

Appendix C  
Impact Fee Ordinance

STATE OF ILLINOIS

COUNTY OF KANE

ORDINANCE NO.22-XX

**KANE COUNTY ROAD IMPROVEMENT IMPACT FEE ORDINANCE**

WHEREAS, the County is authorized pursuant to the Highway Code of the Illinois Compiled Statutes (605 ILCS 5/1-101 *et seq.*), (hereinafter "Highway Code") to plan, develop, manage, operate, maintain and control a system of highways (hereinafter "County highway system") and each highway that is part of the County highway system (hereinafter "highway") under its exclusive jurisdiction within the boundaries of Kane County; and

WHEREAS, the County of Kane (hereinafter "County") is further authorized pursuant to the Illinois Highway Code (605 ILCS 5/5-901 *et seq.*) to adopt road improvement impact fees (hereinafter "impact fees") pursuant to the Road Improvement Impact Fee Law thereof; and,

WHEREAS, the County Board of Kane County (hereinafter "County Board") has determined that impact fees are an equitable and financially responsible approach to ensuring an adequate County highway System will be available when needed to serve new residential, commercial and industrial land development; and

WHEREAS, the County Board is committed to developing and implementing an impact fee program to mitigate the adverse traffic impacts of new development; and

WHEREAS, the County Board desires to implement impact fees that support the goals of the latest version of the County of Kane's Land Resource Management Plan; and

WHEREAS, the County Board has determined that impact fees shall be expended on the County highway improvements within the service area(s) as specified in the County's Comprehensive Road Improvement Plan (hereinafter "CRIP") as may be updated from time to time; and

WHEREAS, the Kane County Road Improvement Impact Fee Ordinance (hereinafter "Ordinance") is intended to comply in all respects with the Road Improvement Fee Law; and

WHEREAS, the County has previously recommended land use assumptions and has approved a CRIP for the purpose of implementing this Ordinance in full compliance with the requirements of the Road Improvement Impact Fee Law; and

WHEREAS, the County has, following extensive public participation, adopted Modified Land Use Assumptions pursuant to County Board Resolution 21-411, in accordance with the provisions of the Road Improvement Impact Fee Law, and has performed all other tasks necessary to update the Ordinance and by approval hereof amends in its entirety Chapter 17, Article II "Road Improvement Impact Fee", of the Kane County Code.

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

Section One. **Title.**

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

## Section Two. **Purpose and Authority.**

1. The County Board recognizes that new development in the County requires the capacity of the County highway system be expanded and that without a funded program for County highway system improvements, new development will have an adverse impact on the safety and efficiency of the County highway system.

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

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

## Section Three. **Definitions.**

The following definitions shall apply to the terms as used in this Ordinance:

**Advisory Committee:** the group of people selected from the public and private sectors in accordance with the Highway Code (605 ILCS 5/5-907) and the provisions of Section Eighteen of this Ordinance to advise the County in the development and implementation of the CRIP and the periodic update thereof.

**Affordable housing:** decent, safe, sanitary, and appropriate housing units that low and moderate-income households can own or rent without having to devote more than approximately thirty percent (30%) of their yearly gross income for monthly housing expenses. "Household expenses" are: (1) rent and utilities for rental housing; and (2) debt service (principal and interest), property taxes, and home insurance for home ownership. To qualify as affordable housing, the maximum purchase price of owner-occupied units shall not exceed that specified in the "Owner Occupied Affordability Chart for Chicago Metro Area" published annually by the Illinois Housing Development Authority. For rental housing to be considered affordable housing, the monthly rent for a dwelling unit may not exceed that specified in "Affordable Rental Units for Chicago Metro Area" published annually by the Illinois Housing Development Authority.

**Age-restricted housing:** single-family detached or single-family attached housing units that are restricted by deed so that at least one resident thereof must be fifty-five (55) years of age or older and no person under the age of nineteen (19) may reside in the unit more than ninety (90) days during any consecutive twelve (12) months.

**Assisted financing:** the financing of residential new 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.

**Building:** either a finished or an unfinished product of construction or a structure, carrying no implication as to size or condition. The terms "building" and "structure" as used herein are interchangeable.

**Building permit:** any form of approval issued or granted by the County or a municipality that grants or otherwise allows the commencement of construction of a building.

**Certificate of occupancy:** any form of approval granted by either the County or a municipality as a condition to occupy a building, and includes any temporary occupancy approval as well as any permanent occupancy approval.

**Charitable organization:** entities, corporations, and any trust, fund, foundation or other entity certified by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Internal Revenue Code organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. Charitable organization includes organizations dedicated to the relief of the poor, the distressed, the disabled or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

**Comprehensive Road Improvement Plan:** the highway improvement plan, also referred to as the CRIP, prepared by the County in consultation with the Advisory Committee. The plan is an analysis of the Kane County highway network, identification of the highway network deficiencies, formulation of a program of improvements and projects with associated costs thereof all of which ultimately results in the determination of a fee per trip calculation(s).

**County:** the County of Kane, of the State of Illinois.

**County Board:** the County Board of the County of Kane, of the State of Illinois.

**County Engineer:** the County Engineer of Kane County as "County Engineer" is defined as set forth in the Highway Code (605 ILCS 5/5-201 *et seq.*).

**County highway:** shall have the same definition as set forth in the Highway Code (605 ILCS 5/2-204).

**County highway system:** shall have the same definition as set forth in the Highway Code (605 ILCS 5/2-102).

**CRIP:** see definition for Comprehensive Road Improvement Plan.

**Demolition Credit:** a credit against an assessed impact fee which credit is determined by the dollar value of impact fees that would have otherwise been assessed on a building or buildings being demolished as part of a new development.

**Density:** an impact fee assessment factor that is calculated for residential new development by dividing the total number of residential units by the total buildable land area in acres of the new development. Buildable land excludes land occupied by nonresidential structures, and land excluded from residential development by law (e.g. wetlands, floodplains and rights of way for arterial and major collector roads), but includes areas devoted to public rights of way for local and minor collector streets internal to the new development, storm water management for the new development, parking areas, and common open space. For detached residential units on individual lots, the average density for the entire new development shall be used.

**Developer:** any person, corporation, organization, or other legal entity initiating or conducting new development.

**Division of Transportation:** the Kane County Division of Transportation located at 41W011 Burlington Road, St. Charles, Illinois 60175.

**Encumbered:** legally obligated or otherwise committed to use under contract or purchase order.

**Enlarged:** to increase its size, make larger, bigger or to add onto so as to increase the useable floor area square footage of a building. Enlarged does not necessarily mean “structurally altered”.

**Existing deficiencies:** the highway intersections and/or highway segments under the jurisdiction of the County that operated at level of service "E" or below (as defined by the Transportation Research Board) in the year 2003 and that are identified as "existing deficiencies" in the latest version of the CRIP.

**Fee payer:** any person initiating new development which pays, or is required to pay an impact fee in accordance with the terms of this or any previous version of the Ordinance.

**Floor Area Ratio (FAR):** the floor area of a structure or structures on a zoning lot divided by the area of such zoning lot, or, in the case of planned unit developments, by the net site area. In all cases, the lot area or site area used to calculate the floor area ratio shall include the land areas allocated to parking and storm water management.

**Highway:** shall have the same definition as set forth in the Highway Code (605 ILCS 5/5-102 *et seq.*).

**Highway improvement:** the improvement, expansion, enhancement, enlargement or construction of those highways and/or the parts thereof under the jurisdiction of the County that are designated for improvement as set forth in the CRIP, which improvements include, but are not limited to bridges, right-of-ways and traffic control improvements owned and operated by the County. The term "highway improvement" shall not include tollways but may include tollway ramps at county highway intersections. The term "highway improvement" does not include any highways that are not designated for improvement in the CRIP even though they are under the jurisdiction of the County nor does it include site improvements related to the new development. Highway improvements must address capacity deficiencies on the highways as set forth in the CRIP.

**Highway improvement capital costs:** include, but are not limited to, capital costs associated with the construction of a highway improvement designated in the CRIP, the need for which is generated by new development, which highway improvement has 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, personnel, training, or other operating costs, but do include the costs of financing such highway improvements and reasonable administrative costs for administering the impact fee program, provided that such administrative costs do not exceed five percent (5%) of the impact fee paid.

**Impact fee:** the “road improvement impact fee” as defined herein.

**Industrial:** manufacturing, production, light manufacturing/industry, construction, assembly, service and/or warehousing activity.

**Infill:** undeveloped land or vacant land having at least seventy-five percent (75%) of its perimeter bordering land that has been developed. Developed land includes land either having or that has had pre-existing structures thereon. Land that is currently in agricultural use or forestry use is not considered developed. Park and forest preserve properties that border an infill site shall not be counted as part of the perimeter of undeveloped land.

**Impact fee agreement:** an executed, fully approved, written agreement between the County and a developer and/or fee payer as provided for in Section Twelve of this Ordinance.

**Impact fee credit agreement:** an executed, fully approved, written agreement between the County and a developer and/or fee payer as provided for in Section Fourteen of this Ordinance.

**Impact fee payment agreement:** a an executed, fully approved, written agreement between the County and a developer and/or fee payer as provided for in Section Twelve of this Ordinance.

**Land use assumptions:** a description of the service area(s) and the roads, streets or highways incorporated therein, which includes projections relating to changes in land uses, densities and population growth rates which affect the level of traffic within the service area(s) for a ten (10) year period of time.

**Level of service:** the measure of roadway sufficiency of traffic flow, in which acceptable operating speeds are assessed, and in which changes in operating conditions, fluctuations in traffic volume, and temporary restrictions to traffic flow are evaluated.

**Municipality:** any city or village or district with territory within the boundaries of Kane County.

**New development:** shall have the same definition as set forth in the Highway Code (605 ILCS 5/5-903). For the purpose of Section Ten of this Ordinance, new development shall additionally constitute a structure or group of structures that require site specific development approval.

**Non-commencement:** the cancellation of new development prior to commencing construction thereof.

**Nonresidential new development:** new development consisting of a building(s) or other structure(s) suitable or capable of being used for all purposes other than residential purposes.

**Ordinance:** Kane County Ordinance No. 04-21 as subsequently amended by Ordinance No.

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**Person:** any individual, firm, partnership, association, public or private corporation, organization, limited liability company or business, charitable trust or governmental agency, person, unit of local government or any other legal entity.

**Private school:** a private, nonprofit educational facility serving one or more of grades, kindergarten through grade-12 and formally recognized by the Illinois State Board of Education.

**Procedures Manual:** the document developed by the County Engineer and available from the Division of Transportation that sets forth the procedures, processes, forms and operating definitions to be used in the administration of this Ordinance.

**Project:** the construction of a new development.

**Redevelopment:** a new development site in which at least seventy-five percent (75%) of the land area thereof has been previously developed.

**Residential new development:** house(s), building(s) or other structure(s) that is suitable or capable of being used for residential purposes.

**Road improvement impact fee:** any charge or fee levied or imposed by the County pursuant to the Road Improvement Impact Fee Law 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 system improvements.

**Service area:** any one of the three (3) land areas within Kane County delineated by the boundaries shown on Exhibit A of this Ordinance, and which are so designated in the CRIP.

Site-related improvements: any capital improvement related in any manner to a highway, street or road necessary or convenient for ingress to and egress from a new development. Site-related improvements include among other things:

- a) site driveways, streets and roads;
- b) right- and left-turn lanes for or leading to or otherwise benefitting site driveways, alleys streets and roads;
- c) traffic control measures for or leading to or otherwise benefitting site driveways, alleys, streets and roads;
- d) acceleration and deceleration lanes;
- e) median openings and closings;
- f) roads necessary to provide direct access to the development;
- g) landscaping and berms;
- h) lighting and other utilities;
- i) sidewalks and bike trails, and
- j) any right of way needed for any of the above.

The term "site related improvements" includes any improvements made to alley's roads, streets, or highways and any appurtenances thereto that are not designated for or as improvement in the CRIP.

Site specific development approval: shall have the meaning as set forth in the Highway Code (605 ILCS 5/5-903 *et seq.*). If the site specific development approval is preliminary in nature, the final plat or plan for the new development must be in substantial conformance with the approved preliminary plat or plan.

Specifically, and uniquely attributable: shall have the meaning as set forth in the Highway Code (605 ILCS 5/5-903 *et seq.*).

Speculative industrial new development: industrial or warehouse new development where the developer intends to lease or otherwise convey parts thereof to parties not yet determined at the time of issuance of the building permit or occupancy permit and where construction will commence prior to the new development or the part(s) thereof being leased or otherwise conveyed. Speculative industrial new development is otherwise defined as Light Industrial/Industrial Park or Warehouse/Distribution Terminal, allow for the collection of impact fees based on an assumption of 20% General Office (ITE LUC 710) and 80% Warehousing (ITE LUC 150) prior to the identification of a tenant(s) or interior architectural plan.

Structurally altered: any change or addition to the load bearing elements of a building that increases the useable internal floor area square feet thereof. Structurally altered does not necessarily mean "enlarged".

Substantial conformance: any final plat or plan for new development which is generally consistent with the approved preliminary plat or plan virtually including the same mix of land uses and density. A final plat or plan in substantial conformance with the preliminary plat or generates the same or fewer peak hour trips, which peak hour trips are determined using the methodology as set forth in Appendix A of the CRIP.

System improvement: see "highway improvement".

Technical specifications: those documents that contain the impact fee calculation factors necessary for computation of the impact fee for a particular land use, an individual assessment, and the impact fee schedule attached to this Ordinance.

Temporary structure: a building or structure designed or intended for temporary human occupancy or for the temporary protection of animals, chattels, or property of any kind. For the purposes of this Ordinance, "temporary" is defined as a period of time no greater than two (2) years.

Transit Supportive Corridors: shall be as defined in the report titled [Implementation of the Kane County 2040 Long Range Transit Plan Transit-Supportive Corridors: Existing Conditions and Implementation Tools](#), prepared by the Chicago Metropolitan Agency for Planning (CMAP) (dated May 2015) which report may be amended from time to time. The following County highways are defined as Transit Supportive Corridors: Randall Road, Orchard Road, Dunham Road/Kirk Road/Farnsworth Avenue, Hopps Road from Randall Road to Illinois 31, Middle Street from Illinois State Route 31 to east Kane County Line, Wilson Street from Orchard Road to Kirk Road, Montgomery Road from Illinois State Route 31 to Hill Avenue, East New York Avenue from Orchard Road to east Kane County line, Illinois State Route 25, Illinois State Route 31, Illinois State Route 38 from Peck Road to east Kane County Line, Illinois State Route 56 from Orchard Road to east Kane County Line, Illinois State Route 64 from Burlington Road to east Kane County line, Illinois State Route 72 from Big Timber Road to east Kane County Line.

Transportation Committee: the Transportation Committee as designated by the County Board.

Unit of local government: any city, village or district with territory in Kane County. The terms "unit of local government" and "municipality" as used herein are interchangeable.

Walking distance: the distance that a pedestrian must travel between destinations without obstruction, in a safe and comfortable environment. Walking distance is measured in linear feet along such paths, sidewalks or ways with one thousand three hundred twenty feet (1,320') equaling a one-fourth (1/4) mile and two thousand six hundred forty feet (2,640') equaling a one-half (1/2) mile.

Warehouse: a structure utilized in whole or part for the storage of materials, merchandise or goods only without any processing, fabrication, direct transfer or assembly.

Working day: any day on which the offices of the County are officially open, not including Saturdays, Sundays, and other holidays as designated by the County Board.

#### Section Four. **Interpretation of Ordinance, Fee Schedule and Appeals.**

1. Application of the provisions of this Ordinance, the impact fee schedules, standard individual assessment, and simplified individual assessment shall be made by the County Engineer. Whenever necessary, the County Engineer may use the latest edition of the Institute of Transportation Engineers [Trip Generation Manual](#), the latest edition of the Transportation Research Board [Highway Capacity Manual](#), or locally obtained empirical data, in applying this Ordinance. 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 by the fee payer to the County Board through its Transportation Committee. Any appeal shall be made by written petition within fourteen (14) calendar days of written notice of a decision by the County Engineer.



3. Upon receipt of a petition for appeal of a decision of the County Engineer, the Transportation Committee shall schedule consideration of such appeal at its next regularly scheduled committee meeting. The Transportation Committee shall notify the petitioner in writing of the date and time of such meeting and shall consider such written or oral testimony that the petitioner may present in conjunction with the decision and recommendation of the County Engineer. The Transportation Committee shall affirm, reverse, or modify the County Engineer's decision at said regularly scheduled meeting.

4. The fee payer shall have seven (7) calendar days after the date of the decision of the Transportation Committee to appeal the Transportation Committee's decision to the County Board. The County Board shall schedule consideration of such appeal at its next regularly scheduled County Board 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 petitioner's appeal.

5. Upon a final decision by the County Board, a fee payer may seek any subsequent relief in a de novo proceeding in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

#### Section Five. **Developers of New Development to Pay Road Improvement Impact Fee.**

Any developer initiating or conducting new development shall pay an impact fee to the County in accordance with the terms and conditions of this Ordinance.

#### Section Six. **Intergovernmental Agreements.**

At any time after the adoption of this Ordinance, the County may enter into an intergovernmental agreement with any municipality the boundaries of which are within Kane County regarding the impact fee imposed by this Ordinance. Such intergovernmental agreements shall be adopted in accordance with law and may include provisions governing administrative issues involving the collection of the impact fee assessed and any other matters deemed necessary or appropriate by the County and the municipality.

#### Section Seven. **Assessment of Impact Fees and Impact Fee Schedule.**

1. An impact fee assessment shall be calculated pursuant to the impact fee schedules set forth in Exhibit B of this Ordinance and shall be due upon issuance of a building permit, unless otherwise provided for herein. Unless the project is otherwise covered by an impact fee agreement, impact fees shall be assessed based on the predominant use of each building.

2. Any new development shall be assessed an impact fee under the terms of the Ordinance in effect at the time of site specific development approval. For any new development, the assessed impact fee shall not be greater than the impact fee calculated under the most current version of this Ordinance and its attached impact fee schedules as may be amended. New development assessed an impact fee under Ordinance #04-22 shall not be eligible for any discounts provided for in Section Ten of this Ordinance.

3. When a land use of a new development is not listed in Exhibit B of this Ordinance, the County Engineer may determine the land use classification which most closely compares with the new development, which land use shall apply for purposes of determining the applicable impact fee under this Section. For land uses not specifically listed in Exhibit B, the County may, at the discretion of the County Engineer, determine an appropriate impact fee based on data published in the latest edition of the Institute of Transportation Engineers Trip Generation Manual pursuant to Section Thirteen of this Ordinance. Where land uses are not specifically listed in Exhibit B or the latest edition of the Institute of Transportation Engineers Trip Generation Manual, the County may, at the discretion of the County

Engineer, determine an appropriate impact fee based on accepted traffic engineering practices, published data, the impact fee per trip provided in Exhibit D of this Ordinance, and the formula set forth in Section Thirteen of this Ordinance.

4. Where new development is a change in the existing land use, the amount of the impact fee shall be based on the net increase in trips generated by the new development, and the formula set forth in Section Thirteen of this Ordinance shall be used to calculate the impact fee.

5. Speculative industrial new development for which the use of the building(s) therein has not been determined at the time a building permit is to be requested will be assessed by one of the following methods:

- a) Assessed at the highest rates in the impact fee based on the new development.
- b) Assessed at a reduced contingent fee via a Fee Payment Agreement per Section Twelve.
- c) Assessed pursuant to a standard individual assessment or simplified individual assessment contained in Section Thirteen.

6. Where a proposed new development is to be located within two (2) service areas, the County Engineer shall assess the impact fee as follows:

- a) In the case of residential new development, the impact fee shall be determined by counting the number of dwelling units located within each service area of the new development and charging a per-unit cost for the dwelling units within each service area.
- b) In the case of non-residential new development, the impact fee shall be determined by calculating the average of the impact fees that would otherwise be charged if the new development were located entirely within each service area.

#### Section Eight. **Exemptions**

The following new development shall be exempt from payment of any impact fees imposed by this Ordinance:

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

2. Nonresidential new development where an existing building will be structurally altered or enlarged and does not exceed the lesser of (a) twenty-five thousand (25,000) square feet of floor area or (b) twenty-five percent (25%) of the existing floor area square footage of the building; where (i) the nonresidential new development does not require a zoning change, and (ii) where additional trips created by the alteration or enlargement does not exceed ten percent (10%) of trips per existing land use; or (iii) where the alteration is required by the County's or a Municipality's building code;

3. The construction of nonresidential accessory buildings which do not constitute an increase in intensity of the existing use;

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

5. Publicly owned and operated school buildings;

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

7. Temporary structures;

8. Affordable housing. Each housing unit (or a designated percentage of the housing units in multi-family housing developments) meeting the definition of “affordable housing” and the requirements of this Section shall be exempt from payment of an impact fee. The County Engineer shall establish procedures to ensure that rental housing developments qualifying for this exemption continue to meet the minimum affordability requirements of the Illinois Housing Development Authority for a period of ten (10) years. If a rental housing development fails to meet the affordability requirement in any year, the impact fee that would otherwise have been due shall be paid in full by the owner of record; and

9. Private schools.

#### Section Nine. **Demolition Credits.**

1. A fee payer or developer shall be entitled to a demolition credit equal to the dollar value of the reduced impact fee that would have been charged on the building(s) being demolished if part of a redevelopment plan or new development. A demolition credit shall not exceed the reduced impact fee for the new development.

2. At the time of application for an impact fee receipt, the person applying for an impact fee receipt shall present to the County a copy of the demolition permit or letter of authorization from the unit of local government issuing the demolition approval. The demolition permit shall be attached to the impact fee receipt application and demolition credits shall be calculated based upon the impact fee schedule in effect as of the date the impact fee is assessed. Demolition credits shall be deducted from the gross impact fee calculated for the new development.

3. The County shall not grant demolition credits for demolitions not associated with new development.

#### Section Ten. **Discounts.**

1. Eligibility: A new development shall be eligible for a discount from impact fees assessed in accordance with Section Seven of this Ordinance, provided that the following criteria are satisfied:

- a) Mobility Options Discounts (up to a maximum of 20%)
  - i. 10% Discount if the new development is within one-quarter mile walking distance from an existing Pace Suburban Bus route;
  - ii. 10% Discount if the new development is within one-half mile walking distance from an existing Metra station;
  - iii. 10% Discount if the new development is within one-half mile from a Transit Supportive Corridor
  - iv. 10% Discount if the new development is within one-half mile from a local or regional greenway or bicycle trail. The greenway or bicycle trail shall be depicted on the [Kane County Bike Map](#) or Chicago Metropolitan Agency for Planning (CMAP) [Regional Greenways and Trails Plan Map](#).

2. New development meeting any requirements set forth in 1(a) above may be eligible for additional discounts as follows:

- a) 10% Discount for Mixed-Use Developments with a residential use and at least two (2) of the following land uses incorporated. Accessory uses within a principal use may not be counted as a separate use.

- i. parks
- ii. forest preserves
- iii. community or civic centers
- iv. recreation facilities
- v. schools or daycare centers
- vi. libraries
- vii. places of worship
- viii. post offices
- ix. convenience stores
- x. laundry/dry cleaners
- xi. neighborhood retail centers
- xii. restaurants
- xiii. pharmacies
- xiv. grocery stores
- xv. banks
- xvi. medical/dental offices or hospitals
- xvii. general offices

- b) Up to a maximum 30% Discount for Residential Density where the residential new development provides an average density of at least 7 units per acre. Where the Residential Density Discount is applied, the new development shall not be eligible for the Mixed-Use Development Density Discount.
  - i. 10% Discount for an average residential density of at least 7 units per acre and no more than 14 units per acre;
  - ii. 20% Discount for an average residential density of at least 15 units per acre and no more than 28 units per acre; or
  - iii. 30% Discount for an average residential density greater than 29 units per acre.

3. 20% Discount for Downtown Development where the new development is located on an infill or redevelopment site defined in a municipal adopted downtown subarea, comprehensive plan or within an established downtown Tax Increment Finance (TIF) district.

4. Up to 20% Discount for Industrial Developments where the following criteria are satisfied.

- a) 10% Discount for redevelopment or infill; or
- b) 10% Discount for onsite railroad spur access, airport access for freight, or direct access to a state designated truck route.

5. Discount for local skilled manufacturing job creation within the Light Industrial/Industrial Park and related land use categories on the Impact Fee Schedule. New development which generates skilled manufacturing jobs can apply for a discount. Skilled manufacturing jobs are defined and classified as follows:

- Highly trained, educated, or experienced employees that can complete more complex mental or physical tasks on the job.

- Often specialized and may require a prolonged period of training and experience
- Skills in science, technology, engineering, and math (STEM) are essential in many industries

Skilled job creation must be verified in writing by the permitting municipality or agency, local economic development organization, or local workforce development board and submitted for approval prior to the discount being granted.

- a) 10% discount for 1-100 jobs created
- b) 20% discount for 101 or more jobs created

Any new development within the Speculative Industrial land use category on the Impact Fee Schedule is not eligible for this discount

6. Except for charitable organizations, the maximum impact fee discount that any new development may receive under this Section is seventy percent (70%). Impact fees calculated through any individual assessment are not eligible for any of the discounts in this Section.

7. **Impact Fee Discount Application:** In order to receive the impact fee discount described in this Section, the developer shall submit an impact fee discount application to the Division of Transportation Impact Fee Coordinator. The impact fee discount application shall include an overall plan of the new development, a description of the permitted and anticipated land uses, and detailed calculations clearly demonstrating that the new development meets the requirements listed in this Section and a schedule indicating the anticipated year of construction of the various phases and elements of the new development. The Division of Transportation may establish further requirements for an impact fee discount application as needed for proper administration the requirements of this Section.

- a) Within fifteen (15) working days of receipt of a written impact fee discount application, the County Engineer shall determine if all pertinent information has been provided by the developer. If the County Engineer determines that additional documentation is required, the County Engineer shall send a written statement to the developer specifying the deficiencies. Until the deficiencies are corrected, the County shall take no further action on the application for an impact fee discount.
- b) When the County Engineer determines that the application for an impact fee discount is complete, the County Engineer shall draft an impact fee payment agreement for the review and approval of the fee payer pursuant to Section Twelve.

8. **Impact Fee Discount Payment:** As a condition of receiving an impact fee discount under this Section, the developer shall enter into a Memorandum of Agreement with the County Engineer. The Memorandum of Agreement shall provide that the developer will construct the new development in accordance with the supporting documents submitted with the impact fee discount application, within a period not to exceed ten (10) years. The agreement shall also include a commitment by the developer that if the new development is not completed in accordance with the impact fee discount application within ten (10) years of the date of the impact fee payment agreement, or if there is a material change in the new development that would result in (i) its ineligibility to receive an impact fee discount, or (ii) its receiving a lesser impact fee discount, then the developer shall pay or cause to be paid to the County an amount equal to the impact fee discount or excess impact fee discount received. The duration of the impact fee discount may be extended beyond the ten (10) year period upon mutual agreement of the County and the developer, provided that portions of the new development completed within ten (10) years meet the qualification requirements for the discount obtained and that additional portions of the development receiving the discount after the ten (10) year period continue to meet the requirements for the discount obtained. The County Engineer may, as a condition of the Memorandum of Agreement, require an impact fee payment agreement with the County in accordance with Section Twelve of this

Ordinance, which also may include provision of a guaranty in a form acceptable to the County to ensure such payment.

9. **Impact Fee Discount Exemptions:** New development shall be eligible for a one hundred percent (100%) discount from the impact fee assessed in accordance with Section Seven of this Ordinance, provided: (i) it is solely owned and solely occupied by a charitable organization certified by the Internal Revenue Service as tax-exempt under section 501(c)(3) of the Internal Revenue Code and (ii) the total site generates fifty (50) or fewer weekday P.M. peak hour trips as determined using the methodology contained in Appendix A of the CRIP. Sites that generate greater than fifty (50) weekday P.M. peak hour trips but otherwise meet the requirements of this Section shall receive a total maximum discount the amount of which is determined by multiplying the applicable impact fee per trip from Exhibit D of this Ordinance, by the applicable impact fee multiplier from Exhibit C of this Ordinance, and multiplying the result by fifty (50). In order to receive this discount, the charitable organization shall provide satisfactory evidence of its federal tax-exempt status.

#### Section Eleven. **Payment of Impact Fees.**

1. Except as may be otherwise provided in subsections 2 and 3 of this Section, impact fees for any new development assessed pursuant to any previous, or current Ordinance shall, prior to the issuance of a building permit by either a municipality or the County, be paid in full.

2. 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 impact fee from the fee payer or the fee payer's successor in title at any time thereafter. In conjunction with the collection of any impact fee that remains unpaid or becomes due, the County may file in the Office of the Kane County Recorder notification of an unpaid impact fee. Any fee payer or any fee payer's successor in title, 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 impact fee is assessed. Interest shall begin accruing on the first business day following the date of said building permit or certificate of occupancy issuance.

3. Payment of an impact fee may be authorized at a time earlier than as otherwise specified in subsections 1 of this Section if the County and the fee payer enter into an impact fee payment agreement that provides for such earlier payment of the impact fee. At the option of the County, the County may enter into an impact fee payment agreement with a fee payer pursuant to Section Twelve hereof that provides for the installment payment of the impact fee at a rate of interest which is 3% over the prime commercial rate in effect at the time that the impact fee is imposed, for a period of up to ten (10) years after the impact fee is due, provided that the County receives, in the opinion of the County, adequate security ensuring such later payment of the impact fee. In all impact fee payment agreements, interest on any unpaid Impact fee or part thereof shall begin accruing on the first business day following submittal of the impact fee application.

4. Developers of residential new development which receives assisted financing, or who have received a written commitment for assisted financing and whose assisted financing has been provided within six (6) months of the issuance of a certificate of occupancy, may enter into an impact fee payment 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 impact fee is assessed.

5. The County and any municipality may enter into an intergovernmental agreement that provides for the cooperative collection of impact fees and/or for the conditioning of the issuance of municipal building permits or certificates of occupancy upon proof of payment of the County's impact fee.

6. Municipalities shall provide the County with a notice of issuance of any building permit in accordance with the provisions of the Illinois Municipal Code of the Illinois Compiled Statutes (65 ILCS

5/11-39-1), and shall submit a copy of the fee payer's receipt of payment of the impact fee or a County approved impact fee payment agreement along with such notice.

## Section Twelve. **Impact Fee Payment Agreements.**

1. At any time prior to the issuance of a building permit, a fee payer may enter into an impact fee payment agreement with the County providing for the payment of the impact fee imposed by this Ordinance, in accordance with requirements specified by the County Engineer. Such impact fee payment agreement may provide for the following:

- a) installment payments of the impact fee for a period up to ten (10) years, (only in the case of new development funded by assisted financing),
- b) recapture payments for construction credits,
- c) credit and security arrangements, and
- d) other matters relating to the impact fee.

In addition, any impact fee payment agreement may also include an improvement credit agreement as provided for in Section Fourteen of this Ordinance.

2. For new development eligible for deferred payment of an impact fee, the impact fee payment agreement may require security, the form of which shall be determined at the sole option of the County. Security 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, among other things. The impact fee payment agreement may provide that such security may be partially releasable upon receipt of partial payments of the impact 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 impact fee is assessed, on any deferred impact fee payments.

3. Fee payers for any new development other than residential new development and fee payers for multi-unit residential new development will be allowed to enter into impact fee payment agreements to defer payment of some portion of the impact fees due upon the issuance of a building permit. Impact fee payment agreements shall provide that a payment of at least fifty percent (50%) of the assessed impact fee or construction credits in lieu of cash shall be payable upon the issuance of a building permit, and the balance shall be payable in twelve (12) months from the date of issuance of the building permit. 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 impact fee is assessed, on any impact fees deferred in accordance with this Section for new development eligible for deferred payment of an impact fee, through an impact fee discount agreement.

4. For new development approved for impact fee discounts pursuant to Section Ten of this Ordinance, the impact fee payment agreement shall provide that the developer will construct the new development in accordance with the supporting documents submitted with the impact fee discount application, within a period not to exceed ten (10) years. The impact fee payment agreement must also include a commitment by the developer that if the new development is not completed in accordance with the impact fee discount application within ten (10) years of the date of the impact fee payment agreement, or if there is a material change in the new development that would result in (i) its ineligibility to receive an impact fee discount, or (ii) its receiving a lesser impact fee discount, then the developer shall pay or cause to be paid to the County an amount equal to the impact fee discount or excess impact fee discount received. The duration of the impact fee discount may be extended beyond the ten (10) year period upon mutual agreement of the County and the developer, provided that portions of the new development completed within ten (10) years meet the qualification requirements for the discount obtained and that additional portions of the development receiving the discount after the ten (10) year period continue to meet the requirements for the discount obtained. The County may, as a condition of

the impact fee payment agreement, require a guaranty in a form acceptable to the County to ensure such payment.

5. Within fifteen (15) working days of receipt of a written application for an impact fee payment agreement, the County Engineer shall determine if all pertinent information has been provided by the fee payer. If the County Engineer determines that additional documentation is required, the County Engineer shall send a written statement to the fee payor specifying the deficiencies in the application. Until the deficiencies are corrected, the County shall take no further action on the application for an impact fee payment agreement.

6. When the County Engineer determines that the application for an impact fee payment agreement is complete, the County Engineer shall draft an impact fee payment agreement for the review and approval of the fee payer. Upon acceptance of the impact fee payment agreement by the fee payer, the Transportation Committee shall consider the impact fee payment agreement at its next regularly scheduled meeting. If the Transportation Committee approves the impact fee payment agreement, the County Engineer may execute the agreement on behalf of the County. The Transportation Committee's denial of an impact fee payment agreement shall be based on written findings. Said written findings shall indicate that the impact fee payment agreement is not in the best interest of the County. Reasons for such finding may include but are not necessarily limited to the extraordinary potential adverse impact of the new development among other things.

### Section Thirteen. **Individual Assessment of Impact – Simplified and Standard Analysis.**

1. Any developer may choose to provide an individual assessment of the impacts of the proposed new development upon the County highway system. The individual assessment may be used by the County to determine: (i) whether the share of the highway improvement capital costs necessitated by the proposed new development should be less than the impact fee established in Section Seven of this Ordinance or (ii) the impact fee for a particular land use or combination of uses not otherwise identified in Section Seven of this Ordinance. There are two types of individual assessments available.

#### **Simplified**

2. Where the impact fee assessed under Section Seven of this Ordinance does not reflect the impact of the proposed new development, and where the latest version of the Institute of Transportation Engineers Trip Generation Manual provides trip generation data for another Land Use Code(s) which more closely represents the data for the new development, the developer may complete a simplified individual assessment.

3. Any developer who requests a simplified individual assessment is required to submit an application for a simplified individual assessment to the County Engineer (see Exhibit E of this Ordinance).

4. The County Engineer will review the application for a simplified individual assessment within fifteen (15) working days of receipt. If the County Engineer determines the application is not complete, the County Engineer shall send a written statement specifying the deficiencies to the person submitting the application. Until the deficiencies are corrected, the County Engineer shall take no further action on the application for simplified individual assessment, other than further reviews for completeness.

5. The County may, at the discretion of the County Engineer, have the simplified individual assessment reviewed by an approved transportation professional. The County Engineer shall approve the proposed impact fee if the County Engineer determines that the data provided in the latest version of the Institute of Transportation Engineers Trip Generation Manual accurately represents the trip generation characteristics anticipated for the new development. If the County Engineer determines that use of the Institute of Transportation Engineers Trip Generation Manual data not fairly assess the highway improvement capital costs to the County highway system in accordance with the formula set out in subsection 8 of this Section the proposed impact fee shall be denied, and the developer shall pay



the impact fee according to the schedule established in Section Seven of this Ordinance if the new development's proposed land use has not previously been identified in the impact fee schedule or an amount as otherwise determined by the County Engineer.

6. If the simplified individual assessment is denied by the County Engineer, the developer retains the ability to perform a full standard individual assessment pursuant to this Section.

### Standard

7. Any developer who chooses to provide a standard individual assessment is required to submit to the County Engineer a written statement of intent to perform a standard individual assessment, including its intended methodology, prior to performing the standard individual assessment and commencing the new development.

8. The individual assessment shall be calculated according to the following formulas (See Technical Specifications for detailed information):

PRIMARY TRIP RATE = GROSS TRIP RATE x TOTAL TRIP REDUCTION

TRIPS = PRIMARY TRIP RATE x NUMBER OF IMPACT UNITS

GROSS IMPACT FEE = TRIPS x IMPACT FEE PER TRIP

NET IMPACT FEE = GROSS IMPACT FEE minus DEMOLITION CREDIT minus IMPROVEMENT CREDIT

REDUCED IMPACT FEE = NET IMPACT FEE x IMPACT FEE MULTIPLIER

Where:

GROSS TRIP RATE; equals the number of trips generated by one IMPACT UNIT of the new development on a weekday during the peak hour, between 4:00 p.m. and 6:00 p.m., of adjacent street traffic, as defined in the latest edition of the Institute of Transportation Engineers Trip Generation Manual.

TOTAL TRIP REDUCTION: equals the percentage of trips generated by a new development that are pass-by trips or diverted-linked trips as defined in the latest edition of the Institute of Transportation Engineers Trip Generation Handbook.

PRIMARY TRIP RATE; equals the portion of the GROSS TRIP RATE that represents new trips on the highway system, discounting pass-by and diverted-linked trips.

IMPACT UNITS; equals a measure of the size of the new development that correlates with the number of peak hour trips generated by the new development between 4:00 p.m. and 6:00 p.m. For residential new developments, the IMPACT UNIT is the number of dwelling units of various types in the new development. For non-residential new developments, the IMPACT UNIT is generally a multiple of the number of gross interior square feet of the buildings constructed in the new development.

IMPACT FEE PER TRIP: equals the GROSS IMPACT FEE for the service area for new development that generates one trip during the peak hour of adjacent highway traffic between 4:00 p.m. and 6:00 p.m. (See Exhibit D of this Ordinance).

DEMOLITION CREDIT: equals the GROSS IMPACT FEE that would have been assessed on a building that a fee payer demolishes in conjunction with new development.

**IMPROVEMENT CREDIT:** equals the value of impact fee eligible highway improvements constructed by a developer in conjunction with new development and pursuant to an improvement credit agreement with the County.

**IMPACT FEE MULTIPLIER;** equals the percentage determined by the County Board by which the NET FEE shall be multiplied to determine the REDUCED FEE (See Exhibit C of this Ordinance).

9. The standard individual assessment shall include the following information:

- a) The trip generation rates for the proposed new 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. Empirical surveys shall include data collected from 4:00 pm to 6:00 pm at a minimum of three (3) locations having the same or similar land uses, or three (3) consecutive days at the same location. Survey locations should be similar to the location of the new development in terms of land use, adjacent street daily traffic, and mobility options. Coordination with the Division of Transportation impact fee coordinator is required for survey locations outside of Kane County
- b) The proposed trip reduction rates for pass-by and diverted-linked trips, if any. The trip reduction rates shall be based on data provided in the latest edition of the Institute of Transportation Engineers Trip Generation Handbook or local empirical surveys for the same or similar land use types.
- c) Any other data and supporting calculations that demonstrate a lower impact fee would be justified due to the unique nature or location of the new development.

10. An individual assessment shall be prepared only by a Professional Traffic Operations Engineer (PTOE) licensed in the state of Illinois with established procedures, in the field of transportation planning and engineering and impact analysis. The standard individual assessment shall be stamped and signed by the qualified engineer.

11. The maximum reduction in any impact fee determined through any individual assessment, standard or simplified shall not exceed seventy percent (70%) of the impact fee as initially determined by and set forth in the impact fee schedule.

12. Within fifteen (15) working days of receipt of an individual assessment, the County Engineer shall determine if the standard individual assessment application materials are complete. If the County Engineer determines the standard individual assessment application is not complete, the County Engineer shall send a written statement specifying the deficiencies to the person submitting the standard individual assessment. The County may, at the discretion of the County Engineer, have the individual assessment reviewed by an approved transportation professional. Until the deficiencies are corrected, the County Engineer shall take no further action on the standard individual assessment, other than further reviews for completeness.

13. When the County Engineer determines the standard individual assessment is complete, the standard individual assessment shall be reviewed by the County within thirty (30) days thereafter. The County Engineer shall approve the proposed impact 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 highway improvement capital costs to the County highway system in accordance with the formula set out in subsection 8 of this Section. If the County Engineer determines that the traffic information, traffic factors, or methodology does not fairly assess the highway improvement capital costs to the County highway system in accordance with the formula set out in subsection 8 of this Section, the proposed impact fee shall be denied, and the developer shall pay the impact fee according to the schedule established in Section Seven of this Ordinance or as otherwise determined by the County Engineer if the new development's proposed land use has not previously been identified in the impact fee schedule. If the individual assessment is denied by the

County Engineer, the decision of the County Engineer may be appealed in the manner provided for in Section Four of this Ordinance.

#### Section Fourteen. **Impact Fee Credit Agreements.**

1. Any fee payer may request an impact fee credit against the impact fee imposed by this Ordinance for any contribution, payment, recapture or construction of a system improvement or conveyance of land accepted and received by Kane County for any system improvement in accordance with the provisions of this Section. Highway related improvements made primarily for the benefit of the new development or municipalities or individuals or entities other than the County, including but not limited to highway related improvements such as turn lanes, traffic signals at private entrances, improvements to cross streets not on the County highway system over and above those necessary for the efficient operation of County intersections, and improvements to private property, together with the engineering and right of way costs therefor, are not eligible for an improvement credit. Any contribution, payment, recapture, construction of a highway related improvement or conveyance of land accepted and received by the County that does not address a capacity deficiency as set forth in the CRIP or that is received by the County as third party beneficiary as consideration included in any annexation agreement or as consideration for a grant from the County of any benefit to the new development that the new development is not otherwise entitled to as a matter of law, is not eligible as an improvement credit. The County Engineer shall determine which improvements are system improvements eligible for an improvement credit.

2. The County shall not be required to refund any impact fee or part thereof for any improvement credits that exceed any impact fee assessed by this Ordinance for the new development. However, a fee payer or his or her successor in interest may apply an improvement credit which has not otherwise been used in any other 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 the credit is being applied is located within the same service area as the new development which would be the beneficiary of the credit and provided that the credit application is made within five (5) years of the date of execution of the original improvement credit agreement.

3. A fee payer shall be entitled to an improvement credit equal to the dollar value of the cost of any eligible system improvement contributed, paid for or committed to by the fee payer or his or her predecessor in interest in conjunction with the County's approval of the new development which is subject to the impact fee for which an improvement credit is being sought. The cost of such improvements shall be based on the following criteria:

- a) The actual cost of the system improvements based on a valid contract proposal or bid tabulations for work performed within Kane County on the County highway system; and
- b) The mean value of two legitimate, qualified appraisals of the fair market value of any land or interest therein which is part of the system improvement for which a credit is being sought. The fee payer or developer and the County shall each provide a legitimate, qualified appraisal from which the mean shall be determined.

4. To be eligible to receive an impact fee credit, the fee payer or developer shall initiate such determination of entitlement to an improvement credit by submitting a written application prepared by an Illinois licensed civil engineer for an improvement credit agreement to the County Engineer, no later than the fee payer's application for (i) the related building permit or (ii) the related highway access permit; whichever occurs first. The application for an improvement credit agreement shall include the following information:

- a) A plan of specific proposed system improvements, prepared and certified by a duly qualified and licensed Illinois civil engineer; and,
- b) The projected costs for the proposed system improvements, which shall be based on local information for similar highway improvements, along with the construction timetable

for the completion of the proposed system 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 fifteen (15) working days of receipt of the application for an impact fee 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 application's deficiencies to the applicant. The County Engineer shall take no further action on the proposed improvement credit agreement, other than further reviews for completeness, until all deficiencies have been corrected or otherwise settled.

6. Once the County Engineer determines that the applicant's proposed improvement is a system improvement and the proposed costs for the suggested system improvement are professionally acceptable and fairly assess its cost, the County Engineer shall draft an impact fee credit agreement that shall be reviewed and approved by the applicant submitting the request for the impact fee credit agreement. The impact fee credit agreement shall specifically outline the system improvements that will be constructed by the applicant, the time by which the system improvements shall be completed and the total dollar value of the proposed system improvements. If the County Engineer determines that either the proposed system improvement is not a system improvement or that the proposed costs thereof are not acceptable, the County Engineer shall notify the applicant of his/her decision and may propose an alternative system improvement consistent with the provisions of this Ordinance.

7. Upon written acceptance of the impact fee credit agreement by the County Engineer and the applicant, the Transportation Committee shall consider the impact credit agreement at the next regularly scheduled committee meeting. If the Transportation Committee approves the impact fee credit agreement, the County Engineer may execute the impact fee credit agreement on behalf of the County. Any impact fee credit agreement that includes system improvements with a total dollar value over \$100,000 shall be reviewed and ratified by the County Board before it is executed by the County Engineer.

8. The Division of Transportation shall maintain records of the use of impact fee credits toward payment of impact fees due and shall provide upon written request a quarterly statement to the beneficiary of each impact fee credit agreement indicating use of any impact fee credits during the reporting period and the balance of impact fee credits remaining. Upon execution of an impact fee credit agreement, the beginning balance shall be equal to the total dollar value of the impact fee credits as specified in the impact fee credit agreement. Impact fee credits will be applied against new development in the following manner:

- a) The recipient of the impact fee credit shall indicate on the impact fee application that impact fees assessed will be paid by utilizing impact fee credits and shall indicate the impact fee credit agreement number.
- b) For each portion of the new development to which an impact fee credit is intended to be applied, the Division of Transportation shall calculate the gross impact fee in accordance with Exhibit B of this Ordinance or in accordance with Section Thirteen of this Ordinance. The remaining impact fee credit balance shall be reduced by the gross impact fee for that portion of the new development. The impact fee receipt shall note that the impact fees were paid through application of impact fee credits and the amount of impact fee credit expended.

- c) If the impact fee credits remaining are insufficient to cover the gross impact fee for the new development, the remaining gross impact fee shall be multiplied by the impact fee multiplier then in effect and the applicant notified of the impact fee due.

#### Section Fifteen. Refunds.

1. Any impact fee collected may be refunded to the fee payer for the new development due to non-commencement before the impact fees have been expended or otherwise encumbered. Refunds may be made in accordance with this Section, provided that the fee payer or his or her successor in interest files a written petition for a refund of impact fees paid, within one (1) year of the date that the impact fees were required to be encumbered or expended.

2. Impact fees collected shall be encumbered for any of the purposes listed in Section Seventeen of this Ordinance within five (5) years of the date of receipt thereof. In determining whether the funds have been encumbered, the impact fees shall be accounted for on a first-in- first-out (FIFO) basis.

3. The impact fees collected pursuant to this Ordinance that have not been encumbered in accordance with subsection 2 of this Section shall be returned to the owner of record only upon receipt of a petition therefor. The petition shall include the following information:

- a) A notarized sworn statement that the petitioner is the owner of record of the new development for which the impact fee was paid and that the petitioner is entitled to a refund under the terms of this Ordinance;
- b) A certified copy of the latest recorded deed for the property that comprises the new development for which the impact fee was paid; and
- c) A copy of the most recent ad valorem property tax bill for the property that comprises the new development for which the impact fee was paid.

4. Within fifteen (15) working days of receipt of the written request, the County Engineer shall determine if the written request is complete. If the County Engineer determines the refund request is not complete, the County Engineer shall send a written statement by U.S. mail or email specifying the deficiencies to the petitioner. Unless the request's deficiencies are corrected, the County Engineer shall take no further action on the request.

5. When the County Engineer determines the written petition for refund of impact fees paid is complete, the County Engineer shall review the petition within fifteen (15) working days, and shall approve the requested refund if the County Engineer determines the fee payer has paid an impact fee which the County has neither expended nor encumbered within five (5) years from the date the impact fee was paid.

6. If any impact fee has not been expended or otherwise encumbered within five (5) years of the date the impact fee were received, upon receipt of a complete refund petition as determined by the County Engineer, the impact fee shall be refunded along with interest at a rate which is seventy percent (70%) of the prime commercial rate in effect at the time that the impact fee is imposed, less five percent (5%) of the total fee to defray the costs of administration.

7. Impact fee refunds may be made at the discretion of the County Engineer without petition in any case where inadvertent mathematical error resulting in overpayment has been made.

8. Any charitable organization certified by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, and when so certified paid an impact fee under Kane County Ordinance 04-22 for new development that is solely owned and solely occupied by the charitable organization shall, upon written application to the Kane County Engineer, receive a one-time refund in an amount equal to 100% of the impact fee that would have been assessed on an equivalent land use that

generates 50 weekday PM peak hour trips, or an amount equal to 100% of the impact fee paid, whichever amount is less.

#### Section Sixteen. **Establishment of Service Areas.**

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

#### Section Seventeen. **Use of Impact Fees Collected.**

1. The impact fees collected pursuant to this Ordinance 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 the Highway Code, (605 ILCS 5/5-701 et seq.) solely for highway improvement capital costs that are specifically and uniquely attributable to the new development assessed the impact fee. In no event shall impact fees be expended to alleviate existing deficiencies in the County's highway system which were identified in the CRIP that was the basis for the original Road Improvement Impact Fees adopted by the County. The impact fees shall be expended on system improvements within the service area(s) from which the impact fees were collected, as specified in the CRIP. In the event that a service area boundary is the centerline of a County highway or intersection, the County Engineer may use the impact fees to complete the system improvements to the opposite side of the highway or right of way. Co-mingling of impact fees with regular highway, local gasoline or state motor fuel tax funds on highway improvements is permissible to the extent that regular tax funds are used to pay for the cost of alleviating any existing deficiencies. The County Engineer shall provide a written justification of the allocation of impact fees whenever such impact fees are allocated to highway improvements that will remedy existing deficiencies, demonstrating that the impact fees are not used to improve said existing deficiencies.

2. Impact fees shall be expended or encumbered within five (5) years from the date of receipt thereof.

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

4. Impact fees collected shall accrue to the fund established for the service area(s) in which the new development is proposed or occurs.

5. Impact fees on deposit and not immediately necessary for expenditure shall be invested in interest bearing accounts designated solely for the impact fees for each service area(s). All interest derived therefrom shall be retained in the appropriate fund and used for highway improvements authorized in this Ordinance.

6. The County shall provide for an annual accounting of any fund or account containing impact fees and interest earned thereon. Such accounting shall include, but shall not be limited to, the total impact fees collected, the source of the impact fees collected, the total amount of interest accruing on such impact fees, the amount of impact fees expended on highway improvements, and a list of the improvement credits granted. The County shall publish the results of the accounting once a year in a newspaper of general circulation within Kane County. The notice shall also state that a copy of the accounting report shall be made available for public inspection at reasonable times. A copy of the report shall be given to the Advisory Committee.

7. Impact fees collected pursuant to Ordinance 04-22 and impact fees assessed pursuant to Section Seven of this Ordinance may be expended on any eligible highway improvement identified in the CRIP in effect at the time of award of the contract for expenditure of the impact fees; however, impact fees collected pursuant to Ordinance 04-22 and impact fees assessed pursuant to Section Seven of this

Ordinance shall be expended within the service area as defined in Ordinance 04-22 from which the impact fees were collected.

#### Section Eighteen. **Advisory Committee.**

1. An Advisory Committee has been established by the County in compliance with the requirements of the Road Improvement Impact Fee Law to assist the County in the recommendation of land use assumptions and the development of the CRIP. After the effective date of this Ordinance, the Advisory Committee shall, among other duties, continue to:

- a) Report to the County on all matters relating to the imposition of impact fees;
- b) Monitor and evaluate the implementation of the CRIP and the assessment of impact fees;
- c) Report annually to the County with respect to the progress of the implementation of the CRIP;
- d) Advise the County of the need to update or revise the land use assumptions, CRIP, or impact fees;
- e) Review the County's highway program with respect to impact fee expenditures; and
- f) Discuss relevant development trends in the County.

2. The County shall adopt procedural rules to be used by the Advisory Committee in carrying out the duties imposed by this Section. The rules shall provide that any three (3) members of the Advisory Committee may call a meeting of the Committee to discuss issues that fall within the duties listed above. The County shall assist the Advisory Committee and shall make available all professional reports reasonably relating to the development and implementation of the land use assumptions, the CRIP, and the periodic up-dates of the CRIP. Meetings of the Committee shall be subject to the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*).

#### Section Nineteen. **Review of Land Use Assumptions and Update of Comprehensive Road Improvement Plan.**

The Advisory Committee shall periodically review the land use assumptions and the CRIP, approved by Resolution 04-21 as amended from time to time, in accordance with Section Eighteen of this Ordinance and shall advise the County of the need to update any of these documents. The CRIP shall be updated at least once every five (5) years in accordance with statutory requirements. The five (5) year period shall commence on the date of the most recent adoption of the CRIP.

#### Section Twenty. **Review of Ordinance.**

1. The Advisory Committee shall periodically review the factors used to calculate the impact fee schedule in Section Seven of this Ordinance, the criteria defined for a simplified individual assessment provided for in Section Thirteen, the factors used for a standard individual assessment provided for in Section Thirteen, 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 impact fee. The review shall not affect the applicability of the impact fee schedule in Section Seven or the factors in Section Ten 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 any proposed increase in the impact fees will be five percent (5%) or greater from the previous impact fee schedule, the County shall hold a public hearing regarding the proposed revisions to the impact fee schedule. The County shall

give thirty (30) days' notice of such public hearing by publication in a newspaper of general circulation within Kane County. A majority vote of the members of the County Board then holding office is required before the impact fees may be increased. In no event shall this subsection or any other Section of this Ordinance be construed to prevent the County Board from taking any action to amend this Ordinance after its effective date.

2. Regarding any revision of the impact fee schedule, the maximum annual increase for any one year shall not be more than ten percent (10%) plus any increase in the Construction Cost Index (as published by the Engineering News Record) for said year.

3. Any impact fee increase or decrease shall become effective on April 1st of the year that the impact fee schedule is approved by the County Board. If there has been a State or County gas tax increase or decrease, a revised fee schedule may be considered by the Transportation Committee at a regularly scheduled meeting and subsequently by the County Board at the next regularly scheduled County Board meeting thereafter. Any revised impact fee schedule approved by the County Board shall reflect the allocation of such gas tax funds to transportation capacity improvements.

4. An annual report shall be provided to the County Board that examines the expenditure of the impact fees collected under the provisions of this Ordinance and analyzes the effectiveness of such expenditures. The annual report shall be produced prior to June 1st of every year.

5. The limitations contained in subsections 1 and 2 of this Section shall not apply to any amendment to this Ordinance resulting from a complete update of the Land Use Assumptions and Comprehensive Road Improvement Plan in accordance with the Road Improvement Impact Fee Law.

#### Section Twenty-one. **Effective Date of Ordinance.**

This Ordinance shall become effective upon adoption by the County Board.

#### Section Twenty-two. **Penalties.**

1. The County Engineer shall initiate, through the office of the Kane County State's Attorney, judicial proceedings to collect any impact fee or any interest accrued thereon that has become due under this Ordinance.

2. Unless a fee payer is actively prosecuting the appeal of an impact fee, or actively prosecuting any other remedy provided by law for relief against an impact fee, if an impact fee required by this Ordinance has not been timely paid, the County or the County Engineer shall not issue to the delinquent fee payer any subsequent approvals or permits for any other development or work in the County of Kane in which the delinquent fee payer has an interest and shall suspend review of any and all pending applications or petitions of the delinquent fee payer pending before the County until all impact fees owed have been paid in full.

#### Section Twenty-three. **Distribution.**

Certified copies of this Ordinance shall be sent to every municipality having territory within Kane County, the Illinois Department of Transportation, the Division of Transportation, and the Kane/Kendall Council of Mayors, and one copy to the Treasurer, Auditor, Finance Department, Development Department, and State's Attorney's Office.

#### Section Twenty-four. **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 affect the remaining portions or sections of the Ordinance, which shall remain in full force and effect.

Passed by the Kane County Board on February 8, 2022.

\_\_\_\_\_  
John A. Cunningham  
Clerk, County Board  
Kane County, Illinois

\_\_\_\_\_  
Corinne M. Pierog,  
Chairman, County Board  
Kane County, Illinois

Vote:  
Yes \_\_\_\_\_  
No \_\_\_\_\_  
Voice \_\_\_\_\_  
Abstentions \_\_\_\_\_



Exhibit A: Impact Fee Service Areas

