or the city as a whole, require the timely exercise of judgment in the public interest by a public body qualified to evaluate the design of proposed new developments or redevelopments within the city.

- (b) *Declaration of public policy.* It is hereby declared as a matter of public policy that the identification, protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, objects, landscape features and works of art of special character of a special historic or aesthetic interest or value is a public necessity and is required in the interest of health, prosperity, safety, education and general welfare of the people. It is further declared as a matter of public policy that the promotion of sound design principals in order to provide a built environment which is attractive and functional is a public necessity and is required in the interest of health, prosperity, safety, education and general welfare of the people. Accordingly, the public policy objectives of this article are as follows:
- (1) To effect and accomplish the protection, enhancement and perpetuation of such places, districts, sites, buildings, structures, objects, landscape features and works of art which represent or reflect special elements of the city's cultural, social and economic and architectural history;
  - (2) To safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such places, districts, sites, buildings, structures, objects, landscape features and work of art;
  - (3) To simulate historic neighborhoods and to protect and enhance local historical and aesthetic attractions to residents, tourists and others and thereby promote and stimulate business;
  - (4) To enhance the opportunities for federal or state tax benefits under relevant provisions of federal or state law;
  - (5) To promote traffic safety and the general welfare of the public through the protection of the community property values, character and vistas of various city entrance corridors and the prevention of unnecessary clutter, congestion and poor definition of properties and development edges along routes of primary access leading into areas and sites of significant historical, cultural, educational, social and/or aesthetic value, and to ensure that any development or redevelopment is consistent with the goals of the comprehensive plan;
  - (6) To improve the environment of the city and quality of life for the general welfare of all citizens of the city;
  - (7) To protect and enhance the attractiveness of the city to home buyer, tourists, visitors and shoppers, and thereby support and promote business, commerce, industry and provide economic benefit to the city.
  - (8) To foster and encourage preservation, restoration and rehabilitation of structures, areas, and neighborhoods and thereby prevent urban blight.
  - (9) To encourage the concept of sustainability, use of energy efficient design and promote conservation of natural resources.

(Ord. No. 437, § 2, 12-20-99; Ord. No. 473, § 2, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

#### Sec. 16-39. - Interpretation.

In addition to any restrictions imposed by this division, all buildings, structures, sites and areas and the property on which they are located shall remain and continue to be subject to all building, sign, zoning and other ordinances of the city. If any conflict arises between this division and regulations promulgated thereunder, the more restrictive shall control.

(Ord. No. 437, § 3, 12-20-99; Ord. No. 473, § 3, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

#### Sec. 16-40. - Definitions.

The following definitions shall apply to this division unless specifically stated otherwise. Any words or phrases not defined below shall be given their common ordinary meaning unless the context clearly indicates otherwise.

*Accessory structure.* A structure detached from a principal building on the same lot and customarily incidental and subordinate to the principal building or structure.

*Action.* Any decision made by the board including approval, deferral or tabling.

*Adaptive use.* The process of converting a building to a use other than that for which it was designed (i.e. changing a factory into housing). Such conversions are accomplished with varying alterations to the building.

*Alpharetta Highway (State Route 9) corridor of influence.* Any and all properties contiguous with or within the portion of the city along Alpharetta Highway or State Route 9, extending from Upper Hembree Road to the south, to Windward Parkway to the north.

*Alteration of building.* Any change in the supporting members of a building (such as bearing walls, columns or girders); any change in the non-supporting interior walls of a building; any addition or reduction to the building; any change in use; or any relocation of a building from one location or position to another.

*Board.* The City of Alpharetta design review board as established by the Unified Development Code and appointed by the mayor and council.

*Building.* A structure created to shelter any form of human activity, such as a house, barn, church, hotel, accessory building or similar structure.

*Canopy (or marquee or awning).* A permanent roof-like shelter or overhang extending from part or all of a building face and constructed of a durable material such as fabric, metal, glass or plastic.

*Central business district (CBD).* That portion of the city bounded by Mayfield Road to the North, Old Milton Parkway to the South, Haynes Bridge Road and Highway 9 to the east and Roswell and Canton Streets to the west. (See map 'A'.)

*Certificate of design approval.* A document issued by the design review board allowing an applicant to proceed with a proposed alteration, demolition, removal or new construction based upon a design review process and determination of the submitted proposal's suitability according to adopted criteria.

*City.* The City of Alpharetta, Georgia.

*Community development director.* The director of the community development department for the City of Alpharetta or their designee.

*Construction.* The act of erecting a new principal building or structure, and/or adding an accessory building or structure. The act of adding to an existing building, structure or other improvement.

*Corridors of influence.* The roadways and transportation routes having the greatest visual impact within the city and those roads which are considered to be "gateways" into the city. The corridors of influence include: Alpharetta Highway or State Route 9 (except those portions which are considered to be in the Central Business District and the Historic Business District), Haynes Bridge Road, Mansell Road, North Point Parkway (from Mansell Road to Kimball Bridge Road), Old Milton Parkway, Westside Parkway (extending from Sanctuary Parkway to Windward Parkway), and Windward Parkway (from State Route 9 to Georgia 400).

*Demolition.* Any act or process that destroys in part or in whole any existing condition.

*Demolition by neglect.* Neglect in any maintenance of any building or structure which results in its deterioration.

*Design review.* The process of ascertaining whether modifications to a particular building, structure, site, area, district, landscape feature or any part thereof meets the standards of appropriateness (design guidelines) established by the design review board.

*Design standards, guidelines or criteria.* Adopted and written standard of appropriate activity that will preserve or enhance the historical, cultural, architectural, archeological, educational, social, aesthetic character, function and value of a particular resource, district or area of the city as a whole.

*Development activity.* All new construction, modification, addition, alteration, moving, destruction or demolition which would affect the exterior appearance of any structure, building, land, site or other object, including, but not limited to the following:

- (1) The demolition of any building, structure or object.
- (2) The moving or relocation of any building, structure or object.
- (3) Except housecleaning, any material work on the exterior appearance of existing buildings by additions, reconstruction, rehabilitation, alteration or any maintenance (including exterior color), or any exterior material changes.
- (4) Any new construction of a principal building or accessory building or structure subject to view from a street or public way.
- (5) Changes in existing walls, fences, steps, sidewalks, streets and paving or construction of new walls, fences, steps, sidewalks, streets and paving, if along street rights-of-way, public lanes or public alleys.
- (6) The erection or display on any lot, building or structure of any sign, light, art work, mural, sculpture or other appurtenant feature.

*Director.* The director of community development department for the City of Alpharetta.

*District.* A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of buildings, structures, sites, spaces, or objects united by past events or aesthetically by plan or physical development.

*Exterior features.* The architectural style, design, general arrangement and components of all or any of the outer surfaces of an improvement, as distinguished from the interior surfaces enclosed by said exterior surfaces, including, but not limited to, the type, color and texture of the building materials and the type and style of all windows, doors, lights, signs and all other features appurtenant to such improvements.

*Facades.* The exterior face(s) of a building or structure exposed to public view.

*Foot candles.* A unit of illuminance on a surface that is one (1) foot from a uniform point source of light of one (1) candle and equal to one (1) lumen per square foot.

*Garden district.* That portion of Canton Street bounded by Church Street to the south and Hopewell Road to the north.

*Gazebo.* An accessory, open air structure not exceeding three hundred (300) square feet in size.

*Haynes Bridge Road corridor of influence.* Any and all properties contiguous with or within the portion of the City along Haynes Bridge Road, extending from Academy Street to the north to Mansell Road to the south.

*Historic business district (HBD).* That portion of the central business district bounded by Church Street to the north, Highway 9 to the east, Marietta Street to the south and the former Milton High School site to the west. (See map "A".)

*Improvement.* Any building, structure, parking facility, fence, gate, wall, landscape feature, work of art or other object constituting a physical change of real property, or any part of such change.

*Interchange districts.* All properties within one thousand (1,000) feet of each interchange along Georgia 400. These districts include: Mansell Road Interchange District, Haynes Bridge Road Interchange District, Old Milton Parkway Interchange District and the Windward Parkway Interchange District.

*Island.* In parking lot and street design, built-up curbs (and in parking lots usually placed at the end of parking rows) as a guide to traffic and also used for landscaping, signage or lighting.



*Landscape strip.* A portion of a lot required to be reserved for, installed with, and maintained with vegetation. Such a strip may or may not be required to be of a linear form.

*Mansell Road corridor of influence.* Any and all properties contiguous with or within the portion of the city along Mansell Road, extending from Haynes Bridge Road to the east to Warsaw Road to the west.

*Mural.* Any piece of artwork painted directly on a wall, ceiling, or other permanent surface. If the artwork conveys a message about a product or service it shall be considered a sign.

*North Point Parkway corridor of influence.* Any and all properties contiguous with or within the portion of the City along North Point Parkway, extending from Kimball Bridge Road to the north to Mansell Road to the south.

*Object.* A material item of functional, aesthetic, cultural, historic or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

*Old Milton Parkway corridor of influence.* Any and all properties contiguous with or within the portion of the city along Old Milton Parkway, extending from Wills Road to the west, and to the eastern city limits.

*Ordinary repairs or maintenance.* Work done to prevent deterioration of a building or any part thereof by restoring the building as nearly as practical to its condition prior to its deterioration, decay or damage.

*Owner.* The title owner and its agents or assignees.

*Parapet.* That portion of a wall which extends above the roof line.

*Preservation.* The act or process of applying measures to sustain, in the existing form, the integrity and material of a building or structure, and the existing form and vegetative cover of a site (i.e. saving from demolition or deterioration buildings, sites, structures and objects and providing for their continued use by means of restoration, rehabilitation or adaptive use).

*Principal building.* The building or other structure within which is conducted for (or intended to be conducted) the principal use of the lot on which said building is situated.

*Reconstruction.* The act or process of reproducing by new construction the exact form and detail of a vanished building, structure or object or part thereof, as it appeared at a specific period of time.

*Rehabilitation.* The act or process of returning property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions of features of the property which are significant to the historical and architectural values.

*Restoration.* The act or process of accurately recovering the form and details of a property and its settings as it appeared at a particular period of time by means of the removal of the later work or by the replacement of earlier work.

*Roof line.* The top edge of the roof or top of the parapet, whichever forms the dominant top line of the building silhouette.

*Sign.* Any identification, description, illustration, symbol, statue or device, illuminated or non-illuminated, which is visible from any public place each designed to advertise, identify or convey information, including any landscaping where letters or numbers are used for the purpose of directing the public's attention to a product or location, with the exception of window displays and state or national flags. For the purpose of removal, sign shall also include all sign structures.

*Sign structure.* Any structure which supports, has supported or is designed to support a sign. A decorative cover is part of a sign structure.

*Site.* The location of a significant event or activity, or a building or a structure, whether standing, ruined, or vanished, where the location itself maintains special or unique value regardless of the value of the existing structure.

*Site plan.* A plan accurately drawn to scale of a development project, depicting the buildings proposed to be placed on the property, related public and site improvements on the site, and additional information as required by this division or conditions of zoning approval, and other applicable ordinances.

*Solar panel.* Two (2) types of devices that collect energy from the sun: Solar photovoltaic modules use solar cells to convert light from the sun into electricity and solar thermal collectors use the sun's energy to heat water or another fluid such as oil or antifreeze.

*Structure.* A combination of materials to form a construction for use, occupancy or ornamentation which is fastened or attached to the ground.

*Style.* A type of architecture distinguished by special characters or features of a structure and ornament and often related in time; also a general quality of distinctive character.

*Westside Parkway corridor of influence.* Any and all properties contiguous with or within the portion of the city along Westside Parkway, extending from Sanctuary Parkway to the southwest to Windward Parkway to the north.

*Windward Parkway corridor of influence.* Any and all properties contiguous with or within the portion of the city along Windward Parkway, extending from State Route 9 to the west, to Georgia 400 to the east.

(Ord. No. 437, § 4, 12-20-99; Ord. No. 473, § 4, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

#### Sec. 16-41. - Scope of division.

The restrictions imposed by this division shall apply to all non-single family detached buildings, structures, sites and areas and the property on which they are located within the central business district and historic district (as defined and depicted on map "A" attached to the ordinance from which this division derives and incorporated by reference), corridors of influence (as defined and depicted on map "B" attached to the ordinance from which this division derives and incorporated by reference), interchange districts (as defined and depicted on map "B" attached to the ordinance from which this division derives and incorporated by reference), and to all projects which otherwise expressly include, as a condition of development, review by the design review board.

(Ord. No. 437, § 5, 12-20-99; Ord. No. 473, § 5, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

#### Sec. 16-42. - Design review board.

(a) *Establishment.* A design review board is hereby established. The board shall consist of seven (7) members and two (2) alternate members. Members shall be appointed and shall serve in accordance with the city boards and commissions ordinance. No member shall be employed by the city, hold public office in the city or be a member of another city board or commission. At least one (1) member of the board shall be a registered architect in the state in good standing.

(b) *Proceedings.*

(1) The board shall elect a chairman and a vice chairman from its members during its first meeting in January of every year who shall serve for one (1) year or until their successors are elected. A staff member of the community development department shall serve as a non-voting secretary to the board. Meetings of the board shall be held at the call of the chairman and at such times as the board may determine. All meetings of the board shall be open to the public. A minimum of four (4) members of the board shall constitute a quorum. Any act of the board shall require a majority vote of the members at a meeting at which a quorum is present. The board shall maintain minutes of its proceeding, including the results of all votes taken, and shall maintain records of its examinations and other official actions, all of which shall be filed in the office of community development department as public record.

(2) Only design review board members present during the initial review of an item may participate in any subsequent reviews of the same items. An exception to this provision can be made in order to maintain a quorum.

(3) If no action is taken by the design review board within three (3) consecutive hearings, the applicant may request to be placed on the next available board of appeals agenda for further consideration and action.

(c) *Powers and duties.* The board shall:

- (1) Review applications for certificate of design approval required in section 16-43 for:
  - a. All exterior features of new construction.
  - b. All exterior features of construction, alteration, restoration, moving, demolition, or repair of an existing building(s) or improvements involving or resulting in a change in the existing structural composition or architectural design or character of such building(s) or improvement;
  - c. All proposed changes, improvements or proposals regarding site plan features such as landscaping, walls, walks, terraces, fences, signs, lights and shopping cart corrals.
  - d. All proposed screening of dumpsters, satellite antennas and dishes, solar panels, parking lots, roof top equipment and other mechanical equipment.
  - e. All proposed outdoor play yards and/or equipment, and outdoor patios with or without seating.
  - f. All demolition of building(s) or portions of building(s) that are over fifty (50) years old and may be of significance.
- (2) Review all applications for signs within the central business district, the historic business district, the corridors of influence and the interchange districts.
- (3) Grant or deny applications for certificates of design approval based upon a design review of the proposed development activity for compliance with design standards.
- (4) The following shall not be subject to review by the board:
  - a. Repainting of a structure to the same color that was previously approved by the board.
  - b. The ordinary maintenance or repair of any exterior elements of any building or structure.
  - c. The construction, reconstruction, alteration or demolition of any such elements which the authorized city officers shall certify as required for public safety.
  - d. Single-family detached residential structures.
- (5) Act in an advisory role to other city departments, boards and commissions.
- (6) Develop from time to time further design standards consistent with the purposes, intents and standards established in this division, and in accordance with section 16-44
- (7) Notwithstanding any other provisions of this division, the design review board may delegate review responsibility for all non-residential areas not included within the central business district, corridors of influence and the interchange districts to the director. If the director finds the plans in compliance, the director's decision shall be final and a development or building permit shall be issued.

(Ord. No. 437, § 6, 12-20-99; Ord. No. 473, § 6, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

Sec. 16-43. - Certificate of design approval—Application.

- (a) *When required.* No person shall undertake development activity within any area of the city subject to this division without first obtaining a certificate of design approval from the design review board in accordance with the provisions of this division. Such certificate of design approval shall be a pre-condition to the issuance of any land disturbance, building or other permit.
- (b) *Application for certificate of design approval.* Application for certificate of design approval shall be made to the community development department and shall be accompanied by site plans, detailed development plans, including relevant sketches, perspective or isometric drawings, written descriptions, affirmatively setting forth provisions for compliance with design standards. No application shall be deemed to be accepted by the community development department unless and until all fees are paid and all information reasonably required by the community development department is provided by the applicant.

No application will be heard until all items have been submitted. Submittal shall include, but not be limited to the following:

- (1) *Site plan requirements.*
  - a. The location of all proposed buildings and structures, accessory and main, indicating the number of stories and height.
  - b. The location and dimensions of proposed recreation areas, open spaces, outdoor seating areas and similar improvements.
  - c. Parking areas with parking spaces drawn, tabulated, and dimensioned. Designated number of parking spaces (including handicap) required by ordinance and provided by proposal.
  - d. Parking islands and/or raised landscape islands and cart corral locations.
  - e. The location of all drives. Minimum drive aisle width and direction of vehicular travel.
  - f. Curb cuts and adjacent and connecting roadways off premises.
  - g. Security gates showing swing path.
  - h. Sidewalks (both public and private).
  - i. Loading docks.
  - j. Detention ponds (underground/above ground). Screening to be depicted on landscape plan and/or site plan.
  - k. Sites for solid waste/trash containers with screening per city design standards.
  - l. Show all easements clearly designating as proposed and type (utility, access, etc.).
  - m. The location, height, type and material of all fences, walls, retaining walls and guardrails.
  - n. Show diameter, location, drip lines and protection areas of all specimen trees whether retained or removed.
  - o. Show all required buffers and setbacks, streams, water and flood plain areas.
  - p. Such other information as is reasonably necessary to represent the character, nature and exactness of the proposed project being review by the board.
  - q. Such other information as is reasonably requested by the community development department and/or the board.
- (2) *Site lighting.* A photometric site lighting study certified by a professional to indicate all foot-candle levels extending to all property lines from the project.
- (3) *Site line study.* A site line drawing depicting several views from the public roadways to ensure all roof mounted equipment is concealed from public view.
- (4) *Landscape submittal requirements.* Provide landscape drawings prepared by a landscape architect (drawn to scale) indicating the locations of all landscape features including but not limited to size and type of all plant materials (including ground covers) and location of seasonal beds.
- (5) *Exterior elevation submittal requirements.*
  - a. Provide photographs of the subject property in its current condition and photographs of all contiguous properties.
  - b. Provide dimensioned and colored exterior elevations (drawn to scale) of all facades of the building identifying and representing the locations and color of all proposed exterior materials. Include locations of all proposed building mounted light fixtures, equipment or other accessories. Enlarged details of portions of the building to help better understand the interaction of materials and colors are highly recommended.

- c. Provide actual material and color samples of all proposed exterior materials. A color copy of such samples shall be included with the submittal (actual materials and color samples shall be brought to the design review meeting). Include cut sheets or other written and pictorial descriptions of all building mounted lighting or equipment.
  - d. Indicate the locations of all roof top mounted equipment.
  - e. The use of perspective drawings, three-dimensional digital models or renderings to assist in depicting the exterior architecture of the building(s) is highly recommended.
- (6) *Building and monument signage requirements.*
- a. Provide dimensioned and colored exterior elevations (drawn to scale) indicating the locations and dimensions of all building mounted signs. Include actual color samples, lighting/illumination methods, materials and construction for each sign. Provide a calculation indicating the total area (square footage) of each building sign.
  - b. Provide a site plan (drawn to scale) indicating locations of ground mounted monument signs. Indicate required setbacks, adjacent ground cover and landscaping materials.
  - c. Provide dimensioned and colored elevations of ground mounted signs. Identify all proposed materials, provide actual material and color samples. Indicate lighting and illumination methods.
- (c) *Action on application.*
- (1) The application shall be delivered with the supporting information and materials to the community development department and the board for review and consideration.
  - (2) The board shall act upon the application within thirty (30) days after the filing of an application with the community development department containing all the information required in section 16-43. The board may extend the period for action fifteen (15) additional days for reasonable cause. The community development department or the board shall notify the applicant in advance of any decision to extend the period for action. The community development department, design review board and the applicant may also mutually extend the period for action.
  - (3) Unless extended, no action after forty-five (45) days shall deem the application as approved, and a certificate of design approval shall be issued by the community development department.
  - (4) If the application is approved, a certificate of design approval shall be issued. In the event an application is not approved, denied or deferred for additional information by the board, the board shall provide the applicant a written denial, indicating the reason(s) for denial.
- (d) *Appeal.* Appeal from the decision of the board is by writ of certiorari to the Fulton County Superior Court and must be filed within thirty (30) days from the date of the decision by the board.
- (Ord. No. 437, § 7, 12-20-99; Ord. No. 473, § 7, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

Sec. 16-44. - Design standards.

- (a) *Visual compatibility factors.* New construction and existing buildings, structures and appurtenances attached thereto which are moved, reconstructed, materially altered, repaired or repainted, including repainting the same color, should reflect the visual character of the surrounding areas and shall be visually compatible with buildings, and places to which they are visually related generally, in terms of the following factors:
  - (1) *Height.* The height of the proposed building shall be visually compatible with and complement the adjacent buildings and structures.
  - (2) *Scale.* The size of a building should be similar in height, width and depth to buildings, squares and places to which it is visually related, except in areas of redevelopment.
  - (3) *Facades.* Buildings should follow an established solid-to-void ratio and are visually compatible with adjacent buildings. Windows and door openings (height and width) are to be visually

compatible with adjacent buildings. Avoid openings exceeding the dimensions of adjacent buildings by more than ten (10) percent. Buildings must have finished front, side and rear elevations where there is visibility to those elevations. Respect and preserve the existing vernacular architecture and its elements.

- (4) *Rhythm of spacing of buildings on streets.* The relationship of buildings to open spaces between the building and the adjoining buildings shall be visually compatible with buildings, and places to which it is visually related.
- (5) *Rhythm of entrance and/or porch projections.* The relationship of entrances and porch projections to the sidewalks of a building shall be visually compatible with buildings, and places to which it is visually related. Incorporate pedestrian-friendly features and amenities wherever possible. Pedestrian paths (i.e. sidewalks, mulched paths) should encourage pedestrian travel throughout an entire project. Pedestrian paths connecting adjacent properties and projects are also strongly encouraged.
- (6) *Materials, texture and color.* The relationship of the materials, texture and colors for each facade of a building shall be visually compatible with buildings, and places to which it is visually related. Buildings and structures shall be visually compatible with adjacent buildings. The use of brick and stone for exterior facades of buildings is strongly recommended. Buildings adjacent to each other of conflicting architectural styles shall be separated by such means as screens and site breaks.
- (7) *Roof configuration and shape.* The roof configuration and shape of a building shall be visually compatible with the building(s) to which it is visually related.
- (8) *Continuity.* Appurtenances of a building such as walls, wrought iron, fences, evergreen landscape masses and building facades shall, if necessary, form cohesive walls of enclosure along a street, to ensure visual compatibility of the building to the buildings, and places to which they are visually related.
- (9) *Signs.* Signs shall be compatible with the buildings, and places to which it is visually related. Signs shall reflect the scale and character of its surroundings in size, type, face, graphics, lighting, square footage, style, material, color and related qualities to the building.

Ground mounted signage in all districts are to be monument style with materials and a color(s) to match the parent building's materials. The board encourages brick or stone to be used as the base of monument signs along with seasonal and evergreen plants installed in planting beds surrounding the monument sign. Efforts should be taken to provide a frame around ground mounted signs to enclose the sign face.

All signs must be weatherproof and must be made of enduring materials so as not to become a hazard due to disrepair, damage or inclement weather. Therefore, ground and wall signs in all districts shall not be constructed of plywood, pressed board or other non-durable material. (See sign regulation tables, section #5.) All letters or numbers shall be permanently affixed. Exposed neon is prohibited. All signs shall provide vertical relief with the use of characters, letters or numbers. Signs painted directly on the building are strongly discouraged. Neon, fiber optics, and non-traditional illumination techniques are strongly discouraged. Lighting should be limited and shall not be distracting to motorists or pedestrians. or distract from the architecture of the site.

Ten (10) percent larger building signs shall be considered for applications incorporating a sign timer that turns lights off two (2) hours past close of business or midnight, whichever is later, until the open of business. A sign tenant package is encouraged for multi-tenant buildings.

Approved colors. Encouraged colors are as denoted in subsection 16-44(a)(14)a. of this division. In general, signage should be limited to not more than three (3) approved colors.

- (10) *Murals.* Murals shall be appropriately scaled and visually compatible with the buildings on which they are placed. Not all buildings are appropriate for mural display and careful consideration shall be given to any mural proposed within the downtown historic district. Murals shall not include advertising or be commercial in nature.

- (11) *Solar panels.* Solar panels should be designed to be visually compatible with the architectural design of the primary structure.
- (12) *Landscaping.* Where existing topographic patterns contribute to beauty and utility of a development, they shall be preserved and developed. Landscape treatment shall be provided to enhance and complement architectural features, strengthen vistas and lines of site and provide shade. Vehicular areas shall be protected by appropriate curbs, tree guards, or other devices wherever possible. Where building sites limit planting, the placement of trees or shrubs in the parkways or paved areas is encouraged. Screening of service yards, exterior utilities (includes generators, water chillers, etc.), refuge collection areas and other places which tend to be unsightly shall be accomplished by the use of walls, fencing, landscaping or any approved combination of these. Screening shall be effective in winter and summer seasons. Respect and preserve existing landforms, trees and other landscape elements. Shield vehicular parking areas, service areas and driveways from adjacent properties and public rights-of-ways through the use of effective screening mechanisms such as: Landscaped earthen berms; lowering the parking level grade below sight lines from public right-of-ways and by the use of landscaping.

Plant materials are encouraged to be indigenous to this region and climate. Care should be taken in selection of plant materials that do not require excessive irrigation or maintenance. Scale and proportion of the surrounding area should be considered in the selection of landscaping materials. Landscaping should be utilized to complement and soften the architecture of buildings, structures and monument signs and soften or eliminate the appearance of parking areas from public rights-of-way. Equal attention is to be considered for landscaping along the front of the building as well as the sides and rear of buildings in addition to surrounding buildings.

The following minimum requirements must be met:

- a. Provide decorative landscaping near building entrances or patios (planting beds, large pots, etc.).
  - b. Screen dumpster and recycling bins with masonry wall to match the building and opaque metal gates and evergreen plantings. See Standard Plan 700.
  - c. Monument signs should not displace required landscaping. Base plantings around sign shall include evergreens and seasonal plantings.
  - d. Parking areas should be demarcated from pedestrian connections with pavers, stamped concrete or other material that differentiates the pedestrian walkway.
  - e. Provide paved pedestrian connection from public sidewalk(s) to site interior (may not be located within a required tree island).
  - f. Sites should include a minimum of one (1) bicycle rack, one (1) bench and one (1) trash receptacle.
  - g. All landscaped areas should be maintained by the use of automatic irrigation systems or as approved by the community development department. Automatic irrigation systems shall comply with the water conservation ordinance.
- (13) *Streetscape guidelines.*

*Old Milton Parkway.*

'Brookside Area' tree placement: Willow Oaks spaced forty (40) feet on center. Alternate with Crape Myrtles centered in the middle of each (Choctaw east of Georgia 400 and Tuscarora or Tuskegee west of Georgia 400).

Granville lights to be located eighty (80) feet on center - color to be dark green east of Georgia 400 and color to be black west of Georgia 400.

Benches to be placed at the rate of one (1) unit every one hundred (100) linear feet.

Medians: Crape Myrtles staggered at eight (8) feet on center in blocks of nine (9) units under planted with Dwarf Youpon Holly, and ends of beds to be planted with dwarf lemon yellow daylilies. Alternate with blocks of Holly (Savannah, Foster, or Nellie Stevens) staggered at eight (8) feet on center and ends of bed to be planted with Knockout roses. Planting shall allow for a minimum visual clearance of twenty-four (24) feet at the end of each median which shall be planted with dwarf daylilies or other ground cover. Median widths of less than two (2) feet shall be brick pavers (no plants).

*North Main Street.*

Hybrid Red Maples spaced fifty (50) feet on center. Alternate with two (2) Seminole or Tuscarora Crape Myrtles centered in the middle of each.

Granville lights to be located fifty (50) feet on center - color to be dark green.

Benches to be placed at the rate of one (1) unit every one hundred fifty (150) linear feet.

Medians: Seminole or Tuscarora Crape Myrtles staggered at ten (10) feet on center in blocks of ten (10) under planted with Knockout Roses. Alternate with blocks of Nellie Stevens Holly staggered at eight (8) feet on center and ends of bed to be planted with low ornamental shrubs. Plantings shall allow for a minimum visual clearance of twenty-four (24) feet at the end of each median which shall be planted with dwarf daylilies or other ground cover. Median widths of less than two (2) feet shall consist of brick pavers (no plants).

*Central business district.* Comply with the Downtown Incentive Zoning Guidelines.

(14) *Building, structure and sign material colors.*

- a. Building color palettes. The use of muted, subdued or earth tone colors are encouraged while the use of novelty and primary colors are strongly discouraged and are to be avoided. It is the intent of these Guidelines to establish timelessness in the color schemes incorporated in the building design and project design. Colors are intended to enhance the architecture of the project, not to attract attention to specific features or elements such as roof or parapet lines and signs. Building colors for the central business and historic business districts are to be derived from the Williamsburg color palette by Martin Senour Paints. Equivalent colors matching the above named manufacturers are acceptable. The Martin Senour color palette is as follows:

1. Outside White
2. George Pitt House Green
3. Benjamin Powell House Green
4. Palmer House Green
5. James Geddy Green
6. Levingston Kitchen Green
7. George Davenport House Green
8. Market Square Tavern Dark Green
9. Burdett's Ordinary Black Green
10. Market Square Tavern Shell
11. Grissell Hay Lodging House Green
12. Ludwell Tenement Sage
13. Barraud House Green



14. Governor's Palace Tan
15. Holt's Storehouse Gray
16. Peyton Randolph Gray
17. King's Arms Tavern Gray
18. Purdic House Gray Slate
19. Market Square Tavern Gray
20. Bracken Tenement Blue Slate
21. Robert Carter Tobacco
22. Palace Arms Red
23. Nicolson Store Red
24. William Finnie House Brown
25. Palmer House Kitchen Brown
26. Bryan House Chocolate
27. Chowning's Tavern Brown
28. Bracken Tenement Biscuit
29. William Byrd III House Ivory
30. James Moir Shop Fawn
31. Brush-Everard Gold
32. Grissell Hay Lodging House Gold
33. Ludwell Tenement Gold
34. George Pitt House Caramel
35. Nicolson Store Taupe
36. Raleigh Tavern Sorrel

- b. Deviation from the approved colors may be considered by the board where appropriate or as part of accented design elements. In general, a project should use no more than three (3) of the approved colors.

(15) *[Discouraged elements.]* The following elements are strongly discouraged in all districts and corridors of influence:

- a. *Visually obtrusive storm water detention or retention areas.* Care should be taken to locate storm water detention or retention areas in the least conspicuous areas of the project site or design them as a water feature. Additional care should be taken to mitigate the visual intrusion of detention or retention through the use of heavy landscaping or concealing these areas underground. Utilization of the retention or detention pond as an attractive site feature is the preferred alternative.
- b. *Visible roof mounted equipment on buildings.* Roof mounted heating and air cooling units, exhaust hoods and fans, vent piping, satellite dishes, antennae and other roof appurtenances on the roof of a building are prohibited from being viewed from the ground by the general public and must be permanently screened. Any exterior ventilated HVAC units shall be internally drained (i.e. condensate lines).
- c. *Visible dumpsters and recycling bins or containers.* Dumpsters, refuse containers and recycling bins are required to be screened from public view with building materials that match the parent building and their location on the project site is to be as inconspicuous as possible.

Enclosure doors are to be constructed of steel or other durable materials that can be easily maintained and their color coordinated with the parent building.

- d. *Excessive site and building lighting.* Site and building lighting should be minimal with lighting standards and levels being at the discretion of the board. Site lighting should not distract motorists or pedestrians transversing on or near the project site. Building lighting should not distract from the overall architecture of the building but should complement the building. Site or building lighting should not "spill over" onto adjacent properties and should be directed specifically at the building in order to limit lighting of the night sky. However, site and building lighting is encouraged to provide a sense of security.
  - e. *Improper landscape design and lack of creativity.* Trendy, untested or non-indigenous species of plants are strongly discouraged. Plants should be of larger caliper and size to create a pleasant and immediate impact upon installation. Blooming plants with complimentary colors should be utilized.
  - f. *Removal of existing trees important to the character of the site.* Large and significant trees should be protected where possible through the use of creative design solutions and man-made protection devices, such as tree wells, aeration systems, etc.
  - g. *Discouraged architectural elements.* Mansard roofs; drive-through windows that become a primary visual focus; plastic elements; inappropriately ornate architectural elements (such as elements depicting animals); metal buildings; and mobile units are discouraged.
  - h. *[Neon, fiber optic, and non-traditional illumination techniques.]* Use of neon, fiber optic, and non-traditional illumination techniques is strongly discouraged. Use of neon tubing or other non-traditional illumination techniques which are visible are prohibited, unless covered by translucent material.
  - i. *Excessive use of building materials.* In general, building materials should be limited to three (3) types. Buildings incorporating too many different material types look busy and disjointed. Visual continuity should be considered by balancing building materials within the architectural elevations.
  - j. *Thematic architecture.* Building styles that are overly theatrical in character or are designed to represent specific objects are strongly discouraged. Materials used to create theatrical design such as driftwood, netting, corrugated metal and mirrors are strongly discouraged.
  - k. *Excessive use of retaining walls.* Use of retaining walls is discouraged. However, where required due to site conditions and grading considerations, care should be taken to mitigate their visual obtrusiveness. Finished materials must match the parent building or structure. Modular block walls are only allowed in non-visible areas of the site.
  - l. *Visually obtrusive parking structures or other accessory buildings.* Parking structures must provide architectural details and materials to mitigate their visual obtrusiveness on all exterior elevations. Materials and colors must match those of the parent building. Should no parent building be adjacent, then the parking structure should be visually compatible with other adjacent structures. All surface and storm water shall be internally drained.
  - m. *Use of plastic materials and primary colored accessory structures.* Accessory structures such as playgrounds must not be visible from public rights-of-way. Plastic materials and primary colors are to be avoided.
- (b) *General design standards.* The board shall also consider the following general design standards when reviewing applications for certificate of design approval:
- (1) For new buildings and additions to existing buildings:
    - a. The height of the rooflines or parapets along the street or public right-of-way.
    - b. Scale and mass of the building on the site.
    - c. Placement of the building on the site.

- d. Materials, color and texture of the buildings.
  - e. Architectural style where there is a predominant style on surrounding and adjacent buildings; and
  - f. Architectural details, including signs, subject to public view from any public street or public way.
- (2) For modifications to existing buildings:
- a. The degree to which the distinguishing original qualities or character of a building, structure or site including historic materials are retained;
  - b. The historic appropriateness of any new features; and
  - c. The compatibility of proposed alterations with other buildings within the street block face or block face across the street, giving consideration to building size, shape, roofline, colors, materials, textures, nature of openings and architectural details.
- (3) The extent to which the buildings or structures will promote the general welfare of the city and all citizens by the preservation and protection of the neighborhood.
- (c) *Specific design standards.* The board shall consider the following specific design standards when reviewing applications for certificates of appropriateness:
- (1) It is the intent of the city to maintain and enhance the "Traditional Main Street" character within the central business district and historic business district. Outside the central business and historic business district the board will evaluate each project proposal based on the quality of its design and relationship to the architectural character and style of the surrounding buildings, structures and streetscape.
  - (2) Building scale, proportion and massing. Within the central business district and historic business district, no single building design element shall exceed one hundred (100) feet in length; and no continuous, uninterrupted storefront elevation (elevation in the same plane) shall exceed fifty (50) feet.
  - (3) The board shall seek to minimize and discourage the use of the following architectural features within the city: mansard roofs, wooden shakes or shingles, drive-through windows that become a primary visual focus, overly plastic elements, metal buildings and mobile units.
- (d) *Additional standards.* Subject to the approval of the city council, the board shall have the authority from time to time to promulgate additional design standards. Such additional design standards shall be effective upon approval by the city council.

(Ord. No. 437, § 8, 12-20-99; Ord. No. 473, § 8, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

Sec. 16-45. - Conformance with certificate.

All work performed pursuant to an issued certificate of design approval shall conform to the requirements of such certificate. If work is performed not in accordance with such certificate, the community development department shall be authorized to issue a cease and desist order and all work shall cease.

Appeal from such cease and desist order shall be the same as that set forth in subsection 16-43(d) for appeal of an application denial by the board.

(Ord. No. 437, § 9, 12-20-99; Ord. No. 473, § 9, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

Sec. 16-46. - Remedies.

In case any activity covered by this division is or is proposed to be initiated in violation of any provision of this division, the community development department may, in addition to other remedies, and after due notice to the appropriate person(s), issue a citation for violation of this division requiring the presence of the violator in the municipal court of the city or the city code enforcement board, or institute an injunction or

other appropriate action of proceedings to prevent such unlawful activity or to correct or abate such violation.

(Ord. No. 437, § 10, 12-20-99; Ord. No. 473, § 10, 5-7-01; Ord. No. 637, §§ 1(Exh. A), 2, 12-7-09)

Secs. 16-47—16-49. - Reserved.

### ARTICLE III. - PUBLIC SAFETY IMPACT FEE

#### FOOTNOTE(S):

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**Editor's note**— The attachment referred to in this section and elsewhere in the code is not set out at length herein but is on file in the appropriate city offices.

Sec. 16-50. - Short title; authority; applicability.

- (a) This article shall be known and may be cited as the "City of Alpharetta Public Safety Impact Fee Ordinance."
- (b) The city has the authority to adopt this article pursuant to Article 9, Section 2, Paragraph 4 of the Constitution of the State of Georgia, and Title 36, Chapter 71 of O.C.G.A.
- (c) This article shall apply to the incorporated areas of the city.

(Ord. No. 415, § 1, 11-2-98)

Sec. 16-51. - Intents and purposes.

- (a) This article is intended to implement and be consistent with the city's comprehensive land use plan adopted in accordance with Title 36, Chapter 70 of O.C.G.A. and pursuant to the minimum standards and procedures established by the department of community affairs.
- (b) The purpose of this article is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of system improvements necessary to provide public safety in the city.
- (c) Nothing in this article shall be deemed to prevent or prohibit private development agreements between property owners or developers and the city.

(Ord. No. 415, § 2, 11-2-98)

Sec. 16-52. - Rules of construction.

- (a) The provisions of this article shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.
- (b) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, the following rules of construction shall apply to the text of this article:
  - (1) In the event of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
  - (2) The word "shall" is mandatory and not discretionary; the word "may" is permissive.
  - (3) Words used in the present tense shall include the future; and words used in the singular shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
  - (4) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

- (5) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
- (6) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and," "or," or "either. . . or," the conjunction shall be interpreted as follows:
  - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
  - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
  - c. "Either. . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- (7) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- (8) The land-use types listed in section 16-55 (computation of the amount of public safety impact fees) of this article shall have the same meaning as under the Alpharetta Zoning Ordinance.
- (9) All public safety service terms used herein shall have the same meaning as those types have in the Alpharetta Comprehensive Land Use Plan and the Alpharetta Development Regulations unless otherwise indicated.

(Ord. No. 415, § 3, 11-2-98)

Sec. 16-53. - Definitions.

*Building permit* means the document issued by the city authorizing the construction, repair, alteration or addition to a structure, or authorizing the installation of a mobile home or recreational vehicle. For the purposes of this article, a building permit also means a change of use permit.

*Capital improvement* means an improvement with a useful life of ten (10) years or more, by new construction or other action, which increases the service capacity of the public safety facilities of the City of Alpharetta.

*Capital improvements element* means that portion of the Alpharetta Comprehensive Land Use Plan which sets out projected needs for system improvements during a planning horizon established in the Alpharetta Comprehensive Land Use 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.

*City* means the City of Alpharetta, Georgia.

*Comprehensive plan* means the city's comprehensive land use plan.

*Developer* means any person who engages in development activity.

*Development activity* means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in use of land requiring the issuance of a building permit.

*Development activity generating the need for public safety* means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which cause additional demand for public safety facilities.

*Director* means the city director of planning and community development and/or the officials that he or she may designate to administer the various provisions of this article.

*Encumber* means to legally obligate by contract or otherwise commit to use by appropriation or other official act of the city.

*Fee payor* means that person who pays a public safety impact fee or his successor in interest with the right or entitlement to any refund of previously paid public safety impact fees which is required by this article and which has been expressly transferred or assigned to the successor in interest. In the absence of an

express transfer or assignment of the right or entitlement to any refund of previously paid public safety impact fees, the right of entitlement shall be deemed "not to run with the land."

*Public safety* means the prevention and extinguishment of fires, the protection of life and property, and the enforcement of municipal, county and state fire prevention codes, as well as any law pertaining to the prevention and control of fires, when such duties are performed by firefighters and such other persons who may be employed to support firefighters in the performance of these duties. The term also includes what commonly is called "emergency medical services," or "EMS," and includes the provision of advanced life support and advanced life support services, the provision of ambulance and/or air ambulance service, and "rescue," a service which generally includes, among other things, the provision of basic life support, the extrication of accident victims from entrapment, and management of and protection of the public from hazardous materials and electrical hazards. The term also includes the detection and prevention of crime, the protection of life and property, the maintenance of order, and the enforcement of municipal, county, state and federal criminal codes, regulations and laws, when such duties are performed by police officers and such other persons who may be employed to support police officers in the performance of these duties.

*Public safety impact fee(s)* means a payment of money imposed upon development activity 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.

*Public safety impact fee district* means a geographic area identified by the city in which a defined set of public safety facilities provide service to development.

*Individual fee calculation study* means the documentation prepared by a fee payor to allow determination of the public safety impact fee other than by use of the fee schedule in section 16-55 (computation of the amount of public safety impact fees) of this article as required by O.C.G.A. § 36-71-4(g).

*Individual fee determination* means the public safety impact fee determined by the director on the basis of an individual fee calculation study.

*Living unit* is any temporary or permanent unit utilized for or designed or intended to be utilized for human habitation.

*Methodology report* means the report entitled "Public Safety Impact Fees, City of Alpharetta, Georgia," dated May 7, 1998, which provides a methodology and analysis for the determination of the impact of development activity on the need and costs for additional public safety facilities.

*Present value* means the current value of past, present or future payments, or contributions or dedications of goods, services, materials, construction, or money.

*Project or development project* means a particular development on an identified parcel of land.

*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 for 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.

*Proportionate share* means that portion of the cost of system improvements which is reasonably related to the demands and needs of a project.

*System improvements* means capital improvements which are designed to provide service to the community at large, in contrast to project improvements.

*System improvement costs* means costs incurred to provide additional public safety facilities, including equipment, needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or

reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorney's fees, and expert witness fees) and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs equal to three (3) percent of the total amount of the costs. System improvement costs shall also include projected interest charges and other finance costs if and to the extent the public safety impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the city to finance the capital improvement elements. Such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

(Ord. No. 415, § 4, 11-2-98)

Sec. 16-54. - Imposition of public safety impact fee.

- (a) Any person who after the effective date of this article engages in a "development activity generating the need for public safety" shall pay a public safety impact fee in the manner and amount set forth in this article.
- (b) No building permit for any "development activity generating the need for public safety" shall be issued by the city unless and until the required public safety impact fee has been paid.

(Ord. No. 415, § 5, 11-2-98)

Sec. 16-55. - Computation of the amount of public safety impact fees.

- (a) (1) At the option of the developer, the amount of the public safety impact fee may be determined by the schedule set forth below.

Public Safety Impact Fee Schedule

	Improvement cost	Bond credit	Net cost	Fee
<i>Residential per dwelling unit</i>				
Single family	\$1,111.00	\$761.00	\$350.00	\$264.00
Multifamily	574.00	305.00	269.00	203.00
<i>Retail/commercial per 1,000 square feet</i>				
Under 25k square feet	781.00	469.00	312.00	251.00
25k—49k square feet	781.00	469.00	312.00	248.00
50k—99k square feet	781.00	469.00	312.00	244.00
100k—299k square feet	781.00	469.00	312.00	240.00
300k—399k square feet	781.00	469.00	312.00	237.00

400k—499k square feet	781.00	469.00	312.00	233.00
500k—999k square feet	781.00	469.00	312.00	229.00
1000k—1250k square feet	781.00	469.00	312.00	225.00
Over 1250k square feet	781.00	469.00	312.00	220.00
<i>Lodging per room</i>				
Hotel/motel	663.00	158.00	505.00	204.00
<i>Industrial per 1,000 feet</i>				
Manufacturing per 1,000 square feet	409.00	134.00	275.00	272.00
Warehousing per 1,000 square feet	409.00	85.00	324.00	285.00
<i>General office per 1,000 square feet</i>				
Less than 100k square feet	781.00	438.00	343.00	204.00
100k—199k square feet	781.00	438.00	343.00	198.00
Over 199k square feet	781.00	438.00	343.00	192.00

- (2) If a building permit is requested for a building with mixed uses, the fee shall be determined according to the above schedule by apportioning the space committed to uses specified on the schedule. If the type of development activity for which a building permit is applied for is not specified on the above fee schedule, the director shall use the fee applicable to the most nearly comparable type of land use on the above fee schedule. In the case of change of use, redevelopment or modification of an existing use which requires the issuance of a building permit, the public safety impact fee shall be based upon the net increase in the fee for the new use as compared to the previous use.
- (b) If a developer shall elect not to have the public safety impact fee determined according to subsection (a) above, then pursuant to O.C.G.A. § 36-71-4(g) the developer may apply for an individual fee determination. A developer applying for an individual fee determination shall prepare and submit to the director an individual fee calculation study for the development activity for which a building permit is sought. The individual fee calculation study shall follow the methodology and format of the "methodology report," or subject to prior approval of the director, such other professionally accepted methodology that identifies a project's proportionate share. The developer shall attend a preapplication meeting with the director, and no agreement or understanding in regard to data assumptions or



methodology shall be binding upon the city unless specifically agreed to by the city in writing. The documentation submitted shall show the basis upon which the individual fee calculation was made. This documentation shall be prepared and presented by qualified professionals in their respective fields and shall follow best professional practices and methodologies. The following formulae, as explained in the methodology report, shall be used by the director to determine the public safety impact fee per unit of development:

Residential public safety impact fee equals cost per dwelling minus bond credit.

Nonresidential public safety impact fee equals cost per one thousand (1,000) square feet of nonresidential floor area minus bond credit.

The director shall provide the developer with the individual fee determination within thirty (30) days after presentation of the individual fee calculation study.

- (c) (1) Upon application to the director, any person contemplating engaging in development activity requiring payment of a public safety impact fee may apply for and shall receive from the director a certification of the public safety impact fee schedule or a certification of an individual fee determination.
- (2) Applications for certification shall include the following information and items:
  - a. A full and complete description of the project.
  - b. A full and complete description of the proposed land use and development activity.
  - c. A statement as to whether the applicant seeks a certification of the public safety impact fee schedule or a certification of an individual fee determination.
  - d. If the applicant seeks a certification of an individual fee determination, an individual fee calculation study complying with the requirements of subsection (b) of this section.
- (3) The director shall provide an applicant with a written certification of the public safety impact fee schedule within five (5) working days after the director's receipt of a completed application. The fee schedule certified by the director shall establish the public safety impact fee schedule for the proposed development activity for a period of one hundred eighty (180) days from the date of certification. The director shall provide the applicant with a written certification of an individual fee determination within thirty (30) days after receipt of a completed application. The individual fee determination certified by the director shall establish the public safety impact fee for the proposed development activity for the one hundred eighty (180) day period immediately following the date of such certification. Notwithstanding the issuance of any such certification, any changes in or additions to the proposed development activity different from the development activity identified in the original application shall be subject to increased or additional public safety impact fees to the extent that such changes or additions require capital improvements or facilities expansions. The additional public safety impact fees shall be based upon the public safety impact fee schedule in effect at the time of any such change or addition.
- (d) Notwithstanding any other provision of this section 16-55, prior to engaging in "development activity generating the need for public safety," and in addition to any other applicable requirements, the developer shall certify in writing to the director:
  - a. A full and complete description of the project;
  - b. A full and complete description of the proposed land use or uses; and
  - c. A statement of the gross square footage applicable to each category of land use.

Prior to the completion of the project, and as a condition to the issuance of a certificate of occupancy, the developer shall recertify in writing to the director the actual land use or uses of the project, and shall present an architect's certificate of the actual gross square footage attributable to each use. In the event that the actual land use or uses and/or the actual gross square footage applicable to the actual land use or uses differs from that originally certified, and in the event that the impact fee applicable to the actual land use or

uses and/or gross square footage exceeds the impact fee previously paid, the developer shall be required to pay the amount of the excess as a condition to the issuance of a certificate of occupancy. The amount of the excess shall be based upon the public safety impact fee schedule in effect on the date the certificate of occupancy is issued. If the actual gross square footage constructed after the issuance of the building permit is less than the amount originally certified, the developer shall be entitled to a refund of the excess portion of the fee.

(Ord. No. 415, § 6, 11-2-98)

Sec. 16-56. - Payment of public safety impact fees.

- (a) Any person required to pay public safety impact fees pursuant to this article shall pay such fees to the director prior to the issuance of a building permit unless the city has previously approved a private development agreement providing for an alternative method of payment.
- (b) All funds collected pursuant to this article shall be properly identified by the public safety impact fee district from which it was collected and promptly transferred for deposit into the appropriate public safety impact fee trust fund to be held in separate accounts as provided for in section 16-62 (public safety impact fee trust funds established) of this article. Funds shall be used solely for the purposes specified in this article.
- (c) In lieu of all or part of the public safety impact fee, the city may accept an offer to provide the items and/or services specified in subsection (2) of section 16-58 (credits) of this article. Any such offer must comply with the requirements of section 16-58 (credits) of this article. The portion of the fee represented by public safety facilities improvements shall be deemed paid when the construction is completed and accepted by the city or when the person claiming such credit posts security for the cost of such construction as provided in subsection (2)e. of section 16-58 (credits) of this article. The portion of the fee represented by land dedication shall be deemed paid when the title to such land has been accepted by the city. Notwithstanding subsection (a) of this section, the city may issue a building permit prior to accepting title to land if the refusal to issue the permit will result in an exceptional hardship to the developer and the city is otherwise reasonably assured that title will be conveyed and accepted within a reasonable time thereafter. For the purposes of this subsection, an exceptional hardship shall not include a hardship solely created by the developer.

(Ord. No. 415, § 7, 11-2-98)

Sec. 16-57. - Use of funds.

- (a) Funds collected as public safety impact fees shall be used for system improvements. No funds shall be used for periodic or routine maintenance or for any purpose not in accordance with the requirements of O.C.G.A. § 36-71-8.
- (b) Public safety impact fees shall be used exclusively for system improvements in the public safety impact fee district in which the project for which the fees were paid is located.
- (c) Funds shall be expended in the order in which they are collected.
- (d) Each fiscal period the director shall present to the mayor and city council an annual report describing the amount of public safety impact fees collected, encumbered and used during the preceding year by public safety impact fee districts. Monies, including any accrued interest, not encumbered in any fiscal period shall be retained in the same public safety impact fee trust fund(s) until the next fiscal period except as provided in section 16-60 (refunds) of this article.
- (e) The city shall be entitled to retain up to three (3) percent of all public safety impact fees it collects as an administrative fee to offset the costs of administering this article.
- (f) Public safety impact fees may be used for the payment of principal and interest on bonds, notes or other financial obligations issued by or on behalf of the city to finance public safety facilities.

(Ord. No. 415, § 8, 11-2-98)

Sec. 16-58. - Credits.

Credits against public safety impact fees shall be given as follows:

- (1) No credit shall be given for project improvements.
- (2) Credit shall be given for the present value of the construction of improvements or contribution or dedication of land or money by a developer subsequent to the effective date of this article and required or accepted by the city from the developer or his predecessor in title for system improvements (the post ordinance credits).
  - a. A person claiming post-ordinance credits shall submit to the director a project description in sufficient detail to allow the director to prepare an engineering and construction cost estimate. A person proposing credit for public safety facilities improvements shall present cost estimates and property appraisals prepared by qualified professionals to be used by the director in determining the amount of the credit. All construction must be carried out in accordance with applicable city, county or state development and design standards. A person proposing post-ordinance credits for land dedication shall present the director with property appraisals prepared by qualified professionals and a certified copy of the most recent assessment of the property for tax purposes to be used by the director in determining the amount of credit. However, the director retains the right to determine the amount to be credited by preparing engineering and construction cost estimates and/or property appraisals for those improvements.
  - b. Post-ordinance credits must be claimed at the time of the application for a building permit. Any post-ordinance credit not so claimed shall not be available as to the public safety impact fee owing with respect to that building permit.
  - c. In the event a developer contracts with the city to construct, fund, or contribute system improvements so that the amount of the post-ordinance credit created by such construction, funding or contribution is in excess of the public safety impact fee which would have been otherwise due and owing, the developer shall be reimbursed for such excess contribution, funding, or contribution from public safety impact fees paid by the development projects located in the public safety impact fee district which has benefitted by such improvements.
  - d. In the event a building permit is abandoned, credit shall be given for the present value of any public safety impact fees paid against future public safety impact fees for the same parcel of land paid upon issuance of such building permit. A building permit shall be deemed abandoned if no construction has been commenced prior to the expiration of the building permit.
  - e. Security in the form of a performance bond, irrevocable letter of credit, or escrow agreement shall be posted with the city, made payable to the city in the amount approved by the director equal to one hundred ten (110) percent of the full cost of the construction of such improvements. If a public safety facilities construction project will not be constructed within one (1) year of the acceptance of the offer by the city, the amount of the security shall be increased by ten (10) percent compounded, for each year of the life of the security. The security shall be reviewed and approved by the city attorney's office prior to the acceptance of the security by the city.
- (3) Credits shall be represented by a written certificate (the "credit certificate") setting forth the name of the person or entity to whom the credit certificate is issued, the number of the credit certificate, and the amount of the credit. Each credit certificate shall be numbered in the order in which it is issued, and shall be signed, either manually or facsimile, by the city clerk with the seal of the city affixed thereto. The city shall also maintain a register (the "credit certificate register") which shall set forth the name of the credit holder, the number of the credit certificate, the amount of the credit, and the name of any party claiming a security interest with respect to the credit represented by the credit certificate. The interest of a secured party shall not be effective and shall not be recognized by the city unless and until the city is in receipt of a written document satisfactory to

the city signed by the secured party and the holder of the credit certificate verifying the creation of the security interest and directing the city to enter the secured party's name in the credit certificate register. Credits are transferable from one developer to another and from one project to another provided that such credits shall not be transferred to a project in a different public safety impact fee district, and provided further that the transfer is accomplished in accordance with the provisions of this section. Transfers of credit certificates shall only be effective when entered in the credit certificate register of the city upon surrender of the credit certificate signed and dated as of the date of the purported transfer by the person in whose name the credit certificate is registered or on his behalf by a person legally authorized to so sign. The credit certificate shall be surrendered to the city not later than ninety (90) days after the date of the purported transfer. Any attempted transfer not in compliance with the terms of this section shall not be effective, shall not be recognized by the city, and shall result in the waiver and forfeiture of the credit. If the credit certificate to be transferred is subject to a security interest reflected in the credit certificate register, the surrendered credit certificate shall also be accompanied by a written consent to transfer or release of security interest signed by the secured party. Upon compliance with the transfer provisions of this section, the city shall issue a new credit certificate in the name of the authorized transferee.

- (4) In the event the public safety impact fee schedule is subsequently changed to reflect increases in construction costs or other relevant factors, then any person entitled to a credit under this section 16-58 may request a recalculation of credits to fairly reflect such changed circumstances. In the event the public safety impact fee schedule is subsequently changed to reflect decreases in construction costs or other relevant factors, the city may recalculate such credits to fairly reflect such changed circumstances.
- (5) Credit shall be given for the present value of construction of improvements or contribution or dedication of land or money by a developer within the ten-year period prior to March 30, 1992 and required or accepted by the city for system improvements (the "pre-ordinance credits").
  - a. A person claiming pre-ordinance credit for public safety facilities improvements shall present actual cost records to be used by the director in determining the amount of the credit. A person proposing pre-ordinance credits for land dedications shall present the director with property appraisals applicable to the date of the dedication prepared by qualified professionals and a certified copy of the assessment of the property for tax purposes at the time of the dedication to be used by the director in determining the amount of the credit. However, the director retains the right to determine the amount to be credited by preparing construction cost estimates and/or property appraisals for those improvements. In determining the amount of any pre-ordinance credit, the director shall deduct an amount equal to the public safety impact fee that would have been imposed if this article had been in effect at the time of the issuance of each pre-ordinance building permit issued for the project from which the credit is derived.
  - b. No pre-ordinance credits shall be given for construction, dedications or contributions that were undertaken outside of the public safety impact fee district within which the project is to be located.
  - c. Pre-ordinance credits shall be applied for within six (6) months of the effective date of this article. Any pre-ordinance credit not so applied for shall be deemed waived. Pre-ordinance credits shall also be claimed at the time of the application for a building permit. Any pre-ordinance credit not so claimed shall not be available as to the public safety impact fee owing with respect to that building permit. Pre-ordinance credits not utilized within five (5) years of the date of application shall expire. However, upon timely request by the developer, the director shall extend the expiration date for five (5) years. Further, upon timely request by the developer, the city council may extend the expiration date for an additional period not to exceed five (5) years; provided, however, that the council may grant such extension only when the developer establishes to the satisfaction of the council that the delay in use of the credit is attributable to adverse local economic conditions not reasonably anticipated. For

the purposes of this subsection, a "timely" request is one that is made not sooner than three (3) months nor later than one (1) month prior to the applicable expiration date.

- d. Notwithstanding any other provision of this article, nothing in this article shall be deemed to reactivate any credits that have been waived or have expired under the fire protection impact fee ordinance prior to the adoption of this article.

(Ord. No. 415, § 9, 11-2-98)

Sec. 16-59. - Exemptions.

- (a) The following shall be exempted from payment of public safety impact fees:
  - (1) Alteration or expansion of an existing building or use of land where no additional living units are created, where the use is not changed, and where no additional demand for public safety facilities will be produced over and above those produced by the existing use.
  - (2) The construction of accessory buildings or structures which will not produce additional demand for public safety facilities over and above those produced by the principal building or use of the land.
  - (3) The replacement of a building, mobile home or structure that was in place on the effective date of this article, or the replacement of a building, mobile home or structure that was constructed subsequent thereto and for which the correct public safety impact fee had been paid or otherwise provided for, with a new building, mobile home or structure of the same use, provided that no additional vehicular trips will be produced over and above those produced by the original use of the land.
  - (4) All or part of a particular project if and to the extent the city council determines such project to create extraordinary economic development and employment growth and provided that such project's proportionate share of public safety system improvements is funded through a revenue source other than public safety impact fees.
- (b) A person claiming exemption(s) pursuant to subsections (a)(1), (2), or (3) above shall submit to the director information and documentation sufficient to permit the director to determine whether such exemption claimed is proper, and, if so, the extent of such exemption. A person seeking exemption under subsection (a)(4) above shall submit to the city council information and documentation sufficient to permit the city council to determine whether such exemption claimed is proper, and, if so, the extent of such exemption.
- (c) Exemptions must be applied for at the time of the application for a building permit. Any exemptions not so applied for shall be deemed waived.

(Ord. No. 415, § 10, 11-2-98)

Sec. 16-60. - Refunds.

Refunds of public safety impact fees shall be made only in the following instances and in the following manner:

- (1) Upon application to the director by the fee payor, the city shall refund ninety-seven (97) percent of the public safety impact fee paid if capacity is available and service is denied. The city shall retain three (3) percent of the fee paid as an administrative fee.
- (2) a. Upon application to the director by the fee payor, the city shall refund ninety-seven (97) percent of the public safety impact fee paid and not expended or encumbered if the city, after collecting the fee when service is not available, has failed to encumber the fee or commence construction within six (6) years from the date the public safety impact fee was paid. The city shall retain three (3) percent of the fee paid as an administrative fee. In determining whether public safety impact fees have been expended or encumbered, fees shall be considered encumbered on a first-in, first-out (FIFO) basis.

b. When the right to a refund exists due to a failure to encumber public safety impact fees, the city shall provide written notice of entitlement to a refund to the fee payor who paid the public safety impact fee at the address shown on the application for development approval, or to a fee payor's successor in interest who has given the city notice of the transfer or assignment of the right or entitlement to a refund and who has provided the city a mailing address. The city shall also publish such notice within thirty (30) days after the expiration of the six (6) year period from the date public safety impact fee was paid. The published notice shall contain the heading "Notice of Entitlement to Public Safety Impact Fee Refund."

(3) A refund application shall be made to the director within one (1) year from the date such refund becomes payable under subsections (1) and (2) of this section 16-60 or within one (1) year from the date of publication of the notice of entitlement of a refund under subsection (2) of this section 16-60, whichever is later. Any refund not applied for within such time period shall be deemed waived.

(4) A refund application shall include information and documentation sufficient to permit the director to determine whether the refund claimed is proper, and, if so, the amount of such refund.

(5) A refund shall include a pro rata share of interest actually earned on the unused or excess public safety impact fee paid.

(6) All refunds shall be paid within sixty (60) days after the director determines that such refund is due.

(Ord. No. 415, § 11, 11-2-98)

#### Sec. 16-61. - Public safety impact fee districts established.

There are hereby established public safety impact fee districts as shown in attachment 1 [4](#) attached hereto and incorporated herein by reference.

(Ord. No. 415, § 12, 11-2-98)

#### Sec. 16-62. - Public safety impact fee trust funds established.

(a) There are hereby established separate public safety impact fee trust funds, one for each public safety impact fee district as shown in attachment 1 attached hereto and incorporated herein by reference.

(b) Funds shall be deposited and maintained in one or more interest bearing accounts. Interest earned on funds shall be funds of the account on which it is earned and is subject to all restrictions imposed by section 16-57 (use of funds) of this article.

(c) Funds withdrawn from these accounts must be used in accordance with the provisions of section 16-57 (use of funds) of this article.

(Ord. No. 415, § 13, 11-2-98)

#### Sec. 16-63. - Review of fee structure.

The public safety impact fees structure shall be reviewed by the mayor and the city council annually; provided, however, the failure to review such structure shall not invalidate this article.

(Ord. No. 415, § 14, 11-2-98)

#### Sec. 16-64. - Administrative appeals.

(a) Any person aggrieved by a decision of the director with respect to any of the following determinations shall have the right to appeal to the mayor and city council:

(1) The imposition of a public safety impact fee.

(2) The amount of a public safety impact fee.

- (3) The entitlement to and/or the amount of credits to a public safety impact fee.
  - (4) The entitlement to an exemption from a public safety impact fee.
  - (5) The entitlement to and/or the amount of a refund of a public safety impact fee. Prior to any appeal to the mayor and city council, the aggrieved party shall file a request for reconsideration with the director, who shall act upon the request within fifteen (15) days.
- (b) All appeals shall be taken within fifteen (15) days of the director's decision on the request for reconsideration by filing with the director a notice of appeal specifying the grounds therefor. The director shall forthwith transmit to the city council all papers constituting the record upon which the action appealed from is taken. The city council shall thereafter establish a reasonable date and time for a hearing on the appeal, give due notice thereof to the parties in interest, and decide the same within a reasonable period of time following the hearing. Any party taking an appeal shall have the right to appear at the hearing to present evidence and may be represented by counsel. Any person aggrieved by a decision of the mayor and city council may take an appeal to the superior court of the county within thirty (30) days after the decision of the city council is rendered.
- (c) A developer may pay a public safety impact fee under protest to obtain a building permit, and by making such payment shall not be estopped from:
- (1) Exercising this right of appeal provided in this section 16-64; or
  - (2) Receiving a refund of any amount deemed to have been illegally collected.

(Ord. No. 415, § 15, 11-2-98)

Sec. 16-65. - Penalty and enforcement.

A violation of this article shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution, the city shall have the power to sue for relief in civil court to enforce the provisions of this article. Knowingly furnishing false information to the director on any matter relating to the administration of this article shall constitute a violation thereof.

(Ord. No. 415, § 16, 11-2-98)