

CITY OF WAUKESHA, WISCONSIN

ORDINANCE NO. _____-14

**An Ordinance Amending Sections 4.10 and 23.08 of the Waukesha Municipal Code,
Regarding Impact Fees**

Whereas, a Public Facilities Needs Assessment having been performed for the Department of Community Development, and the report thereof, dated March, 2012, having been filed with the City Clerk and been made available for public inspection as required by Wis. Stats. §66.0617; and

Whereas the Public Facilities Needs Assessment having been delivered to the Common Council for its consideration and action on amending the City's Impact Fee Schedule; and

Whereas a public hearing having been conducted before the Common Council regarding the Public Facility Needs Assessment in May, 2012, and the Common Council having considered the comments of the public; and

Whereas the Common Council having approved and adopted in May, 2012 the Public Facilities Needs Assessment and the recommendations therein for the adjustment of the City's Impact Fee Schedule; and

Whereas the Ordinance and License Committee having recommended to the Common Council revisions of Municipal Code §4.10 and §23.08 to consolidate provisions relating to impact fees; and

Whereas the Common Council having accepted the Ordinance and License Committee's recommendations and finding that it is in the City's best interest to revise Municipal Code §4.10 and §23.08, and to adopt a revised Impact Fee Schedule as contemplated by revised §4.10 and §23.08; and

Whereas the Common Council having found that the requirements of Wis. Stats. §66.0617 regarding the amendment of impact fees have been duly met;

Now, therefore, the Mayor and the Common Council of the City of Waukesha do ordain as follows:

Section 1. Section 4.10 of the Waukesha Municipal Code is amended to read in its entirety as follows:

4.10 Impact Fees.

- (1) **Purpose and Intent.** When land is developed for residential, commercial, industrial and institutional uses, it creates a need for additional public infrastructure, including transportation, water, sanitary sewerage, storm water sewerage, and park and recreation facilities. This additional public infrastructure directly benefits the newly-developed land, but without some method for allocation, the cost is borne by the taxpayers of the entire city. Wisconsin Statutes §66.0617 enables municipalities to impose fees upon developers to allocate the costs of required public infrastructure improvements to the developments which directly benefit from the improvements, to avoid imposing those costs upon the taxpayers at large. The Common Council finds that it is equitable for the developers of land within the City of Waukesha to bear a certain amount of the costs of public infrastructure improvements necessitated by their developments in order to maintain the City's Service Standard, defined below, and not to impose those costs upon the taxpayers at large. Therefore, pursuant to Wis. Stats. §66.0617, the Common Council has enacted this ordinance to enable the City to charge impact fees to developers to contribute to the costs of construction of public infrastructure necessitated by land development within the City of Waukesha.
- (2) **Definitions.** Capitalized terms used in this section shall have the following meanings:
- (a) Capital Costs means the costs of construction, expansion or improvement of public facilities, including the costs of acquiring land, legal work, engineering and design. Legal, engineering and design may not exceed 10% of total Capital Costs, unless the City demonstrates that its actual legal, engineering and design costs which relate directly to the public improvement for which the Impact Fee is imposed exceed 10% of Capital Costs. Capital Costs do not include other, non-capital costs to construct, expand or improve Public Facilities; vehicles; or the costs of equipment to construct, expand or improve Public Facilities.
 - (b) Developer means a person that constructs or creates a Land Development.
 - (c) Impact Fee means a cash contribution, the value of contributions of land or interests in land, or the value of contribution of other items of value, imposed on a Developer by the City under this section.
 - (d) Land Development means the construction or modification of improvements to real property that create additional residential dwelling units or that result in nonresidential uses that create a need for new, expanded or improved Public Facilities within the City.
 - (e) Public Facilities means highways as defined in Wis. Stats. §340.01(22), and other transportation facilities; traffic control devices; facilities for collecting and treating sewage; facilities for collecting and treating storm and surface waters; facilities for pumping, storing, and distributing water; parks, playgrounds, and land for athletic fields; solid waste and recycling facilities; fire protection facilities; law enforcement facilities; emergency medical facilities; and libraries. Public Facilities does not include facilities owned by a school district.
 - (f) Service Standard means a certain quantity or quality of Public Facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the City.

- (3) **Imposition of Impact Fees.** An Impact Fee shall be paid by any Developer creating a Land Development within the City of Waukesha. Impact Fees, and any amended Impact Fees, shall be determined by the Department of Community Development according to the standards and procedures given in Wis. Stats. §66.0617 and this Municipal Code §4.10, and a proposed Impact Fee Schedule shall then be presented to the Common Council for approval. After approval by the Council, the Impact Fee Schedule, as amended, shall be maintained and published by the Department of Community Development. The Impact Fee Schedule shall show the categories of Public Facilities for which fees are imposed, and the allocation of fee amounts among the categories.
- (4) **Payment of Impact Fees.** Impact Fees shall consist of the total amount of all fee categories applicable to the Development shown on the Impact Fee Schedule. Impact Fees shall be paid by the Developer to the City at the time a building permit for any Land Development is issued.
- (5) **Amendment of Impact Fee Schedule.** Impact Fees shall be reviewed by the Department of Community Development at least once every five years, and a new Public Facilities Needs Assessment shall be prepared and Impact Fees shall be adjusted, if the review indicates that Impact Fees no longer meet the standards given in Wis. Stats. §66.0617(6) as a result of changing Public Facility needs, inflation, revised cost estimates for capital improvements, changes in other funding sources applicable to Public Facility projects, and any other relevant factors.
- (6) **Public Facilities Needs Assessment.** Pursuant to Wis. Stats. §66.0617(4), the City of Waukesha has prepared a Public Facilities Needs Assessment which identifies Public Facilities for which Impact Fees are imposed under Subsection (3). A Public Facilities Needs Assessment shall be prepared before any amendment of this ordinance which changes the Public Facilities for which Impact Fees are imposed, or which alters the Impact Fee Schedule issued under Subsection (3). A copy of the then-current Public Facilities Needs Assessment shall be kept on file by the City and Clerk and made available for inspection and copying by the public.
- (7) **Public Hearing.** A public hearing shall be held before any amendment of this ordinance which changes the Public Facilities for which Impact Fees are imposed, or which alters the Impact Fee Schedule issued under Subsection (3). Notice of the hearing shall be as required by Wis. Stats. §66.0617(3).
- (8) **Adjustments to Impact Fees.** Impact Fees charged to a Developer may be adjusted, as follows:
- (a) Impact Fees may be reduced by an amount equal to other charges paid, or the value of property given, with respect to a Land Development by the Developer for the costs of Public Facilities. The amount of the reduction shall be determined by the Department of Community Development.
 - (b) The portion of the Impact Fee allocated for parks, playgrounds and athletic fields shall be reduced by the credit for land dedication described in Municipal Code §23.08(3).
 - (c) Impact Fees for low-cost housing may be waived or reduced if recommended by the Plan Commission and approved by the Common Council. If a portion of a particular project has been approved for low-cost housing, then the Impact Fee

may be adjusted on a pro-rata basis. No amount of a waived or reduced Impact Fee may be shifted to any other Land Development in the City.

- (9) **Segregated Fund for Impact Fees.** The City shall maintain a segregated, interest-bearing account for revenues collected from Impact Fees, which shall be accounted separately from other City funds. All interest shall be added to the segregated account. Funds in the segregated account shall be expended only for the specific Capital Costs for which the Impact Fee was imposed, except for refunds according to subsection (10), below.
- (10) **Time for Use, Refund of Unused Impact Fees.** Impact Fees shall be used for the payment of the Capital Costs for which they were imposed no later than the first day of the 120th month after the date on which the Impact Fee was collected, or the Impact Fee shall be refunded to the then-current owner of the property, along with any interest that has accrued.
- (11) **Appeals.**
- (a) A Developer upon whom an Impact Fee is imposed may appeal the amount, collection or use of the Impact Fee by filing a written request with the City Clerk, provided the following conditions are met:
 - (i) The request is filed within 15 days of the date on which the Impact Fee is imposed;
 - (ii) The request specifies the bases on which the appeal is requested; and
 - (iii) The Impact Fee is paid to the City within 15 days of the date on which it is imposed.
 - (b) Appeals are limited to whether the amount, method of collection and use of the Impact Fee imposed on the Developer complies with the requirements of this section and Wis. Stats. §66.0617; or the amount of Impact Fee adjustment pursuant to Subsection (8)(a).
 - (c) The Developer shall include in the appeal request the Developer's independent calculations for the Impact Fee, including all supporting information used in the calculation of the fee.
 - (d) The City Clerk shall forward the appeal request promptly to the Department of Community Development. Within 15 days of receiving the appeal request, the Department of Community Development shall evaluate the appeal request and prepare a recommendation for the Common Council. The Common Council shall either place the matter on the agenda for either its next regularly-scheduled meeting, or a special meeting, to consider the appeal.
 - (e) At the meeting, the Common Council shall hold a public hearing, consider the evidence and arguments of the Developer and the Department of Community Development.
 - (f) If, after the hearing, the Common Council finds that the Impact Fee does not comply with this section and Wis. Stats. §66.0617, then the Common Council may determine an appropriate remedy, including an amendment of the Impact Fee, or a reallocation of the Impact Fee among its components.
 - (g) The Common Council shall make specific, written findings of fact and conclusions as to whether the imposed Impact Fee complies with this section and Wis. Stats. §66.0617, and shall state the selected remedy. The written

decision shall be delivered to the Developer no later than 10 days after the hearing.

- (h) If the remedy includes a reduction in the Impact Fee, then a refund of the reduction shall be made to the Developer within 10 days of the date of the written decision. If the remedy includes an increase in the Impact Fee, then Developer shall pay the increase to the City within 10 days of the date of the written decision.
- (i) Provided the Developer has paid the Impact Fee, and all other required permits and approvals for the Land Development have been properly obtained, the Land Development may proceed during the appeal process.

(12) SEVERABILITY. If any provision of this ordinance is declared by a court having jurisdiction to be illegal or invalid for any reason, that illegality or invalidity shall not affect the remaining provisions of this ordinance which shall remain in full force and effect.

Section 2. Section 23.08 of the Waukesha Municipal Code is amended to read in its entirety as follows:

Section 23.08 Park and Open Space Dedication

- (1) Purpose and Intent.** The Common Council has determined that it is in the interest of the general welfare of the citizens of the City of Waukesha that ample public open spaces, recreation facilities and parks be located throughout the City and be readily accessible to all citizens, and that new development within the City occur with this policy taken into account. The City has created a Comprehensive Plan for development which determines the location and size of public parks, open space and recreation facilities to implement this policy. To ensure that development of land complies with the Comprehensive Plan, and that the cost of providing for public parks, open spaces and recreation facilities in compliance with the Comprehensive Plan is equitably apportioned on the basis of the demand for such facilities created by the development of land, the City establishes this Ordinance.
- (2) Provision for Parks, Open Spaces and Recreation Facilities.** All subdivision plats, and all certified survey maps creating more than eight residential lots, shall take into consideration the requirements of the City's Comprehensive Plan for public parks, open spaces and recreation facilities, and shall be subject to the determination of the Plan Commission of the adequacy of provisions within the plat or certified survey map of lands reserved for such uses. Approval of the plat or certified survey map shall be conditioned upon the finding of the Plan Commission that adequate provisions are made within the plat or certified survey map for public parks, open spaces and recreation facilities, and the Plan Commission may require amendment of the plat or certified survey map to make adequate provisions. If the Plan Commission finds that adequate provisions for public parks, open spaces and recreation facilities cannot practically be made by the reservation of lands, for reasons including, but not limited to, the unsuitability of land within the development for such facilities, or the requirements of the Comprehensive Plan already being met by lands reserved in other nearby developments, then all or a portion of the developer's obligation may be met through the Impact Fees assessed pursuant to §4.10 of the Municipal Code, and reservation of land may not be required.

- (3) **Dedication of Land, Credit Towards Impact Fee.** Lands required to be reserved for public parks and open spaces pursuant to Subsection (2), above, shall be dedicated to the City for development and use as public parks, public open spaces or public recreation facilities, as determined by the Plan Commission. The plat or certified survey map shall indicate the dedication. Dedication of lands pursuant to this section shall not relieve the developer from the assessment of Impact Fees under §4.10, however, the fair market value of all lands dedicated as a condition of approval of plats and certified survey maps pursuant to this Section shall be credited towards the portion of Impact Fees allocated for parks, playgrounds and athletic fields under Municipal Code §4.10, however, the credit shall not exceed the amount of the portion of the Impact Fee allocated for parks, playgrounds and athletic fields.
- (4) **Determination of Fair Market Value.** For purposes of Subsection (3), above, fair market value shall be determined by the mutual agreement of the City and the developer. If the City and developer are unable to agree within 30 days of the Plan Commission's final determination pursuant to Subsection (2), above, then the fair market value shall be the average of the fair market values determined by a panel made up of an appraiser appointed by the City, an appraiser appointed by the developer, and an appraiser appointed by the agreement of the City's appraiser and the developer's appraiser. Fair market values shall be determined on the assumption that the land is vacant and unimproved. The fees of the developer's appointed appraiser shall be paid by the developer, the fees of the remaining two appraisers shall be paid by the City. All appraisers shall be MAI certified.

Passed the _____ day of _____, 2014.

Approved:

Shawn N. Reilly, Mayor

Attest:

Gina L. Kozlik, City Clerk

For _____ Against _____ Absent _____