

The Town of Holden hereby ordains that the following ordinance is hereby enacted.

## **ROAD ACCEPTANCE AND MAINTENANCE IMPACT FEE ORDINANCE**

### **Section 1. Purpose and Authority**

A. The purpose of this ordinance is to ensure the continued health, safety, and welfare of residents and business owners in the Town of Holden by:

1. Requiring owners of private roads to pay impact fees proportional to their share of the costs for new capital equipment and associated expenses before their roads are accepted by the Town as town ways, in order to provide four-season maintenance for the new road(s) without degrading maintenance services on the rest of the public road inventory; and

2. Establishing standards and procedures for assessing these impact fees and administering the impact fee program.

B. This ordinance is enacted pursuant to the following authority:

1. The home rule provisions of Article VIII, Part Second of the Maine Constitution and 30-A M.R.S. §3001, as well as the authority to adopt impact fee ordinances pursuant to Title 30-A M.R.S. §4354.

2. The home rules provisions of Article VIII, Part Second of the Maine Constitution and 30-A M.R.S. §3001, including the authority to establish conditions on the exercise of the Town's legislative authority to accept town ways under 23 M.R.S. §3025.

### **Section 2. Definitions**

The definitions contained in Title 30-A of the Maine Revised Statutes shall govern the construction of words and terminology contained in this ordinance. Any word or term not defined therein, or explained contextually within this ordinance, shall be given its common and ordinary meaning.

### **Section 3. Effective Date**

This ordinance, enacted on the 27 day of October 2007 by the Holden Town Council, shall take effect immediately. It shall remain in place until repealed or amended by a separate act of the Town Council.

### **Section 4. Relationship to Other Ordinances**

Whenever a provision of this ordinance is inconsistent with another provision of the ordinance or any other ordinance, regulation, or statute, the language in this ordinance shall prevail.

## **Section 5. Validity and Severability**

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

## **Section 6. Adoption and Amendments**

Before consideration of the adoption or amendment of this ordinance, the Town Council shall hold a public hearing. Notice of the public hearing shall be published in a newspaper having a general circulation in Holden, and posted at the Municipal Building and another public place in Holden, at least seven days prior to the hearing.

## **Section 7. Applicability**

This ordinance shall apply to all existing and future-construction private roads within the Town of Holden for which a specific Capital Equipment Financing Plan has been adopted, pursuant to Section 8 of this ordinance. The impact fee zone covered by this ordinance shall consist of all land area within the geographic limits of the Town of Holden. In addition, this ordinance shall apply to all roads in subdivisions that have been approved by the Planning Board, but which have not been accepted by the Town of Holden as town ways as of September 24, 2007.

## **Section 8. Capital Equipment Financing Plan**

Prior to assessment of a road maintenance impact fee, the Town of Holden shall develop and adopt a Capital Equipment Financing Plan. This plan shall cover all anticipated private road acceptances and corresponding capital equipment needs over a specified time period of five years (minimum) to ten years (maximum). The purpose of the plan is to justify the need and specify the cost of new capital equipment that will be purchased to ensure adequate road maintenance for the newly accepted roads, in direct proportion to their anticipated demand for road maintenance services. The Capital Equipment Financing Plan shall comply with the following requirements:

A. The plan shall estimate the total cost of new capital equipment purchases and associated expenses that will be needed to meet Holden's existing standards for four-season road maintenance, if all of the identified existing and planned future-construction private subdivision roads are accepted as new public ways.

B. The following items may be included in estimating the total cost of capital equipment and associated expenses: legal, professional, and administrative costs associated with the setup and enactment of this ordinance; legal and administrative costs incurred in selecting and acquiring the capital equipment; all costs associated with issuing municipal bonds or promissory notes and providing debt service (including interest payments) to finance the equipment purchase; and any charges incurred in delivering the new capital equipment from the point of sale to the Holden Public Works garage.

C. The Town Council may exclude up to 20 percent of the estimated total cost of new capital equipment from the Capital Equipment Financing Plan, in order to use that

portion of the equipment's total operating time to assist with the maintenance of public infrastructure not covered by this ordinance. Otherwise, the new equipment shall be used to ensure year-round maintenance of residential subdivision roads whose owners have paid the impact fee to the Town of Holden, in direct proportion to the amount of use that they will receive from the new equipment when the roads are accepted as public ways.

D. No portion of the road maintenance impact fee shall be used to pay or reimburse municipal staff salaries or wages, overtime, benefits, or office overhead costs; nor shall it be used to pay or reimburse routine maintenance and operational expenses for any items purchased under the Capital Equipment Financing Plan.

E. The Town Council is authorized to develop and adopt a new, concurrent Capital Equipment Financing Plan if the demand for new road maintenance equipment increases significantly beyond the terms of the existing plan(s). Following a residential growth boom, for example, the Town may deem it preferable to purchase several one-ton maintenance trucks right away by implementing a new financing plan, rather than waiting several years for the expiration of the original plan before any new subdivision roads can be accepted as public ways. This ordinance permits the adoption of two or more concurrent Capital Equipment Financing Plans, each with its own identified impact fee assessment. However, private road owners shall be assessed only one mileage-based road maintenance impact fee based on one Capital Equipment Financing Plan for each proposed public road acceptance, and the plan used to assess the fee shall address only the specific capital equipment that has been identified for use on that road.

## **9. Administration of Impact Fees**

A. This ordinance shall be administered by the Holden Code Enforcement Officer (CEO).

B. Impact fees shall be assessed by the CEO based on the field-measured length of lane-miles that are proposed for public acceptance, in accordance with the terms of the Capital Equipment Financing Plan in effect at the time of the assessment. The lane-mile represents the width of one pass of a snowplow blade or sand spreader over a linear distance, so it is a valid unit of measurement for the proportional demand that new roads will place on municipal maintenance equipment.

C. For the purposes of this ordinance, a lane-mile unit shall be measured for each 10 to 16 feet of paved or unpaved roadway width that extends along the road for the length of one linear mile. Paved shoulder widths shall be included within the lane-mile measurement for the adjacent travel lane. The vast majority of lane-miles are expected to conform to Holden's subdivision road design standards, with 13-foot widths (i.e., 10-foot travel lanes with 3-foot shoulders) and two lane-miles per each linear mile of roadway. Road and shoulder widening in the immediate vicinity of intersections, in order to provide adequate intersection turning radii, shall be ignored in measuring the total lane-miles to be assessed under this ordinance.

D. All measured lane-mile lengths shall be rounded up or down to the nearest 0.1 mile before calculating the fee assessment.

E. The CEO is authorized to charge a review fee to the road owner, not to exceed \$500 per private road proposed for public acceptance, to contract professional services to assist with lane-mile field measurement and calculation of the impact fee assessment.

F. Following the enactment of this ordinance and adoption of a Capital Equipment Financing Plan, owners of all existing and future-construction private roads located in the Town of Holden shall pay the assessed impact fee before their roads can be accepted as public ways by the Town Council.

G. Impact fee assessments may be remitted to the Town either in a lump sum payment or in multiple installments over the course of a year or several years, at the option of the fee payer. However, the entire amount of the impact fee must be accumulated and certified as "paid in full" by the CEO prior to bringing the proposal for road acceptance before the Town Council for final review and approval. The date of receipt for the final installment shall be recorded as the official impact fee payment date.

## **10. Impact Fee Accounts**

All fees collected under the provisions of this ordinance shall be segregated from general municipal revenues and expenditures. Separate bookkeeping accounts shall be set up and maintained for each specific Capital Equipment Financing Plan and its associated impact fee revenues.

## **11. Refund of Impact Fees**

The Town of Holden may pursue a financial strategy in which it accumulates the collected impact fees and grows the pooled capital investment fund to a specified minimum revenue goal before any of the monies are expended for the designated purchases. However, all impact fees must be spent or contractually obligated within the time period specified in the Capital Equipment Financing Plan. This time period shall be not less than five years, nor more than ten years. Any portion of the funds that have not been spent or obligated by contract within the specified time period shall be refunded to all fee payers on a pro-rata basis in the calendar quarter following the end date of the Capital Equipment Financing Plan, together with interest compounded annually as simple interest at three percent per year from the official date of fee payment.

The Town could inadvertently collect too much revenue in road maintenance impact fees, if the actual costs for capital equipment and related expenses have been significantly over-estimated in developing the financing plan. In such a case, the CEO shall rebate the calculated amount of overpayment to each fee payer in the calendar quarter following the end date of the Capital Equipment Financing Plan, together with interest compounded annually as simple interest at three percent per year from the official date of fee payment.

## **12. Modification of Impact Fees**

The Town Council may, in its sole discretion and by formal vote following a public hearing, waive the payment of the road maintenance impact fee either in whole or in part, if the Town Council determines that any of the following extenuating circumstances warrant a waiver:

A. The road proposed for public acceptance provides access to affordable housing for Holden residents, as defined by the U.S. Department of Housing and Urban

Development, the U.S. Department of Agriculture Rural Development Agency, or the Maine State Housing Authority. If only part of the subdivision project consists of affordable housing, the Council shall use the ratio of affordable units to all subdivision units to determine an appropriate partial fee waiver.

B. The original subdivision developer or the current road owner has already paid or absorbed the cost to create significant public amenities that contribute to a better quality of life in accordance with the goals set forth in Holden's Comprehensive Plan, such as the development of a public trail system for walking and bicycling, the establishment of recreational facilities and attractive open spaces with public access points, or the permanent conservation of large habitat blocks in Holden for wildlife protection (to include both privately held conservation easements and property donations to the Holden Land Trust). If the amenities are not demonstrated to provide a community value equivalent to the full impact fee assessment, or if they are designated for use solely by subdivision residents and their guests, the Council may choose to waive only that portion of the fee that corresponds to the approximate in-kind value (if any) received by the general public.

C. Changing economic development and transportation needs, or concerns for public health, safety, and welfare, may occasionally prompt the Town to assume ownership for an existing private road. Impact fees shall be waived in full whenever the Town initiates the transfer of a private road to the public road inventory, regardless of whether the transfer is voluntary or involuntary on the part of the private owner.

A waiver decision by the Town Council cannot be appealed.

### **Section 13. Appeals**

Any person who feels aggrieved by a decision or action taken by the CEO with regard to an impact fee assessment or refund may appeal to the Holden Town Council in writing up to seven days following the date of the decision or action, providing sufficient detail to establish the grounds for the appeal. The Town Council shall conduct a de novo review of the appeal with the petitioner and the CEO and then affirm, modify, or reverse the decision of the CEO, based on the provisions of this ordinance. Any party aggrieved by the decision of the Town Council may, within thirty days after the decision is rendered, appeal the decision to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.