

ORDINANCE NO. 10-02-008

TO AMEND TITLE 13 CHAPTER 13.16 ENTITLED "WATER AND SEWER SERVICE RATES AND CHARGES" OF CODE OF ORDINANCES OF THE CITY OF LOCUST GROVE TO PROVIDE FOR REGULATIONS AND PROCEDURES FOR WATER AND SEWER IMPACT FEE CREDITS; TO PROVIDE FOR REGULATIONS AND PROCEDURES FOR WATER AND SEWER IMPACT FEE REFUNDS; TO PROVIDE FOR REGULATIONS AND PROCEDURES FOR PRIVATE AGREEMENTS; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

THE COUNCIL OF THE CITY OF LOCUST GROVE HEREBY ORDAINS

SECTION 1. Title 13, Chapter 13.16 of the Code of Ordinances of the City of Locust Grove is hereby amended by creating new code sections 13.16.17 through 13.16.19 as follows:

13.16.17 Prepayments and Credits for Water and/or Sewer Impact Fees

When eligible, feepayors shall be entitled to a credit against impact fees otherwise due and owing under the circumstances and in the manner set forth in this Section.

- A. Credits; Restrictions.**
1. Except as provided in subparagraph A 2 below or in a private agreement meeting the definition established in Section 13.16.19, no credit shall be given for construction, contribution, or dedication of any system improvement or funds for system improvements made before the effective date of this Ordinance.
 2. If the value of any construction, dedication of land, or contribution of money made by a developer (or his or her predecessor in title or interest) for system improvements that are included for impact fee funding in the Capital Improvements Element of the City of Locust Grove Comprehensive Plan, prior to the effective date of this Ordinance, is greater than the impact fee that would otherwise have been paid for the Project, then the developer shall be entitled to a credit for such excess construction, dedication, or funding. Notwithstanding anything to the contrary in this Ordinance, any credit due under this section shall not constitute a liability of the City of Locust Grove, and shall accrue to the developer to the extent of impact fees assessed for new development for the same category of system improvements within the same service area.

3. In no event shall credit be given for project improvements, or for system improvements not included for impact fee funding in the Capital Improvements Element of the Comprehensive Plan.

B. Granting of Credits.

1. Credit shall be given for the present value of any construction of improvements, contribution or dedication of land, or payment of money by a developer or his or her predecessor in title or interest for system improvements of the same public facilities category and in the same service area for which a water and/or sewer impact fee is imposed, provided that:
 - a. the system improvement is included for impact fee funding in the Capital Improvements Element of the City of Locust Grove Comprehensive Plan;
 - b. the amount of the credit does not exceed the portion of the system improvement's cost that is eligible for impact fee funding, as shown in the Capital Improvements Element; and,
 - c. the Mayor and Council shall have explicitly approved said improvement, contribution, dedication, or payment and the value thereof prior to its construction, dedication, or transfer.
2. The credit allowed pursuant to this Section shall not exceed the impact fee due for such system improvement unless a greater credit is allowed under a private agreement executed under the provisions of this Ordinance. In the event that a developer enters into such a private agreement with the City of Locust Grove, Georgia to construct, fund, or contribute system improvements such that the amount of the credit created is in excess of the impact fee which would otherwise have been paid for the development project, the developer shall be reimbursed for such excess construction, funding, or contribution from impact fees paid by other development located in the service area which is benefited by such improvements.

C. Guidelines for Credit Valuation.

Credits under this Section shall be valued using the following guidelines:

1. For the construction of any system improvements by a developer or his or her predecessor in title or interest and accepted by the City, the developer must present evidence satisfactory to the Administrator of the original cost of the improvement, from which present value may be calculated.
2. For any contribution or dedication of land for system improvements by a developer or his or her predecessor in title or interest and accepted by the City, the original value of the land shall be the same as that attributed to the property by the validated tax appraisal at the time of dedication, from which present value may be calculated.

3. For any contribution of capital equipment that qualifies as a system improvement by a developer or his or her predecessor in title or interest and accepted by the City, the value shall be the original cost to the developer of the capital equipment or the cost that the City of Locust Grove, Georgia would normally pay for such equipment, whichever is less.
4. For any contribution of money for system improvements from a developer or his or her predecessor in title or interest accepted by the City, the original value of the money shall be the same as that at the time of contribution, from which present value may be calculated.
5. In making a present value calculation, the discount rate used shall be the net of the interest returned on a State of Georgia, AA rated or better municipal bond less average annual inflation, or such other discount rate as the Mayor and Council in its sole discretion may deem appropriate.

D. Credits; Application.

1. Credits shall be given only upon written request of the developer to the Administrator. A developer must present written evidence satisfactory to the Administrator at or before the time of impact fee assessment.
2. The Administrator, in his or her sole discretion, shall review all claims for credits and make determinations regarding the allowance of any claimed credit, and the value of any allowed credit.
3. Any credit approved by the Administrator shall be acknowledged in writing by the Administrator and calculated at the time of impact fee assessment.

E. Credits; Abandoned Building Permits.

In the event that an impact fee is paid but the building permit is abandoned, credit shall be given for the present value of the impact fee against future impact fees for the same parcel of land, upon submission of adequate evidence to the Administrator that an impact fee was received by the City, the amount paid, and that the building permit was abandoned.

F. Credits; Transfer/Collateralization - Generally.

1. Credit or a portion of credit assigned to a person or entity for paid impact fees, including water and/or sewer impact fees, may be transferred or collateralized only upon strict compliance with the terms of this section and the terms of an applicable development agreement as referenced in Section 13.16.19. To the extent the terms of such development agreement conflict with this section, the terms of this section shall control. Credit for water and/or sewer impact fees may be transferred only within a water/sewer basin served by the City of Locust Grove Indian Creek Wastewater Treatment Plant within the jurisdiction of the City of Locust Grove. No transfer or collateralization of credit is permitted

without first obtaining a certification in accordance with this section, and no transfer or collateralization is valid without filing an affidavit of transfer or collateralization in accordance with this section.

2. The Administrator shall maintain and update a record of all credits held, transferred and collateralized.
3. Prior to the transfer or collateralization of credit, an application shall be filed with Administrator, providing information requested pursuant to the forms used by that department. Such information shall include at a minimum the following:
 - a. The value of the credit to be transferred or collateralized based upon the value at the time the credit was approved by action of the Mayor and City Council, or at the time of payment of the impact fee, if no value was assigned by the Mayor and City Council.
 - b. The name, address, telephone number, electronic mail address and tax identification number of the current holder of the credit affected by the application and the person or entity to whom such credit will be transferred or for whom such credit will serve as collateral. (The applicant shall be the holder of the credit.)
 - c. A signed and sealed survey by a Georgia registered land surveyor and legal description of the property to which the credit applied at the time of application.
 - d. In the case of a transfer of credit to be used for a particular parcel, a signed and sealed survey by a Georgia registered land surveyor and legal description of the property to which the credits are intended to be applied.
 - e. An affirmation by the applicant that the credit stated in the application is not a duplication or misrepresentation of the value of credit actually held by the applicant to be transferred or collateralized.
 - f. Authorization by both the applicant and recipient/creditor that the City may record such information as necessary to reflect the transfer or collateralization in the Henry County property records.
 - g. The signatures of the applicant and recipient/creditor.
 - h. Payment of an administrative fee established pursuant to this section.
 - i. Any additional information requested by the Administrator regarding the credits or the transaction involving said credits.
4. The Administrator shall review the application and the credit records to verify the value of credits to be affected by an application. After verification, the Administrator shall certify in writing the value of credits held by the applicant and transmit or mail said certification to both the applicant and recipient/creditor.
5. Within ten (10) calendar days after the transfer or collateralization of the credit, the applicant shall file with the Administrator an affidavit executed

by the applicant specifying the value of credit actually transferred or collateralized, to whom and when the credit was transferred or collateralized; and any other information required by the Administrator consistent with this Code Section. The transfer or collateralization shall not exceed the value certified by the Administrator.

6. To administer this section, the Administrator may collect a minimum application fee of twenty five dollars (\$25) plus any amount in excess of said fee for recording notice of the transaction in the Henry County property records.
7. Failure to strictly follow any of the procedures set forth in this section renders the transfer or collateralization of credits automatically null and void, without effect against the City.

G. Credits—Abandoned building permits.

In the event that an impact fee is paid but the building permit is abandoned, credit shall be given for the present value of the impact fee against future impact fees for the same parcel of land, upon submission of adequate evidence to the Administrator that an impact fee was received by the City, the amount paid, and that the building permit was abandoned.

13.16.18 Refunds.

A. Eligibility for a Refund.

1. Upon the request of a feepayor regarding a property on which a water and/or sewer impact fee has been paid, the water and/or sewer impact fee shall be refunded if:
 - a. capacity is available in the public facility for which the fee was collected but service is permanently denied; or,
 - b. the water and/or sewer impact fee has not been encumbered or construction has not been commenced within six years after the date the fee was collected.
2. In determining whether water and/or sewer impact fees have been encumbered, water and/or sewer impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis.

B. Notice of Entitlement to a Refund.

When the right to a refund exists due to a failure to encumber the water and/or sewer impact fees, the Administrator shall provide written notice of entitlement to a refund to the feepayor who paid the water and/or sewer impact fee at the address shown on the application for development approval or to a successor in interest who has given adequate notice to the Administrator of a legal

transfer or assignment of the right to entitlement to a refund and who has provided a mailing address. Such notice shall also be published in the City of Locust Grove within 30 days after the expiration of the six year period after the date that the water and/or sewer impact fee was collected and shall contain a heading "Notice of Entitlement to Water and/or sewer Impact Fee Refund." No refund shall be made for a period of 30 days from the date of said publication.

C. Filing a Request for a Refund.

All requests for refunds shall be made in writing to the Administrator within one year of the time the refund becomes payable or within one year of publication of the notice of entitlement to a refund, whichever is later. Failure to make a claim for a refund within said time period shall result in a waiver of all claims to said funds. Such funds together with the accrued interest thereon shall be transferred to the general revenue account of the City of Locust Grove, Georgia.

D. Payment of Refunds.

1. All refunds shall be made to the feepayor within 60 days after it is determined by the Administrator that a sufficient proof of claim for refund has been made, but no sooner than 30 days after publication of the notice of entitlement to the refund.
2. A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess impact fee collected.
3. In no event shall a feepayor be entitled to a refund for impact fees assessed and paid to recover the cost of excess capacity in existing system improvements, or for that portion of the fee payment that was assessed for administration of the impact fee ordinance or for recovery of the cost of preparation of the Capital Improvements Element of the Comprehensive Plan.

13.16.19 Private Contractual Agreements.

A. Private Agreements; Authorized.

Nothing in this Ordinance shall prohibit the voluntary mutual approval of a private contractual agreement between the City and any developer or property owner or group of developers and/or property owners in regard to the construction or installation of system improvements and providing for credits or reimbursement for system improvement costs incurred by a developer, including interproject transfers of credits or providing for reimbursement for project improvement costs which are used or shared by more than one development project, provided that:

1. The system improvements are included for impact fee funding in the Capital Improvements Element of the City of Locust Grove Comprehensive Plan; and,
2. The amount of any credit granted shall not exceed the portion of the system improvement's cost that is eligible for impact fee funding.

B. Private Agreements; Provisions.

A private contractual agreement for system improvements may include, but shall not be limited to, provisions which:

1. Modify the estimates of impact on public facilities according to the methods and provisions concerning the calculation of impact fees, provided that any such agreement shall allow the City to assess additional water and/or sewer impact fees after the completion of construction according to schedules set forth in this Ordinance.
2. Permit construction of, dedication of property for, or other in-kind contribution for specific public facilities of the type for which water and/or sewer impact fees would be imposed in the same service area in lieu of or with a credit against applicable water and/or sewer impact fees.
3. Permit a schedule and method of payment appropriate to particular and unique circumstances of a proposed project in lieu of the requirements for payment under this Ordinance, provided that acceptable security is posted ensuring payment of the water and/or sewer impact fees. Forms of security that may be acceptable include a cash bond, irrevocable Letter of Credit from a bank authorized to do business within the State of Georgia, a surety bond, or lien or mortgage on lands to be covered by the building permit.

C. Private Agreements; Procedure.

1. Any private agreement proposed by an applicant pursuant to this Section shall be submitted to the Administrator for review, negotiation, and submission to the Mayor and Council.
2. Any such agreement must be presented to and approved by the Mayor and Council of the City of Locust Grove, Georgia prior to the issuance of a building permit.
3. Any such agreement shall provide for execution by mortgagees, lien holders or contract purchasers in addition to the landowner, and shall require the applicant to submit such agreement to the Clerk of Superior Court for recording.

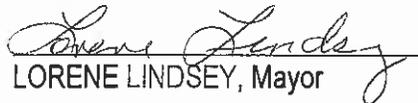
Section 2. Codification. This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3. Severability. The preamble of this Ordinance is incorporated herein and made a part hereof by reference to same. In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of Locust Grove that such adjudications shall in no manner affect the other sections, sentences, clauses, or phases of this ordinance which shall remain in full force and effect as if the invalid or unconstitutional section, sentence, clause or phrase were not originally part of the ordinance.

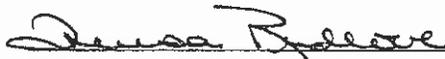
SECTION 4. Repeal of conflicting provisions. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed, except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective date. This ordinance shall become effective immediately upon its adoption by the Mayor and the City Council of Locust Grove.

SO ORDAINED this 1st day of February, 2010.


LORENE LINDSEY, Mayor

ATTEST:


THERESA BREEDLOVE, Clerk
(seal)