

O R D I N A N C E

ODT-021R-89

AMENDMENT TO ODT-021Q-89

DU PAGE COUNTY FAIR SHARE ROAD IMPROVEMENT IMPACT FEE ORDINANCE

WHEREAS, the County Board of DuPage County supports responsible new development within the County; and

WHEREAS, additional road improvements are needed to serve new development; and

WHEREAS, DuPage County does not have sufficient revenues to ensure that adequate road improvements will be in place when needed by new development; and

WHEREAS, the County Board of DuPage County has determined that the fair share road improvement impact fees shall be expended on those road improvements within the service area or areas as specified in the COMPREHENSIVE ROAD IMPROVEMENT PLAN, as updated from time to time; and

WHEREAS, the County Board of DuPage County has determined that fair share impact fees are an equitable and financially responsible approach to ensuring that adequate roads, streets and highways will be available when needed to serve new development; and

WHEREAS, the County has the authority to adopt a fair share road improvement impact fee pursuant to statutory authority and other applicable law; and

WHEREAS, the County Board of DuPage County has committed itself to developing and implementing a fair share road improvement impact fee program to mitigate the adverse traffic impacts of new development; and

WHEREAS, the County Board has previously adopted fair share transportation impact fee ordinances and amendments for the purpose of ensuring that adequate transportation facilities will be provided in the County; and

WHEREAS, the legislature has passed the Road Improvement Impact Fee Law (hereinafter also referred to as "new statute"), formerly Ill. Rev. Stat. ch. 121, sec. 5-901 et seq., now 605 ILCS 5/5-901 et seq., on July 26, 1989; and

WHEREAS, this Ordinance is intended to comply in all respects with the Road Improvement Impact Fee Law; and

WHEREAS, the County has previously recommended land use assumptions and has approved a COMPREHENSIVE ROAD IMPROVEMENT PLAN as background data for implementing this Ordinance in its Resolution No. DT-00101-00, in full compliance with statutory requirements; and

NOW, THEREFORE, BE IT ORDAINED by the County Board of DuPage County, Illinois:

Section One. Amendment

That certain Ordinance entitled the "DuPage County Fair Share Transportation Impact Fee Ordinance," being original Ordinance No. ODT-021-89, as amended, is hereby amended so that it hereafter reads as follows:

Section Two. Title.

This Ordinance shall be known and may be referred to as the "DuPage County Fair Share Road Improvement Impact Fee Ordinance."

Section Three. Purpose and Authority.

1. The County Board of DuPage County recognizes that development in the County will require that the capacity of the road, street and highway systems in the County be expanded and that without a funded program for road improvements, new development will have an adverse impact on the County highway system.

2. The County Board further recognizes that all development in the County generates traffic on the County highway system and requires direct or indirect access to County highways, regardless of the location of the development.

3. The purpose of this Ordinance is to ensure that new development that is approved for construction in the County pays a fair share of the costs of road improvements expended to serve new development. To that end, the imposition of such road improvement impact fees is designed to supplement other funding sources so that the burden of paying for road improvements is allocated in a fair and equitable manner and orderly growth is promoted throughout the County.

4. The preamble shall be incorporated by reference into the text of this Ordinance as if fully set forth herein.

Section Four. Definitions.

1. "ADVISORY COMMITTEE" means the group of members PERSON selected from the public and private sectors in accordance with the provisions of Section Nineteen hereof to advise in the development and implementation of the COMPREHENSIVE ROAD IMPROVEMENT PLAN and the periodic update of the plan.

2. "ASSISTED FINANCING" means the financing of residential development by the Illinois Housing Development Authority, including loans to developers for multi-unit residential development and loans to purchasers of single family residences, including condominiums and townhouses.

3. "AVERAGE TRIP RATE FOR PEAK HOUR OF ADJACENT STREET TRAFFIC" means the weighted average trip rate during the hour of the highest volume of traffic passing the site on adjacent streets between 4:00 and 6:00 p.m.

4. "CERTIFICATE OF OCCUPANCY", means a permit issued by either the County or a municipality as a condition of occupancy, and includes any temporary occupancy permit as well as any permanent approval.

5. "COMPREHENSIVE ROAD IMPROVEMENT PLAN" means the plan prepared by the County in consultation with the Advisory Committee.

6. "COUNTY BOARD" means the County Board of DuPage County, Illinois.

7. "COUNTY ENGINEER" means the DuPage County Engineer as that term is used in 605 ILCS 5/5-201 et seq., formerly referred to as Superintendent of Highways.

8. "DEVELOPER" means a PERSON, corporation, organization, or other legal entity undertaking new development.

9. "ENCUMBERED", means legally obligated or otherwise committed to use under contract or purchase order.

10. "FEE PAYER" means a PERSON undertaking new development who pays a fair share road improvement impact fee in accordance with the terms of any current or subsequent Ordinance.

11. "LAND USE ASSUMPTIONS" means a description of the service area or areas and the roads, streets or highways incorporated therein, and includes projections relating to changes in land uses, densities and population growth rates which affect the level of traffic within the service area or areas for a ten (10) year period of time.

12. "LEVEL OF SERVICE" is a measure of roadway sufficiency of traffic flow, in which tolerable operating speeds are assessed, and in which changes in operating conditions, fluctuations in volume, and temporary restrictions to flow are evaluated.

13. "LEVEL OF SERVICE D," as defined in the Highway Capacity Manual (Special Report, 209, p. 11-4), borders on a range in which small increases in traffic flow may cause substantial increases in approach delay and, hence, decreases in arterial speed.

14. "NEW DEVELOPMENT" means any residential, commercial, industrial or other project which is being newly constructed, reconstructed, redeveloped, structurally altered, relocated, or enlarged, and which generates additional traffic within the service area or areas of the County. Conversely, if the construction, expansion or change in use of any building(s) or structure(s) will not generate additional traffic, the development shall not constitute "NEW DEVELOPMENT" and the

DEVELOPER shall be exempt from the provisions of this Ordinance. NEW DEVELOPMENT will be deemed to begin upon either the issuance of a building permit or commencement of construction, whichever occurs first.

15. "NON-COMMENCEMENT" means the cancellation of construction activity making a material change in a structure, or the cancellation of any other new development activity making a material change in the use or appearance of land.

16. "NON-RESIDENTIAL DEVELOPMENT" means a building or other structure that is suitable or capable of being used for all purposes other than residential purposes.

17. "PERSON" means any individual, firm, partnership, association, public or private corporation, organization or business, charitable trust or governmental agency, PERSON or any other legal entity.

18. "PROCEDURES MANUAL" means a document developed by the COUNTY ENGINEER and available from the Division of Transportation that sets forth the procedures, processes, forms and definitions to be used in the administration of this Ordinance.

19. "RESIDENTIAL DEVELOPMENT" means a house, building or other structure that is suitable or capable of being used for residential purposes.

20. "ROAD CAPACITY" means the maximum number of vehicles, as defined by the Highway Capacity Manual, Special Report 209, p. 11-11, which have a reasonable expectation of passing over a given section of a lane or a roadway in one direction, or in both directions for a two-lane, three-lane, or four-lane road, street or highway, during a given time period under prevailing traffic conditions at an identified level of service.

21. "ROAD IMPROVEMENTS" means the improvement, expansion, enlargement or construction of roads, streets or highways under the jurisdiction of the County, and includes, but is not limited to bridges, rights-of-way and traffic control improvements owned and operated by the County. The term "road improvements" shall not include tollways but may include tollway ramps at county highway interchanges. The term "ROAD IMPROVEMENTS" does not include any roads, streets, or highways that are not designated

for improvement in the COMPREHENSIVE ROAD IMPROVEMENT PLAN, even though they are under the jurisdiction of the County.

22. "ROAD IMPROVEMENT CAPITAL COSTS" include, but are not limited to, capital costs associated with the construction of new or expanded road improvements, the need for which is generated by new development which have a life expectancy of three (3) or more years, and the land acquisition, land improvement, planning, design, and engineering related thereto. Such costs do not include routine and periodic maintenance expenditures, resurfacing or rehabilitation of existing pavement structures, or personnel, training, or other operating costs, but do include the costs of financing such road improvements and reasonable administrative costs for administering the impact fee program, provided that such administrative costs do not exceed five percent (5%) of the fee paid.

23. "ROAD IMPROVEMENT IMPACT FEE" means any charge or fee levied or imposed by the County as a condition to the issuance of a building permit or certificate of occupancy in connection with a new development, when any portion of the revenues collected is intended to be used to fund any portion of the costs of road improvements.

24. "ROADS, STREETS OR HIGHWAYS" means any road, street or highway which has been designated for improvement in the COMPREHENSIVE ROAD IMPROVEMENT PLAN, together with all necessary appurtenances, including but not limited to bridges, rights-of-way, tollway ramps and traffic control improvements.

25. "SERVICE AREA" means the land within the boundaries shown on Exhibit A to this Ordinance, formerly designated as impact fee districts in Ordinance ODT-021-89, as amended, and which are now designated in the COMPREHENSIVE ROAD IMPROVEMENT PLAN.

26. "SITE-RELATED IMPROVEMENTS" means capital improvements necessary for direct access/egress to the development in question. Direct access/egress site-related improvements include the following: (1) site driveways and roads; (2) right and left-turn lanes for or leading to those driveways and roads; (3) traffic control measures for or leading to those driveways and roads; (4) acceleration/deceleration lanes; (5) median openings/closings; (6) roads necessary to provide direct access to the development; (7) landscaping; (8) lighting; (9)

utilities; and (10) berms. The term "SITE-RELATED IMPROVEMENTS" includes any improvements made to roads, streets, or highways that are not designated for improvements in the County highway system.

27. "SPECIFICALLY AND UNIQUELY ATTRIBUTABLE" shall have the same meaning as that term is used in 605 ILCS 5/5-901 et seq.

28. "SYSTEM IMPROVEMENT" means capital improvements, other than site-related improvements, on roads, streets or highways under the jurisdiction of the County which are designated for improvement in the COMPREHENSIVE ROAD IMPROVEMENT PLAN. Improvements not designated are not included in the term "System Improvement."

29. "TECHNICAL SPECIFICATIONS" means the document that contains the impact fee calculation factors necessary for computation of the impact fee for a particular land use, the INDIVIDUAL ASSESSMENT, and the fee schedule attached to this document.

30. "WORKING DAY" means any day on which the offices of the County are officially open, not including Saturdays, Sundays, and other holidays designated by the County Board.

Section Five. Interpretation of Ordinance and Fee Schedule and Appeals.

1. Interpretation of the provisions of this Ordinance, the fee schedules and individual assessments shall be made by the COUNTY ENGINEER of DuPage County. Whenever necessary, the COUNTY ENGINEER may use Trip Generation (6th ed. Institute of Transportation Engineers) or the Highway Capacity Manual (Special Report 209, Transportation Research Board), as may be amended from time to time, or locally obtained empirical data, in making such interpretations. The COUNTY ENGINEER shall establish a PROCEDURES MANUAL identifying the procedures the Division of Transportation will utilize in administering this Ordinance.

2. Any decision by the COUNTY ENGINEER with respect to this Ordinance may be appealed to the County Board through the Division of Transportation Committee. Any appeal shall be made by written petition within fourteen (14) calendar days of notice of a decision by the COUNTY ENGINEER.

3. Upon receipt of a petition for appeal of a decision of the COUNTY ENGINEER, the Division of Transportation Committee shall schedule consideration of such appeal for its next regularly scheduled meeting. The Committee shall notify the FEE PAYER by regular mail of the date of such meeting and shall consider such written or oral testimony that the FEE PAYER may present in conjunction with the decision and recommendation of the COUNTY ENGINEER. The Committee shall affirm, reverse, or modify the COUNTY ENGINEER's decision at the scheduled meeting.

4. The FEE PAYER shall have fourteen (14) calendar days after the Committee's decision to appeal that decision to the County Board. The County Board shall schedule consideration of such appeal at its next regularly scheduled meeting. Failure by the County Board to render a decision within sixty (60) days of said County Board meeting shall constitute a denial of the appeal.

5. A FEE PAYER may seek any subsequent relief in a de novo proceeding in a circuit court of competent jurisdiction.

Section Six. All Developers of New Development to Pay Fair Share Fee.

All DEVELOPERS of new development shall pay a fair share road improvement impact fee to the County in accordance with the terms and conditions of this Ordinance.

Section Seven. Assessment of Impact Fees.

Impact fees shall be calculated pursuant to the fee schedules shown in Exhibit B of this Ordinance and shall be due upon issuance of said permit, unless otherwise provided herein.

Section Eight. Timing of Payment of Fees.

1. Except as may be provided in subsections 3 and 4 of this Section, fair share road improvement impact fees for new single family residential development imposed pursuant to any current or subsequent Ordinance shall be paid in full prior to the issuance of a building permit by either a municipality or the County.

2. Except as provided in subsection 3 of this Section, fair share road improvement impact fees for new multi-family residential and for new non-residential development imposed pursuant to any current or subsequent Ordinance shall be paid in full prior to the issuance of an initial certificate of occupancy by either a municipality or the County, provided that the DEVELOPER and the County have entered into an agreement which provides that the DEVELOPER must notify the County when a building permit or certificate of occupancy has been issued. If there is no agreement regarding such notice, then the FEE PAYER shall pay the fee as a condition to the issuance of a building permit.

3. In the event that a building permit or certificate of occupancy is issued by a municipality without an impact fee having been paid, the County may collect the fee from the FEE PAYER at any time. FEE PAYERS paying an impact fee after a building permit or certificate of occupancy has been issued shall be charged a rate of interest which is three percent (3%) over the prime commercial rate in effect at the time that the fee is imposed. Interest shall begin accruing on the first business day following the date of building permit issuance.

4. Payment of the fair share road improvement impact fee may be authorized at any point earlier than as specified in subsections 1 and 2 above if the County and the FEE PAYER enter into an agreement that provides for such earlier payment of the fee. At the option of the County, the County may also enter into a Fair Share Fee Agreement with a FEE PAYER pursuant to Section Nine hereof that provides for the installment payment of the fee at a rate of interest which is 3% over the prime commercial rate in effect at the time that the fee is imposed, for a period of up to ten (10) years after the fee is due, provided that the County receives adequate security ensuring such later payment of the fee. In all agreements and/or deferral arrangements,

interest shall begin accruing on the first business day following submittal of the impact fee application.

5. DEVELOPERS of new residential developments who receive "assisted financing" as defined by this Ordinance, or who have received a commitment for assisted financing and whose financing has been provided within six (6) months of the issuance of a certificate of occupancy, may enter into an agreement with the County whereby the impact fee may be paid in installments over a ten (10) year period of time at a rate of interest which is three percent (3%) over the prime commercial rate in effect at the time that the fee is imposed.

6. In the event that any applicant fails to complete a permit application, including payment of fees, within 60 days of the original application date, the County may terminate the application. Any permit application, which is not completed, including payment of fees, within 180 days of the original application date shall terminate and a new application shall be filed pursuant to any new rules and regulations of this Ordinance including any new fee schedule.

7. The County and municipalities may enter into intergovernmental agreements that provide for the cooperative collection of the fees or for the conditioning of the issuance of municipal building permits and certificates of occupancy upon proof of payment of the County impact fee.

8. Municipalities shall provide the County with a Notice of Issuance of building permits in accordance with the provisions of 65 ILCS 5/11-39-1, and shall submit a copy of the developer's Receipt of Payment of the Impact Fee or executed Fair Share Fee Agreement along with such notice.

Section Nine. Fair Share Fee Agreements.

1. At any time prior to the issuance of a building permit, the FEE PAYER may enter into a Fair Share Fee Agreement with the County providing for payment of the impact fee imposed by this Ordinance, in accordance with application requirements specified by the COUNTY ENGINEER. Such Fee Agreement may provide for installment payments of the fee for a period up to ten (10) years, only in the case of development funded by "assisted financing", reduction of the fee through transportation systems

management strategies, recapture payments for construction credits, credit and security arrangements and other matters relating to the fee. In addition, such Fee Agreement may include an Improvement Credit Agreement as provided for in Section Thirteen of this Ordinance. Security provided for the payment of any fee due under the provisions of this Ordinance may be in the form of a promissory note, cash bond, security bond, an irrevocable letter of credit, or a lien or mortgage on the lands to be covered by the building permit. The Fee Agreement may provide that such security may be partially releasable upon receipt of partial payments of the fee. FEE PAYERS receiving "assisted financing" shall be charged a rate of interest which is three percent (3%) over the prime commercial rate in effect at the time that the fee is imposed, on any monies deferred.

2. FEE PAYERS for non-residential development and FEE PAYERS of multi-unit residential development will be allowed to enter into fee agreements to defer payment of some portion of the fees due upon an initial certificate of occupancy. Fee agreements shall provide that a payment of at least fifty percent (50%) of the determined fees or construction credits in lieu of cash shall be payable when the initial certificate of occupancy is issued, and the balance shall be payable in twelve (12) months. FEE PAYERS shall be charged a rate of interest that is three percent (3%) over the prime commercial rate in effect at the time that the fee is imposed, on any monies deferred.

3. If the use changes from one category to another either by adding 25,000 square feet or rearranging the space to effectively add 25,000 square feet, then subsequent fees shall be calculated according to the most recent fee schedule and the balance of the fees shall be due and owing before such subsequent certificates of occupancy are issued.

4. Within ten (10) working days of receipt of a written request for a Fee Agreement, the COUNTY ENGINEER shall determine if all pertinent information has been provided. If the COUNTY ENGINEER determines that additional documentation is required, the COUNTY ENGINEER shall send a written statement specifying the deficiencies by mail to the PERSON submitting the request. Until the deficiencies are corrected, the County shall take no further action on the request.

5. When the COUNTY ENGINEER determines that the request is complete, the COUNTY ENGINEER shall draft an Impact Fee Agreement that shall be reviewed and approved by the FEE PAYER. Upon acceptance of the Fee Agreement by the FEE PAYER, the Transportation Committee shall consider the Fee Agreement at its next regularly scheduled meeting, and if the Committee approves the Fee Agreement, the Chairman of the Committee may execute the Agreement on behalf of the County. The Committee shall only deny a Fee Agreement upon written findings that it is not in the best interest of the County, for reasons including but not limited to the extraordinary potential impacts of a development.

Section Ten. Intergovernmental Agreements.

1. At any time after the adoption of this Ordinance, the County may enter into an intergovernmental agreement with any municipality within its jurisdiction regarding the fee imposed by this Ordinance. Such intergovernmental agreements shall be adopted in accordance with State statutes and may include provisions governing administrative issues involving the collection of the fee imposed, such as the reimbursement of collection costs from the fees collected, and any other matters deemed necessary or appropriate by the County and the municipality.

2. The intergovernmental agreement may provide for the collection of a fair share road improvement impact fee for municipal roads as an additional component of the DuPage County Fair Share Road Improvement Impact Fee, provided that all the municipalities in the applicable impact fee service area enter into an intergovernmental agreement with the County that provides that the municipal road portion of the fee shall be expended for municipal road improvements within the service area in which the fee is collected, and provided that the use of the funds on municipal roads is used in the same manner and for the same purposes as motor fuel tax money allotted to the County under the provisions of 605 ILCS 5/5-701 et seq., solely for road improvement capital costs.

Section Eleven. Fair Share Road Improvement Impact Fee Schedule.

1. Any PERSON who initiates any development, except those preparing an Individual Assessment pursuant to Section Twelve of this Ordinance and those activities exempted from the fee by the provisions of Section Eighteen hereof, shall pay a fair share impact fee as set forth on Exhibit B to this Ordinance.

2. Where the land use in a particular development is not listed on the fee schedule, the COUNTY ENGINEER may determine the land use classification which most closely identifies the development and which shall apply for purposes of determining the applicable fee under this Section.

3. In the event that the development proposed is a change in the immediate past use, the amount of the fee shall be based on the change in trips generated by the new use, and the formula set out in Section Twelve shall be used to calculate the fee.

4. Where a proposed development is to be located within two (2) service areas, the COUNTY ENGINEER shall determine the fee as follows:

a. If a residential development, the fee shall be determined by counting the number of dwelling units located within each service area and charging a straight-per-unit cost for units within each area.

b. If a non-residential development, the fee shall be determined by calculating the average of the fees that would otherwise be charged if the development were located entirely within each service area.

Section Twelve. Individual Assessment of Impact.

1. Any PERSON who initiates development may choose to provide an Individual Assessment of the impacts of the proposed development upon the road, street and highway systems in the County. The Individual Assessment may be used to determine whether a fair share of the road improvements' capital costs necessitated by the proposed development should be less than the fee established in Section Eleven of this Ordinance or the appropriate fee for a particular use or combination of uses not identified in Section Eleven.

2. Any PERSON who chooses to provide an Individual Assessment is required to submit to the COUNTY ENGINEER a written statement of intent to perform an Individual Assessment.

3. The Individual Assessment shall be calculated according to the following formula (See TECHNICAL SPECIFICATIONS for more detailed information):

GROSS FEE = (((PHAST x NT) x (TRIP LENGTH x %VMT) / 2) x (LANE-MILE COST)) / (CAPACITY)

NET FEE = GROSS FEE minus TAX CREDIT minus IMPROVEMENT CREDITS minus DEMOLITION CREDITS

FEE = NET FEE x .85 (ADMINISTRATIVE DISCOUNT)

WHERE:

PHAST = Number of trips generated on a weekday during the peak hour of adjacent street traffic between 4:00 P.M. and 6:00 P.M.

NT = Fraction of PHAST which represents new trips on the highway system: 1 minus the fraction of PHAST which are passby trips minus the fraction of PHAST which are diverted trips.

Trip Length = Average Trip Length in Miles

%VMT = % of Vehicle Miles of Travel on County Highway System in the given Service Area.

Capacity = Lane Mile Capacity at LOS "D" in Vehicles Per Hour

Lane-Mile Cost = Average Construction and Right of Way Cost of a Lane-Mile with Intersection Improvements

Tax Credit = The present value of that portion of the highway, local gas tax and motor fuel taxes expected to be generated by the development which are devoted to capital expenditures.

Improvement Credits = The value of improvement credits pursuant to an Improvement Credit Agreement (See Section Thirteen).

Demolition Credits = The value of impact fees that would have been assessed on a building or buildings that FEE PAYER demolishes prior to development. (See Section Fourteen).

4. The Individual Assessment shall include the following information:

a. The proposed trip generation rates for the proposed development, on an average daily and on a peak design hour basis. The trip generation rates shall be based on local empirical surveys for the same or similar land use types;

b. The proposed average trip length generated from the proposed development onto the County's road system. Trip length information shall be based upon local empirical surveys of similar land use type and may include, if available, empirical data which specify the percentage of travel made on County Highways by users of the proposed development;

c. Assessment of the costs of providing a lane-mile with intersection improvements and right-of-way. The cost figures used shall be based upon recently assembled empirical information of the costs in DuPage County for the cost of a lane-mile.

5. The Individual Assessment shall be prepared by professionals, qualified by the County in accordance with established procedures, in the field of transportation planning and engineering and impact analysis.

6. Within ten (10) working days of receipt of an Individual Assessment, the COUNTY ENGINEER shall determine if the Individual Assessment is complete. If the COUNTY ENGINEER determines the application is not complete, the COUNTY ENGINEER shall send a written statement specifying the deficiencies by mail to the PERSON submitting the application. Until the deficiencies are corrected, the COUNTY ENGINEER shall take no further action on the application, other than further reviews for completeness.

7. When the COUNTY ENGINEER determines the Individual Assessment is complete, the assessment shall be reviewed within fifteen (15) working days. The COUNTY ENGINEER shall approve the proposed fee if the COUNTY ENGINEER determines that the traffic information, traffic factors, and methodology used to determine the proposed impact fee are professionally acceptable and fairly assess the costs for capital improvements to the road, street and highway systems in the County in accordance with the formula set out in Subsection 1 of this Section. If the COUNTY ENGINEER determines that the traffic information, traffic factors, or methodology are unreasonable, the proposed fee shall be denied, and the DEVELOPER shall pay the fair share impact fee according to the schedule established in Section Eleven (1) of this Ordinance or as set by the COUNTY ENGINEER, if the use had not previously been identified in the fee schedule. If the Individual Assessment is denied, the PERSON or DEVELOPER may appeal the decision of the COUNTY ENGINEER in the manner provided for in Section Five of this Ordinance.

Section Thirteen. Improvement Credit Agreements.

1. Any PERSON who initiates development may request an improvement credit against the fair share impact fee imposed by this Ordinance for any contribution, payment, recapture, construction, or dedication of land accepted and received by DuPage County for system improvements in accordance with the provisions of this section. Credits shall not be given for any contributions made by a DEVELOPER that are not used for the benefit of the County road, street or highway system, such as the donation of parks or school sites. Credits shall not be given for any contributions made by a DEVELOPER that are required by the County, a municipality or other unit of local government such as improvements on site or access to a site.

2. The County will not be required to refund funds for any improvement credit that exceeds the impact fee imposed by this Ordinance for the proposed development. However, a FEE PAYER, or his or her successor in interest, may apply for an improvement credit, which has not otherwise been used in another improvement credit agreement, against an impact fee which would otherwise be due and owing under the provisions of this Ordinance, provided that the improvement for which credit is being sought is located within the same service area as the development which would be the beneficiary of the credit.

3. A PERSON shall be entitled to an improvement credit equal to the dollar value of the cost of system improvements contributed, paid for or committed to by the PERSON or his or her predecessor in interest in conjunction with the County's approval of the development which is subject to the impact fee for which a credit is being sought. Credit for system improvements will be given only if the COUNTY ENGINEER determines the system improvements are justified in accordance with the COMPREHENSIVE ROAD IMPROVEMENT PLAN. The cost of such improvements shall be based on the following criteria:

a. The actual cost of improvements based on a valid contract proposal or bid tabulations for work performed in DuPage County on a DuPage County highway; and

b. The mean value of two qualified appraisals of the fair market value of any land or interest therein which is part of the improvement for which a credit is being sought. The PERSON or DEVELOPER and the County shall each provide a qualified appraisal from which the mean shall be determined.

4. The PERSON or DEVELOPER shall initiate such determination of entitlement to credit by submitting a written request for an Improvement Credit Agreement to the COUNTY ENGINEER. The request for an Improvement Credit Agreement shall include the following information:

a. A proposed plan of specific road improvements, prepared and certified by a duly qualified and licensed Illinois engineer; and

b. The projected costs for the suggested roadway improvements, which shall be based on local information for similar roadway improvements, along with the construction timetable for the completion of such improvements. Such estimated costs shall include the cost of all labor and materials, the appraised value or cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction, cost of plans and specifications, surveys of estimated costs and of revenues, costs of engineering and legal services and all other expenses necessary or incidental to determining the feasibility or practicability of such construction or reconstruction.

5. Within ten (10) working days of receipt of the request for an Improvement Credit Agreement, the COUNTY ENGINEER shall determine if all pertinent information has been provided. If the COUNTY ENGINEER determines that additional information is required, the COUNTY ENGINEER shall send a written statement outlining the deficiencies to the PERSON submitting the request. The COUNTY ENGINEER shall take no further action on the proposed Agreement, other than further reviews for completeness, until all deficiencies have been corrected or otherwise settled.

6. Once the COUNTY ENGINEER determines that the proposed improvement is a system improvement and the proposed costs for the suggested improvement are professionally acceptable and fairly assess its cost and the agency with jurisdiction over the proposed improvement is in agreement with the improvement, the COUNTY ENGINEER shall draft an Improvement Credit Agreement that shall be reviewed and approved by the PERSON or DEVELOPER submitting the request for the agreement. The Improvement Credit Agreement shall specifically outline the capital roadway improvements that will be constructed by the PERSON or DEVELOPER, the time by which the improvements shall be completed and the dollar credit the PERSON or DEVELOPER shall receive for construction of the improvements. If the COUNTY ENGINEER determines that either the suggested improvement is not a system improvement or that the proposed costs are not acceptable, the COUNTY ENGINEER shall notify the PERSON or DEVELOPER of his or her decision and may propose an alternative improvement consistent with the provisions of this Ordinance.

7. Upon acceptance of the Improvement Credit Agreement by the COUNTY ENGINEER and the PERSON or DEVELOPER, the Transportation Committee shall consider the Improvement Credit Agreement at its next regularly scheduled meeting. And, if the Committee approves the Improvement Credit Agreement, the Chairman of the Committee may execute the Agreement on behalf of the County. Any Improvement Credit Agreement that awards the PERSON or DEVELOPER a dollar credit of over \$100,000 shall be reviewed and ratified by the County Board before it may be executed by the Chairman.

Section Fourteen. Demolition Credits.

1. A PERSON shall be entitled to a DEMOLITION CREDIT equal to the dollar value of impact fee that would have been charged on the building or buildings being demolished as part of a redevelopment plan or NEW DEVELOPMENT. The DEMOLITION CREDIT shall not exceed the gross impact fee for the NEW DEVELOPMENT.

2. At the time of impact fee application, the PERSON applying for an impact fee shall present to the COUNTY a copy of the demolition permit or letter of authorization from the local government. The demolition permit or letter shall be attached to the impact fee application and demolition credits shall be calculated based upon the impact fee schedule in effect at the time of demolition. These credits shall be deducted from the gross impact fee calculated for the NEW DEVELOPMENT.

3. The COUNTY shall not issue demolition credits for demolitions not associated with NEW DEVELOPMENT.

Section Fifteen. Establishment of Service Areas.

There are hereby established service areas for the County in accordance with the boundaries set forth on Exhibit A of this Ordinance. The funds collected pursuant to this Ordinance shall be expended within the service area from which they were collected, in accordance with the provisions of Section Sixteen of this Ordinance.

Section Sixteen. Use of Funds Collected.

1. The funds collected pursuant to this Ordinance and Ordinance ODT-021-89, as amended, shall be used in the same manner and for the same purposes as motor fuel tax money allotted to the County under the provisions of 605 ILCS 5/5-701 et seq., solely for road improvements capital costs that are specifically and uniquely attributable to the development charged the fee. In no event shall funds be expended to alleviate existing deficiencies in the County's road, street or highway systems. The funds shall be expended on road improvements within the service area or areas from which they were collected, as specified in the COMPREHENSIVE ROAD IMPROVEMENT PLAN. In the event that a service area boundary is

the centerline of a County road or intersection, the COUNTY ENGINEER may use the funds to complete the road improvements to the opposite side of the road or right of way. Co-mingling of funds with regular highway, local gasoline or motor fuel tax funds on projects is permissible to the extent that regular tax funds are used to pay for at least the cost of alleviating the existing deficiencies. The COUNTY ENGINEER shall provide a written justification of the allocation of impact fee funds whenever such funds are allocated to projects that will remedy existing deficiencies, demonstrating that the impact fee funds are not used for such deficiencies.

2. Any expenditure or encumbrance of impact fee funds used to acquire right of way shall be expended or encumbered in conjunction with the construction associated with that right of way and shall begin within five (5) years from receipt of the funds used to acquire the right of way.

3. The impact fees collected by the County pursuant to this Ordinance shall be kept separate from other funds of the County.

4. A "Road Improvement Impact Fee Fund" shall be established for each service area established in Section Fifteen of this Ordinance to insure that the fees collected are appropriately earmarked and spent for road improvement capital costs in accordance with the provisions of this Ordinance. In the event that any municipality enters into an intergovernmental agreement for the collection of a Fair Share Road Improvement Impact Fee for municipal roads, an additional Road Improvement Impact Fee Fund shall be established for each of the service areas in which the municipality is located to insure that the municipal component of the fee is expended on municipal projects within the district in which it is collected.

5. Road improvement impact fees collected shall be accrued to the fund established for the service area in which the new development is proposed.

6. Any funds on deposit not immediately necessary for expenditure shall be invested in interest bearing accounts designated solely for such funds for each service area. All interest derived from these investments shall be retained in the appropriate fund and used for road improvements authorized in this Ordinance.

7. The County shall provide that an accounting be made annually for any account containing impact fee proceeds and interest earned. Such accounting shall include, but shall not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds, the amount of funds expended on road improvements, and a list of the credits given. The County shall publish the results of the accounting in a newspaper of general circulation within DuPage County at least three (3) times. The notice shall also state that a copy of the accounting report shall be made available to the public for inspection at reasonable times. A copy of the report shall be given to the Advisory Committee.

Section Seventeen. Refunds.

1. Any impact fee collected may be returned to the FEE PAYER if the approved new development is cancelled due to non-commencement of construction before the funds have been spent or encumbered by contract. Refunds may be made in accordance with this Section, provided that the FEE PAYER or his or her successor in interest files a written request for a refund within one (1) year of the date that the fees were required to be encumbered by contract.

2. Impact fees collected shall be encumbered for the construction of roadway facilities within five (5) years of the date of collection. In determining whether the funds have been encumbered, the funds should be accounted for on a first-in-first-out (FIFO) basis.

3. The fees collected pursuant to this Ordinance shall be returned to the FEE PAYER only upon receipt of a written refund Affidavit. The Affidavit shall include the following information:

a. A notarized sworn statement that the FEE PAYER paid the impact fee for the property and the amount paid;

b. A copy of the dated receipt issued by the County for payment of the fee;

c. A certified copy of the latest recorded deed for the property;

- d. A copy of the most recent ad valorem tax bill; and
- e. A sworn statement of entitlement.

4. Within ten (10) working days of receipt of the written request, the COUNTY ENGINEER shall determine if it is complete. If the COUNTY ENGINEER determines the refund request is not complete, the COUNTY ENGINEER shall send a written statement specifying the deficiencies by mail to the PERSON submitting the request. Unless the deficiencies are corrected, the COUNTY ENGINEER shall take no further action on the request.

5. When the COUNTY ENGINEER determines the request for refund is complete, the COUNTY ENGINEER shall review it within fifteen (15) working days, and shall approve the proposed refund if the COUNTY ENGINEER determines the FEE PAYER has paid an impact fee which the County has not spent or encumbered within five (5) years from the date the fees were paid.

6. When the money requested is still in a fund and has not been spent or encumbered within five (5) years of the date the fees were paid, the money shall be returned along with interest at a rate which is seventy percent (70%) of the prime commercial rate in effect at the time that the fee is imposed, less three percent (3%) of the total fee to defray the costs of administration.

7. Refunds may be made at the discretion of the COUNTY ENGINEER without application in any case where inadvertent mathematical overpayment has been made.

Section Eighteen. Exemptions.

The following development shall be exempted from payment of the fair share road improvement impact fee imposed in this Ordinance:

1. Alterations or expansion of an existing dwelling unit where no additional units are created and the use is not changed;

2. The internal alteration of a non-residential unit of less than 25,000 square feet where (a) no additional useable square feet of space are added, (b) where the construction or

expansion of square footage does not require a zoning change, or (c) where the alteration is required by the County's or a Municipality's building code;

3. The construction of accessory buildings which are not dwelling units and which do not constitute an increase in intensity of use;

4. The replacement of a destroyed or partially destroyed building with a new building of the same size and use;

5. Publicly owned and operated school buildings; and

6. Public buildings owned, operated and occupied by government agencies.

Section Nineteen. Advisory Committee.

1. An Advisory Committee has previously been established by the County in compliance with the requirements of the new impact fee statute to assist the County in the recommendation of land use assumptions and the development of the COMPREHENSIVE ROAD IMPROVEMENT PLAN. After the effective date of this Ordinance, the Advisory Committee shall continue to have the following duties:

a. Report to the County on all matters relating to the imposition of impact fees;

b. Monitor and evaluate the implementation of the COMPREHENSIVE ROAD IMPROVEMENT PLAN and the assessment of impact fees;

c. Report annually to the County with respect to the progress of the implementation of the COMPREHENSIVE ROAD IMPROVEMENT PLAN; and

d. Advise the County of the need to update or revise the land use assumptions, COMPREHENSIVE ROAD IMPROVEMENT PLAN, or impact fees.

2. The County shall adopt procedural rules to be used by the Advisory Committee in carrying out the duties imposed by this Section. The County shall cooperate with the Advisory

Committee and shall make available all professional reports relating to the development and implementation of the land use assumptions, the COMPREHENSIVE ROAD IMPROVEMENT PLAN, and the periodic up-dates of the plan.

Section Twenty. Review of Land Use Assumptions and Update of COMPREHENSIVE ROAD IMPROVEMENT PLAN.

The Advisory Committee shall periodically review the land use assumptions and the COMPREHENSIVE ROAD IMPROVEMENT PLAN, approved by Resolution DT-0101-00, in accordance with Section Nineteen, and shall advise the County of the need to update these documents. The COMPREHENSIVE ROAD IMPROVEMENT PLAN shall be updated every five (5) years. The five (5) year period shall commence on the date of the original adoption of the COMPREHENSIVE ROAD IMPROVEMENT PLAN, and shall be conducted in accordance with statutory requirements.

Section Twenty One. Review of Ordinance.

1. The Transportation Committee shall periodically review the factors used to calculate the impact fee schedule in Section Eleven, the factors used for an individual assessment provided for in Section Twelve, the administration of this Ordinance and the PROCEDURES MANUAL, and shall revise the impact fee schedule in accordance with any changes in the factors used in calculating the fee. The review shall not affect the applicability of the impact fee schedule in Section Eleven or the factors in Section Twelve until a revision to the schedule or the factors is approved by the County Board. If the COUNTY ENGINEER determines that the arithmetic average of the increase in the fees will be five percent (5%) or greater from the previous fee schedules, the County shall hold a public hearing regarding the revisions to the fee schedules. The County shall give thirty (30) days notice of such public hearing by publication in a newspaper of general circulation within DuPage County. A majority vote of the members of the County Board then holding office is required before the fees may be increased. In no event shall this paragraph or any other section of this Ordinance be construed to prevent the DuPage County Board from taking any action to amend this Ordinance after its effective date.

2. In addition to the periodic review of factors, the County shall apply a nationally recognized cost inflation factor to the impact fees on an annual basis. This cost factor shall be based upon the McGraw-Hill Engineering News Record Construction Cost Index for the City of Chicago which is updated monthly and annually. This adjustment shall be applied annually and shall go into effect at the beginning of the succeeding fiscal year. As in Section 21.1, if the COUNTY ENGINEER determines that the arithmetic average of the increase in the fees will be five percent (5%) or greater from the previous fee schedules, the County shall hold a public hearing regarding the revisions to the fee schedules. The County shall give thirty (30) days notice of such public hearing by publication in a newspaper of general circulation within DuPage County. A majority vote of the members of the County Board then holding office is required before the fees may be increased.

3. Unless there has been a State or County gas tax increase or decrease, any fee increase or decrease shall become effective on December 1st of the year that the fees are increased or decreased. If there has been a gas tax increase or decrease, the revised fee schedules may be considered by the Transportation Committee at its next regularly scheduled meeting and then by the County Board at its next subsequently scheduled meeting and shall be revised to reflect the allocation of such tax funds to transportation capacity improvements.

4. An annual report shall be provided to the County Board that examines the expenditure of the impact fee funds collected under the provisions of this ordinance and analyzes the effectiveness of such expenditures. The first annual report shall be produced on or before June 1, 1990, and a report shall be produced prior to June 1st of every year thereafter.

Section Twenty Two. Effective Date of Ordinance.

This Ordinance shall become effective on December 9, 2008.

Section Twenty Three. Transition.

1. This Ordinance amends Ordinance ODT-021-89, as previously amended. Any PERSON who has paid or became obligated to pay an impact fee or who has entered into a Fair Share or Credit Agreement under the terms of a preceding ordinance shall continue to be bound by the fee schedule of that ordinance.

2. Any fee collected or payable pursuant to a preceding ordinance, which has heretofore been allocated to a service area described in the preceding ordinance, shall be disbursed only within said service area.

Section Twenty Four. Penalties.

1. The COUNTY ENGINEER may initiate, through the State's Attorney, judicial proceedings to collect any fee that has become due under this or any predecessor Ordinance.

2. Unless a FEE PAYER is currently appealing a fee, in addition to other remedies provided by other applicable laws, when an impact fee required by this Ordinance has not been paid, the County or the COUNTY ENGINEER shall not issue to the violator any subsequent approvals or permits for any other development in the County and shall suspend review of any pending applications or petitions of the violator until the impact fee has been paid.

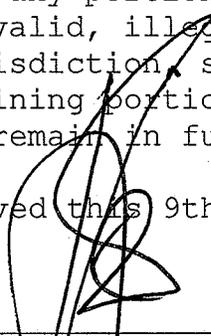
Section Twenty Five. Distribution.

Certified copies of this Ordinance shall be sent to each of the thirty-five (35) municipalities having territory within DuPage County, the Illinois Department of Transportation, the DuPage Mayors & Managers Conference, and one copy to the DuPage County Treasurer and the DuPage County Auditor.

Section Twenty Six. Severability.

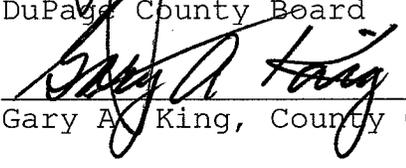
In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner effect the remaining portions or sections of the Ordinance which shall remain in full force and effect.

Enacted and approved this 9th day of December, 2008 at Wheaton, Illinois.



Robert J. Schillerstrom, Chairman
DuPage County Board

ATTEST:



Gary A. King, County Clerk

Ayes: 15
Absent: 3

