

THE TOWNSHIP OF UPPER SAUCON  
LEHIGH COUNTY, PENNSYLVANIA

ORDINANCE NO. 112

AN ORDINANCE ESTABLISHING AND IMPOSING A TRANSPORTATION IMPACT FEE UPON NEW DEVELOPMENT, SUBDIVISION AND CONSTRUCTION WITHIN CERTAIN TRANSPORTATION SERVICE AREAS FOR OFF-SITE PUBLIC TRANSPORTATION CAPITAL IMPROVEMENTS; IDENTIFYING THE TRANSPORTATION SERVICE AREAS; ESTABLISHING A MEANS AND PROCEDURES FOR CALCULATION OF SAID FEE; IDENTIFYING EXEMPTIONS OR CREDITS WHICH MAY BE APPLICABLE; PROVIDING THE TIME, METHOD AND PROCEDURE FOR PAYMENT OF SAID FEES; AND PROVIDING FOR THE ADMINISTRATION, COLLECTION AND DISBURSEMENT AND ACCOUNTING OF SAID FEES AND OTHER PROCEDURES AND STANDARDS ANCILLARY THERETO.

WHEREAS, Upper Saucon Township (hereinafter the "Township") has experienced considerable sustained growth and development in recent years; and,

WHEREAS, the Township continues to experience significant demands in the nature of subdivision and land development plan submissions and review requests and it is therefore, anticipated that such development will continue; and,

WHEREAS, the level of such future development will create a substantial and sustained adverse impact upon the transportation facilities, roads, streets, bridges and traffic control devices within certain areas of the Township driving them below service Level "D"; and,

WHEREAS, the Board of Supervisors is charged with the responsibility and obligation to keep roads open, in repair and usable for the safe and convenient travel by the public; and,

WHEREAS, successful adherence to this charge by the Board of Supervisors will entail a substantial cost directly attributable to and almost solely a consequence of the impact of new development; and,

WHEREAS, the Commonwealth of Pennsylvania has empowered the Board of Supervisor, under certain conditions and circumstances, to impose all or a portion of any cost for transportation facilities improvement upon new development and has delegated such authority unto the Township pursuant to the Act of December 19, 1990, P.L. 1343, No. 209, Section 1, 53 P.S. 10501-A, et seq.; and,

WHEREAS, the amount of the Transportation Impact Fee (hereinafter "impact fee") to be imposed has been determined by establishing the cost of additional transportation improvements necessary to meet the minimum safety and capacity standards, for certain public facilities which have been identified in the Upper Saucon Township capital improvement plan, taking into consideration the anticipated and projected growth and development in the Upper Saucon Township transportation service areas; and,

WHEREAS, the Township hereby finds and declares that an "impact fee" shall be established and imposed upon residential and non-residential subdivision and/or land development and construction to provide for or assist in financing specified transportation capacity capital improvements in transportation service area Number 1, the demand for which is uniquely attributable to and created by such development, and is in the best interest of the Township, its residents, and property owners is equitable, and does not impose an unfair burden on such development.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Upper Saucon that:

ARTICLE I. TITLE, PURPOSES, DEFINITIONS AND SUPPORTING STUDIES

SECTION 1. TITLE. This ordinance shall be known as the "Upper Saucon Township Transportation Impact Fee Ordinance."

SECTION 2. PURPOSE. The purpose of this Ordinance is to establish an Impact Fee Program to ensure that the transportation system situate within the Township and servicing its residents and the general public is and continues to be available and adequate to support new growth and development. To advance this objective, there is hereby created an impact fee as hereinafter calculated which shall be payable to the Township at the time of and as a condition precedent to building permit issuance.

SECTION 3. GENERAL FINDINGS AND CONDITIONS. The Board of Supervisors hereby finds and declares that:

(a) The conditions and standards for the determination and imposition of the impact fee set forth herein are consistent with and comply with those set forth in the Act of December 19, 1990, P.L. 1343, No. 209, Section 1, 53 P.S. 10501-A, et seq. and any and all amendments thereto (hereinafter the "Act"), and consist of:

- 1) The recitals set forth above;
- 2) The analysis, advice and recommendations of the Upper Saucon Township Capital Improvements (Impact) Fee Advisory Committee;

- 3) The Upper Saucon Township Land Use Assumptions as adopted in a Resolution by the Board of Supervisors on April 7, 1994 ;
- 4) The Upper Saucon Township Roadway Sufficiency Analysis as adopted in a Resolution by the Board of Supervisors on April 7, 1994 ;
- 5) The Transportation Capital Improvements Plan, as adopted in a Resolution by the Board of Supervisors on April 7, 1994 ; and,
- 6) Such other conditions and standards as the Board of Supervisors may by resolution or otherwise identify from time to time as being relevant and material to the imposition of an impact fee and consistent with the provisions of the Act and any amendments thereto.

b) The collection, disbursement and accounting of impact fees shall be administered by the office of the Township Manager, subject to supervision, review, oversight and control by the Board of Supervisors.

c) The time, method and procedure for payment of impact fees shall be consistent with the Act and any amendments thereto and as set forth in Article II, Section 10 and Article III, Section 16 of this Ordinance.

d) The procedure for credits against or refunds of impact fees shall be consistent with the Act and any amendments thereto and are set forth in Article III, Sections 17 and 18, of this Ordinance.

e) Exemptions, if any, shall be at the discretion of the Board of Supervisors and such exemptions as the Board shall choose to enact shall be consistent with the Act and any amendments thereto and are set forth in Article II, Section 11 of this Ordinance.

SECTION 4. DEFINITIONS. The terms and definitions set forth in 53 P.S. §10502-A of the Act are hereby adopted and incorporated, as though more fully set forth in this Ordinance by reference.

SECTION 5. IMPOSITION. There is hereby enacted an impact fee to be imposed upon any subdivision, land development or construction for the purpose of off-site transportation capital improvements as may be authorized by the Act and as described in the Transportation Capital Improvement Plan adopted by the Board of Supervisors. Said impact fee shall apply to all subdivisions, developments and construction within the transportation service area identified herein and shall be a condition precedent to final approval of a land development plan, a subdivision plan or issuance of a building permit or use and occupancy permit as may be necessary.

SECTION 6. USES. Impact fees collected pursuant to this Ordinance shall be expended for such costs, fees and expenses as may be incurred for improvements attributable to subdivision, land development and construction within the Transportation Service Area and designated in the Transportation Capital Improvements Plan adopted by the Board of Supervisors in a Resolution. Additionally, such fees may be used for the acquisition of land and rights-of-way, engineering, legal and planning costs, and all other costs, including

debt service related to road improvements within the designated service area, and including such proportionate amount of the Roadway Sufficiency Analysis as is allowed under the provisions of the Act.

**SECTION 7. DOCUMENTS ADOPTED BY THE BOARD OF SUPERVISORS**

The following documents, previously adopted by the Board of Supervisors, are hereby incorporated by reference in this Ordinance:

- a) Recommendations of the Upper Saucon Township Capital Improvements (Impact) Fee Advisory Committee.
- b) Land Use Assumptions as adopted by the Township in a Resolution, as may be amended from time to time.
- c) Roadway Sufficiency Analysis as adopted by the Township in a Resolution, as may be amended from time to time.
- d) The Transportation Capital Improvements Plan as adopted by the Township in a Resolution, as may be amended from time to time.
- e) The Impact Fee Schedule as established by Township Resolution.
- f) Designation of transportation districts as set forth in the Transportation Service Area Map identified as Transportation Service Areas and incorporated as though more fully depicted herein by reference.

**SECTION 8. SPECIAL TRAFFIC STUDIES.** Where necessary and intended to assist in determining the appropriate amount of traffic impact fees, the Township at the discretion of the Board of Supervisors may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in non-residential developments only; provided, however, that studies may

be waived as part of the planning procedure where the proposed development will not require deviation from the land use assumptions approved by the Township as the basis of the program.

Any such studies required by the Township shall be submitted prior to the imposition of the impact fee and shall be considered in the determination of the fee.

SECTION 9. APPLICABILITY OF IMPACT FEE. This Ordinance shall, except to the extent provided herein, be uniformly applicable to all subdivision, development and construction that occurs within the designated Transportation Service Area.

ARTICLE II IMPOSITION OF FEE, CALCULATION OF FEE, EXEMPTIONS.

SECTION 10. IMPOSITION OF IMPACT FEE. No building permit or use and occupancy permit shall be issued for a development or construction in a designated transportation service area, as herein defined, unless the applicant therefor has paid the "impact fee" imposed by and calculated pursuant to this Ordinance.

SECTION 11. EXEMPTIONS, WAIVERS. Exemptions or waivers, if any, shall be determined at the sole discretion of the Board of Supervisors consistent with the terms of the Act and this Ordinance.

This Impact Fee Ordinance is intended to apply to all growth and development in Upper Saucon Township after the effective date of this Ordinance. In the event that there is an unanticipated hardship not of the Developer's/Applicant's own making as a result of the enactment of this Ordinance, which results in a manifest injustice, the affected party may request a waiver in writing which requests shall accompany the plan review at all stages. The Planning

Commission shall have the opportunity to review such request for waiver and make recommendations to the Board of Supervisors.

SECTION 12. CALCULATION OF IMPACT FEES.

a) The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted Transportation Capital Improvements Plan within a given transportation service area attributable to and necessitated by a subdivision development or construction within the service area as defined, divided by the number of anticipated peak-hour trips generated by the subdivision development or construction consistent with the adopted Land Use Assumptions and calculated in accordance with the Trip Generation Manual published by the Institute of Transportation Engineers, 4th or subsequent editions, which is hereby adopted as though more fully set forth herein at length by the Township, to equal a per-trip cost for transportation improvements within the service area.

b) The specific impact fee for a subdivision, development or construction within the service area for road improvements shall be determined as of the date of preliminary land development, subdivision or construction plan approval by multiplying the per-trip cost established for the service area by the estimated number of trips to be generated by the subdivision, development or construction using generally accepted traffic engineering standards.

c) The Board of Supervisors may at its discretion, authorize or require the preparation of a transportation study to determine traffic generation or circulation for a non-residential

development or construction to assist in the determination of the amount of the fee of such subdivision, development or construction.

SECTION 13. ESTABLISHMENT OF TRANSPORTATION SERVICE AREAS

The transportation service areas are established as shown on the "Transportation Service Area Map" (attached hereto as Exhibit "A" and incorporated herein by reference).

Additional transportation service areas or designation of transportation service areas may be designated by the Board of Supervisors from time to time consistent with the procedure set forth in the Act and this Ordinance and in consideration of the following factors:

- a) The Comprehensive Plan;
- b) Any standards for adequate public facilities incorporated in the Program;
- c) The projected build-out and timing of subdivision, development and construction within the transportation service areas;
- d) The need for the cost of unprogrammed transportation improvement as may be determined necessary by special traffic studies or changed physical condition which support projected subdivision, development and construction; and,
- e) Such other factors as the Board of Supervisors may deem relevant.

Fees collected from development in the transportation service area will be used exclusively to fund transportation improvement projects scheduled for that district.

SECTION 14. NON-BINDING IMPACT FEE SCHEDULE. Prior to making an application for a building permit or use and occupancy permit, an applicant may request a non-binding impact fee estimate from the Township, which will be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the application specifics and documents a lesser use or development within said zoning regulations.

ARTICLE III. ADMINISTRATION, METHOD OF PAYMENT, CREDITS AND REFUNDS

SECTION 15. ADMINISTRATION OF IMPACT FEE.

a) Impact fees due pursuant to this Ordinance shall be collected by the Township in the manner or manners prescribed herein or as modified by action of the Board of Supervisors prior to and as a precondition for the issuance of the building permit or use and occupancy permit, whichever first occurs.

b) Upon receipt of impact fees, the Township Manager or his/her designee shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in an interest bearing account identified relative to the proposed transportation service area in a bank authorized to receive deposits of the Township funds. Interest earned by such account shall be credited to the account and shall be used solely for the purpose specified for funds of such account.

c) The Township Manager or his/her designee shall establish appropriate fund accounts and shall maintain records whereby impact fees collected can be segregated for each transportation service area and payor.

d) The Township Manager or his/her designee shall maintain and keep adequate financial records for such accounts as will show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursement of the funds from each account shall be used solely and exclusively for the provision of projects specified in the Program for the particular transportation service area.

SECTION 16. METHOD OF PAYMENT. Payment of the transportation capital improvements impact fee shall be made by the traffic generator prior to and as a precondition for the issuance of a building permit or use and occupancy permit by the Township for development or construction on the applicable site.

SECTION 17. CREDIT. Any applicant who shall perform, at applicants own expense and with the consent and prior agreement of the Board of Supervisors which shall be within the sole discretion of the Board, off-site traffic improvements, as herein defined, shall be eligible for a credit from the impact fee otherwise due in the amount of the actual cost of such off-site traffic improvements as approved by the Township Engineer. Such credit shall not exceed the amount of the impact fee.

a) If the applicant proposes to make such off-site improvements for which he seeks credit, he must enter into a prior written agreement with the Board of Supervisors in advance of the issuance of any building permit or use and occupancy permit. The agreement must establish the estimated cost of the off-site improvement, the schedule of initiation and completion of the

improvement, the financial security for the said improvement, a requirement that the improvement be completed to Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Supervisors. The Board of Supervisors must review the improvement plan, verify costs and time schedules, determine if the improvement is an eligible improvement and determine the amount of the applicable credit for such improvement to be applied to the otherwise applicable impact fee prior to issuance of any building permit or use and occupancy permit. In no event shall the Board of Supervisors provide a credit which is greater than the applicable impact fee.

Provided: any such applicant shall be required to supply financial security, in the form of a Letter of Credit or cash, sufficient in the discretion of the Township, to cover the cost of any such improvement to be installed by the applicant for which credit is sought.

b) Any applicant shall be entitled to credit against impact fees an amount equal to the agreed upon fair market value of land dedicated by the applicant and accepted by the Township in its discretion for future off-site right-of-way, realignment or widening of existing roadways.

c) An applicant shall be entitled to credit against impact fees an amount equal to the value of any road improvement construction which is contained in the Transportation Capital Improvements Plan and which was performed at the applicant's expense and with the consent and approval of the Board of Supervisors.

SECTION 18. REFUNDS. Impact fees collected pursuant to this Ordinance shall be refunded, together with interest earned thereon, to the payor of the fees under the following circumstances:

a) In the event the Township completed or terminates the capital improvements plan without adoption of a new or amended capital improvement plan and there remain undisbursed funds, the respective payors shall be entitled to a share of the fund balance in the same portion as the payor's impact fee payment plus interest earned bears to the total impact fees collected plus interest.

b) In the event any road improvement project within the transportation service area not the subject of additional improvement plans is completed at a cost to the Township less than ninety-five percent (95%) of the budgeted cost of the road project, the Township shall refund an amount equal to the excess budgeted cost over actual cost to the payors, pro rata, plus accumulated interest at the same pro rata value.

c) In the event that the Township fails to commence construction within three (3) years of the scheduled construction date of the project as set forth in the Transportation Capital Improvements Plan, without revision of said plan and construction date, the Township shall refund the portion of the fee paid by any payor making written request therefor, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt of such refund request even if said initiation date shall be more than three (3) years beyond the scheduled construction date.

With respect to refunds arising out of the subparagraphs (a) or (b) hereof, any funds unclaimed within one (1) year after notice as required by law shall be transferred to the general fund account of the Township, and the payor's entitlement to said refund shall lapse. It is the responsibility of the payor to provide the Township with payor's current address at all times.

ARTICLE IV. EFFECT OF ZONING AND SUBDIVISION REGULATIONS, CONSTRUCTION, REPEALER, EFFECTIVE DATE.

SECTION 19. EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS. This Ordinance shall not affect, in any manner, the permissible use of property, density of development, previously adopted design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements which remain subject to applicable zoning, and subdivision regulations of the Township, which shall continue to be operative and remain in full force and effect without limitation with respect to all such development.

SECTION 20. IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT. The impact fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the Township on the development of land or issuance of building permits or use and occupancy permits. Nothing herein contained shall be deemed to alter or affect the Township's existing Ordinances and regulations regarding on-site improvement. - In no event shall a property owner be obligated to pay for transportation capital improvements in an amount in excess of the amount calculated pursuant to this Ordinance, provided,

however, that a property owner may be required to pay, pursuant to the Township Ordinances, regulations or policies for other public facilities, fees or charges in addition to the impact fee as provided.

SECTION 21. LIBERAL CONSTRUCTION. The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety and welfare and convenience.

SECTION 22. REPEALER. All Ordinances, code sections or parts thereof applicable to off-site traffic improvements in conflict herewith shall be repealed but only to the extent of such conflict.

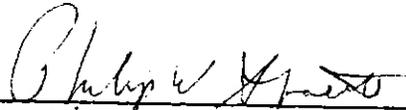
SECTION 23. SEVERABILITY. Should any sentence, section, clause, part or provision of this Ordinance be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part thereof, other than the part declared to be invalid.

SECTION 24. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption.

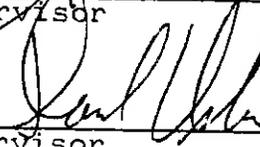
SECTION 25. RETROACTIVE APPLICATION.

a) Notwithstanding anything herein to the contrary, impact fees imposed on those projects involving subdivisions, developments and construction for which an application was filed following the first publication of notice of the Township's intent to adopt this Ordinance shall be subject to retroactive application of this Ordinance for a term not to exceed eighteen (18) months prior to adoption of the Resolution that created the Advisory Committee in connection herewith.

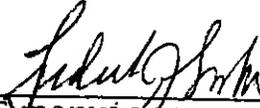
DULY ENACTED this 7th day of April, 1994.

  
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Supervisor

  
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Supervisor

  
Bernard A. Rodgers  
Township Manager