

## **CHAPTER 28**

### **IMPACT FEE ORDINANCE FOR THE TOWN OF LYONS**

#### **(1) Legislative Findings to Support Impact Fees**

- (a) The Town of Lyons has expanded or must expand its public facilities if new development is to be accommodated without decreasing current levels of service. This must be done in order to promote and protect the public health, safety and welfare;
- (b) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of public facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare;
- (c) Each of the types of land development described in this ordinance will create a need for the construction, equipping, or expansion of the public facilities;
- (d) The fees established by this ordinance are derived from, are based upon, and do not exceed the costs of providing additional facilities necessitated by the new land developments for which the fees are levied;
- (e) A separate report entitled "Public Facility Needs Assessment and Methodology for Town of Lyons", dated January 31, 1997, sets forth a reasonable methodology and analysis for the determination of the impact of new development on the need and costs for additional public capital facilities in the Town of Lyons.

#### **(2) Authority**

The Town of Lyons has the authority to adopt this ordinance pursuant to Sections 66.55, and Chapter 236 of the Wisconsin State Statutes.

#### **(3) Intent and Purpose**

- (a) This ordinance is intended to assist in the implementation of the Town of Lyons Comprehensive Plan.
- (b) The purpose of this ordinance is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide needed improvements in the Town of Lyons.

(4) **Rules of Construction**

- (a) The provisions of this ordinance shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.
- (b) For the purposes of administration and enforcement of this ordinance, unless otherwise stated, the following rules of construction shall apply to the text:
  - 1. In case of any difference of meaning or implication between the text and any caption, illustration, summary table, or illustrative table, the text shall control.
  - 2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
  - 3. Words used in the present tense shall include the future; and words used in the singular tense shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
  - 4. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and", "or" or "and/or", the conjunction shall be interpreted as follows:
    - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
    - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
    - c. "And/or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
  - 5. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(5) **Definitions**

- (a) "Capital costs" means the capital costs to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10% of capital costs may consist of legal,

engineering and design costs unless the political subdivision can demonstrate that its legal, engineering and design costs which relate directly to the public improvement or which the impact fees are proposed exceed 10% of capital cost. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities or the costs of equipment to construct, expand or improve public facilities.

- (b) "Comprehensive Plan" means the Southeastern Wisconsin Regional Planning Commission's 2010 Land Use Plan.
- (c) "Developer" means a person that constructs or creates a land development.
- (d) "Feepayer" is a person seeking the development for which the impact fee is being imposed.
- (e) "Impact fees" means cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a political subdivision under this ordinance.
- (f) "Independent Fee Calculation Study" means the demographic and/or public facilities documentation prepared by a feepayer to allow the determination of the impact fee other than by the use of the table in Section (7) of this ordinance.
- (g) "Housing for the Elderly" means housing which is deed restricted to residents aged 62 and above.
- (h) "Land development" means the construction or modification of improvements to real property that creates additional residential dwelling units within a political subdivision or that results in nonresidential uses that create a need for new, expanded or improved public facilities within a political subdivision.
- (i) "Political subdivision" means a city, village, town or county.
- (j) "Public facilities" means highways, as defined in Section 340.01 (22) of the State Statutes, 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 other recreational facilities, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries.

(k) "Service area" means a geographic area delineated by a political subdivision within which there are public facilities.

(l) "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 political subdivision.

(6) **Imposition of the Impact Fee**

(a) Any person who, after the effective date of this ordinance seeks to develop land within the Town of Lyons by applying for a building permit, an extension of a building permit issued prior to the effective date of this ordinance, or issuance of a final subdivision plat, condominium plat, or certified survey map for land division is hereby required to pay an impact fee in the manner and amount setforth in this ordinance.

(b) No new building permit, final subdivision plat, condominium plat, or certified survey map for land division for any activity requiring payment of an impact fee pursuant to Section (9) of this section shall be issued unless and until the impact fee(s) hereby required has been determined.

(7) **Computation of the Amount of Impact Fee**

(a) At the option of the feepayer, the amount of the impact fee may be determined by the following fee schedule. The fee schedule reflects a discount of 10% from net cost to encourage use of this schedule and discourage the time consuming processing of variance requests for independent fee calculation.

**1997 FIRE & RESCUE FACILITY IMPACT FEE SCHEDULE**

<u>Land Use Type</u>	<u>Gross Fee</u> <sup>1</sup>	<u>Discounted Fee</u> <sup>4</sup>
Single Family residential <sup>2</sup>	\$193.26/unit	\$173.92/unit
Elderly residential <sup>6</sup>	\$____/unit	\$____/unit
Commercial <sup>5</sup>	\$0.17/sq. ft. .	\$0.16/sq. ft.
Industrial <sup>5</sup>	\$0.025/sq. ft. .	\$0.02/sq. ft

**1997 TRANSPORTATION FACILITY IMPACT FEE - SPRING VALLEY ROAD BRIDGE  
AND APPROACH**

<u>Land Use Type</u>	<u>Gross Fee</u> <sup>1</sup>	<u>Credit Reduction</u>	<u>Net Fee</u> <sup>3</sup>	Discounted <u>Fee</u>
Single Family residential <sup>2</sup>	\$38.13/unit	\$12.3/unit	\$26.14/unit	\$23.53 /unit
Multi-family residential <sup>2</sup>	\$23.37/unit	\$3.32/unit	\$20.12/unit	\$18.12/unit
Elderly residential <sup>6</sup>	\$____/unit	\$____/unit	\$____/unit	\$____/unit
Office <sup>5</sup>	\$0.0472/sq. ft.	\$0.0065/sq. ft.	\$0.0407/sq. ft.	\$0.0366/sq. ft.
Retail <sup>5</sup>	\$0.0830/sq. ft.	\$0.0065/sq. ft.	\$0.0765/sq. ft.	\$0.0691/sq. ft.
Industrial <sup>5</sup>	\$0.0207/sq. ft.	\$0.0065/sq. ft.	\$0.0141/sq. ft.	\$0.0130/sq. ft.

**1997 TRANSPORTATION FACILITY IMPACT FEE - SOUTH ROAD WIDENING**

<u>Land Use Type</u>	<u>Gross Fee</u> <sup>1</sup>	<u>Credit Reduction</u>	<u>Net Fee</u> <sup>3</sup>	Discounted <u>Fee</u>
Single Family residential <sup>2</sup>	\$146.37/unit	\$46.91/unit	\$99.15/unit	\$89.24/unit
Multi-family residential <sup>2</sup>	\$88.56/unit	\$12.51/unit	\$76.59/unit	\$68.94/unit
Elderly residential <sup>6</sup>	\$____/unit	\$____/unit	\$____/unit	\$____/unit
Office <sup>5</sup>	\$0.1796/sq. ft.	\$0.0250/sq. ft.	\$0.1547/sq. ft.	\$0.1398/sq. ft.
Retail <sup>5</sup>	\$0.3155/sq. ft.	\$0.0250/sq. ft.	\$0.2905/sq. ft.	\$0.2617/sq. ft.
Industrial <sup>5</sup>	\$0.0788/sq. ft.	\$0.0250/sq. ft.	\$0.0539/sq. ft.	\$0.0503/sq. ft.

**1997 TRANSPORTATION FACILITY IMPACT FEE - HOSPITAL ROAD BRIDGE  
AND WIDENING**

<u>Land Use Type</u>	<u>Gross Fee</u> <sup>1</sup>	<u>Credit Reduction</u>	<u>Net Fee</u> <sup>3</sup>	Discounted <u>Fee</u>
Single Family residential <sup>2</sup>	\$115.62/unit	\$37.08/unit	\$78.23/unit	\$70.41 /unit
Multi-family residential <sup>2</sup>	\$70.11/unit	\$9.89/unit	\$60.45/unit	\$54.40/unit
Elderly residential <sup>6</sup>	\$____/unit	\$____/unit	\$____/unit	\$____/unit
Office <sup>5</sup>	\$0.1418/sq. ft.	\$0.0198/sq. ft.	\$0.1220/sq. ft.	\$0.1100/sq. ft.
Retail <sup>5</sup>	\$0.2485/sq. ft.	\$0.0198/sq. ft.	\$0.2293/sq. ft.	\$0.2066/sq. ft.
Industrial <sup>5</sup>	\$0.0622/sq. ft.	\$0.0198/sq. ft.	\$0.0424/sq. ft.	\$0.0420/sq. ft.

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**1997 PARK FACILITY IMPACT FEE SCHEDULE**

<u>Land Use Type</u>	<u>Gross Fee</u> <sup>1</sup>	<u>Discounted Fee</u> <sup>4</sup>
Residential <sup>7</sup>	\$128.00/unit	\$115.20/unit

**1997 TRANSPORTATION FACILITY IMPACT FEE - PUBLIC WORKS SCHEDULE**

<u>Land Use Type</u>	<u>Gross Fee</u> <sup>1</sup>	<u>Discounted Fee</u> <sup>4</sup>
Single Family residential <sup>2</sup>	\$144.67/unit	\$130.20/unit
Elderly residential <sup>6</sup>	\$_____/unit	\$_____/unit
Commercial <sup>5</sup>	\$0.10/sq. ft.	\$0.090/sq. ft.
Industrial <sup>5</sup>	\$0.075/sq. ft.	\$0.070/sq. ft.

**Total Fees:**

Single-family residential.	\$602.50/ unit
Multi-family residential	\$560.78/ unit
Office land use	\$0.5364 / square foot of gross floor area
Retail land use	\$0.7874 / square foot of gross floor area
Industrial land use	\$0.1953 / square foot of gross floor area

1. Fees assessed on the basis of square feet (i.e. sq. ft.) shall be calculated by gross floor area.
2. Single-family residential shall be defined as 1-4 units per building. Multi-family residential shall be defined as 5 or more units per building.
3. Net fee = Gross Fee - applicable credit
4. Discounted Fee = Net Fee x 90% and rounded down to nearest dollar.
5. Industrial shall be defined as manufacturing, warehousing, insurance, real estate, and service trades. Office, where specifically distribution, wholesaling, mining, transportation, and construction activities. Commercial shall be generally defined as retail, finance, noted, shall be defined as finance, insurance, real estate, and similar professional activities. Retail, where specifically noted, shall be defined as retail and retail service activities.
6. Fee calculations for elderly housing shall be calculated by the Town Clerk and based on specific project characteristics.

7. Residential for this category shall include all types of residential development.

- (b) If a proposed development activity is not specified on the above fee schedule, the Town Clerk shall use the fee applicable to the most nearly comparable type of land use on the above fee schedules. The Town Clerk shall be guided in the selection of a comparable type by the Comprehensive Plan, supporting documents of the Comprehensive Plan, and/or the Zoning Ordinance. If the Town Clerk determines that there is no comparable type of land use on the above fee schedule then the

Town Board shall determine the appropriately discounted fee by considering demographic or other documentation which is available from state, local and regional authorities.

- (c) In case of change of use, redevelopment, or expansion or modification of an existing use which requires the issuance of a building permit, the impact fee shall be based upon the net positive increase in the impact generated from the new use as compared to the previous use. The Town Clerk shall be guided in this determination by the sources listed above.

(8) **Fee Payment**

The feepayer shall pay the impact fee required by this Section to the Town Clerk or his/her designee prior to issuance of a building permit.

(9) **Administration of Impact Fees**

- (a) There is hereby established separate Impact Fee Trust Accounts for the following categories:

Fire & Rescue Facility Trust Account  
Transp. Facility-Spring Valley Road Trust Account  
Transp. Facility-South Road Trust Account  
Transp. Facility-Hospital Road Trust Account  
Transp. Facility-Public Works Trust Account  
Park Facility Trust Account

- (b) Upon receipt of impact fees, the Town of Lyons Town Treasurer shall be responsible for placement of such funds into separate accounts. All such funds shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of Town of Lyons funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.

- (c) The Town of Lyons Town Clerk shall maintain and keep accurate financial records for each such account that shall show the source and disbursement of all revenues; that shall account for all moneys received; that shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program; and that shall provide an annual accounting for each impact fee account showing the source and amount of all funds collected and the projects that were funded.
- (d) Funds withdrawn from these accounts must be used in accordance with the provisions of Section (9).

(10) **Use of Funds**

- (a) Funds collected from impact fees shall be used solely for the purpose of acquiring or making capital improvements and shall not be used for maintenance or operations.
- (b) Funds shall be expended in the order in which they are collected.
- (c) In the event that bonds or similar debt instruments are issued for advanced provisions of capital facilities for which impact fees may be extended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in the definition section.
- (d) At least once each fiscal period the Town Clerk shall present to the Town of Lyons a proposed capital improvement program for assigning funds, including any accrued interest, from the Impact Fee Trust Accounts to specific improvement projects and related expenses. Moneys, including any accrued interest, not assigned in any fiscal period shall be retained in the same Impact Fee Trust Accounts until the next fiscal period except as provided by the refund provisions of Section (11).
- (e) Funds may be used to provide refunds as described in Section (11).

(11) **Refunds**

- (a) If a building permit expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the impact fee previously paid. The feepayer must submit an application for such a refund to the Town Clerk within 30 days of the expiration of the permit. The application shall include such supporting documentation as the Town of Lyons may



reasonably require.

- (b) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten (10) years from the date the impact fee was paid shall be returned to the current landowner, without interest.

(12) **Exemptions**

- (a) The following shall be exempted from payment of the impact fee:
1. Alterations or expansion of an existing residential building where no additional residential units are created.
  2. The construction of accessory residential buildings or structures.
  3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use.
  4. Any claim of exemption must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.

(13) **Credits**

- (a) The following procedures apply regarding credits to the impact fee:
1. The Town Clerk shall, if appropriate, establish and apply a credit equaling the net present value of any future property tax payments the feepayer will pay towards capital facilities and equipment to be funded by Impact Fees and/or credit to compensate for moneys received by the Town of Lyons from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed.
  2. Any claim for credit must be made no later than the time of application for a building permit. Any claim not so made shall be deemed waived.
  3. Determinations made by the Town Clerk pursuant to this paragraph may be appealed to the Town Board by filing a written request with the Town Clerk within ten (10) days of the Town Clerk's determination.

(14) **Review**

The fee schedule contained in Section (7) shall be reviewed by the Town of Lyons at least once each fiscal year and modified, if necessary, as a result of (a) changes in credit calculation; (b) changing facility needs; (c) inflation; (d) revised cost estimates for capital improvements; (e) changes in the availability of other funding sources applicable to public facility projects; and (f) such other factors as may be relevant.

(15) **Penalty Provision**

A violation of this ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted and upon conviction the violator shall be punishable according to law; however, in addition to or in lieu of any criminal persecution, the Town of Lyons shall have the power to sue in civil court to enforce the provisions of this ordinance.

(16) **Variance/Appeal Provision**

If a feepayer contests the impact fee determined according to Section (7), then the feepayer shall apply for a variance to the Town Board and prepare and submit to the Town Board an independent fee calculation study for the land development activity for which a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. The Town Board shall consider the documentation submitted by the feepayer and, if necessary, request clarification or additional information. If an acceptable independent fee calculation study is not presented, the feepayer shall pay impact fees based upon the schedule shown in Section (7). If an acceptable independent fee calculation study is presented, the Town Board may adjust the fee to that appropriate to the particular development.

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