

ORDINANCE NO. 24-43



**AN ORDINANCE ESTABLISHING AN EQUITABLE IMPACT FEE FOR THE
PURPOSE OF PLANNING AND FINANCING ROAD AND STREET
INFRASTRUCTURE NEEDED TO SERVE NEW DEVELOPMENT IN THE CITY OF
WESTFIELD, INDIANA**

WHEREAS, the Common Council (“Council”) of the City of Westfield, Indiana (“City”) 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 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;

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 throughout the City, any road or street improvement benefits all citizens of the City equally;

WHEREAS, the Council 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 a road impact fee, in accordance with Ind. Code § 36-7-4-1300 *et seq.*, representing the development’s proportionate share of the capital cost of new road and street infrastructure necessary to serve new development in the City;

WHEREAS, the Council finds that new development should not be required to pay a fee for the capital costs of 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;

WHEREAS, to further the objectives of the Council, and as a prerequisite to the adoption of this Ordinance, the City engaged A&F Engineering Co., LLC to prepare the 2024 Westfield Road Impact Fee Zone Improvement Plan (“Zone Improvement Plan”);

WHEREAS, the Council adopted the Zone Improvement Plan as part of the Westfield-Washington Comprehensive Plan by adoption of Resolution 24-127 on July 8, 2024, in accordance with Ind. Code § 36-7-4-1318 and 36-7-4-500 *et seq.*;

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WHEREAS, it has been the stated objective of the City that the analysis contained in the Zone Improvement Plan supports and should result in the implementation of a road impact fee, which meets the requirements of Indiana law;

WHEREAS, the Westfield-Washington Township Advisory Plan Commission (“Plan Commission”) properly noticed, advertised, and conducted a public hearing on this Ordinance on July 15, 2024;

WHEREAS, after conducting a public hearing and having given due deliberation to the Zone Improvement Plan, which provides the basis for this Ordinance, the Plan Commission voted to favorably recommend adoption of this Ordinance to the Council;

WHEREAS, the Plan Commission certified this Ordinance to the Council on July 15, 2024; and

WHEREAS, the purpose of this Ordinance is not to deter growth, remedy existing infrastructure deficiencies, or pay for maintenance or other “non-capital costs.”

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Westfield, Indiana as follows:

Section 1: Effective Date and Limitation on Imposition of Impact Fee

This Ordinance shall become effective on January 22, 2025 (“Effective Date”), which date is not earlier than six (6) months after the date of adoption of this Ordinance. This Ordinance shall expire and become void five (5) years after the Effective Date, and no road impact fee may be collected after such time unless a replacement impact fee ordinance is adopted by the Common Council (“Council”) of the City of Westfield Indiana (“City”).

Section 2: 1300 Series—Impact Fees

The Council specifically acknowledges the existence of Ind. Code § 36-7-4-1300 through Ind. Code § 36-7-4-1342 (“1300 Series”), that regulates the imposition of impact fees by municipal corporations within the State of Indiana. It is the intent of the Council and the City to comply with the 1300 Series, and this Ordinance shall be construed in all respect to be consistent with the 1300 Series. The substantive and procedural requirements of the 1300 Series shall control in the event they conflict with this Ordinance.

Section 3: Identification of Responsible Infrastructure Agency

The City is the infrastructure agency, as the term is defined in Ind. Code § 36-7-4-1310, that is responsible for acquiring, constructing, and providing road infrastructure to the public in the City.

Section 4: Establishment of Impact Zone

There is hereby established an impact zone for road infrastructure in the City (“Impact Zone”), the borders of which are co-terminus with the existing corporate boundaries of the City, as they may be extended from time to time through annexation. The City has planning and zoning jurisdiction over the Impact Zone. The Council specifically finds that there is a functional relationship between the components of the City’s road infrastructure in the Impact Zone and the City’s road infrastructure provides a reasonably uniform benefit throughout the Impact Zone as of the Effective Date of this Ordinance. The Council further finds that all areas within the Impact Zone are contiguous, as required by Ind. Code § 36-7-4-1316.

Section 5: Application of Ordinance

This Ordinance applies to any development that is located within the Impact Zone and for which the City requires a structural building permit. This Ordinance shall not apply to:

- a. Developments meeting the requirements set forth in Ind. Code § 36-7-4-1322(g);
- b. Improvements which do not require a structural building permit;
- c. Improvements that do not create a need for additional road infrastructure, including the erection of a sign, the construction of a fence, or the interior renovation of a building not resulting in a change in use; and
- d. Unless requested by the landowner, “qualified property” as the term is defined in Ind. Code § 36-1-8-18.

Section 6: Zone Improvement Plan

- a. As a precondition to the adoption of this Ordinance, the City engaged A&F Engineering to prepare the Westfield Road Impact Fee Zone Improvement Plan

("Zone Improvement Plan"), dated June 2024, and which is a comprehensive and detailed road impact analysis for the Impact Zone.

- b. The Council now finds that the Zone Improvement Plan contains and complies with all of the statutory requirements outlined Ind. Code § 36-7-4-1318.
- c. The Zone Improvement Plan was adopted and became effective when the Council adopted the Zone Improvement Plan as part of the Westfield-Washington Township Comprehensive Plan pursuant to Resolution No. 24-127.
- d. The Zone Improvement Plan, as adopted, is incorporated herein by this reference. The Council also hereby makes a part of the record of these proceedings all of the data collected, calculations made, and conclusions reached by A&F Engineering in the process of developing the Zone Improvement Plan.
- e. The employees of the City shall make the Zone Improvement Plan publicly available as a public record of the City for review during the City's regular business hours.

Section 7: Establishment of Road Impact Fee

Based upon the analyses in the Zone Improvement Plan, the Council now finds, determines, establishes, and adopts a road impact fee in the amount of \$362.44 per 24-hour generated trip. The number of 24-hour weekday trips generated by each new development will be determined on a case-by-case basis using the methods and procedures outlined in the most recent edition of the *ITE Trip Generation Manual*, *ITE Trip Generation Handbook* and relevant information provided by the developer. The number of generated 24-hour trips for the new development is then multiplied by the Impact Fee to determine the collected road impact fee ("Impact Fee").

Section 8: Impact Fee Assessment Date

If the fee payer so requests, the amount of the Impact Fee shall be assessed not later than thirty (30) days after the earlier of: (1) the date the fee payer obtains an improvement location permit for the development; or (2) the date the fee payer voluntarily submits to the City a development plan for the development and evidence that the property is properly zoned for the proposed development. Such plan shall be in the form prescribed by the Westfield-Washington Township Unified Development Ordinance and shall contain reasonably sufficient detail for the City to calculate the Impact Fee. If no such request is made, the Impact Fee shall be assessed at the time the

structural building permit is issued. For purposes of this Section 8, "assessed" shall mean the act of calculating the amount of the total Impact Fee.

Section 9: Impact Fee Due Date; Installment Payment Plan

- a. An Impact Fee imposed pursuant to this Ordinance shall be due and payable on the date of issuance of the structural building permit from the City for the new development on which the Impact Fee is imposed.
- b. For a phased development, the Impact Fee shall be prorated for purposes of payment according to the impact of the parcel for which the structural building permit is issued in relation to the total impact of the development. Only the prorated portion of the assessed Impact Fee is due and payable on the issuance of the permit.
- c. A fee payer may be eligible to pay the Impact Fee in installment payments if the Impact Fee is greater than Five Thousand Dollars (\$5,000). In accordance with Ind. Code § 36-7-4-1324, an installment payment plan under this Section 9 must at least allow that:
 - i. A maximum of Five Thousand Dollars (\$5,000) or five percent (5%) of the Impact Fee, whichever is greater, may become payable on the date the structural building permit is issued for the development on which the fee is imposed;
 - ii. The first installment payment may not become due and payable less than one (1) year after the date the structural building permit is issued; and
 - iii. The last installment payment may not become due and payable less than two (2) years after the date the structural building permit is issued.
- d. A reasonable rate of interest, equal to the prejudgment rate of interest in effect at the time the interest accrues, may be charged if a fee payer elects to pay the Impact Fee in installments. Any such interest accrues only on the portion of the Impact Fee that is outstanding and does not begin to accrue until the date the structural building permit is issued for the development or the part of the development on which the Impact Fee is imposed. If all or part of the installment is not paid when due and payable, the amount of the installment shall be increased on the first day after the installment is due and payable by a penalty

amount equal to ten percent (10%) of the installment amount that is overdue, and interest shall be charged on said penalty amount.

Section 10: Credit in Lieu of Payment; Exemptions

- a. A fee payer may receive a credit against the Impact Fee if the owner or developer of the development constructs or provides road infrastructure or any other "improvement," as the term is defined in Ind. Code § 36-7-4-1335(a), after January 1, 1989 to the City for the benefit of the public, so long as the road infrastructure or improvement is constructed pursuant to the Zone Improvement Plan or in accordance with the City's specifications in force under the City's jurisdiction at the time.
- b. The amount of the credit shall equal the sum of the cost of constructing or providing the road infrastructure or improvement and the fair market value of land, real property interests, and site improvements provided to the City.
- c. The amount of the credit shall be determined at the date the Impact Fee is assessed. If an assessment is not requested by the fee payer, the amount of the credit shall be determined at the time the structural building permit is issued. The amount of the credit shall be determined jointly by the City and the person constructing or providing the infrastructure or improvement after obtaining a verified certification from a registered engineer, architect, or contractor of the actual costs of constructing and providing the road infrastructure or improvement to the City.
- d. The amount of a credit may be increased or decreased for the reasons stated in Ind. Code § 36-7-4-1335(e).
- e. If the person providing the road infrastructure or improvement for the credit is not the fee payer, the person providing the infrastructure or improvement may allocate all or some of the credit to the fee payer by submitting written and notarized documentation certifying the same in writing.
- f. The person providing the road infrastructure or improvement may designate in writing a reasonable and administratively feasible method of allocating credits to future fee payers.
- g. If the parties cannot agree on the amount of the credit, the fee payer or the person constructing or providing the infrastructure or improvement may file a

petition for determination of the amount of the credit with the City's Impact Fee Review Board ("Board"), established under Section 13 below, not later than thirty (30) days after the structural building permit is issued for the development on which the Impact Fee is imposed. The petition must be made on the form prescribed by the Board. A petition under this Section 10 may be made as part of an appeal proceeding under Section 15 below.

- h. Not later than thirty (30) days after the City receives a copy of a timely-filed petition for determination of a credit amount, the City shall provide the Board with its response to the petition, on the form prescribed by the Board.
- i. The Board shall determine the amount of the credit not later than thirty (30) days after the response is filed.
- j. A fee payer aggrieved by a final determination of the Board may appeal to the Circuit or Superior Courts of Hamilton County.

Section 11: Lien Rights Established

Pursuant to Ind. Code § 36-7-4-1325, the City acquires a lien against the real estate which is the subject of the Impact Fee on the date a structural building permit is issued. Upon adoption, this Ordinance shall be recorded, and thereafter, it shall constitute constructive notice of the lien rights of the City with respect to a parcel of real estate on which an Impact Fee is delinquent. The City may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate on which an Impact Fee is delinquent, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

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Section 12: Form of Receipt for Payment

The Clerk-Treasurer of the City shall issue a receipt for any and all Impact Fees collected on the following form:

_____ (fee payer) made payment to the City of Westfield, Indiana, this ____ day of _____, 20__, in the total sum of _____ (\$_____) in (full/partial) satisfaction of impact fees due pursuant to Ordinance No. ____ relating to improvements to be constructed on the real estate located on or around _____, and subject to lien rights in favor of the City of Westfield, Indiana in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: _____ (\$_____).

Clerk-Treasurer, City of Westfield, Indiana

Section 13: Impact Fee Review Board

- a. An Impact Fee Review Board ("Board") is hereby re-established. The Mayor shall appoint three (3) citizen members to the Board not later than six (6) months after adoption of this Ordinance. The Board members shall consist of the following:

One (1) member who is a real estate broker licensed in Indiana;
One (1) member who is an engineer licensed in Indiana; and
One (1) member who is a certified public accountant.

A Board member may not be a member of the Westfield-Washington Township Advisory Plan Commission.

- b. Board members shall serve a term of one (1) year commencing upon the date of their appointment. Each member shall continue to serve until his/her successor is appointed.
- c. In the event a member of the Board has a conflict of interest, the Mayor shall appoint a temporary replacement member, meeting the qualifications of the member being temporarily replaced, to dispose of the petition giving rise to the conflict of interest. If a member of the Board dies, resigns, or vacates office, the

Mayor shall appoint a replacement member meeting the qualifications of the member being replaced. The new member shall serve for the remainder of the vacated term.

- d. The Board is authorized to adopt by-laws, rules, regulations, and procedures as it may deem necessary for the proper conduct of its proceedings and the carrying out of its duties.
- e. Board members shall receive no salary but shall be entitled to reimbursement for any expenses necessarily incurred in the performance of their duties.
- f. The Board shall conduct its review of the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the procedures established in this Ordinance and Ind. Code § 36-7-4-1338(c).
- g. The Board shall have the powers and duties established in Ind. Code § 36-7-4-1338 and all other applicable provisions of the 1300 Series governing impact fees.

Section 14: Refunds

- a. A fee payer may be entitled to a refund of an Impact Fee for the reasons stated in Ind. Code § 36-7-4-1332.
- b. An application for a refund must be filed with the City's Director of Public Works not later than two (2) years after the right to a refund accrues under Ind. Code § 36-7-4-1332. The Director of Public Works will respond to the application within thirty (30) days of receipt by either rejecting the application or issuing a refund in part or in full.
- c. If a refund is approved, in whole or in part, the fee payer is entitled to interest from the date on which the Impact Fee was paid to the date the refund is issued. The interest rate shall be equal to the prejudgment rate of interest in effect at the time the interest accrues.
- d. If the City rejects the refund or approves only a partial refund, the fee payer may appeal the decision to the Board within sixty (60) days of the City's decision. An appeal application shall be filed with the Board on the prescribed form. The Board will hold a hearing on the appeal within forty-five (45) days of receipt of the appeal application. After a hearing, the Board will determine the amount of the refund, if any, including interest from the date the impact fee was paid to the

date the refund is issued. A party aggrieved by a final decision of the Board after a hearing may appeal the decision to the Hamilton County Circuit or Superior Court.

Section 15: Appeals

- a. A person against whom an Impact Fee is assessed may appeal the amount of the Impact Fee to the Board. An appeal of the amount of an Impact Fee may be made for the following reasons: (1) a fact assumption used in determining the amount of an impact fee is incorrect; or (2) the amount of the Impact Fee is greater than the amount allowed under Ind. Code § 36-74-1320, 1321 and 1322.
- b. To commence an appeal, the fee payer must file a petition for review of the Impact Fee on the prescribed form with the Board not later than thirty (30) days after issuance of the structural building permit for the development for which the Impact Fee is assessed. The petition must specify the following:
 - i. A description of the new development on which the impact fee has been assessed;
 - ii. All facts related to the assessment of the impact fee; and
 - iii. The reasons the petitioner believes the amount of the impact fee assessed is erroneous or is great than the amount allowed by the fee limitations set forth in the 1300 Series.
- c. The petition shall be filed with the Clerk-Treasurer and be accompanied by a filing fee of one hundred dollars (\$100). The filing fee may be refunded in full if:
 - i. The fee payer prevails;
 - ii. The amount of the impact fee or the reductions or credits against the fee is adjusted by the City, the Board, or a court; and
 - iii. The body ordering the adjustment finds that the amount of the fee, reductions, or credits were arbitrary or capricious.
- d. Upon receipt of a timely-filed petition on the prescribed form, the Board shall provide a copy of the petition to the City. The City shall provide the Board with a complete response to the petition on the form prescribed by the Board, not later than thirty (30) days after the City's receipt of the petition. The Board shall immediately forward a copy of the City's response to the petitioner. The City's response must indicate:

- i. Agreement or disagreement with each item indicated on the petition for review; and
 - ii. The reasons the City believes the amount of the fee assessed is correct.
- e. The Board shall review the petition and the City's response and determine the appropriate amount of the Impact Fee not later than thirty (30) days after submission of the City's response.
- f. A petitioner aggrieved by a final determination of the Board may appeal the Board's decision to the Hamilton County Superior or Circuit Courts. If the Impact Fee is vacated by judgment of the court, the assessment of the Impact Fee shall be remanded to the Board for correction of the Impact Fee assessment and further proceedings in accordance with law.
- g. 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 Impact Fee is determined.
- h. The City may not deny issuance of a structural building permit on the basis that an Impact Fee has not been paid or condition issuance of the permit on the payment of an Impact Fee. However, in the case of an Impact Fee of one thousand dollars (\$1,000) or less, the City may require the fee payer to pay the Impact Fee or bring an appeal under this Section before the City issues a structural building permit for the development for which the Impact Fee was assessed.

Section 16: Road and Street Thoroughfare Fund

- a. The City has established a Road and Street Thoroughfare Fund ("Fund") in compliance with Ind. Code § 36-7-4-1329. All Impact Fees received under this Ordinance shall be deposited in the Fund.
- b. Money in the Fund at the end of the City's fiscal year shall remain in the fund, and any interest earned by the Fund shall be deposited in the fund.
- c. The Clerk-Treasurer shall manage the Fund according to the provisions of the 1300 Series. The Clerk-Treasurer shall annually report to the Westfield-Washington Township Advisory Plan Commission and the City the amount of money in the Fund and the total receipts and disbursements of the Fund.

Section 17: Use of Impact Fees

Any and all Impact Fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes:

- a. Providing funds to the City or the Board of Public Works for the provision of new road infrastructure that is necessary to serve the new development in the impact zone from which the Impact Fee is collected and is identified in the Zone Improvement Plan.
- b. An amount not to exceed Five Percent (5%) of the annual collections of the Impact 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; and
- d. To pay the debt service cost of an obligation issued to provide new road infrastructure described in sub-paragraph (a) above.

Section 18: Amendment 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 Council may 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 all constitutional and statutory requirements. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Zone Improvement Plan and the Westfield-Washington Township Comprehensive Plan.

Section 19: Severability

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 20: Repeal

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

[Signature Page to Follow]

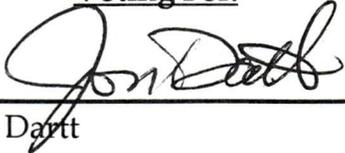
THIS ORDINANCE IS HEREBY APPROVED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WESTFIELD, INDIANA THIS 22ND DAY OF JULY, 2024.

COMMON COUNCIL OF THE CITY OF WESTFIELD, INDIANA

Voting For:

Voting Against:

Abstain:



Jon Dartt

Jon Dartt

Jon Dartt



Victor McCarty

Victor McCarty

Victor McCarty

Joe Duepner

Joe Duepner

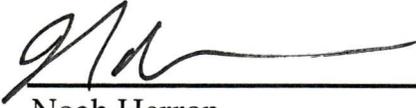
Joe Duepner



Patrick T. Tamm

Patrick T. Tamm

Patrick T. Tamm



Noah Herron

Noah Herron

Noah Herron



Kurt J. Wanninger

Kurt J. Wanninger

Kurt J. Wanninger

Chad Huff

Chad Huff

Chad Huff

ATTEST:



Marla Ailor, Clerk-Treasurer

I hereby certify that ORDINANCE 24-43 was delivered to the Mayor of the City of Westfield, Indiana on the 24th day of JULY, 2024, at 8:00A.m.

Marla Ailor
Marla Ailor, Clerk-Treasurer

I hereby APPROVE ORDINANCE 24-43

This 29th day of July, 2024.

Scott A. Willis
Scott A. Willis, Mayor

I hereby VETO ORDINANCE 24-43

This ____ day of _____, 2024.

Scott A. Willis, Mayor

ATTEST:

Marla Ailor
Marla Ailor, Clerk-Treasurer

This document was prepared by Kayla Moody-Grant; Taft Stettinius & Hollister, LLP, 1 Indiana Square, Suite 3500, Indianapolis, IN 46204.

I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document unless required by law. /s/ Kaitlin Glazier