

CHAPTER XIII. STREETS AND SIDEWALKS

ARTICLE 6. SOUTH LEAWOOD TRANSPORTATION IMPACT FEE

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13-601. **SHORT TITLE.** This Ordinance shall be known and cited as the "South Leawood Transportation Impact Fee Ordinance".

(Ord. 1031C; 02-01-88)

13-602. **PURPOSE.** A Transportation Impact Fee is imposed on new development in South Leawood for the purpose of assuring that transportation improvements are available and provide adequate transportation system capacity to support new development while maintaining levels of transportation service deemed adequate by the City. The Impact Fee shall be imposed on all new development in South Leawood, except as may be otherwise provided herein, and all fees collected shall be utilized solely and exclusively for transportation improvements in South Leawood serving such new development.

(Ord. 1031C; 02-01-88)

13-603.

DEFINITIONS.

- (a) **Applicant:** the property owner, or duly designated agent of the property owner, of land for which final plat approval has been requested for residential or nonresidential development or for which a building permit has been requested for nonresidential development for which no final plat is required.
- (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 final platting of land for residential and nonresidential development; and the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit, but for which final plat approval is not required.
- (f) **Dwelling:** any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.
- (g) **Impact Fee or South Leawood Transportation Impact Fee:** a pro rata regulatory fee imposed on all new development in South Leawood and required by the City as a condition of development approval and collected at final platting for residential and nonresidential development for which a final plat is required or at building permit issuance for nonresidential development for which a final plat is not required to ensure that the necessary transportation improvements are or will be in place to accommodate the traffic generated by such new development.
- (h) **Impact Fee Coefficient:** the distance, to the nearest 1/10 of a mile expressed as a decimal, from the principal access of the proposed development on a north-south arterial to the point at which the arterial intersects with 135th Street [formally known as Highway K-150]; where the principal access of the proposed development is to an east-west arterial, the distance shall be measured from the intersection of the east-west arterial with the nearest north-south arterial to the intersection of the north-south arterial with 135th Street.
- (i) **Impact Fee Rate:** the amount of the applicable Impact Fee per gross acre of new development in South Leawood.
- (j) **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.
- (k) **Nonresidential Development:** all development other than residential development and public and quasi-public use, as herein defined.
- (l) **Property:** a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.
- (m) **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.

- (n) **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.
- (o) **Residential Development:** the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.
- (p) **South Leawood:** all of that land within the City of Leawood lying south of 137th Street [formally known as the southern reverse frontage road of the Highway K-150 Corridor] as set forth in the Leawood Master Development Plan.
- (q) **Subdivision Regulations:** The Subdivision Regulations of the City of Leawood as contained in the Leawood Development Ordinance including all duly adopted amendments thereof.
- (r) **Transportation Improvements:** the development of off-site secondary arterial streets in South Leawood pursuant to the Major Street Plan, including but not limited to, widening, paving, intersectional improvements, signalization, grading, acquisition of right-of-way, medians, turn lanes, curbs, gutters, signage, sidewalks, street lighting, bridges and ancillary facilities or any portion thereof, except for the development of on-site or abutting arterial streets required pursuant to City subdivision, zoning, or planned development regulations and the collector portion of off-site arterial streets.
- (s) **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.
- (t) **Zoning Ordinance:** The Leawood Development Ordinance including all duly adopted amendments thereto.

(Ord. 1031C; 02-01-88)

(Ord. 2076C; 08-16-04)

13-604. 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 South Leawood which must be served by transportation improvements as a condition of development approval. For purposes of this Ordinance, property is "served by" transportation improvements when off-site secondary arterial street improvements are necessary in order to provide north-south and east-west access to and from the property via continuous, improved arterial streets. For purposes of this Ordinance, "improved arterial streets" means and refers to secondary arterial streets identified on the Major Street Plan and constructed to secondary arterial street standards pursuant to applicable City regulations.

- (b) This Ordinance shall be applicable to development occurring prior to, in conjunction with, or subsequent to the initiation of transportation improvements in South Leawood as set forth in the Master Plan and Major Street Plan; 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. 1031C; 02-01-88)

13-605. IMPOSITION OF IMPACT FEE.

- (a) No building permit for development to which this Ordinance is applicable shall be issued by the City nor shall any development subject to this Ordinance be granted final plat approval 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, unless exempt or partially exempt pursuant to subsection (b) or Section 13-612 herein.
- (b) The Impact Fee shall not be imposed on:
- (1) residential or nonresidential development for which final plat approval had been granted by the City;
 - (2) nonresidential development for which a building permit has been issued by the City on or before the date of adoption of this ordinance; or
 - (3) residential development for which preliminary plat approval and rezoning has been granted by the City prior to November 2, 1987 and which approval and/or rezoning included stipulations imposed by the City which effectively prevented the applicant from submitting a final plat or plats for all or a portion of the proposed development prior to November 2, 1987.
- (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 on-site or abutting arterial street improvement requirements, local or collector street improvement requirements, right-of-way dedication requirements, and/or design and construction standards for local, collector or arterial streets. Provided, however, that an applicant for development approval shall be eligible for a credit for the provision of arterial street improvements pursuant to Section 13-613 herein.
- (d) Upon receipt of an application for a preliminary plat, the Director of Planning and Development shall preliminarily calculate the amount of the Impact Fee due by multiplying the Impact Fee rate by the number of gross acres in the proposed development for which subdivision approval is being sought and multiplying the product by the applicable Impact Fee coefficient. 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 for development requests final plat approval or a building permit is requested for nonresidential development for which a final plat is not required.

(Ord. 1031C; 02-01-88)

13-606. 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 13-609 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.

(Ord. 1031C; 02-01-88)

13-607. COLLECTION OF IMPACT FEE.

- (a) The Director of Planning and Development shall be responsible for the processing and collection of the applicable Impact Fee.
- (b) Applicants for development approval subject to this Ordinance must submit the following information:
 - (1) the gross acreage of property for which approval is being sought;
 - (2) the principal access of the development to an arterial street;
 - (3) the distance from the principal access point to Highway 150;
 - (4) relevant supporting documentation as may be required by the Director of Planning and Development.
- (c) The Director of Planning and Development shall be responsible for determining that:
 - (1) the applicant has paid the applicable Impact Fee; or
 - (2) the applicant is exempt pursuant to Section 13-612; or
 - (3) an appeal has been taken and a bond or other surety posted pursuant to Section 13-614.
- (d) The Director of Planning and Development shall collect the applicable Impact Fee prior to final plat approval or prior to building permit issuance for nonresidential development for which final plat approval is not required.

(Ord. 1031C; 02-01-88)

13-608. 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 Planning and 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 Planning and Development;
- (b) if this Ordinance is not applicable, the Director of Planning and 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 Planning and Development shall:
 - (1) Determine the gross acreage of the proposed development;
 - (2) determine the applicable Impact Fee coefficient;
 - (3) determine the applicability of credit, if any;
 - (4) 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.

- (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 Planning and Development as to the applicability of the Impact Fee Ordinance, the gross acreage of the subject development, the applicable Impact Fee coefficient, 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. 1031C; 02-01-88)

13-609. ANNUAL REVIEW.

- (a) Each year, the City Administrator, or his duly authorized agent, shall prepare a report to the Governing Body on the South Leawood Transportation Impact Fee. In preparation of such report, the City Administrator or his duly designated agent shall review the following information:
- (1) a statement from the City Finance Director 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 approvals were granted in the year and summarizing the administration and enforcement of the Impact Fee;
 - (4) a statement and recommendation from the Leawood Public Works Committee on any and all aspects of the South Leawood Transportation Impact Fee, and transportation improvements and planned land use in South Leawood.
- (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 Comprehensive Plan or Major Street 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; construction 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 Comprehensive Plan and Major Street Plan; changes in the anticipated land use mix and/or intensity of development in South Leawood; and such other factors as may be deemed relevant and appropriate.

(Ord. 2564C; 08-20-12)

(Ord. 1031C; 02-01-88)

(Ord. 2892C; 06-04-18)

13-610. RESTRICTIONS ON USE OF AND ACCOUNTING FOR IMPACT FEE FUNDS.

- (a) The funds collected by reason of the establishment of the South Leawood Transportation Impact Fee must be used solely for the purpose of funding transportation improvements as described herein and pursuant to the Master Plan and Major Street Plan or for reimbursement to the City for costs incurred in providing such transportation improvements.
- (b) Upon receipt of Impact Fees, the Director of Planning and 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 "South Leawood 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 South Leawood 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 South Leawood 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 transportation improvements nor to finance 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 South Leewood 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. 1031C; 02-01-88)

13-611. 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 final plat of an approved development is vacated; or
 - (3) the building permit for an approved nonresidential development for which the Impact Fee has been paid subsequently lapses for non-commencement of construction.
- (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 Planning and 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. 1031C; 02-01-88)

13-612.**EXEMPTIONS.**

- (a) A property owner shall be exempt from the Impact Fee otherwise due if:
- (1) access to and from the applicable development can be obtained via a continuous, improved arterial street;
 - (2) the property owner has constructed, escrowed money for the construction of, or established a benefit district for the construction of "transportation improvements" necessary to ensure that access to and from the applicable development can be obtained via a continuous, improved arterial street concurrent with development; or
 - (3) the property owner has agreed, as a condition of preliminary or final plat approval or rezoning, to construct, escrow money for the construction of, or to establish a benefit district for the construction of "transportation improvements" necessary to ensure that access to and from the applicable development can be obtained via a continuous, improved arterial street concurrent with development.
- (b) An exemption may only be given for final plat approval or for building permits for nonresidential development for which no final plat is required on the subject property for which access, as described in subsection (a) above, is assured.
- (c) An applicant must apply for an exemption in conjunction with final plat approval or at the time of application for a building permit for nonresidential development for which no final plat is required. The applicant shall file a petition for exemption with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain: a statement by the property owner or a duly designated agent of the property owner certifying that petitioner is the current owner of the property; documentary evidence of the ownership of the property at the time of occurrence of the event giving rise to the claim for exemption; documentary evidence of appropriate access, as described in subsection (a) above with respect to the affected property; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which the exemption is being sought. Within one month of the date of receipt of a petition for exemption, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the exemption request; provided, however, that a decision on a petition for exemption filed in conjunction with a final plat shall be made by the City Administrator concurrently with Planning Commission action on the final plat. The decision must include the reasons for the decision. Upon making the decision, the City Administrator or his duly designated agent shall notify the petitioner in writing. Petitioner may appeal the determination of the City Administrator to the Governing Body.
- (d) An applicant may apply for an advance determination of exemption at any time by filing a petition for same with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain the information required and shall be processed in accordance with the procedure set forth in Section 13-612(c) above. If an advance determination has been granted, the applicant shall submit evidence of same at the time of application for final plat approval or, for nonresidential development for which no final plat is required, at the time of application for building permit, thereby permitting concurrent action by the City.

(Ord. 1031C; 02-01-88)

13-613. CREDITS.

- (a) Any property owner who constructs, escrows money with the City for the construction of, or agrees to participate in a benefit district for the construction of an abutting arterial street to secondary arterial street standards as established by the City shall be eligible for a credit against the amount of the Impact Fee otherwise due.
- (b) The amount of the credit shall be equal to the difference between collector and secondary arterial front-foot street costs, as determined by the City, multiplied by the length (in front feet) of the abutting arterial street as improved by the property owner; provided, however, that the credit shall not exceed the amount of the otherwise applicable Impact Fee.
- (c) The Director of Planning and Development shall determine the applicability and amount of a credit based upon information to be submitted by the applicant including, but not limited to: a statement by the property owner or a duly designated agent of the property owner certifying that the applicant is the current owner of the property; documentary evidence of the ownership of the property at the time of occurrence of the event giving rise to the claim for a credit; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which the credit is being sought.

(Ord. 1031C; 02-01-88)

13-614. APPEALS. After a determination by the Director of Planning and Development of the applicability of the Impact Fee or the amount of the Impact Fee due, including credits, or after a determination by the City Administrator of the amount of refund due, if any, or the applicability of an exemption, 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 Planning and 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 Planning and 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. 1031C; 02-01-88)

13-615. 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. 1031C; 02-01-88)

13-616. 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 Major Street Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of an adequate street system 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 to construct or escrow money for the construction of local and collector streets and on-site and abutting arterial streets, to collector street standards, in addition to meeting the Impact Fee requirements set forth herein.

(Ord. 1031C; 02-01-88)

13-617. 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. 1031C; 02-01-88)