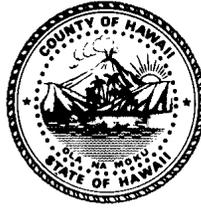


*Pete Hoffmann*  
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## HAWAI'I COUNTY COUNCIL

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TO: Council Members  
Hawai'i County Council

FROM: Pete Hoffmann, Council Chair

Date: October 2, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Section 36-4. Violations and fines.**

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

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

**“Section 36-8. Impact fees required.**

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

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

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

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

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

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

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

“(C) The ~~home~~ **home's gross floor area** does not exceed 1400 square feet in size, excluding carport or garage; and”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“INTRODUCED BY:

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

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

Thank you.

PH/kf  
Att.