

REQUEST FOR LEGAL SERVICES

Date: January 7, 2022
From: Yuki Lei K. Sugimura, Chair
Infrastructure and Transportation Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jen Oana, Esq.

Subject: **TRAFFIC IMPACT FEES** (IT-22)

Background Data: Please see the attached bill. Please send the signed bill to it.committee@mauicounty.us.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>Laksmi Abraham</u> (Telephone Extension: <u>7659</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

it:ltr:022acc01:lma

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE,
RELATING TO IMPACT FEES FOR TRANSPORTATION
IMPROVEMENTS ON MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapters 14.62, 14.68, 14.70, 14.72, 14.74, 14.76, and 14.78, Maui County Code, are repealed.

SECTION 2. Title 14, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 14.80

**IMPACT FEES FOR TRANSPORTATION IMPROVEMENTS
ON MAUI, HAWAII**

Sections:

14.80.010	Authorization.
14.80.020	Purpose and intent.
14.80.030	Findings.
14.80.040	Definitions.
14.80.050	Applicability.
14.80.060	Calculation of impact fees.
14.80.070	Assessment and collection of impact fees.
14.80.080	Traffic impact fee study.
14.80.090	Impact fee improvement fund.
14.80.100	Exemptions.
14.80.110	Credits and refunds.
14.80.120	Hearing and appeal procedures.
14.80.130	Update and amendment of impact fees.
14.80.140	Administrative costs.
14.80.150	Rule-making authority.

14.80.010 Authorization. This ordinance is enacted in accordance with Part VII, chapter 46, subsections 121 through 127, inclusive, and chapter 46, subsections 141 through 148, inclusive, HRS.

14.80.020 Purpose and intent. This chapter is intended to promote public health, safety, and welfare by providing a fair and equitable method for new development on Maui island to pay for its fair share of public transportation system infrastructure through the imposition of impact fees. The amount of each impact fee is calculated based on the amount and relative intensity of land use creating demand on Maui island's transportation infrastructure, resulting in a fee that is roughly proportional to the impacts of new development on public facilities. This Ordinance does not preclude the exaction of capital improvements that are otherwise required by law or may be imposed by an administrative agency, board, or commission for local, site specific transportation capital improvements that are needed to serve new development.

14.80.030 Findings. Maui county finds: A. The General plan anticipates Maui island will experience continued growth and development in the future.

B. Continued growth will place additional demands for travel on the county's transportation system infrastructure and result in a decreased transportation level of service and quality of life without improvement to the transportation system infrastructure.

C. A well-functioning and comprehensive roadway system, bicycle and pedestrian network, and transit services are essential to the continued social and economic well-being of the island of Maui.

D. The county council, after careful consideration of several studies and documents and the experience of other similar jurisdictions, finds that the imposition of impact fees to finance specified public transportation system infrastructure in designated benefit zones is in the best interest of the general welfare of the county, is equitable, and does not impose an unfair burden on new development.

14.80.040 Definitions. Unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used in this chapter are defined as follows:

"Applicant" means an individual, partnership, corporation, trust, or agent having the requisite authority, who has applied for a building permit.

"Arterial road" means a road that is a main traffic artery carrying relatively high-traffic volume for relatively long distances.

This classification includes all roads that function above the level of a collector road.

"Benefit zone" means a geographical area designated in the traffic impact fee study addendum where impact fees collected must be spent.

"Building" has the same meaning as defined in chapter 16.26B, Maui County Code, as amended.

"Building permit" means an official document or certificate issued by the county authorizing the construction of any building or structure.

"Capacity" means the maximum number of vehicles for a given time period that a road can safely and efficiently carry, usually expressed in terms of vehicles per hour.

"Capital improvements" means the acquisition of real property, improvements to expand capacity and serviceability of existing public facilities related to transportation, and the development of new public facilities related to transportation.

"Collector road" means a road that carries vehicular traffic from local roads to arterial roads. Collector roads have more continuity, carry higher vehicular traffic volumes, and may provide less access than local roads.

"Credit" means the present value of past or future payments or contributions, including the dedication of land or construction of a public facility made by a developer toward the cost of existing or future public facility capital improvements, except for contributions or payments made under a development agreement.

"Developer" means a person or entity that engages in development of land.

"Development" means any change to real property that requires a building permit, including construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Development unit" means a standardized unit of measure applicable to a particular land use for the purpose of determining the relative size or intensity of a particular development. A development unit may include dwelling units, gross or net acres of development, employees, gross square feet of building area, students, seats, and beds.

"Duplex" or "Dwelling, two-family" has the same meaning as defined in section 19.04.040.

"Dwelling, single-family" has the same meaning as defined in section 19.04.040.

"Dwelling unit, multifamily" has the same meaning as defined in section 19.04.040.

"External trip" means any trip that either has its origins from or its destination to the development site and impacts the major road transportation system.

"General plan" means the countywide policy plan, Maui island plan and community plans, as defined in chapter 2.80B, Maui County Code.

"Gross floor area" has the same meaning as "Floor area" as defined in section 19.04.040.

"HRS" means Hawaii Revised Statutes.

"Impact fee" means the charges imposed on a developer by Maui county to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected or to recoup the costs of existing public facility capital improvements made in anticipation of the needs of a development.

"Impact fee study" or "impact fee study addendum" means a study that determines the need for a public facility, the cost of development, and the level of service standard, and that projects future public facility capital improvement needs based on current county planning and infrastructure analysis efforts adopted by Maui county. The impact fee study includes the capital improvement plan.

"Industrial development" means the development of land primarily used for warehousing and distribution types of activity such as the manufacturing, compounding, assembly, processing, or treatment of materials.

"Institutional, public" means a governmental, quasi-public or institutional use, or a nonprofit recreational use, not located in a shopping center. Typical uses include elementary, secondary or higher educational establishments, day care centers, hospitals, mental institutions, nursing homes, assisted living facilities, fire stations, city halls, county court houses, post offices, jails, libraries, museums, places of religious worship, military bases, airports, bus stations, fraternal lodges, and parks and playgrounds.

"Internal trip" means a trip that has both its origin and destination within the development site.

"Local road" means a road designed and maintained primarily to provide access to abutting property. A local road is of limited continuity and is not for through vehicular traffic.

"Office" means a building not located in a shopping center and exclusively containing establishments providing executive, management, administrative or professional services, and may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper or candy stand, or child care facilities. Typical uses include real estate, insurance, property management, investment, employment, travel, advertising, secretarial, data processing, photocopy and reproduction, telephone answering, telephone marketing, music, radio, and television recording and broadcasting studios; professional or consulting services in the fields of law, architecture, design, engineering, accounting and

similar professions; interior decorating consulting services; medical and dental offices and clinics, including veterinary clinics and kennels; and business offices of private companies, utility companies, trade associations, unions, and nonprofit organizations.

"Recoupment" means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

"Refund" means the rebate of fees paid and accrued interest in accordance with section 46-145, HRS.

"Residential development" means the development of land primarily used for human habitation.

"Retail" means establishments engaged in the selling or rental of goods, services, or entertainment to the general public. Such uses include: shopping centers, discount stores, supermarkets, home improvement stores, pharmacies, automobile sales and service, banks, movie theaters, amusement arcades, bowling alleys, barber shops, laundromats, funeral homes, vocational or technical schools, dance studios, health clubs, and golf courses.

"Road network system" means all arterial and collector roads on Maui island, including new arterial and collector roads necessitated by land developments.

"Roadway transportation system" means all public roads, public transit systems, and conveyances intended for the movement of persons and goods.

"Shopping center" means a group of retail and other commercial establishments that is planned, owned, and managed as a single property with parking provided on-site.

"Single-family" means a single-family dwelling, including a farm dwelling, or a duplex dwelling, as defined in section 19.04.040.

"Square foot" is computed by determining the gross floor area under roof.

"Subdivision approval" means the approval for final plat recordation given by the county of Maui in accordance with title 18.

"Transportation system" means the public ways providing for the movement of persons and goods, including vehicles, transit, pedestrians, bicycles, and other non-motorized modes of transportation.

"Trip" means a one-way movement of vehicular travel from an origin to a destination.

"Trip generation" means the attraction or production of trips caused by a given type of development.

"Visitor accommodation unit" means a dwelling or lodging unit, including a bed and breakfast home, short-term rental home, time share, hotel, or transient vacation rental used by transients for any period of less than one hundred eighty days.

14.80.050 Applicability. Unless exempted, this ordinance applies to all traffic impact fees imposed by the county to finance public facility capital improvement costs attributable to new development occurring exclusively on the island of Maui, including without limitations:

A. Roadway transportation system improvements are physical facilities, constructed or purchased, that are necessary to provide safe and efficient travel service for vehicular, pedestrian, bicycle, and other non-motorized traffic on or along public rights-of-way. Fees imposed can be applied to the planning, preliminary engineering, engineering design and study, land surveys, environmental studies, acquisition of rights-of-way and easements, permitting and construction of all the necessary features for any roadway transportation system improvements, including:

1. Construction of through lanes, turn lanes, bridges, bridge-class structures, drainage facilities in conjunction with roadway construction, traffic signalization, signing, pavement markings, curbs, medians, and shoulders.

2. Sidewalks, pedestrian, and non-motorized vehicle (including bicycle) improvements that are integrally related to transportation improvements and serve to separate pedestrians and non-motorized vehicles from motorized vehicles and provide other safety measures.

3. Relocation of utilities to accommodate roadway construction.

4. Facilities for the purpose of maintaining or enhancing the roadway's carrying capacity and enhancing safety.

5. Intersection and grade-separation improvements.

B. Public transit system improvements, which are shared passenger transportation services available for use by the general public. Fees imposed can be applied to the planning, preliminary engineering, engineering design and study, land surveys, environmental studies, acquisition of rights-of-way and easements, permitting and construction of all physical facilities intended to facilitate public or mass transportation services to the public, including:

1. Acquisition of vehicles intended to operate on roadways, fixed guideways and land, and easements for physical facilities.

2. Purchase and installation of equipment supporting transit service, including dispatching and vehicle location equipment, capital maintenance equipment, passenger amenities such as bus shelters, information kiosks, and bus pass vending machines and route signage.

3. Construction of facilities necessary to support the provision of transit services, including maintenance and storage facilities, and passenger shelter and terminals.

C. Impact fees must be used to maintain the transportation system at normative operating levels. Impact fees must not be used for the payment of annual operational and maintenance expenses or deficits that pre-exist the developments where fees are imposed.

14.80.060 Calculation of impact fees. A. Except as provided in this ordinance, the department of public works will impose impact fees as a condition of approval of all developments through the building permit process. No building permit may be approved unless the provisions of this chapter have been fulfilled.

B. Impact fees will be imposed based on the size and intensity of the particular land use in accordance with the applicable fee schedules adopted through ordinance as part of the county's annual budget for the benefit zone or zones where the development is situated. The total impact fee will be calculated by multiplying the number of development units applicable to the particular land use as shown in the applicable fee schedule by the fee per development unit indicated for the particular land use.

C. The following categories of uses serve as the basis for a fee schedule. These fee categories may be further defined during the adoption of the fee schedule:

1. Residential development:
 - a. Single-family
 - b. Duplex
2. Multi-family development
3. Commercial development:
 - a. Office
 - b. Retail
4. Industrial development
5. Visitor accommodation unit
6. Institutional, public

D. For land uses not specifically listed or that can be reasonably classified from the applicable fee schedules, the county must utilize the most similar land use in terms of traffic generating characteristics to determine the applicable impact fee rate to be used for assessment of impact fees.

E. Assessment of cost. A schedule for determining traffic impact fees must be established by the impact fee study addendum. The fee rates may vary from benefit zone to benefit zone according to each zone's cumulative impact on the transportation system.

The department of public works must compute and collect the impact fees from applicants upon issuance of building permits.

F. In general, impact fees will be assessed based on the principal use of a building or lot. For example, a warehouse that contained a small administrative office would be assessed at the warehouse rate for all of the square footage. Shopping centers are assessed at the retail/commercial rate, regardless of the type of tenants. For a true mixed-use development, such as one that includes both residential and nonresidential development, the fee will be determined by adding up the fees that would be payable for each use as if it was a free-standing land use type under the fee schedule.

G. If the type of impact-generating development is for a change of land use type or for the expansion, redevelopment, or modification of an existing development, the fee must be based on the net increase in the fee for the new land use as compared to the previous land use. The previous land use must be the most intensive use of the site during the previous ten years.

H. In the event that the proposed change of land use type, redevelopment, or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there will be no refund of impact fees previously paid.

14.80.070 Assessment and collection of impact fees.

Assessment of impact fees are a condition precedent to the issuance of a building permit and must be collected in full before or upon issuance of the permit.

14.80.080 Traffic impact fee study. The impact fee study addendum prepared by CDM Smith and dated November 16, 2021, was prepared in accordance with the requirements in section 46-143, HRS, and serves as the basis for the calculation of impact fee rates. In accordance with section 46-144, HRS, the following benefit zones are established for the collection and expenditure of traffic impact fees to finance roadway and transit projects under county jurisdiction:

- A. Hana community plan area.
- B. Paia-Haiku community plan area.
- C. West Maui community plan area.
- D. Makawao-Pukalani-Kula community plan area.
- E. Kihei-Makena community plan area.
- F. Wailuku-Kahului community plan area.

Traffic impact fees must be expended within the same benefit zone where they are collected.

14.80.090 Impact fee improvement fund. A. The department of finance must establish an impact fee improvement fund for each benefit zone, as designated by this ordinance for which

an impact fee is imposed, and monies collected must be deposited by the department of finance in such fund according to the benefit zone. The department of finance may also establish an impact fee improvement fund for fees collected for state highway improvements that must be transferred to the State of Hawaii under an executed intergovernmental agreement.

B. Each account must be interest-bearing and the accumulated interest becomes part of the account.

C. The funds of each account must be expended within the benefit zone exclusively for the capital improvements for which the impact fees were collected as identified in the impact fee study addendum. The funds may also be used to pay debt service on any portion of any current or future general obligation bond or revenue bond that was used to create capacity of the type reflected in the title of the account that will be available to serve development occurring after the effective date of this chapter.

D. The monies in each impact fee account may only be used for public facility capital improvement costs as permitted by chapter 46, subsection 141-148, as amended, HRS.

14.80.100 Exemptions. A. The following are exempted from payment of impact fees under this chapter:

1. Alteration or expansion of an existing dwelling where no additional units are created, and the use is not changed.

2. The construction of accessory buildings or structures, to the extent that there is no increase in vehicle trip generation of the original land use that will not increase the external trip generation.

3. The replacement of an existing building or structure with a new building or structure of the same size and use will not increase traffic counts.

4. Residential workforce housing units under chapter 2.96.

B. Any claim of exemption must be made no later than the time of application for a building permit. Any claim not made by the required time is invalid.

14.80.110 Credits and refunds. A. An applicant may apply for a credit to assessed impact fees as follows:

1. An applicant who elects to construct or dedicate all or a portion of a capital improvement identified in the impact fee study addendum as a basis for the calculation of impact fees is eligible for a credit for such construction or dedication up to the amount of the impact fees otherwise due.

2. The applicant must, prior to the applicant's construction or dedication, submit a petition to the director of public works and obtain a determination of credit eligibility and the amount of any credit.

3. The director of public works may grant the credit and determine the amount to be credited if the proposed project or comparable transportation improvement is in the impact fee study assessment.

4. Impact fees due and payable must be net of any approved credits available under this section. It is the responsibility of the applicant to claim credits prior to payment of impact fees. Any credits not claimed are waived.

B. Refund of collected impact fees may be made under the following conditions:

1. If impact fees collected are not expended or encumbered within six years of the date of collection, a developer or developer's successor may, by application, request a refund within three hundred sixty-five days on which the right to claim arises. Refunded fees must include interest accrued.

2. If the county terminates impact fee requirements under this article, unexpended or unencumbered funds must be refunded as provided in subsection B.1 above.

3. If the activity for which the permit is issued is not pursued, a developer or developer's successor may, by application, request a refund within one hundred eighty days of permit issuance. The refund must be paid, less a handling fee, with the cancellation of the building permit.

4. Unclaimed funds must be distributed in accordance with section 46-145, HRS.

14.80.120 Hearing and appeal procedures. Within fifteen days after receiving a written notice, the applicant affected or the owner of the development subject to traffic impact fees may file an appeal under chapter 19.520.

14.80.130 Update and amendment of impact fees. A. The impact fee study must be reviewed by the department of planning no later than the fifth-year anniversary from its adoption and at least every five years thereafter, or as deemed necessary by the planning director.

B. Following the adoption of this chapter, the department of public works must submit an annual report to the county council that includes the following:

1. A financial summary, including total impact fee collections and collections by benefit zone, over the past twelve months; amounts currently expended and encumbered, and amounts not expended or encumbered, relative to the refund date of the collections.

2. A summary of capital improvement projects initiated, underway, and completed within the past twelve months that utilize the impact fees collected.

3. Any recommendations for changes in the boundaries of benefit zones.

4. Any recommendations for changes to the capital improvements plan.

5. Any recommendations for changes to impact fee rates and schedules. Increases in impact fees in line with changes in the Honolulu construction cost index as compiled by the State of Hawaii department of business, economic development and tourism will be calculated and presented in the report. Changes to impact fee rates may be proposed to account for the effects of inflation on the costs of projects identified in the capital improvements list or to reflect newly obtained data that more accurately reflects the anticipated cost of capital improvements.

14.80.140 Administrative costs. In carrying out its responsibilities, the department of public works may retain not more than two percent of the total funds collected to offset costs associated with the collection of these funds.

14.80.150 Rule-making authority. The director of public works has the authority to adopt rules regarding the administration of this chapter."

SECTION 3. This Ordinance takes effect on approval. However, building permits submitted to the county prior to the effective date of this Ordinance are exempt from compliance, if: (1) the construction proceeds according to the provisions of the permit and the permit does not expire prior to the completion of the construction; and (2) the building permit application did not have a condition of development approval, unilateral agreement, covenant, or other similar agreement requiring the payment of traffic impact fees.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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