

**ORDINANCE**

DT-O-0051-23

DUPAGE COUNTY FAIR SHARE TRANSPORTATION IMPACT FEE  
ADMINISTRATION ORDINANCE  
(REPEALING DTo-16-88 AS AMENDED “DUPAGE COUNTY TRANSPORTATION  
IMPACT FEE ORDINANCE”)

WHEREAS, the State of Illinois (hereinafter “State”) adopted the Impact Fee Law via Public Act 85-464 and codified the Impact Fee Law under Illinois Compiled Statute 605 ILCS 5/5-905 *et seq.*, in 1988; and

WHEREAS, in accordance with the Impact Fee Law, the DuPage County Board (hereinafter “County Board”) adopted the DuPage County Fair Share Transportation Impact Fee Ordinance DTo-16-88 on November 22, 1988 and adopted amending ordinances from time to time (hereinafter collectively “prior Ordinance”); and

WHEREAS, the County Board has adopted six Comprehensive Road Improvement Plans in support of the Fair Share Transportation Impact Fee program; and

WHEREAS, the prior Ordinance has been in operation thirty-three years and has provided the County with more than \$70 Million in revenues for highway capital improvements made necessary due to residential and commercial land use growth; and

WHEREAS, project eligibility, network capacity, program administration and financial forecast considerations reduce the need for continued impact fee program revenues; and

WHEREAS, the DuPage County Fair Share Transportation Impact Fee program has met the intent of the Impact Fee Law, and has substantially satisfied the goals of the County Board by ensuring that the County transportation network accounts for changes in land use and economic development; and

WHEREAS, the County Board believes that it is in the best interest of our resident, commercial businesses, and service industry, to support continued economic growth and opportunity by ceasing the Fair Share Transportation Impact Fee program; and

WHEREAS, the Impact Fee Law requires the County to continue to administer impact fee accounts, expenditures and refunds and report in a manner stipulated under the statute, until such time as all funds are expended.

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

**Section One. Title**

- 1) That a certain ordinance entitled the "DuPage County Fair Share Transportation Impact Fee Ordinance," original Ordinance DTO-016-88, as amended ("prior ordinance"), is hereby repealed and replaced with the "DuPage County Fair Share Road Improvement Impact Fee Administration Ordinance" (hereinafter "this Ordinance") to read as follows:

**Section Two. Purpose and Authority.**

- 1) The purpose of this Ordinance is to ensure that the repealed DuPage County Fair Share Transportation Impact Fee accounts are administered according to the Road Improvement Impact Fee Law, 605 ILCS 5/5-901, *et. seq.*, (hereinafter "Impact Fee Law") until all fee accounts are expended.

**Section Three. Fair Share Transportation Impact Fee Remittance Agreements.**

- 1) The term fee payer means a person or entity who undertook development and paid a fair share transportation impact fee in accordance with the terms of the prior ordinance or pursuant to an agreement with the County. Under the prior ordinance, a fee payer could enter into an Impact Fee Remittance Agreement (hereinafter "Remittance Agreement") with the County to provide for payment to the County of the impact fee over a period of time.
- 2) Any Remittance Agreement in effect at the time of the repeal of the prior ordinance shall be considered terminated.

**Section Four. Intergovernmental Agreements.**

- 1) At any time after the adoption of this Ordinance, the County may enter into an intergovernmental agreement with the State of Illinois or any municipality within the County's jurisdiction regarding the use of impact fees held in impact fee district accounts (provided the use of the funds on State or municipal roads conforms to the uses intended under Impact Fee Law).

**Section Five. Individual Assessment of Impact Fee Agreements.**

- 1) Under the prior ordinance, the fee payer could enter an Individual Assessment of Impact Fee Agreement with the County whereby the fee payer provided the County with an Individual Assessment of the impacts of the proposed development upon the

County highway systems to determine whether a fair share of the road improvements' capital costs necessitated by the proposed development should be less than the fee established by the prior ordinance.

- 2) Any Individual Assessment of Impact Fee Agreement in effect at the time of the repeal of the prior ordinance shall continue to be in effect consistent with the terms of said Agreement.

**Section Six. Fair Share Impact Fee Improvement Credit Agreements.**

- 1) Under the prior ordinance, the fee payer could enter into a Fair Share Impact Fee Improvement Credit Agreement (hereinafter "Improvement Credit Agreement") with the County for credit against the fair share impact fee imposed based on the fee payer's contribution, payment, recapture, construction or dedication of land accepted and received by DuPage County for system improvements in accordance with the prior ordinance.
- 2) Any Improvement Credit Agreement in effect at the time of the repeal of the prior ordinance shall continue to be in effect consistent with the terms of said Agreement.

**Section Seven. Fair Share Impact Fee Credit Agreements.**

- 1) Under the prior ordinance, the County allowed developers or municipalities to accrue impact fee credits through Impact Fee Credit Agreements ("Credit Agreements") in a limited set of circumstances such as the dedication of real property for the County's capital facilities and system improvements such as the transfer of a roadway to the County.
- 2) All Credit Agreements in effect at the time that the prior ordinance is repealed shall be considered terminated.
- 3) The COUNTY shall notify all credit holders and parties to the Credit Agreements of the cessation of collection activities and the termination of the agreements according to the requirements of the Credit Agreement.

**Section Eight. Service Areas.**

- 1) Under the prior ordinance, service areas for the County were established in accordance with the boundaries set forth on Exhibit A. Under this Ordinance the funds previously collected shall be expended within the service area from which they were collected, in accordance with Section Nine below and Impact Fee Law.

**Section Nine. Use of Funds Collected.**

- 1) Upon repeal of the prior ordinance, collection of road improvement impact fees will cease.
- 2) Funds collected under the impact fee program preceding repeal of the prior ordinance shall not be refunded (except in accordance with Section Ten) and will continue to be maintained and managed in interest bearing accounts according to Impact Fee Law, Section 5-913.
- 3) The funds collected pursuant to the prior ordinance shall be expended in a manner consistent with Impact Fee Law and for the same purposes as motor fuel tax money allotted to the County under 605 ILCS 5/5-701 *et seq.*, solely for road improvement capital costs that are specifically and uniquely attributable to the development charged the fee. In no event shall funds be expended to alleviate existing deficiencies in the County's roads, streets or highway systems. The funds shall be expended on road improvements within the service area or areas from which they were collected, as specified in the Comprehensive Road Improvement Plan. In the event that a service area boundary is the centerline of a County road or intersection, the County Engineer (as term is defined in 605 ILCS 5/5-201 *et seq.*) may use the funds to complete the road improvements to the opposite side of the road or right of way. Comingling of funds with regular local gasoline or motor fuel tax funds on projects is permissible to the extent that regular tax funds are used to pay for at least the cost alleviating existing deficiencies. The County Engineer shall provide a written justification of the allocation of impact fee funds whenever such funds are allocated to projects that will remedy existing deficiencies, demonstrating that the impact fee funds are not used for such deficiencies.
- 4) Use of impact fees by agencies other than DuPage County is permissible under state statute (605 ILCS 5/5-903). Road improvements may also include the improvement, expansion, enlargement or construction of roads, ramps, streets, or highways under the jurisdiction of the State of Illinois or other local agency, as long as the State, County or local entities have developed an agreement providing for the construction and financing of such road improvements and these improvements are incorporated into the Comprehensive Road Improvement Plan. Road improvements shall not include tollways but may include tollway ramps. Use of funds is limited to projects adjacent to and effecting County highways where there is a demonstrable performance or capacity benefit.
- 5) Any expenditure or encumbrance of impact fee funds used to acquire right of way shall be expended or encumbered in conjunction with the construction associated with

that right of way and shall begin within five (5) years from the receipt of the funds used to acquire the right of way.

- 6) Impact Fees assessed prior to repeal of the prior ordinance shall be accrued to the fund established for the service area in which the new development is proposed. Any funds on deposit not immediately necessary for expenditure shall be invested in an interest-bearing account designated solely for such funds for each service area. All interest derived from these investments shall be retained in the appropriate fund and used for road improvements authorized in this Ordinance.
- 7) The County shall provide that an accounting be made annually for any account containing impact fee proceeds and interest earned. Such accounting shall include, but shall not be limited to, the total funds collected, the source of the funds collected, the total amount of interest accruing on such funds, the amount of funds expended on road improvements and a list of the credits given. The County shall publish the results of the accounting in a newspaper of general circulation within DuPage County at least three (3) times. The notice shall also state that a copy of the accounting report shall be made available to the public for inspection at reasonable times. A copy of the report shall be given to the Advisory Committee and shall be posted with Advisory Committee approval on the DuPage County impact fee web page.

#### **Section Ten. Refunds.**

- 1) Any impact fee collected may be returned to the fee payer if the approved new development is cancelled due to non-commencement of construction before the funds have been spent or encumbered by contract. Refunds may be made in accordance with this Section, provided that the fee payer or his or her successor in interest files a written request for a refund within one (1) year of the date that the fees were required to be encumbered by contract.
- 2) Impact fees collected shall be encumbered for the construction of roadway facilities within five (5) years of the date of collection. In determining whether the funds have been encumbered, the funds should be accounted for on a first-in-first-out (FIFO) basis.
- 3) The fees collected pursuant to the prior ordinance shall be returned to the fee payer only upon receipt of a written refund Affidavit. The Affidavit shall include the following information:
  - a. A notarized sworn statement the fee payer paid the impact fee for the property and the amount paid;
  - b. A copy of the dated receipt issued by the County for payment of the fee;

- c. A certified copy of the latest recorded deed for the property that comprises the new development for which the fee was paid;
  - d. A copy of the most recent ad valorem tax bill that comprises the new development for which the fee was paid.
- 4) Within ten (10) working days of receipt of the written request, the County Engineer shall determine if it is complete. If the County Engineer determines the refund request is not complete, the County Engineer shall send a written statement specifying the deficiencies by mail to the person or entity submitting the request. Unless the deficiencies are corrected, the County Engineer shall take no further action on the request.
  - 5) When the County Engineer determines the request for refund is complete, the County Engineer shall review it within fifteen (15) working days and shall approve the proposed refund if the County Engineer determines the fee payer has paid an impact fee which the County has not spent or encumbered within five (5) years from the date the fees were paid.
  - 6) When the money requested is still in a fund and has not been spent or encumbered within five (5) years of the date the fees were paid, the money shall be returned along with interest at a rate which is seventy percent (70%) of the prime commercial rate in effect at the time that the fee is imposed, less three percent (3%) of the total fee to defray the costs of administration.
  - 7) Refunds may be made at the discretion of the County Engineer without application in any case where inadvertent mathematical overpayment has been made.

**Section Eleven. Advisory Committee.**

- 1) An Advisory Committee has previously been established by the County in compliance with the requirements of Impact Fee Law (605 ILCS 5/5-901 *et seq.*) to assist the County in the recommendation of land use assumptions and the development of the Comprehensive Road Improvement Plan.
- 2) After the repeal of the prior ordinance, the Advisory Committee shall continue to have the following duties:
  - a. Report annually to the County on the disposition of the impact fees and accounts;
  - b. Approve annual impact fee financial reports;
  - c. Consider and approve amendments to this Ordinance

**Section Twelve. Effective Date of Ordinance.**

- 1) This Ordinance shall become effective immediately upon passage by the DuPage County Board.

**Section Thirteen. Distribution.**

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

**Section Fourteen. Severability.**

- 1) 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 this Ordinance which shall remain in full force and effect.

Enacted and approved this \_\_\_\_\_ 2023, at Wheaton, Illinois.