

ORDINANCE NO. 09-2012

**AN ORDINANCE IMPOSING A PARK IMPACT FEE UPON NEW DEVELOPMENT
IN THE TOWN OF PLAINFIELD, INDIANA**

WHEREAS, the Town Council ("Town Council") of the Town of Plainfield ("Town") deems it desirable and in the best interests of the Town to adopt an Ordinance for the imposition of a Park Impact Fee for the creation of new and maintenance of existing parks, trails and recreation facilities in the Town; and

WHEREAS, the Town has completed the pre-requisites for the adoption of the Ordinance and imposition of the fees;

NOW, THEREFORE, by the powers vested in the Town Council, it is hereby ORDERED and ORDAINED as follow:

SECTION 1: LIMITATION ON IMPOSITION OF IMPACT FEE

This Ordinance shall expire and become void five years after its effective date as required by IC §36-7-4-1340, unless action is undertaken to extend its life consistent with the provisions of said Code section which contemplates a replacement ordinance.

SECTION 2: ESTABLISHMENT OF IMPACT ZONE

There is hereby established one park and recreational Infrastructure Impact Zone, the borders of which are co-terminus with the existing corporate borders of the Town, and, as they may be extended from time to time through annexation, and, over which the Town exercises planning and zoning jurisdiction. In this regard, the Town Council specifically finds that there is a functional relationship between the components of the Park and Recreation Master Plan and Infrastructure Improvement Plan and that such park and recreational plan provides a reasonably uniform benefit to all of the citizens throughout the impact zone as of the adoption of this Ordinance. The Town Council further finds that all areas within the impact zone are contiguous as required in IC §36-7-4-1316. Except as provided below, this Ordinance shall apply uniformly to all residential developments within the impact zone hereby established for which the Town may require a structural building permit and which creates a need for new and additional park and recreational infrastructure. This Ordinance shall not apply to:

- (A) Developments meeting the requirements set forth in IC §36-7-4-1322(g);
- (B) Improvements which do not require a structural building permit;
- (C) Improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed;
- (D) The replacement of a destroyed or partially destroyed improvement, provided that the replacement improvement does not create a need for new and additional infrastructure over

and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof.

- (E) Non-residential development.

SECTION 3: ZONE IMPROVEMENT PLAN

(A) As a pre-condition to the adoption of this Ordinance, the Town Council undertook a comprehensive and detailed park and recreational impact analysis through the employment for that purpose of H. J. Umbaugh & Associates, LLP. The Town Council does now find that the resulting study and data base constitute a sufficient study to constitute a Zone Improvement Plan. The Town Council does hereby adopt the Zone Improvement Plan prepared by H. J. Umbaugh & Associates, LLP, and dated according to its most recent update, the 17th day of May, 2012, as its Zone Improvement Plan and finds in this regard that said Zone Improvement Plan does contain the following elements:

- (1) Reasonable estimates relating to the nature and location of development that is expected within the impact Zone during the planning period, which, for the purposes of this Ordinance is defined to be a period of five (5) years commencing with the date of adoption hereof.
- (2) A reasonable determination of the community level of service for the Impact Zone.
- (3) A reasonable determination of the current level of service provided within the Impact Zone.
- (4) A reasonable estimate of the nature, location, sequencing, and timing of the park and recreational requirements and costs necessary to provide the community level of service for the developments contemplated in division (A)(1) of this section.
- (5) A reasonable estimate of the share of the park and recreational costs identified in division (A)(4) of this section that will be used to:
 - (a) Raise the current level of service for existing development or provide service to existing development; or
 - (b) Provide service to new development.
- (6) A reasonable estimate of revenues that:
 - (a) Are from sources other than impact fees; and,
 - (b) Will be used to finance the cost identified in division (A)(5)(a) of this section.

- (7) A description of the nature and location of existing infrastructure in the impact zone.
- (8) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

(B) In addition, the Town Council does hereby specifically adopts the Zone Improvement Plan as an official part of the Comprehensive Plan of the Town of Plainfield, pursuant to IC §36-7-4-500 et seq.

SECTION 4: ESTABLISHMENT OF PARK AND RECREATIONAL IMPACT FEE

(A) Based upon the Park and Recreation Master Plan and Infrastructure Improvement Plan previously referred to and which is made a part of this Ordinance, the Town Council determines that the cost per detached single-family housing unit is in the amount of \$730.00; the cost per duplex unit, condo unit and townhome unit is in the amount of \$526.00 and the cost per apartment unit is in the amount of \$477.00. The Town Council does hereby make as a part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached by the Town Council in the process of developing the Zone Improvement Plan.

(B) In the event that any parcel of real estate considered in the creation of the Zone Improvement Plan undergoes a change in use, redevelopment, or a modification which requires a structural building permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on infrastructure.

SECTION 5: CREDIT IN LIEU OF PAYMENT; EXEMPTIONS

(A) Credits against impact fees otherwise due shall be allowed pursuant to this section for all infrastructure and improvements constructed or furnished in accordance with IC §§36-7-4-1313, 36-7-4-1335 since January 1, 1989 and 36-7-4-1336. In addition, a fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided for above. Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm or other casualty beyond their control, shall be exempt from said fee if they repair or replace the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed structure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

SECTION 6: IMPACT FEE DUE UPON ISSUANCE OF STRUCTURAL BUILDING PERMIT

(A) The impact fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a structural building permit by the Town. In this regard, it is understood that the structural building permit is synonymous with the term "structural building permit" as that term is used in IC §36-7-4-1323, in that the issuance of a structural building permit authorizes the applicant to commence construction activities, structural and otherwise.

The entire fee which is calculated pursuant to the terms of this Ordinance shall be due at said time unless the amount of the fee upon calculation is greater than \$5,000, in which case an installment plan may be requested by the applicant in accordance with the terms set forth in IC §36-7-4-1324 (a), (b), (c) and (d). The Plainfield Impact Fee Review Board shall establish specific rules consistent with said code provisions for installment payments. The interest rate on any installment plan or deferred payment shall be the pre-judgment rate of interest set forth in the Indiana Code as from time to time amended.

(B) If a fee payer requests, the amount of the impact fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the improvement location permit, whichever is earlier. For purposes of this section, "assessment" means the act of calculating the amount of the impact fee which shall be due. The Town shall make such assessment within 30 days of the date of such voluntary request or at the issuance of the improvement location permit with or without a request.

SECTION 7: LIEN RIGHTS ESTABLISHED

Pursuant to IC §36-7-4-1325, the Town of Plainfield acquires a lien against the real estate which is the subject of the impact fee. The Town hereby incorporates IC §36-7-4-1325(a), (b), (c), (d), (e) and (f) into this Ordinance. Upon adoption, this Ordinance shall be recorded, and, thereafter, it shall constitute constructive notice of the lien rights of the Town. The Town may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an installment payment of an impact fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

SECTION 8: FORM OF RECEIPT

The Clerk Treasurer of the Town of Plainfield shall issue a receipt for any and all impact fees collected, and the form of such receipt shall be as follows:

Received of _____ (fee payer), this ____ day of _____, 20____, the sum of _____ (\$_____) in (full) (partial) satisfaction of impact fees due pursuant to Ordinance No. _____ relating to improvements to be constructed on the real estate described on Exhibit A, attached hereto, made part hereof, and subject to lien rights in favor of the Town of Plainfield in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: _____ (\$_____).

Clerk-Treasurer, Town of Plainfield

SECTION 9: IMPACT FEE REVIEW BOARD

An Impact Fee Review Board ("Review Board") shall be established consisting of three (3) members appointed by the President of the Town Council. A member of the Review Board may not be a member of the Plainfield Plan Commission.

The term of the Review Board members shall be one (1) year commencing on January 1 and ending on the following December 31.

The Review Board membership must meet the following conditions: (1) one (1) member who is a real estate broker licensed in Indiana; (2) one (1) member who is an engineer licensed in Indiana; and (3) one (1) member who is a certified public accountant.

In the event of a conflict of interest on the Review Board, the President of the Town Council shall appoint a temporary replacement member meeting the qualifications of the member being temporarily replaced.

The Review Board shall have the power and duties set forth specifically in I.C. §36-7-4-1338 as well as any other duties set forth generally in I.C. §36-7-4-1300, 1300 SERIES-IMPACT FEES.

SECTION 10: APPEALS

(A) Any fee payer who believes itself to be aggrieved by the calculation of the impact fee, may appeal from such calculation to the Town Impact Fee Review Board and the Town Impact Fee Review Board shall conduct a hearing with regard thereto. An appeal of the amount of an impact fee shall be made for the following reasons:

- (1) A fact assumption used in determining the amount of the impact fee is incorrect; or
- (2) The amount of the impact fee is greater than the amount allowed under IC §36-7-4-1320, 1321 and 1322.

(B) The fee payor must file a petition ("Petitioner") for a review of the amount of an impact fee with the Town's Impact Fee Review Board not later than thirty (30) days after issuance of the structural building permit for the development for which the impact fee was assessed. The petition shall be filed with the Clerk-Treasurer and be accompanied by payment of a filing fee of one hundred dollars (\$100). The Petitioner shall receive a full refund of the filing fee if:

- (1) the Petitioner prevails;
- (2) the amount of the impact fee or the reductions or credits against the fee is adjusted by the Town, the board, or a court; and
- (3) the body ordering the adjustment finds that the fee, reductions, or credits were arbitrary or capricious.

(C) The Town's Impact Fee Review Board shall prescribe the form of the petition for review of an impact fee under subsection (B). The Review Board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person. The form must require the Petitioner to specify:

- (1) a description of the new development on which the impact fee has been assessed;
- (2) all facts related to the assessment of the impact fee; and
- (3) the reasons the Petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in this series.

(D) The Town's Impact Fee Review Board shall prescribe a form for a response by the Town to a petition for review under this section. The Review Board shall issue instructions for completion of the form. The form must require the Town to indicate:

- (1) agreement or disagreement with each item indicated on the petition for review under subsection (C); and
- (2) the reasons the Town believes that the amount of the fee assessed is correct.

(E) Immediately upon the receipt of a timely filed petition on the form prescribed under subsection (C), the Town's Impact Fee Review Board shall provide a copy of the petition to the Town assessing the impact fee. The Town shall not later than thirty (30) days after the receipt of the petition provide to the Review Board a completed response to the petition on the form prescribed under subsection (D). The Review Board shall immediately forward a copy of the response form to the Petitioner.

(F) An Impact Fee Review Board shall:

- (1) review the petition and the response submitted under this section; and
- (2) determine the appropriate amount of the impact fee not later than thirty (30) days after submission of both petitions.

(G) A Petitioner aggrieved by a final determination of an Impact Fee Review Board may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo. If the assessment of a fee is vacated by judgment of the court, the assessment of the impact fee shall be remanded to the Review Board for correction of the impact fee assessment and further proceedings in accordance with law.

(H) If a petition for a review or an appeal of an impact fee assessment is pending, the impact fee is not due and payable until after the petition or appeal is finally adjudicated and the amount of the fee is determined.

(I) The town shall not deny the issuance of a structural building permit on the basis that the impact fee has not been paid, or, condition issuance of the permit on the payment of the impact fee. If the impact fee totals \$1,000 or less, the town may require the fee payer to pay the impact fee or initiate an appeal under this section before the structural building permit is issued.

SECTION 11: ESTABLISHMENT OF PARK AND RECREATIONAL FUND

(A) There is hereby established the Town Park and Recreational Fund. This Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this Ordinance to be utilized in connection with the purposes set forth herein. The Fund shall consist initially of one account based upon the current existence of one Impact Zone. In the event, and only in the event, that an additional Impact Zone is created hereafter, a separate account shall be maintained for each separate Impact Zone established within the Town. Interest earned on the Fund or on any account within the Fund, shall be deposited and maintained within the Fund or the separate account. The Clerk-Treasurer of the Town shall maintain records of the status of the Fund or any account which may be established therein, and shall make an annual report of said fund and accounts which shall be available to the public in general and fee payers, upon request, in particular. The annual report shall include (1) the amount of money in accounts established for the Impact Zone and (2) the total receipts and disbursements of the accounts established for the Impact Zone.

(B) Pursuant to IC §36-7-4-1332 (e), the Clerk-Treasurer is designated as the town official responsible for acting upon refund requests. In order to facilitate refunds when they may be due, the Clerk-Treasurer is directed to identify the purpose of any impact fee paid in order that a refund, if any, may be paid from the Fund or account into which the fee was originally deposited.

SECTION 12: USE OF IMPACT FEES COLLECTED

Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the Town, acting by and through its Town Council, which, for the purpose of this Ordinance is identified as the "infrastructure agency" contemplated by IC §36-7-4-1317:

- (A) Providing funds to be utilized by the Town for the purpose of paying the capital costs of new park and recreational infrastructure that is necessary to serve the new development within the corporate limits of the Town and that is identified in the Zone Improvement Plan;
- (B) An amount not to exceed 5% of the annual collections of the fee to be utilized for expenses incurred by the Town for the consulting services used to establish this Ordinance;
- (C) To pay any refund due pursuant to the terms of this Ordinance;
- (D) To pay the debt service cost on an obligation issued to provide new park and recreational infrastructure described in division (A) above.

SECTION 13: HOUSE ENROLLED ACT NO. 1467

The Town Council specifically acknowledges the existence of a law adopted by the General Assembly of the State of Indiana which regulates the imposition of impact fee ordinances by municipal corporations within the state. It is the intent of the town to comply with such legislation, and this Ordinance shall be construed in all respects to be consistent with the

Act. The substantive and procedural requirements of IC §36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the Town Council.

SECTION 14: AMENDMENTS AND REVIEW

The impact fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the Town has no control. The Town Council shall, therefore, when the Town determines that circumstances require, cause a review to be made by Town staff or consultants as may be required, to determine the continuing validity of the Impact Fee, the Impact Zone, and the Zone Improvement Plan. The Town Council shall consider and adopt such amendments as are necessary to cause a substantive compliance with the rational nexus test to continue, to insure that procedural due process is maintained or enhanced and to insure that this Ordinance meets the requirements of the IC §36-7-4-1300 series. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Zone Improvement Plan and the Comprehensive Plan.

SECTION 15: REPEALER

All ordinances or parts of ordinances of the Town in conflict with this Ordinance are hereby repealed.

SECTION 16: PARTIAL INVALIDITY

If any clause, section, provision or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other clause, section, provision or portion of this Ordinance.

SECTION 17: EFFECTIVE DATE

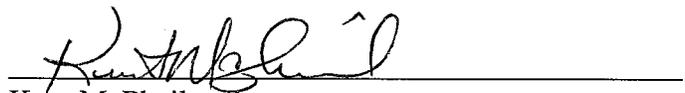
This Ordinance shall take effect six (6) months after the date this Ordinance is adopted by the Town Council of the Town of Plainfield, Hendricks County, Indiana.

THIS ORDINANCE is hereby APPROVED and ADOPTED, this 25th day of June, 2012.

TOWN COUNCIL, TOWN OF PLAINFIELD,
HENDRICKS COUNTY, STATE OF INDIANA



Robin G. Brandgard, President



Kent McPhail

Bill Kirchoff

Bill Kirchoff

Edmund L. Gaddie, Jr.

Edmund L. Gaddie, Jr.

Renea Whicker

Renea Whicker

ATTESTED BY:

Wesley R. Bennett

Wesley R. Bennett, Clerk-Treasurer
Town of Plainfield