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**STATE OF ILLINOIS**

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COUNTY OF KANE

ORDINANCE NO.12-xxx

**KANE COUNTY ROAD IMPROVEMENT IMPACT FEE ORDINANCE**

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

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

~~WHEREAS, the legislature has passed the Road Improvement Impact Fee Law, (605 ILCS 5/5-901 et seq.), on July 26, 1989; and,~~

~~WHEREAS, Kane County does not have nor is it projected in the immediate future to have sufficient revenue to ensure that adequate highway improvements will be completed when needed by new development; and,~~

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

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

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

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

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

WHEREAS, this 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 Comprehensive Road Improvement Plan ~~as background data for~~ the purpose of implementing this Ordinance in its Resolutions 03-206, 04-21, and 06-112 in full compliance with the requirements of the Road Improvement Impact Fee Law; and,

WHEREAS, the County has, following extensive public participation, adopted revised Land Use Assumptions pursuant to County Board Resolution 06-112, and has adopted a revised Comprehensive Road Improvement Plan for impact fees pursuant to County Board Resolution 07-nnn, in accordance with the provisions of the Road Improvement Impact Fee Law, and has performed all other tasks necessary to update the Kane County Road improvement Impact Fee Ordinance and by approval of this

Ordinance 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."

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## Section Two. Purpose and Authority.

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

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

3. The purpose of this Ordinance is to ensure that new development pays a fair share of the costs of 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 highway improvements is allocated in a fair and equitable manner and orderly growth is promoted throughout the County.

~~The preambles as set forth hereinabove shall be incorporated by reference into the text of this Ordinance as if fully set forth herein.~~ Section Three. **Definitions.**

1. 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 605 Illinois Compiled Statutes the Highway Code of the Illinois Compiled Statutes (605 ILCS-5/5-907 and the provisions of section nineteen of this Ordinance to advise the County in the development and implementation of the comprehensive road improvement plan and the periodic update thereof of the plan.

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 gross income for monthly housing expenses that shall be (1) rent and utilities for rental housing; and (2) debt service (principal and interest), property taxes, and home insurance for home ownership. 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 must be fifty five (55) years old of age old or older and no person under age nineteen (19) may reside in the unit more than ninety (90) days in any consecutive twelve (12) months.

Assisted financing: the financing of residential development by the Illinois housing development authority, including loans to developers for multi-unit residential development and loans to purchasers of single-family residences, including condominiums and townhouses.

Average trip rate for peak hour of adjacent street traffic: the weighted average trip rate during the hour of the highest volume of traffic passing a site on adjacent streets between four o'clock (4:00) and six o'clock (6:00) P.M.

Block perimeter: the linear measurement taken along the public right-of-way line adjacent to and around land entirely bounded by streets or publicly owned paved bicycle or pedestrian paths.

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" are interchangeable.

Building permit: any form of approval issued or given 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 issued by either the County or a municipality as a condition of occupancy of a building, and includes any temporary occupancy approval as well as any permanent approval.

Charitable organization: entities, corporations, and any community chest, fund, or foundation certified by the internal revenue service as tax-exempt under Section 501(c)(3) of the internal revenue code and is 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 prepared by the County in consultation with the advisory committee.

County: the County of Kane, State of Illinois.

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

County Engineer: the County Engineer of Kane County as "County Engineer" is defined in [605 Illinois Compiled Statutes the Highway Code of the Illinois Compiled Statutes \(605 ILCS 5/5-201 et seq.\)](#).

County highway: shall have the definition as set forth in the Illinois Highway Code of the Illinois Compiled Statutes (605 ILCS 5/2-204).

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

Density: 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 development, ~~but includes areas devoted to public rights of way~~, 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 make larger, bigger or to add onto so as to increase the useable square footage of a building so that the amount of useable internal square feet exceeds 25% of the existing useable internal square feet of the building structure.

Existing deficiencies: highway intersections or highway segments under the jurisdiction of the County that operated at level of service "E" (as defined by the Institute of Transportation Engineers) or below in 2003 and that are identified as "existing deficiencies" in the comprehensive road improvement plan adopted by the County in County Board Resolution 04-21.

Fee payer: any person initiating new development who pays, or is required to pay an impact fee in accordance with the terms of this or any previous [Road Improvement Impact Fee Ordinance](#).

Floor area ratio of a zoning lot: the floor area of the 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: ~~" means any public way for vehicular travel which has been laid out in pursuance of any law of the State of Illinois or of the Territory of Illinois, or which has been established by dedication, or used by the public as a highway for 15 years, or which has been or may be laid out and connect a subdivision or platted land with a public highway and which has been dedicated for the use of the owners of the land included in the subdivision or platted land where there has been an acceptance and use under such dedication by such owners, and which has not been vacated in pursuance of law. The term "highway" includes right of way, bridges, drainage structures, signs, guard rails, protective structures and appurtenances necessary or convenient for vehicular traffic. A highway in a rural area is sometimes called a "road", while a highway in a municipal area may be called a "street".~~ has the meaning as set forth in the Highway Code of the Illinois Compiled Statutes (605 ILCS 5/5-102 et seq.).

Highway capacity: the maximum hourly rate at which vehicles can reasonably be expected to traverse a point or a uniform section of a highway or lane thereof during a given time period under prevailing highway, traffic and control conditions. ("Highway Capacity Manual" HCM 2000, section 2-II)

Highway improvement: the improvement, expansion, enhancement, enlargement or construction of highways under the jurisdiction of the County, which includes, but is 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 comprehensive road improvement plan, even though they are under the jurisdiction of the County.

Highway improvement capital costs: include, but are not limited to, capital costs associated with the construction of new or expanded highway improvement, 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 paving structures, or 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 industry, construction, service and/or warehousing activity.

Industrial Redevelopment: New development which is primarily industrial activity occurring on an infill or redevelopment site.

Infill: undeveloped 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 agreement between the County and a fee payer as provided for in Section Seven Paragraph 4 of this Ordinance.

Impact fee credit agreement: an agreement between the County and a fee payer as provided for in Section Twelve of this Ordinance.

Impact fee payment agreement: an agreement between the County and a fee payer as provided for in Section Eight of this Ordinance.

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

Level of service: the category of road service as defined by the Institute of Transportation Engineers which has been selected by the County as the adopted level of service to serve existing development not subject to the impact fee and to serve new development, provided that the level of service selected for the new development shall not exceed the level of service adopted for existing development.

Municipal impact fee: an impact fee assessed by a municipality pursuant to the road improvement impact fee law.

Municipality: any city, village or town with territory within the boundaries of Kane County.

New development: any residential, commercial, industrial or other project which is being newly constructed, reconstructed, redeveloped, structurally altered, relocated, or enlarged, and which generates additional traffic within the service area(s) of the County. Conversely, if the ~~project, expansion or change in use of any building(s) or structure(s)~~ will not generate additional traffic, ~~the development~~ it shall not constitute "new development" and the developer shall be exempt from the provisions of this Ordinance. New development will be deemed to commence upon the issuance of a building permit or the commencement of construction of the new development, whichever occurs first. Relocation of a business operating within the County to a newly constructed structure shall constitute new development. New development shall not include any new development for which site specific development approval has been given by a unit of local government within eighteen (18) months before the first date of publication (~~which publication date was~~ ~~which publication date was~~ February 19, 2003) by the County of the notice of public hearing to consider the land use assumptions relating to the development of a comprehensive road improvement plan and imposition of impact fees; provided, however, that a building permit for such new development is issued within eighteen (18) months after the date of publication of such notice. For the purpose of section eighteen of this Ordinance, new development shall constitute a structure or group of structures that require submittal of plans to and development approval by a municipality, including a final planned development plan, a final subdivision plat, a conditional or special use permit or a building permit. New development may also be defined through the terms of an impact fee payment agreement.

Noncommencement: the cancellation or abandonment of construction activity making a material change in a structure, or the cancellation or abandonment of any other new development activity making a material change in the use or appearance of land.

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

Person: any individual, firm, partnership, association, public or private corporation, organization 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 definitions to be used in the administration of this Ordinance.

Project: the construction of or an addition to a building.

Redevelop: to change the use of a building.

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

Relocate: To move, reposition or change the location of an existing structure to a different location.

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

Retail commercial: a single commercial retail outlet or series of retail outlets for the sale and or distribution of perishable and non perishable goods and the provision of services.

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.

Roads, streets or highways: any road, street or highway which has been designated for improvement in the comprehensive road improvement plan, together with all necessary appurtenances, including but not limited to bridges, rights of way, tollway ramps and traffic control improvements.

Service area: any one of the three (3) land areas delineated by the boundaries shown on exhibit A attached to the Ordinance codified herein, and which are so designated in the comprehensive road improvement plan.

Site-related improvements: capital highway improvements necessary for direct ingress to and egress from a new development. Site-related improvements include, among other things the following: (i) site driveways and roads; (ii) right and left-turn lanes for or leading to site driveways and roads; (iii) traffic control measures for or leading to site driveways and roads; (iv) acceleration and/or deceleration lanes; (v) median openings and/or closings; (vi) roads necessary to provide direct ingress to and egress

from a new development; (vii) landscaping; (viii) lighting; (ix) utilities; (x) berms, and the rights of way needed for the above. The term "site related improvements" includes any improvements made to roads, streets, or highways and any appurtenances thereto that are not designated for improvement in the comprehensive road improvement plan.

Site specific development approval: an approval of a plan submitted by a developer to a unit of local government describing with reasonable certainty the type and intensity of land use for a specific parcel or parcels of real property. The plan may be in the form of, but need not be limited to, any of the following: a preliminary or final planned unit development plan, subdivision plat, development plan, conditional or special use permit, or any other form of development use approval, as utilized by a unit of local government, provided that the development use approval constitutes a final exercise of discretion by the unit of local government. If the approval is preliminary in nature, the final plat or plan for the new development shall be in substantial conformance with the preliminary plat or plan. "Substantial conformance" as used herein means that when compared to the preliminary plat or plan, the final plat or plan for a new development has virtually the same mix of land uses in virtually the same proportions and 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 comprehensive road improvement plan.

Specifically and uniquely attributable: has the meaning as set forth in the Road improvement impact Fee Law of the Illinois Compiled Statutes (605 ILCS 5/5-901 et seq.).

Structurally altered: any change or addition to the load bearing structure of a building so that the amount of useable internal square feet exceeds 25% of the existing useable internal square feet of the building. System improvement: capital improvements, other than site-related improvements, on county highways under the jurisdiction of the County which are set forth in the comprehensive road improvement plan and identified as being eligible to be funded with impact fees. System improvements must address capacity deficiencies. ~~The dedication of highway right of way to meet the published minimum right of way requirements of a unit of local government for the functional classification of any highway shall not be considered a system 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.

Transportation Committee: the transportation committee as designated by the Kane County Board.

Unit of local government: any city, village or town with territory in Kane County. The terms "unit of local government" and "municipality" 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.

Working day: any day on which the offices of the County are officially open, not including Saturdays, Sundays, and other holidays designated by the County Board. (Ord. 07-232, § 3, 7-10-2007)



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

1. Application of the provisions of this Ordinance, the impact fee schedules and any individual assessment shall be made by the County Engineer. Whenever necessary, the County Engineer may use Trip Generation (6<sup>8</sup>th ed. of the Institute of Transportation Engineers as may be amended or revised from time to time) or the Highway Capacity Manual (Special Report 209, Transportation Research Board, as may be amended from time to time), or locally obtained empirical data, in 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 the 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 fee payer by regular mail of the date and time of such meeting and shall consider such written or oral testimony that the fee payer may present in conjunction with the decision and recommendation of the County Engineer. The Transportation Committee shall affirm, reverse, or modify the County Engineer's decision at said regularly scheduled meeting.

4. The fee payer shall have fourteen (14) 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 fee payer'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. **All 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. **Assessment of Impact Fees and Impact Fee Schedule.**

1. An impact fee 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. Speculative projects for which the use of the buildings has not been determined will be assessed at the highest of the rates in the impact fee schedule which may be appropriate for the structure being built.

2. Any new development that has received site specific development approval prior to January 1, 2008, shall be assessed an impact fee under the terms of Kane County Ordinance 04-22, ~~;-however, Any new development that has received site specific development approval impact fee that is due and payable~~ on or after January 1, 2010, shall be assessed ~~imposed~~ in accordance with the terms of the Kane County Road Improvement Impact Fee Ordinance in effect at the time the impact fee became due. New development that is assessed an impact fee under Kane County Ordinance 04- 22 shall not be eligible for any impact fee discount provided for in Section Eighteen of this Ordinance.

3. Any new development that is solely owned and solely occupied by a charitable organization that is certified by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, and that has received site specific development approval prior to January 1, 2008, shall be assessed an impact fee pursuant to the terms of Kane County Ordinance 04-22 until January 1, 2010, but shall receive a total site discount equaling: (i) 100% of the impact fee that would have been assessed on an equivalent land use that generates 50 weekday PM peak hour trips, or (ii) 100% of the impact fee assessed on the new development thereunder, whichever amount is less.

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

1. Except as may be otherwise provided in subsections 3 and 4 of this Section, impact fees for a single family residential new development assessed pursuant to any [previous](#), current or subsequent Ordinance shall, prior to the issuance of a building permit by either a municipality or the County, be paid in full.

2. Except as otherwise provided for in this subsection and in subsection 3 and 4 of this Section, impact fees for multi-family residential new development and for non-residential new development assessed pursuant to any [previous](#), current or subsequent Ordinance shall, prior to the issuance of a building permit by either a municipality or the County, be paid in full.

3. In the event that a building permit or certificate of occupancy is issued by a municipality without an impact fee having been paid, the County may collect the impact fee from the fee payer or the fee payer's successor in title at any time thereafter. 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.

4. Payment of an impact fee may be authorized at a time earlier than as otherwise specified in subsections 1 and 2 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 Eight 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.

5. Developers of residential new development who receive 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.

6. 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.

7. Municipalities shall provide the County with a notice of issuance of any building permit in accordance with the provisions of 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 Eight. 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 application requirements specified by the County Engineer. Such impact fee payment agreement may provide for: 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) reduction of the impact fee through transportation systems management strategies; c) recapture payments for construction credits; d) credit and security arrangements and e) 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 Twelve of this Ordinance. A form of security may, at the sole option of the County be required to secure the deferred payment of an impact fee due under the provisions of this Ordinance. Security provided for the payment of any impact fee due under the provisions of this Ordinance may be in the form of a promissory note, cash bond, security bond, an irrevocable letter of credit, or a lien or mortgage on the lands to be covered by the building permit, 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. Fee payers for non-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 determined 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.

2. Within ten (10) 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 person making the written application. If the County Engineer determines that additional documentation is required, the County Engineer shall send a written statement specifying the deficiencies in the application by mail/email to the person submitting the application. Until the deficiencies are corrected, the County shall take no further action on the application for an impact fee payment agreement.

3. 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 that shall be 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 committee meeting, and, 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 shall not approve of an impact fee payment agreement shall be based on only upon written finding. 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, for reasons include but are not necessarily limited to the extraordinary potential adverse impact of the new development among other things.

#### Section Nine. Intergovernmental Agreements.

1. At any time after the adoption of this Ordinance, the County may enter into an intergovernmental agreement with any municipality with territory in Kane County regarding the impact

fee imposed by this Ordinance. Such intergovernmental agreements shall be adopted in accordance with state statute and may include provisions governing administrative issues involving the collection of the impact fee assessed, such as the reimbursement of collection costs from the impact fees collected, and any other matters deemed necessary or appropriate by the County and the municipality.

2. The intergovernmental agreement may provide for the collection of an impact fee for municipal streets as an additional component of the Kane County Road improvement Impact Fee, provided that all the municipalities in the applicable service area(s) enter into an intergovernmental agreement with the County that provides that the municipal street portion of the impact fee shall be expended for municipal street improvements within the service area(s) in which the fee is collected, and provided that the use of the impact fees on municipal streets is 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 of the Illinois Compiled Statutes \(605 ILCS 5/5- 701 et seq.\)](#), solely for highway improvement capital costs.

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### Section Ten. Impact Fee Schedule.

1. Any ~~developer~~~~person who initiates new development~~, except those ~~persons~~ preparing an individual assessment pursuant to Section Eleven of this Ordinance and those ~~persons~~ initiating new development exempt from the impact fee by the provisions of Section Seventeen hereof, shall pay the impact fee as set forth in Exhibit B of this Ordinance. 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 identifies 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 accepted traffic engineering practices, published data, the impact fee per trip provided in Exhibit D of this Ordinance, and the formula in Section Eleven of this Ordinance.

2. In the event that the ~~proposed~~ new development is a change in the immediate past land use of the site of the new development, the amount of the impact fee shall be based on the change in trips generated by the new use of the new development site, and the formula set forth in Section Eleven shall be used to calculate the impact fee.

3. Where a proposed new development is to be located within two (2) service areas, the County Engineer shall determine 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 Eleven. Individual Assessment of Impact.

1. Any ~~developer~~~~person who initiates new development~~ 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 Ten of this Ordinance or (ii) the impact fee for a particular land use or combination of uses not otherwise identified in Section Ten of this Ordinance.

2. Any ~~developer~~~~person~~ who chooses to provide an individual assessment is required to submit to the County Engineer a written statement of intent to perform an individual assessment prior to performing the individual assessment.

3. 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

DISCOUNTED IMPACT FEE = REDUCED IMPACT FEE x (100% minus IMPACT FEE DISCOUNT) Where: GROSS TRIP RATE = 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 Trip Generation (Institute of Transportation Engineers, 8<sup>th</sup> ed., 2008).

TOTAL TRIP REDUCTION = The percentage of trips generated by a new development that are pass-by trips or diverted-linked trips as defined by the Trip Generation Handbook (Institute of Transportation Engineers, 2004) as may be amended from time to time.

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

IMPACT UNITS = 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 = 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 = The GROSS IMPACT FEE that would have been assessed on a building that a fee payer demolishes in conjunction with new development.

IMPROVEMENT CREDIT = 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 = 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).

IMPACT FEE DISCOUNT = The percentage determined by the County Engineer by which the REDUCED FEE shall be discounted based upon the trip reduction measures included in the new development, as provided for in Section Eighteen of this Ordinance. Only new developments meeting the specific requirements of Section Eighteen are eligible for this discount. For all other projects, the IMPACT FEE DISCOUNT = 0%.

4. The individual assessment shall include the following information:

a. The proposed 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;

b. The proposed trip reduction rates for pass-by and diverted-linked trips, if any. The trip reduction rates shall be based on local empirical surveys for the same or similar land use types.

a-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.

5. An individual assessment shall be prepared only by transportation professionals, qualified by the County in accordance with established procedures, in the field of transportation planning and engineering and impact analysis

6. Within ten (10) working days of receipt of an individual assessment, the County Engineer shall determine if the individual assessment is complete. If the County Engineer determines the application is not complete, the County Engineer shall send by mail 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, other than further reviews for completeness.

7. When the County Engineer determines the individual assessment is complete, the individual assessment shall be reviewed by the County within fifteen (15) working 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 1 of this Section. If the County Engineer determines that the traffic information, traffic factors, or methodology are unreasonable, the proposed impact fee shall be denied, and the developer shall pay the impact fee according to the schedule established in Section Ten 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 person or developer may appeal the decision of the County Engineer in the manner provided for in Section Four of this Ordinance.

#### Section Twelve. **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, construction of a system improvement or conveyance of land accepted and received by Kane County for system improvements in accordance with the provisions of this Section. To be eligible to receive an impact fee credit, any fee shall apply for said credits in writing to the County Engineer no later than . Highway improvements made primarily for the benefit of the new development or individuals or entities other than the County, including but not limited to highway 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 therefore, are not eligible for an improvement credit. Any contribution, payment, recapture, construction of a system improvement or conveyance of land accepted and received by the County that does not address a capacity deficiency as set forth in the Comprehensive Road Improvement Plan or is received by the County as third party beneficiary to consideration included in any annexation agreement or as consideration for the a grant from the County of any benefit to the new development, is not eligible as an improvement credit. The County Engineer shall determine ~~make the final determination as to~~ 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 the 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 another improvement credit agreement, against an impact fee which would otherwise be due and owing under the provisions of this Ordinance, provided that the improvement for which 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 refund application is made within five 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 eligible system improvements 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 in Kane County on a County highway; 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. The fee payer or developer shall initiate such determination of entitlement to an improvement credit by submitting a written request for an improvement credit agreement to the County Engineer no later than . The request for an improvement credit agreement shall include the following information:

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

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

5. Within ten (10) working days of receipt of the request for an 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 request's deficiencies to the person submitting the request. 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 proposed improvement is a system improvement and the proposed costs for the ~~suggested~~ system improvement are professionally acceptable and fairly assess its cost and any unit of local government with jurisdiction over the proposed system improvement or any part thereof is in agreement with the system improvement, the County Engineer shall draft an improvement credit agreement that shall be reviewed and approved by the person or developer submitting the request for the improvement credit agreement. The impact fee credit agreement shall specifically outline the system improvements that will be constructed by the person or developer, the time by which the system improvements shall be completed and the total dollar value of the system improvements. If the County Engineer determines that either the ~~proposed~~suggested system improvement is not a system improvement or that the proposed costs thereof are not acceptable, the County Engineer shall notify the person or developer of his/her decision and may propose an alternative system improvement consistent with the provisions of this Ordinance.

7. Upon acceptance of the impact fee credit agreement by the County Engineer and the person or developer, the Transportation Committee shall consider the impact credit agreement at its 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 may be~~ 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 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 beneficiary shall indicate on the impact fee application that impact fees assessed will be paid by utilizing impact fee credits and shall indicate the improvement credit agreement number.

b. For each portion of the new development to which an be applied against 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 Eleven 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 improvement 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 Thirteen. **Demolition Credits.**

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

2. At the time of application for an impact fee receipt application, 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 Fourteen. **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 Fifteen of this Ordinance.

**Section Fifteen. 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 of the Illinois Compiled Statutes, (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 Comprehensive Road Improvement Plan 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 Comprehensive Road Improvement Plan. 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 projects 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 projects that will remedy existing deficiencies, demonstrating that the impact fees are not used to improve said existing deficiencies.

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

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

4. A "Road Improvement Impact Fee Fund" shall be established for each service area established in Section Fourteen of this Ordinance to insure that the impact fees collected are appropriately earmarked and spent on system improvements in accordance with the provisions of this Ordinance. In the event that any municipality enters into an intergovernmental agreement for the collection of a Road Improvement Impact Fee for municipal streets, an additional Road Improvement Impact Fee Fund shall be established for each of the service area(s) in which the municipality is located to insure that the municipal component of the impact fee is expended on municipal projects within the service area(s) in which it is collected.

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

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

7. The County shall provide ~~for an annual that an~~ accounting ~~be made annually for of~~ any ~~fund~~ ~~or~~ account containing impact fee proceeds 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.

Impact fees collected pursuant to Kane County Ordinance 04-22 and impact fees assessed pursuant to under the grandfather clause contained in Section Six, Paragraph 2 of this Ordinance may be expended on any eligible project identified on the Comprehensive Road Improvement Plan in effect at the time of award of the contract for expenditure of the impact fees; however, impact fees collected pursuant to Kane County Ordinance 04-22 and impact fees assessed pursuant to under the grandfather clause contained in Section Six of this Ordinance shall be expended within the service area as defined in Ordinance 04-22 from which the impact fees were collected.

#### Section Sixteen. Refunds.

1. Any impact fee collected may be refunded~~turned~~ to the fee payer for the approved new development is cancelled~~or~~ due to non-commencement of construction before the impact fees have been spent 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 request for a refund for an impact fees paid, within one (1) year of the date that the impact fees were required to be encumbered.

2. Impact fees collected shall be encumbered for any of the purposes listed in Section Fifteen 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 Paragraph 2 of this Section shall be returned to the owner of record only upon receipt of a petition therefor~~written refund affidavit~~. The petition affidavit~~written refund affidavit~~ shall include the following information:

a. A notarized sworn statement that the applicant is the owner of record of the new development for which the impact fee was paid and that the applicant 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 ten (10) 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 specifying the deficiencies by mail to the person submitting the request. 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 request for refund of impact fees paid is complete, the County Engineer shall review the request 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 spent nor encumbered within five (5) years from the date the impact fee was paid.

6. If any impact fee has not been spent or otherwise encumbered within five (5) years of the date the impact fee were received, upon receipt of a refund petition, the impact fee shall be refunded~~turned~~ 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 application 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 Seventeen. 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 is structurally altered or enlarged creating additional usable square footage. The internal alteration of a non-residential unit of less no greater than twenty-five thousand (25,000) square feet (alternative language: or where the square footage created by the structural alteration or enlargement does not exceed 25% of the square footage of the existing building????). where (a) no additional useable square feet of space ~~is~~ are added, (b) where the ~~construction or expansion of nonresidential new development square footage~~ does not require a zoning change, or (c) where the alteration is required by the County's or a municipality's building code;

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~~2.3.~~ The construction of nonresidential accessory buildings which ~~are not dwelling units and which~~ do not constitute an increase in intensity of the existing use;

~~3.4.~~ The ~~reconstruction~~ placement of a destroyed or partially destroyed building with a new building of the same size and use;

~~4.5.~~ Publicly owned and operated school buildings; and

~~5.6.~~ Public buildings owned, operated and occupied by government agencies.

~~6.7.~~ 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 the road improvement 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

~~7.9.~~ Private schools (Ord. 07-232, § 17, 7-10-2007).

#### Section Eighteen. Discounts

1. A new development shall be eligible for a forty percent (40%) discount from the impact fee assessed in accordance with section ten of this Ordinance, provided that all of the following ~~four criteria (a through d)~~ are met:

a. All building entrances in the new development are (i) within one half (1/2) mile walking distance of an existing or committed PACE fixed route bus service; or (ii) within one mile (1) mile walking distance of an existing or committed METRA commuter rail station (for the purposes of this subsection (a), "committed" shall mean that the METRA station or PACE fixed route bus service is included in either agency's published five year capital plan or has otherwise been actually budgeted by either agency); or (iii) within one-half (1/2) mile

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walking distance of other transit service. In order to meet the requirements of this subsection, "other transit service" shall meet all of the following requirements:

~~i.~~ i. The transit service shall be scheduled along a fixed route with at least one terminus at an existing METRA commuter rail station or existing PACE fixed bus service. At a minimum, hourly round trip service shall be provided on weekdays from six o'clock (6:00) A.M. to nine o'clock (9:00) A.M. and from four o'clock (4:00) P.M. to seven o'clock (7:00) P.M.; and,

~~ii.~~ ii. The transit service shall be available for use by the general public, although occupants of the new development may be charged a preferred rate; and,

~~iii.~~ iii. The transit ~~service re-shall be a minimum ten (10) year committedment to for a period of at least ten (10) years maintain the shall be committed to for a period of at least ten years along~~ with a guaranteed funding source ~~therefor~~; and,

~~iv.~~ iv. The transit service shall have a minimum passenger capacity sufficient to serve five percent (5%) of the units of the residential new development receiving the discount or five percent (5%) of the employees of the nonresidential new development receiving the discount. If a new development proposes to utilize an existing "other transit service", that transit service shall have sufficient available capacity to meet the minimum passenger capacity requirement as set forth in this subsection; and,

~~v.~~ v. The transit service shall be provided by an entity licensed and insured to carry passengers for hire.

b. The new development includes a residential component and also includes at least four (4) of the land uses or trip generators listed in paragraph 2 below, or all building entrances are: (i) within one-quarter (1/4) mile walking distance of a residential zoning district and at least four (4) of the land uses or trip generators listed in paragraph 2 below; or (ii) within three quarter (4/23/4) mile walking distance of a residential zoning district and at least six (6) of the land uses or trip generators listed in paragraph 2 below.

c. The new development has (i) an average residential density of at least seven (7) units per acre; or (ii) an average nonresidential or mixed use floor area ratio of at least 0.5.

d. ~~Unless located on an infill or redevelopment site~~ the maximum block perimeter within the new development is less than or equal to two thousand two hundred feet (2,200') and the main or a public entrance to the building is directly accessible on a paved pathway from the public sidewalk along a street, with no parking allowed between the building and the public sidewalk along the street.

2. Land uses and trip generators referenced in this section are: parks, forest preserves, community or civic centers, recreation facilities, schools or daycare centers, libraries, places of

worship, post offices, convenience stores, laundry/dry cleaners, neighborhood retail centers, restaurants, pharmacies, grocery stores, banks, medical/dental offices or hospitals, and general offices. A single use may not be counted in more than one category. Accessory uses within a principal use may not be counted as a separate use; for example, a school within a church shall be considered one (1) use.

3. New development meeting the requirements of paragraph 1 of this section shall be given an additional ten percent (10%) discount from the impact fee assessed in accordance with section ten of this ordinance, provided the new development is located on an infill or redevelopment site.

4. Non residential new development meeting the requirements of subsection (a) of this section shall be given an additional twenty percent (20%) discount from the impact fee assessed in accordance with section 17-17 of this article, provided the new development is located on an infill or redevelopment site.

5. Industrial redevelopment meeting the requirements of paragraph 1 of this section shall be given an additional twenty percent (20%) discount from the impact fee assessed in accordance with section ten of this Ordinance

~~3-6.~~ New development meeting the requirements of paragraph 1 of this section shall be given an additional ten (10%) discount from the impact fee assessed in accordance with section ten of this Ordinance, provided the new development (i) has an average residential density of at least fourteen (14) units per acre; or (ii) has an average non-residential or mixed use floor area ratio of at least 1.0.

7. New development meeting the requirements of paragraph 1 of this section shall be given an additional ten percent (10%) discount from the impact fee assessed in accordance with section ten of this Ordinance, provided the new development (i) has an average residential density of at least twenty eight (28) units per acre; or (ii) has an average non-residential or mixed use floor area ratio of at least 1.5.

8. The first fifty (50) trips generated by industrial redevelopment shall be discounted ten (10) percent.

9. Industrial redevelopment meeting the requirements of paragraph 1 of this section shall be given an additional ten percent (10%) discount from the impact fee assessed in accordance with section 10 of this Ordinance, provided the new development has access to a railroad spur for freight purposes.

10. Industrial redevelopment meeting the requirements of paragraph 1 of this section shall be given an additional five percent (5%) discount from the impact fee assessed in accordance with section 10 of this Ordinance, provided the new development is within one mile of a public use airport.

11. Industrial redevelopment meeting the requirements of paragraph 1 of this section shall be given an additional five percent (5%) discount from the impact fee assessed in accordance with section 10 of this Ordinance, provided the new development has access to a railroad spur for freight purposes.

12. Industrial redevelopment meeting the requirements of paragraph 1 of this section shall be given an additional five percent (5%) discount from the impact fee assessed in accordance with section 10 of this Ordinance, provided the new development has access to a satet designated truck route.

~~4.13.~~ 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 an individual assessment are not eligible for any of the discounts in this section.

~~5.14.~~ 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. 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 to properly administer the requirements of this section.

~~6.15.~~ As a condition of receiving an impact fee discount under this section, the developer shall enter into an impact fee payment agreement with the County in accordance with section eight 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 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 its ineligibility to receive an impact fee discount, or its receiving a lesser impact fee discount, that 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.

~~7.16.~~ New development shall be eligible for a one hundred percent (100%) discount from the impact fee assessed in accordance with section ten 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 comprehensive road improvement plan. 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 attached to the Ordinance codified herein of this Ordinance, by the applicable impact fee multiplier from exhibit C attached to the Ordinance codified herein, 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. (Ord. 07-232, § 18, 7-10-2007).

#### Section Nineteen. **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 Comprehensive Road Improvement Plan. 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 Comprehensive Road Improvement Plan and the assessment of impact fees;

c. Report annually to the County with respect to the progress of the implementation of the Comprehensive Road Improvement Plan; and

d. Advise the County of the need to update or revise the land use assumptions, Comprehensive Road Improvement Plan, or impact fees.

e. Review the County's highway program with respect to impact fee expenditures.

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 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 Comprehensive Road Improvement Plan, and the periodic up-dates of the plan.

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

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

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

1. The Advisory Committee shall periodically review the factors used to calculate the impact fee schedule in Section Ten, the factors used for an individual assessment provided for in Section Eleven, 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 Ten or the factors in Section Eleven 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 paragraph 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 December 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 its



next regularly scheduled meeting and subsequently by the County Board at the next regularly scheduled County Board meeting. 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 first annual report shall be produced on or before June 1, 2005, and a report shall be produced prior to June 1st of every year thereafter.

5. The limitations contained in Paragraphs 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-two. **Effective Date of Ordinance.**

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

#### Section Twenty-three. **Penalties.**

1. The County Engineer may 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.

#### Section Twenty-four. **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 County Council of Mayors, and one copy to the Treasurer, Auditor, Finance Department, Development Department, and State's Attorney's Office.

#### Section Twenty-five. **Severability.**

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