

ORDINANCE NO. 2554C

ORDINANCE AMENDING ARTICLE 5 OF CHAPTER 13 OF THE CODE OF THE CITY OF LEAWOOD, KANSAS, 2000, ENTITLED "135TH STREET CORRIDOR IMPACT FEE," FORMERLY KNOWN AS "K-150 CORRIDOR IMPACT FEE;" AND REPEALING EXISTING ARTICLE 5 OF CHAPTER 13 AND OTHER SECTIONS IN CONFLICT HEREWITH.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS:

SECTION ONE: Article 5 of Chapter 13 of the Code of the City of Leawood, Kansas, 2000, is hereby amended to read as follows:

ARTICLE 5. 135th STREET CORRIDOR IMPACT FEE

13-501. SHORT TITLE. This Ordinance shall be known and cited as the "Leawood, Kansas 135th Street Corridor Impact Fee Ordinance".

(Ord. 1027C; 01-04-88)

13-502. PURPOSE. A 135th Street corridor impact fee is imposed on new development in the 135th Street corridor for the purpose of assuring that 135th Street transportation improvements are available and provide adequate transportation system capacity to support new development while maintaining levels of transportation service on 135th Street deemed adequate by the City. The impact fee shall be imposed on all new development in the 135th Street corridor and all fees collected shall be utilized solely and exclusively for transportation improvements in the 135th Street corridor serving such new development.

(Ord. 1027C; 01-04-88)

13-503. DEFINITIONS.

(a) **Applicant:** the property owner or duly designated agent of the property owner, of land on which a building permit has been requested for non-residential development or on which final plat approval has been requested for residential development.

(b) **Building:** any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.

(c) **Building Permit:** the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.

(d) **City:** the City of Leawood, Kansas.

(e) **Development:** the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit; and the final platting of land for residential development.

(f) **Dwelling:** any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.

(g) **Floor Area, Finished:** the square foot area of all space within the outside line of exterior walls including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement or cellar.

(h) **Highway K-150:** means that road formally known as Highway K-150, and currently known as 135th Street. (i) **Highway K-150 Corridor:** all of that land within the north and south Highway K-150 reverse frontage roads, also known as 133rd Street and 137th Street, as set forth in the Leawood Master Development Plan.

(i) **135th Street Corridor Impact Fee or Impact Fee:** a pro rata regulatory fee imposed on all new development in the 135th Street corridor and required by the City as a condition of development approval and collected at final platting for residential development and at building permit issuance for nonresidential development to ensure that the necessary 135th Street corridor transportation improvements are or will be in place to accommodate the traffic generated by such new development.

(j) **Highway K-150 Corridor Study:** the Joint Land Use Study and Recommended Corridor Development Plan for Highway K-150 prepared by the Cities of Leawood, Olathe and Overland Park and Johnson County, Kansas.

(k) **Impact Fee Rate:** the amount of the applicable impact fee per trip generated by new development in the 135th Street corridor.

(l) **Master Plan or Master Development Plan:** the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto, including the Major Street Plan.

(m) **Nonresidential Development:** all development other than residential development and public and quasi-public use, as herein defined.

(n) **Property:** a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.

(o) **Property Owner:** any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.

(p) **Public and Quasi-Public Use:** a development owned, operated or used by the City of Leawood, Kansas; any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, and any agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this Ordinance only, "places of worship" are hereby defined as quasi-public uses.

(q) **Residential Development:** the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.

(r) **Subdivision Regulations:** The Subdivision Regulations of the City of Leawood contained in the Leawood Development Ordinance, including all duly adopted amendments thereof.

(s) **Transportation Improvements:** the development of Phase I roads and roadway improvements in the 135th Street corridor, which may include but which are not limited to, widening, paving, intersectional improvements, signalization, grading, acquisition of right-of-way, medians, turn lanes, curbs, gutters, signage, sidewalks, street lighting and ancillary facilities or any portion thereof pursuant to the City Master Plan and this Ordinance.

(t) **Transportation Improvement Costs:** the amounts spent, to be spent or authorized to be spent in connection with the provision of transportation improvements, which may include, but which are not limited to, funds spent on the planning, design, engineering, financing, acquisition of land or easements,

construction, administration or incidental expenses associated with the provision of transportation improvements.

(u) **Zoning Ordinance:** The Leawood Development Ordinance including all duly adopted amendments thereto.

(v) **135th Street corridor:** means all of that land within and between 133rd Street and 137th Street in the City of Leawood, as more further set forth in the Leawood Master Development Plan, all as formerly known as or may be referred to as the K-150 Corridor.

(Ord. 1027C; 01-04-88)

(Ord 2073C; 08-16-04)

13-504.

APPLICABILITY OF IMPACT FEE.

(a) This Ordinance shall be uniformly applicable to residential and nonresidential development, but not public and quasi-public uses, on property in the City of Leawood which is in the 135th Street corridor.

(b) This Ordinance shall be applicable to development occurring prior to, in conjunction with, or subsequent to the initiation of Phase I transportation improvements in the 135th Street corridor as set forth in the Master Plan and in Attachment "A" to Ordinance 1027C; provided, however, that such transportation improvements are actually provided within a reasonable period of time following payment of the impact fee imposed by this Ordinance.

(Ord. 1027C; 01-04-88)

13-505

IMPOSITION OF IMPACT FEE.

(a) No building permit for development to which this section is applicable shall be issued by the City nor shall any development subject to this section be finally approved by the City unless the applicant therefor or the owner of the subject property has paid the applicable impact fee in full in the amount and manner prescribed herein.

(b) The impact fee shall not be imposed on any residential development for which final plat approval had been granted by the City or on any nonresidential development for which a building permit has been issued by the City on or before the date of adoption of this section.

(c) Imposition of the impact fee does not alter, negate, supersede or otherwise affect any other requirements of city, county, state or federal legislation or regulations that may be applicable to a development, including City zoning and/or subdivision regulations that may impose transportation improvements requirements, right-of-way dedication requirements, and design and construction standards for local, collector or arterial streets.

(d) Upon receipt of an application for a preliminary plat, the Director of Community Development shall preliminarily calculate the amount of the impact fee due by multiplying the impact fee rate by the number of dwelling units or floor area (in square feet) for the proposed development for which subdivision approval is being sought. This calculation shall be an estimate only for the benefit of the applicant for subdivision approval and shall be subject to final determination at such time as the applicant requests final plat approval for residential development or a building permit for nonresidential development.

(Ord. 1027C; 01-04-88)

13-506.

AMOUNT OF IMPACT FEE.

(a) **Impact Fee Rate:** the impact fee rate shall be established by Resolution of the City Council initially upon the adoption of this Ordinance, and thereafter as part of the annual review provided in Section 13-509 or at such other times as deemed

necessary by the City. If no action is taken by the City Council to amend the impact fee rate, the rate then in effect shall remain in effect.

(b) Amount of Impact Fee: the amount of the impact fee per dwelling unit for residential development and the amount of the impact fee per square foot of floor area, finished for nonresidential development (by type) shall be established by Resolution of the City Council initially upon the adoption of this Ordinance, and thereafter as part of the annual review provided in Section 13-509 or at such other times as deemed necessary by the City. If no action is taken by the City Council to amend the impact fee amounts, the amounts then in effect shall remain in effect.

(Ord. 1027C; 01-04-88)

(Reso. No. 1357; 07-07-97)

(Reso. No. 2287; 08-16-04)

13-507. COLLECTION OF IMPACT FEE.

(a) The Director of Community Development shall be responsible for the processing and collection of the applicable impact fee.

(b) Applicants for building permits for nonresidential development and applicants for final plat approval for residential development subject to this Ordinance must submit the following information:

- (1) the number of dwelling units for residential development;
- (2) the type and amount of finished floor area for nonresidential development (in square feet);
- (3) both the number of dwelling units and the type and finished floor area of nonresidential development (in square feet) for a mixed-use project;
- (4) relevant supporting documentation as may be required by the Director of Community Development.

(c) The Director of Community Development shall be responsible for determining that:

- (1) the applicant has paid the applicable impact fee; or
- (2) an appeal has been taken and a bond or other surety posted pursuant to Section 13-512.

(d) The Director of Community Development shall collect the applicable impact fee prior to issuance of a building permit for nonresidential development and prior to final plat approval for residential development.

(Ord. 1027C; 01-04-88)

13-508. CALCULATION OF IMPACT FEE. Upon receipt of an application for a building permit or final plat approval for development subject to this Ordinance, the Director of Community Development shall calculate the amount of the applicable impact fee due in accordance with the following procedure:

(a) determination of the applicability of this ordinance to the subject property shall be made within three (3) working days of receipt of such application by the Director of Community Development;

(b) if this Ordinance is not applicable, the Director of Community Development shall indicate the inapplicability of this Ordinance on such application, shall notify the applicant of said inapplicability, and shall process the application in accordance with all relevant City ordinances and regulations.

(c) if this Ordinance is determined to be applicable, the Director of Community Development shall:

(1) for residential development, multiply the applicable impact fee amount pursuant to Section 13-506(b) by the number of dwelling units for which final plat approval is being sought.

(2) for nonresidential development, multiply the applicable impact fee amount pursuant to Section 13-506(b) by the finished floor area (in square feet) of nonresidential development for which the building permit is being sought.

(3) for mixed use developments, the impact fee shall be separately calculated as set forth above for residential and nonresidential development (by type).

(4) the Director of Community Development shall calculate the amount of the impact fee due pursuant to the building permit application or application for final plat approval as submitted and the requirements of this Ordinance in effect at the time of submission.

(5) a building permit application or application for final plat approval must be resubmitted to the Director of Community Development and the amount of the impact fee recalculated if the applicant alters the proposed development by increasing the number of dwelling units, increasing the finished floor area of nonresidential development or changing the non-residential use to a different use category.

(d) An applicant may file a petition for review with the City Administrator or his duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Community Development as to the applicability of the impact fee ordinance, the type of development, the number of dwelling units for residential development, the finished floor area (in square feet) of nonresidential development, or the amount of the impact fee due. Within one (1) month of the date of receipt of a petition for review, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 1027C; 01-04-88)

13-509.

ANNUAL REVIEW.

(a) Prior to April 1, 2013 and each year thereafter, the City Administrator, or his duly authorized agent, shall prepare a report to the Governing Body on the 135th Street Corridor Transportation Impact Fees. In preparation of such report, the City Administrator or his duly designated agent shall review the following information:

(1) a statement from the City Treasurer summarizing impact fees collected and disbursed during the year;

(2) a statement from the City Engineer summarizing transportation improvements completed during the past year and planned for the next succeeding year.

(3) a statement from the Director of Community Development summarizing the type, location, timing and amount of development for which building permits were issued or final plat approval granted in the year and summarizing the administration and enforcement of the impact fee.

(4) a statement and recommendation from the Planning Commission on any and all aspects of the Impact Fee and 135th Street corridor transportation improvements and land uses.

(b) The City Administrator's Report shall make recommendations, if appropriate, on amendments to the Ordinance; changes in the administration or enforcement of the Ordinance; changes in the impact fee rate; and changes in the Master Plan.

(c) The impact fee rate shall be reviewed annually. Based upon the City Administrator's Report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the impact fee rate by Resolution. If the Governing Body fails to take such action, the impact fee rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the impact fee rate and/or the Impact Fee Ordinance at such other times as may be deemed necessary.

(d) In the annual review process, the Governing Body may take into consideration the following factors: inflation as measured by changes in an appropriate construction cost index used by the City; improvement and land acquisition cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed transportation improvements; revisions to the Master Plan; changes in the anticipated land use mix and/or intensity of development in the 135th Street corridor; and such other factors as may be deemed relevant and appropriate.

(Ord. 1027C; 01-04-88)

(Reso. No. 1357; 07-07-97)

(Reso. No. 2287; 08-16-04)

13-510.

RESTRICTIONS ON USE OF AND ACCOUNTING FOR IMPACT FEE FUNDS.

(a) The funds collected by reason of the establishment of the 135th Street corridor transportation impact fee must be used solely for the purpose of funding transportation improvements as described herein and pursuant to the Master Plan or for reimbursement to the City for costs incurred in providing such transportation improvements.

(b) Upon receipt of impact fees, the Director of Community Development shall transfer such funds to the City Treasurer who shall be responsible for the placement of such funds in a segregated, interest bearing account designated as the "135th Street Corridor Transportation Impact Fee Account". All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for the provision of transportation improvements as described herein in the 135th Street corridor pursuant to the Master Plan and this Ordinance. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Treasurer shall establish adequate financial and accounting controls to ensure that impact fee funds disbursed from such accounts are utilized solely and exclusively for transportation improvements in the 135th Street corridor as described herein or for reimbursement to the City of advances made from other revenue sources to fund such transportation improvements. Disbursement of funds from said accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed five (5) years from the date such funds are collected.

(c) The City Treasurer shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.

(d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.

(e) Impact fee funds collected shall not be used to maintain or repair 135th Street nor to finance transportation improvements other than those described herein.

(f) The City may issue and utilize general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of the 135th Street transportation improvements as set forth in the Master Plan and this Ordinance. Funds pledged toward the retirement of such bonds or other certificates of indebtedness may include the impact fees and other City (and non-City) funds and revenues as may be allocated by the Governing Body. Impact fees paid pursuant to this Ordinance, however, shall be used solely and exclusively for transportation improvements as defined herein.

(Ord. 1027C; 01-04-88)

13-511.

REFUNDS.

(a) The current owner of property on which an impact fee has been paid may apply for a refund of such fee if:

(1) the City has failed to initiate transportation improvements within five (5) years of the date of payment of the impact fee; or

(2) the building permit for nonresidential development pursuant to which the impact fee has been paid has lapsed for non commencement of construction; or

(3) the nonresidential development for which a building permit has been issued has been altered resulting in a decrease in the amount of impact fee due; or

(4) the final plat for a residential development pursuant to which an impact fee has been paid is vacated; or

(5) a replat for fewer residential lots or dwelling units is submitted on property pursuant to which an impact fee had been paid prior to final plat approval.

(b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.

(c) The petition for refund must be submitted to the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the impact fee issued by the Director of Community Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.

(d) Within one month of the date of receipt of a petition for refund, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.

(e) Petitioner may appeal the determination of the City Administrator to the Governing Body.

(Ord. 1027C;01-04-88)

13-512.

APPEALS. After a determination by the Director of Community Development of the applicability of the impact fee or the amount of the impact fee due, or after a determination by the City Administrator of the amount of refund due, if any, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within thirty (30) days following the determination by the Director of Community Development or City Administrator. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the impact fee due as calculated by the Director of Community Development, the application shall be processed. The filing of an appeal shall not stay the collection of the impact fee due unless a bond or other sufficient surety has been filed.

(Ord. 1027C; 01-04-88)

13-513.

EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.

This ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or requirements for the provision of public improvements that may be imposed by the City pursuant to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 1027C; 01-04-88)

13-514.

IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT. The Impact Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the City as a condition of the development of land or the issuance of building permits; provided, however, that the impact fee requirement and the payment of such fee by a developer for the transportation improvements described herein shall not be duplicative of other street improvement requirements imposed pursuant to City zoning, subdivision, planned unit development or other applicable ordinances or regulations and the payment of the Impact Fee shall not be used to meet such requirements. The Impact Fee requirement is intended to be consistent with and to further the objectives and policies of the Master Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of adequate transportation capacity in conjunction with the development of land. In no event shall a property owner be obligated to pay an impact fee in an amount in excess of the amount calculated pursuant to this Ordinance; but, provided that a property owner may be required, pursuant to City zoning and subdivision regulations to dedicate land and/or construct local, collector or arterial streets in addition to meeting the impact fee requirements set forth herein.

(Ord. 1027C; 01-04-88)

13-515. VARIANCES AND EXCEPTIONS. Petitions for variances and exceptions to the application of this Ordinance shall be made to the City Administrator in accordance with procedures to be established by Resolution of the Governing Body.

(Ord. 1027C; 01-04-88)

SECTION TWO: This ordinance shall be construed as follows:

A. Liberal Construction. The provisions of this Ordinance 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.

B. Savings Clause. The repeal of Ordinance sections, as provided herein below shall not affect any rights acquired, fees, fines, penalties, forfeitures or liabilities incurred there under, or actions involving any of the provisions of said Ordinances or parts thereof. Said Ordinance repealed is hereby continued in force and effect after the passage, approval, and publications of this Ordinance for the purposes of such rights, fees, fines, penalties, forfeitures, liabilities and actions therefore.

C. Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Code or other Ordinances.

SECTION THREE: That existing Article 5 chapter 13 and any provisions in conflict herewith are hereby repealed.

SECTION FOUR: This ordinance shall become take effect and be in force from and after publication in full or by summary in accordance with K.S.A. 12-3007 and amendments thereto.

PASSED by the Governing Body this 16th day of July, 2012.

APPROVED by the Mayor this 16th day of July, 2012.

[SEAL]

/s/
Peggy J. Dunn, Mayor

