

**ARTICLE XI Impact Fees (§ 135-53 — § 135-74)**

[Added 3-17-2004 by Ord. No. 3703]

**§ 135-53 Purpose.**

The purpose of this article is to establish an impact fee program to ensure that the transportation system is available and adequate to support new growth and development. To advance this objective, there is hereby created an impact fee payable to the Township at the time of building permit issuance.

**§ 135-54 General findings and conditions.**

The Board of Commissioners hereby finds and declares that:

- A. The conditions and standards for the determination and imposition of the impact fee set forth herein are those set forth in Act 209 of 1990<sup>7</sup>, and any and all amendments thereto (hereinafter the "Act"), and consist of:
  - (1) The recitals set forth above;
  - (2) The analysis, advice and recommendations of the Transportation Services Advisory Committee;
  - (3) The land use assumptions as adopted by the Board of Commissioners;
  - (4) The Roadway Sufficiency Analysis as adopted by the Board of Commissioners;
  - (5) The Transportation Capital Improvements Plan, as adopted by the Board of Commissioners; and
  - (6) Such other conditions and standards as the Board of Commissioners may by resolution identify from time to time as being relevant and material to the imposition of an impact fee and consistent with the provisions of the Act and any amendments thereto.
- B. The collection, disbursement and accounting of impact fees shall be administered by the office of the Township Manager, subject to review, oversight and control by the Township Board of Commissioners.
- C. The time, method and procedure for payment of impact fees shall be as set forth in this article.

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<sup>7</sup> Editor's Note: See 53 P.S. § 10501-A et seq.

- D. The procedure for credits against or refunds of impact fees shall be as set forth in this article.
- E. Such exemptions as the Board of Commissioners shall choose to enact shall be as set forth in this article.

**§ 135-55 Definitions.**

The terms and definitions set forth in Section 502-A of the Act<sup>8</sup> are hereby adopted and incorporated in this article by reference.

**§ 135-56 Imposition.**

There is hereby enacted an impact fee to be imposed upon new development for the purpose of off-site public transportation capital improvements authorized by the Act and as described in the program adopted by the Board of Commissioners. Said impact fee shall apply to all new developments or subdivisions within each of the transportation service areas identified herein and shall be a condition precedent to final approval of a development or a subdivision plan or issuance of a building permit.

**§ 135-57 Uses.**

Impact fees collected pursuant to this article shall be expended for costs incurred for improvements attributable to new development and designated in the Transportation Capital Improvements Plan adopted by the Board of Commissioners for improvements within each of the transportation service areas in which the new development will be located. Additionally, such fees may be used for the acquisition of land and right-of-way, engineering, legal and planning costs, and all other costs, including debt service related to road improvements within the designated service area, and including such proportionate amount of the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

**§ 135-58 Documents adopted by Board of Commissioners.**

The following documents, previously adopted by the Board of Commissioners, are hereby incorporated by reference in this article:

- A. Recommendations of the Transportation Services Advisory Committee, identified as follows: Lower Merion Township Act 209 Transportation Impact Fee Study.
- B. Land use assumptions as adopted by Township resolution.
- C. Roadway Sufficiency Analysis as adopted by Township resolution.

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<sup>8</sup> Editor's Note: See 53 P.S. § 10502-A.

- D. The Transportation Capital Improvements Plan as adopted by Township resolution.
- E. The Impact Fee Schedule as established by Township resolution.
- F. Transportation districts as set forth on the Transportation Service Area Map incorporated herein by reference.

**§ 135-59 Special traffic studies.**

- A. Where intended to assist in determining the appropriate amount of traffic impact fees, the Township may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in new developments; provided, however, that no studies may be required where the proposed development will not require a deviation from the land use assumptions used to create the program.
- B. Any such studies required by the Township shall be submitted prior to the imposition of the impact fee and shall be considered in the determination of the fee.

**§ 135-60 Applicability.**

This article shall be uniformly applicable to all development that occurs within a designated development subarea.

**§ 135-61 Payment of fee required prior to issuance of building permit.**

No building permit shall be issued for a development in a designated transportation district subarea, as herein defined, unless the applicant therefore has paid the impact fee imposed by and calculated pursuant to this article.

**§ 135-62 Exemptions.**

(Reserved)

**§ 135-63 Calculation.**

- A. The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the Transportation Capital Improvements Plan within a given transportation service area attributable to and necessitated by new development within the service area as defined, divided by the number of anticipated peak-hour trips generated by all new development consistent with the adopted land use assumptions and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, sixth or subsequent editions, which is hereby adopted by the Township, to equal a per trip cost for transportation improvements within the service area.

- B. The specific impact fee for a specific new development or subdivision within the service area for road improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per trip cost established for the service area as determined in § 135-64 hereof by the estimated number of trips to be generated by the new development or subdivision using generally accepted traffic engineering standards.
- C. The Board of Commissioners may authorize or require the preparation of a special transportation study in order to determine traffic generation or circulation for a new development to assist in the determination of the amount of the transportation fee for such development or subdivision.

**§ 135-64 Establishment of transportation service areas.**

- A. Transportation service areas as established herein are shown on the Transportation Service Area Map to be maintained by the Building and Planning Department and described as follows: ~~The Rock Hill Road Transportation Service Area is hereby established, to include the following properties: All properties fronting on Rock Hill Road from Conshohocken State Road to Belmont Avenue; all properties fronting on Belmont Avenue from Rock Hill Road to the Schuylkill Expressway; all properties fronting on Old Belmont Avenue from Belmont Avenue to Jefferson Street.~~

(1) The Rock Hill Road Transportation Service Area is hereby established, to include the following properties: All properties fronting on Rock Hill Road from Conshohocken State Road to Belmont Avenue; all properties fronting on Belmont Avenue from Rock Hill Road to the Schuylkill Expressway; all properties fronting on Old Belmont Avenue from Belmont Avenue to Jefferson Street.

(2) The City Avenue Transportation Service Area is hereby established, to include the following properties: All properties fronting on City Avenue from Orchard Way to the Schuylkill Expressway, Bala Avenue from City Avenue to Montgomery Avenue, St. Asaphs Road, Belmont Avenue from City Avenue to Righters Ferry Road, Righters Ferry Road from Belmont Avenue to Monument Road, Monument Road from City Avenue to Righters Ferry Road, and Presidential Boulevard from Monument Road to City Avenue.

- B. Additional transportation district areas or subareas or combinations of transportation district subareas may be designated by the Board of Commissioners from time to time consistent with the procedure set forth in this article and in consideration of the following factors:
  - (1) The Comprehensive Plan;
  - (2) Any standards for adequate public facilities incorporated in the program;
  - (3) The projected build-out and timing of development areas;

(4) The need for and cost of unprogrammed transportation improvements necessary to support projected development; and

(5) Such other factors as the Board of Commissioners may deem relevant.

C. Fees collected from development in each of the transportation district subareas will be used exclusively to fund transportation improvement projects scheduled for that district.

**§ 135-65 Nonbinding estimate.**

Prior to making an application for a building permit, an applicant may request a nonbinding impact fee estimate from the Township, which shall be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the applicant specified a lesser use of development.

**§ 135-66 Administration.**

- A. Collection of impact fee. Impact fees due pursuant to this article shall be collected by the Township in the manner or manners prescribed herein prior to the issuance of a building permit.
- B. Establishment of fund. Upon receipt of impact fees, the Township Manager shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of the Township funds. Interest earned by each account shall be credited to that account and shall be used solely for the purpose specified for funds of such account.
- C. Establishment and maintenance of accounts. The Township Manager shall establish appropriate trust fund accounts and shall maintain records whereby impact fees collected can be segregated for each transportation district subarea.
- D. Maintenance of records. The Township Manager shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Program for the particular transportation district subarea.

**§ 135-67 Method of payment.**

Payment of the transportation capital improvements impact fee shall be made by the traffic generator prior to the issuance of a building permit by the Township to the traffic generator for development on the applicable site.

**§ 135-68 Credit.**

Any applicant who shall perform, at his own expense and with the consent and agreement of the Board of Commissioners, off-site improvements, as herein defined, shall be eligible for a credit from the impact fee otherwise due in the amount of the actual cost of such off-site improvements as approved by the Township Engineer. Such credit shall not exceed the amount of the impact fee.

- A. If the applicant wishes to make such improvements, he must enter into an agreement with the Board of Commissioners, prior to the issuance of any building permit. The agreement must establish the estimated cost of the improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Commissioners. The Board of Commissioners must review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable impact fee prior to issuance of any building permit. In no event shall the Board of Commissioners provide a credit which is greater than the applicable impact fee. If, however, the amount of the credit is calculated to be greater than the amount of the impact fee due, the applicant may use such excess credit toward the impact fees imposed on other building permits for development on the same site and in the same ownership.
- B. An applicant shall be entitled as a credit against impact fees an amount equal to the fair market value of land dedicated by the applicant and accepted by the Township for future right-of-way, realignment or widening of existing roadways.
- C. An applicant shall be entitled as a credit against impact fees an amount equal to the value of any road improvement construction which is contained in the Transportation Capital Improvements Plan and which was performed at the applicant's expense.

**§ 135-69 Refunds.**

- A. Impact fees collected pursuant to this article shall be refunded, together with interest earned thereon, to the payor of the fees under the following circumstances:
  - (1) In the event the Township completes or terminates the capital improvements plan and there remain undisbursed funds, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's impact fee payment plus interest earned bears to the total impact fees collected plus interest.
  - (2) In the event any specific road improvement project is completed at a cost to the Township less than 95% of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted cost over actual cost to the payors, pro rata, plus accumulated interest.

- (3) In the event the Township fails to commence construction within three years of the scheduled construction date of the project as set forth in the Transportation Capital Improvements Plan, the Township shall refund the portion of the fee paid by any payor making written request therefore which is attributable to said project, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt of such refund request.
- (4) In the event the development for which impact fees were paid has not commenced prior to the expiration of the building permit issues therefor, the impact fees paid with accumulated interest shall be refunded to the payor. Further, if a building permit, after issuance, is altered in such a way as to reduce the indicated impact fee, the difference between the amount indicated and the amount actually paid shall be refunded. The payor, at his option may roll over the impact fees attributable to an expired building permit to cover fees incurred by a renewal of said expired permit.

B. With respect to refunds arising out of Subsection A(1) or (2) hereof, any funds unclaimed within one year after notice as required by law shall be transferred to the general account of the Township, and the payor's entitlement to said refund shall lapse. It is the responsibility of the payor to provide the Township with the current address of his place of business.

**§ 135-70 Effect on zoning and subdivision regulations.**

This article shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvements standards and requirements or any other aspect of the development of land or provision of public improvements which remain subject to applicable zoning, subdivision and regulations of the Township, which shall be operative and remain in full force and effect without limitation with respect to all such development.

**§ 135-71 Fee is additional and supplemental requirement.**

The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the Township on the development of land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township's existing ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this article; provided, however, that a property owner may be required to pay, pursuant to Township ordinances, regulations or policies, for other public facilities in addition to the impact fee for transportation improvements as provided herein.

**§ 135-72 Construction of provisions.**

The provisions of this article shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.

**§ 135-73 Retroactive application.**

- A. Impact fees may be imposed on those projects involving development, subdivision and PRD's for which an application has been filed on or after the first publication of notice of the Township's intent to adopt this article; provided, however, that such retroactivity does not exceed 18 months after the adoption of the resolution that created the advisory committee in connection herewith.
- B. In retroactive applications, the per-trip fee may not exceed \$1,000 or the actual calculated fee, whichever is less.

**§ 135-74 Establishment of per trip cost.**

The per trip cost for transportation service areas shall be as follows:

- A. Rock Hill Road Transportation Service Area: \$3,149.26 per afternoon peak hour trip.

**B. City Avenue Transportation Service Area:**

- (1) \$1,544 per afternoon peak hour trip.
- (2) \$1,000 per afternoon peak hour trip for any land development or subdivision application submitted between April 1, 2010 and the effective date of this ordinance.