

ORDINANCE NO. 10-02-16

AN ORDINANCE ADOPTING ROAD IMPACT FEES

Effective January 1, 2017

WHEREAS, the City Council of the City of Noblesville finds that it is reasonable and necessary to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the City of Noblesville by providing for an equitable program to fund the capital costs of new road and street infrastructure necessary to serve newly developing areas of the City: and,

WHEREAS, the City Council further finds that it is reasonable and necessary to promote the orderly development of the City by establishing standards by which the City may require that new development shall pay an impact fee representing the development's proportionate share of the capital costs for new road and street infrastructure necessary to serve the new development; and,

WHEREAS, the City Council finds that new development should not be required to pay a fee for the capital costs of such new road and street infrastructure greater than the development's proportionate share of the capital costs of such infrastructure which is needed to serve such development; and,

WHEREAS, the City of Noblesville, Hamilton County, Indiana, has caused to be prepared a comprehensive Traffic Impact Analysis prepared by A & F Engineering Co., Inc., dated December 2016 (the Analysis), which hereafter may also be referred to as the Traffic Impact Analysis as Exhibit A to this Ordinance and made a part hereof; and,

WHEREAS, the Analysis will not be recorded as part of this Ordinance, but copies shall be available for inspection in the Office of the Clerk of the City of Noblesville upon reference to this Ordinance; and,

WHEREAS, it has been determined by the City of Noblesville that it is beneficial that the Analysis will combine all other existing zones previously established into one zone for the entire City and,

WHEREAS, the Analysis includes all areas which have been annexed by the City of Noblesville or which will subsequently be annexed by the City of Noblesville, all of which is included in the Area where the City exercises planning and zoning jurisdiction; and,

WHEREAS, the cost of implementing the thoroughfare improvement recommendations (the Zone Improvement Plan) described within the Traffic Impact Analysis for the City in its entirety exceeds (1) the income capacity of the City through its ad valorem property tax receipts or other tax distributions allocated to road and street improvements relative to the chronological needs of the City for said improvements; (2) the general obligation bond capacity of the City based upon its net assessed valuation; or (3) the revenue bond potential of the City based upon any existing means of acquiring revenue related to such improvements; including the circuit breaker legislation imposed by the Indiana General Assembly; and,

WHEREAS, because of the size of the City, considering both its population and geographic area, as well as the distribution of public and private institutions, services and other facilities through the City, road or street improvements generally benefit the citizens and businesses of throughout the City; and,

WHEREAS, it has been the stated objective of the City that the Traffic Impact Analysis should result in the determination of an impact fee which meets the rational nexus test as that test is understood by current applicable case law and statutory law; and,

WHEREAS, the Plan Commission of the City of Noblesville, Hamilton County, Indiana, held a public hearing on January 19, 2016 and determined that the Traffic Impact Analysis for the City prepared by A&F Engineering Co., Inc., was consistent with the Comprehensive Plan and Thoroughfare Plan of the City; and recommended the approval of the Analysis to the City Council; and;

WHEREAS, the purpose of this Ordinance is declared not to deter growth, remedy existing infrastructure deficiencies or pay for maintenance or other non "capital costs", but instead to impose an equitable fee upon new development to pay the costs of the improvements to the roads and streets of the City which are necessitated by new development.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Noblesville, Hamilton County, Indiana, meeting in regular session as follows:

Section 1. Term of Ordinance.

This Ordinance shall expire and become void five (5) years after its effective date as required by I.C. 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 for the City Infrastructure Impact Zone (the Zone), effective January 1, 2017, the borders of which are co-terminus with existing corporate boundary of the City of Noblesville, Hamilton County, Indiana, as they may be extended or altered from time to time through annexation, over all of which the City exercises planning and zoning jurisdiction and provides services.

The Council finds that there is a functional relationship between the components of all road and street thoroughfares listed in the Traffic Impact Analysis and that such road and street Improvement Plan provides a reasonably uniform benefit to all of the citizens throughout the city as of the adoption of this Ordinance. The Council further finds that all areas within the impact zone which are contiguous as required in I.C. 36-7-4-1316. Except as provided below, this Ordinance shall apply uniformly to all developments within the impact zone hereby established for which the City of Noblesville may require an improvement location permit and which create a need for new and additional infrastructure. This Ordinance shall not apply to:

- (1) development meeting the requirements set forth in I.C. 36-7-4-1322 (g);
- (2) improvements which do not require a structural building permit;
- (3) 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 of the land, or intensity thereof, has not changed;

- (4) 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.

Section 3. Zone Improvements Plan. As a pre-condition to the adoption of this Ordinance, the City has undertaken a comprehensive and detailed Traffic Impact Analysis through the employment for that purpose of A&F Engineering Co., Inc., which Analysis is dated

December 2015 , the Zone Improvement Plan does contain the following elements:

(a) 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 ten (10) years commencing with the date of adoption hereof.

(b) A reasonable definition of the community Level of Service (LOS) for the Impact Zone and a determination that a community LOS of Level D for intersections and Level E for roadway service is the level of service to be used in the Analysis.

(c) A reasonable determination of the current level of service for the infrastructure within the Impact Zone.

(d) A reasonable estimate of the nature, location, sequencing, and timing of the intersection, road, and street thoroughfare requirements and costs necessary to provide the community level of service for the developments contemplated in Sub-Paragraph (a) hereof.

(e) A reasonable estimate of the share of the road and street thoroughfare costs identified in Sub-Paragraph (d) hereof that will be allocated to:

(1) Raise the current level of service or existing conditions to the proposed level of service for existing development (Today's Costs); or

(2) Provide service to new development (Impact Fee Costs), which costs are summarized in pages 14-21 of the Analysis which are attached.

(f) A reasonable estimate of the costs needed to be paid from the City's distributive share of County Income Tax, tax increment, or other sources to finance the cost identified in Sub-Paragraph (e) (1) above.

(g) A description of the nature and location of existing infrastructure in the Impact Zone.

In addition, the City Council does hereby specifically adopt the Zone Improvement Plan contained in the Analysis as an official part of the Comprehensive Plan of the City of Noblesville, as recommended by the Noblesville Plan Commission, pursuant to I.C. 36-7-4-500 and following.

Section 4. Establishment of Road Impact Fee. Based upon the Traffic Impact Analysis previously referred to and which is made a part of this Ordinance, the City Council determines that the cost per twenty four hour trip is in the amount of Two Hundred and Sixty Nine Dollars (\$269) as shown on page 21 of the Analysis. Notwithstanding the sufficient evidentiary basis for

such calculation, the City Council does now, legislatively establish the Impact Fee per twenty-four hour trip in the amount of Two Hundred and Fifty Dollars (\$250). The number of twenty-four (24) hour trips are to be based upon calculations taken from "Trip Generation" (most recent edition thereof), a study published by the Institute of Transportation Engineers. (ITE) In legislatively providing for Impact Fee in an amount less than that justified by the Traffic Impact Analysis the City acknowledges that the new residential development will generate County Option Income Taxes which will help provide a small amount of the cost of improving the infrastructure to accommodate new development. However, substantially all of the City's County Option Income Tax will be used to fund the operating budget of the City and provide for capital needs of the City other than roads. Therefore, the City believes the \$19 per trip reduction far exceeds any fee deduction required by IC 36-7-4-1320(d)(i).

The City 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 A. & F. Engineers in the process of developing the Zone Improvement Plan, and specifically instructs the employees of the City to make such data and other information inclusively available to anyone for review during regular business hours. The City Council further authorizes A&F Engineers to sell or otherwise distribute copies of the Improvement Plan and any of the other data collected upon which they relied, at a cost reasonably intended to compensate them for the cost of reproduction only.

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 an improvement location permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on infrastructure caused by the change in use, redevelopment, or modification.

Section 5. Credit In Lieu of Payment; Exemptions. Any person or entity obligated to pay a fee pursuant to the terms of this Ordinance may, with the prior approval of the City, have the option of financing, constructing and dedicating road and street thoroughfare infrastructure instead of making all or part of any impact fee payment which may be due, so long as such financing, construction and dedication are for capital improvements identified in the Zone Improvement Plan; are accomplished pursuant to the thoroughfare improvement plan of the City; and are constructed in accordance with the road and street specifications for such road or street to be improved in force within the City's jurisdiction at the time of construction. Such fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit upon a

verified certification from a registered engineer or architect or a contractor of the actual costs of constructing such road and street thoroughfare improvements which are identified in the Zone Improvement Plan. Such certification shall be presented prior to the issuance of the improvement location permit. In the event construction costs of the infrastructure built does not equal the amount of the impact fee due pursuant to the calculation provided for in the schedule set forth in Section 4 hereof, the remaining balance shall be due in accordance with the provisions stated hereafter.

Credits against impact fees otherwise due shall be allowed pursuant to this Section for all infrastructure and improvements constructed or furnished in accordance with I.C. 36-7-4-1335. 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. The City commits to pay the costs identified in the traffic fee analysis to raise the current level of service to the community level of service, thereby remediating existing deficiencies identified in the zone improvement plan, from the City's distributive share of the County Option Income Tax or tax increment.

Section 7. Impact Fee Due Upon Issuance of Structural Building Permit. 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 City of Noblesville, Hamilton County, Indiana. 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 I.C. 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 Five Thousand Dollars (\$5,000), in which case an installment payment plan may be requested by the applicant in accordance with the terms set forth in I.C. 36-7-4-1324(a), (b), (c), and (d). The Board of Public Works and

Safety approve reasonable requests for installment payments consistent with said code provisions. 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.

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 structural building 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 by the City and providing such written calculation to the landowner or its designee. The City shall make such assessment within Thirty (30) days of the date of such voluntary request or at the issuance of the improvement location permit with or without a request. No fee shall be assessed prior to the effective date of this Ordinance; however, any calculation made prior to the effective date of this Ordinance shall be conclusive as to the maximum amount of the impact fee.

Section 8. Lien Rights Established. Pursuant to I.C. 36-7-4-1325, the City of Noblesville acquires a lien against the real estate which is the subject of the impact fee on the date a fee is assessed, or upon the effective date of *this* Ordinance, whichever is last. Upon adoption, *this* ordinance shall be recorded, and thereafter, it shall constitute constructive notice of the lien rights of the City for any unpaid impact fee from the date of recording. The City may, in its discretion, record 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 by the recording of *this* Ordinance.

Section 9. Form of Receipt. The Controller of the City of Noblesville shall issue a receipt for any and all impact fees collected, and the form of such receipt shall be as follows:

"Received of *this* _____ day of the sum of \$ _____ in (full) (partial) satisfaction of impact fees due pursuant to Ordinance No. 10-02-16 relating to improvements to be constructed on the real estate described on Exhibit A, attached hereto, made a part hereof, and subject to lien rights in favor of the City of Noblesville in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: \$ _____ . This impact fee is dedicated to the creation of the following infrastructure element in accordance with the Zone Improvement Plan.

Controller, City of Noblesville"

Section 10. Appeals. Any fee payer who believes itself to be aggrieved by the calculation of the impact fee, may appeal from such calculation to the Noblesville Impact Fee Review Board created hereafter and the Noblesville Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

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

Upon conclusion of the presentation of evidence, the Noblesville Impact Fee Review Board shall make a determination within not more than (30) days, upon the facts presented and may make such adjustments in the impact fee as they believe are appropriate under the circumstances, if any.

An appeal under this Section must be filed not later than Thirty (30) days after the issuance of the structural building permit. The appeal shall be initiated with the filing of a Petition for Review with the Controller's office, together with a filing fee in the amount of One Hundred Dollars (\$100). The filing fee shall be refunded in full (1) if the Petition for Review is granted and the impact fee is eliminated, reduced, or adjusted by the Noblesville Impact Fee Review Board, by independent

action of the City, or by a Court having jurisdiction, and, (2) if the reviewing body determines that the amount of the fee, reductions, or credits were arbitrary or capricious. The Petition for Review shall be in a form calculated to inform the Noblesville Impact Fee Review Board of the nature of the complaint, the parties to the action, and the relief requested. In addition, the petition shall describe the new development on which the impact fee has been assessed, all facts related to the assessment of the impact fee, and 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 the enabling statute.

The City 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. However, the lien imposed by this Ordinance shall be effective as of the date set out in Section 8 above and may be collected by foreclosure of the lien which shall include interest, costs, and attorney's fees. If the impact fee totals One Thousand Dollars (\$1,000) or less, the City 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 Road and Street Impact Fee Fund. There is hereby established the Road and Street Impact Fee Fund of the City of Noblesville by consolidating all existing zones into one fund and zone. 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. Said Fund shall consist of an account for each Impact Zone within the City. Upon the creation of additional Impact Zones, a separate account shall be maintained for each separate Impact Zone established within the City of Noblesville. 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 Controller of the City of Noblesville 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. Pursuant to I.C. 36-7-4-1332(e), the Board of Public Works and Safety of the City is designated as the City official responsible for acting upon refund requests. In order to facilitate refunds when they may be due, the Controller 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 Pursuant to this Ordinance. Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the City of Noblesville, acting by and through its City Council, which, for the purpose of this Ordinance is identified as the "infrastructure agency" contemplated by I.C. 36-7-4-1317:

- (a) Providing funds to be utilized by the City of Noblesville for the purpose of paying the capital costs of new road and street infrastructure that is necessary to serve the new development within the corporate limits of the City identified that are identified in the Zone Improvement Plan;
- (b) An amount not to exceed Five Percent (5%) of the annual collections of the fee to be utilized for expenses incurred by the City 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 road and street infrastructure described in subparagraph (a) above.

Section 13. Establishment of Noblesville Impact Fee Review Board. There is hereby created the Noblesville Impact Fee Review Board to be appointed by the Mayor and consisting of three (3) citizen members. A member of the Noblesville Impact Fee Review Board may not be a member of the Noblesville Advisory Plan Commission. One member of the Noblesville Impact Fee Review Board shall be a real estate broker licensed in the State of Indiana. One member shall be a civil engineer licensed in Indiana. The third member shall be a certified public accountant. Each member shall serve at the pleasure of the Mayor of the City for calendar year terms commencing with their initial appointment and concluding on December 31st of the year in which he or she is appointed, unless reappointed.

In the event of a conflict of interest, or other condition which causes a duly appointed member of the Noblesville Impact Fee Review Board to disqualify himself or herself on any matter before the Board, such member shall notify the Mayor in writing of their intent not to participate in such matter. Thereafter, the Mayor may appoint a replacement member for the limited purpose of hearing that petition for which the regular member is disqualified. Any such replacement member shall meet the qualifications of the member he or she is replacing.

The Noblesville Impact Fee Review Board shall have only those duties and responsibilities established in I.C. 36-7-4-1338 as from time to time amended and any additional duties and responsibilities as imposed by Ordinance. Upon the organization of the Noblesville Impact Fee

Review Board, the members shall establish rules of procedure to the extent they are consistent with state law, and, specifically, to provide the ways and means to carry out the specific provisions of the enabling statute regarding petitions for review, refunds, credits, and the like. Said rules shall specifically provide that in the event that no development occurs, or only a portion of the anticipated development occurs, a refund in whole or in part of such fee paid shall be made, with interest. The Board may impose reasonable requirements to insure that either no development will occur, or no development will be greater than requested will occur upon the real estate which was the subject of the initial assessment.

Members of the Noblesville Impact Fee Review Board shall serve without compensation. At the first meeting after the first of January in each year, the membership shall elect from the then duly appointed members a chairperson. The chairperson shall be responsible for conducting the business of the Board.



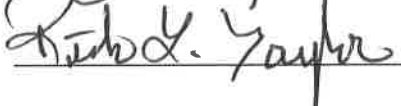





Section 14. House Enrolled Act No. 1467. The City Council of the City of Noblesville, Hamilton County, Indiana, specifically acknowledges the existence of a law adopted by the General Assembly of the State of Indiana, codified at Indiana Code 36-7-4-1300, which regulates the imposition of impact fee ordinances by municipal corporations within the State of Indiana. It is the intent of the City of Noblesville 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 I.C. 36-7-4-1300 et. seq. shall control in the event of conflicts, which are unintended by the City Council.

Section 15. 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 City has no control. The City Council may, therefore, not less than once each year, cause a review to be made by City 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 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 Indiana Code 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 16. Effective Date. This ordinance shall be effective on January 1, 2017 until said date, the Road Impact Fee Ordinance presently including the land included within the Impact Fee Zone described shall remain in full force and effect.

All OF WHICH RESOLVED by the Common Council of the City of Noblesville this 15th day of March, 2016

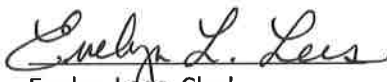
COMMON COUNCIL OF THE CITY OF NOBLESVILLE

 _____ ROY JOHNSON _____
 _____ CHRIS JENSEN _____
 _____ RICK TAYLOR _____
_____ WIL HAMPTON _____
 _____ GREGORY P. O'CONNER _____
 _____ MEGAN WILES _____
 _____ BRIAN AYER _____
 _____ MARK BOICE _____
 _____ MARY SUE ROWLAND _____

APPROVED and signed by the Mayor of the City of Noblesville, Hamilton County, Indiana, the 15th day March, 2016.

 _____
John Ditslear, Mayor
City of Noblesville, Indiana

ATTEST:

 _____
Evelyn Lees, Clerk
City of Noblesville, Indiana

