

ORDINANCE NO. _____

AN ORDINANCE IMPOSING AN IMPACT FEE
UPON NEW DEVELOPMENT WITHIN A
TRANSPORTATION SERVICE AREA WITHIN LOWER
POTTSGROVE TOWNSHIP AND ESTABLISHING
PROCEDURES AND STANDARDS ANCILLARY
THERETO.

WHEREAS, Lower Pottsgrove Township (the “Township”) has experienced considerable growth in the form of residential, commercial and industrial development in recent years; and

WHEREAS, it is anticipated that such development will continue; and

WHEREAS, it is anticipated that such future development will create a substantial impact upon the transportation facilities within the Township; and

WHEREAS, the Board of Commissioners is required to keep all roads open, in repair and usable for the safe and convenient travel by the public; and

WHEREAS, the fulfillment of the above duty by the Board of Commissioners will entail a substantial cost directly attributable to the impact of new development; and

WHEREAS, the Board of Commissioners is empowered by law to impose all or a portion of said cost upon new development; and

WHEREAS, the amount of the “impact fee” to be imposed shall be determined by the cost of the additional transportation improvements needed to meet such minimum safety and capacity standards, which public facilities shall be identified in a capital improvements program, considering the projected growth and development within the transportation district area; and

WHEREAS, the Township hereby finds and declares that an “impact fee” imposed upon residential and non-residential development in order to assist in the financing of specified major

transportation capacity improvements in the designated transportation district area, the demand for which is uniquely created by such development, is in the best interest of the Township and its residents, is equitable, and does not impose an unfair burden on such development.

NOW, THEREFORE, in consideration of the foregoing, be it hereby **ENACTED AND ORDAINED** by the Board of Commissioners of Lower Pottsgrove Township, as follows:

SECTION 1. Title. This ordinance shall be known as the “Lower Pottsgrove Township Impact Fee Ordinance.”

SECTION 2. Purpose. The purpose of this ordinance is to establish an Impact Fee Program to ensure that the transportation system is available and adequate to support new growth and development. To advance this objective, there is hereby created an impact fee payable to the Township at the time of building permit issuance.

SECTION 3. General Findings and Conditions. The Board of Commissioners hereby finds and declares that:

- A. The conditions and standards for the determination and imposition of the impact fee set forth herein are those set forth in Act 209 of 1990, and any and all amendments thereto (hereinafter the “Act”), and consist of:
 - 1. The recitals set forth above;
 - 2. The analysis, advice and recommendation of the Impact Fee Advisory Committee;
 - 3. The Land Use Assumptions Report as adopted by the Board of Commissioners;
 - 4. The Roadway Sufficiency Analysis as adopted by the Board of Commissioners;
 - 5. The Transportation Capital Improvements Plan, as adopted by the Board of Commissioners; and
 - 6. Such other conditions and standards as the Board of Commissioners may by resolution 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 or Secretary-Treasurer, subject to review, oversight and control by the Board of Commissioners.
- C. The time, method and procedure for payment of impact fees shall be as set forth in Section 10 of this ordinance.
- D. The procedure for credits against or refunds of impact fees shall be as set forth in Section 17 and 18 of this ordinance.
- E. Such exemptions as the Board of Commissioners shall choose to enact and shall be as set forth in Section 11 of this ordinance.

SECTION 4. Definitions. The terms and definitions set forth in Section 502-A of the Act are hereby adopted and incorporated in this ordinance by reference, except that Transportation Service Area and Transportation Study Area shall be synonymous terms.

SECTION 5. Imposition. There is hereby enacted an impact fee to be imposed upon new development for the purpose of off-site public transportation capital improvements authorized by the Act and as described in the Program adopted by the Board of Commissioners. Said impact fee shall apply to all new developments or subdivisions within the transportation service area identified herein and shall be a condition precedent to final approval of a development or a subdivision plan or issuance of a building permit.

SECTION 6. Uses. Impact fees collected pursuant to this ordinance shall be expended for costs incurred for improvements attributable to new development and designated in the Transportation Capital Improvements Plan adopted by the Board of Commissioners in Resolution No. 1096-16 on February 18, 2016, for improvements within the transportation service area in

which the new development will be located. 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 this Act.

SECTION 7. Documents Adopted by the Board of Commissioners. The following documents, previously adopted by the Board of Commissioners, are hereby incorporated by reference in this ordinance.

- A. Recommendations of the Impact Fee Advisory Committee, identified as follows: Land Use Assumptions Report, Roadway Sufficiency Analysis, and Transportation Capital Improvements Plan.
- B. Land Use Assumptions Report as adopted by the Township Resolution No. 1082-15.
- C. Roadway Sufficiency Analysis as adopted by the Township Resolution No. 1083A-16.
- D. The Transportation Capital Improvements Plan as adopted by Township Resolution No. 1096-16.
- E. Designation of a Transportation Study Area as set forth on the Land Use Assumptions Study Area Map.

SECTION 8. Specific Traffic Studies. Where intended to assist in determining the appropriate amount of traffic impact fees, the Township may require the preparation of special transportation studies to determine the traffic generation or circulation patterns in new non-residential developments only; provided, however, that no studies may be required where the proposed development will not require a deviation from the land use assumptions used to create 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 be uniformly applicable to all developments that occur within a designated transportation service area.

SECTION 10. Imposition of Impact Fee. No building permit shall be issued for a development in a designated transportation service area, as herein defined, unless the applicant therefore has paid the “impact fee” imposed by and calculated pursuant to this ordinance.

SECTION 11. Exemptions. RESERVED.

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 the transportation service area attributable to and necessitated by new development within the service area as defined, divided by the number of anticipated peak-hour trips generated by all new development consistent with the adopted Land Use Assumptions Report and calculated in accordance with the Trip General Manual published by the Institute of Transportation Engineers, 4th or subsequent editions, which is hereby adopted by the Township, to equal a per-trip cost for transportation improvements within the service area.
- B. The specific impact fee for a specific new development or subdivision within the service area for road improvements shall be determined as of the date of preliminary land development or subdivision approval by multiplying the per-trip cost established for the service area as determined in Section 13 hereof by the estimated number of trips to be generated by the new development or subdivision using generally accepted traffic engineering standards.

- C. The Board of Commissioners may authorize or require the preparation of a special transportation study in order to determine traffic generation or circulation for a new non-residential development to assist in the determination of the amount of the transportation fee for such development or subdivision.

SECTION 13. Establishment of Transportation Service Area. The Transportation Service Area is established as shown on the “Land Use Assumptions Study Area” map (incorporated herein by reference).

Additional transportation service area or combinations of transportation service areas may be designated by the Board of Commissioners from time to time consistent with the procedure set forth in 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 project build-out and timing of development areas;
- D. The need for and cost of unprogrammed transportation improvements necessary to support projected development; and
- E. Such other factors as the Board of Commissioners may deem relevant.

SECTION 14. Non-Binding Impact Fee Estimate. Prior to making an application for a building permit, an applicant may request a non-binding impact fee estimate from the Township, which shall be based upon the maximum development potential of the site pursuant to existing zoning regulations, unless the applicant specifies a lesser use of development.

SECTION 15. Administration of Impact Fee.

- A. Collection of Impact Fee. Impact fees due pursuant to this ordinance shall be collected by the Township in the manner or manners prescribed herein to the issuance of a building permit.

- B. Establishment of Fund. Upon receipt of impact fees, the Township Manager or Secretary-Treasurer shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited in interest-bearing accounts in a bank authorized to receive deposits for the Township funds. Interest earned by each account shall be credited to that account and shall be used solely for the purpose specified for funds of such account.
- C. Establishment and Maintenance of Accounts. The Township Manager or Secretary-Treasurer shall establish appropriate trust fund accounts and shall maintain records whereby impact fees collected can be segregated for each transportation district subarea.
- D. Maintenance of Records. The Township Manager or Secretary-Treasurer shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure that the disbursements of funds from each account shall be used solely and exclusively for the provision of projects specified in the Program for the particular transportation district sub-area.

SECTION 16. Method of Payment. Payment of the transportation capital improvements impact fee shall be made by the traffic generator prior to the issuance of building permit by the Township to the traffic generator for development on the applicable site.

SECTION 17. Credit. Any applicant who shall perform, at his own expense and with the consent and agreement of the Board of Commissioners, off-site 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 improvements as approved by the Township Engineer. Such credit shall not exceed the amount of the impact fee.

- A. If the applicant makes such improvements, he must enter into an agreement with the Board of Commissioners prior to the issuance of any building permit. The agreement must

establish the estimated cost of the improvement, the schedule for initiation and completion of the improvement, a requirement that the improvement be completed to the Township and Pennsylvania Department of Transportation standards and design criteria and such other terms and conditions as deemed necessary by the Board of Commissioners. The Board of Commissioners 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. In no event shall the Board of Commissioners provide a credit which is greater than the applicable impact fee. If, however, the amount of the credit is calculated to be greater than the amount of the impact fee due, the applicant may use such excess credit toward the impact fees imposed on another building permit for development on the same site and in the same ownership.

Provided any such applicant shall be required to supply financial security sufficient, in the judgment of the Township, to cover the cost of any such improvement installed by the applicant for which credit is sought.

- B. An applicant shall be entitled to a credit against impact fees in an amount equal to the fair market value of land dedicated by the applicant and accepted by the Township for future right-of-way, realignment or widening of existing roadways.
- C. An applicant shall be entitled to a credit against impact fees in 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.

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

- A. In the event the Township completes or terminates the capital improvements plan and there remain undisbursed funds, the respective payors shall be entitled to a share of the fund balance in the same proportion as the payor's impact fee payment plus interest earned equal to the total impact fee collected plus interest.
- B. In the event any specific road improvement project is completed at a cost to the Township less than 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.
- C. In the event 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, as may be amended from time to time, the Township shall refund the portion of the fee paid by any payor making written request therefore which is attributable to said project, with accumulated interest, provided no refund shall be paid with respect to any project actually begun prior to the receipt of such refund request.
- D. In the event the development for which impact fees were paid has not commenced prior to the expiration of the building permit issued therefore, the impact fees paid with accumulated interest shall be refunded to the payor. Further, if a building permit, after issuance, is altered in such a way as to reduce the indicated impact fee, the difference between the amount indicated and the amount actually paid shall be refunded. The payor, at his option, may roll over the impact fees attributable to an expired building permit to cover fees incurred by a renewal of said expired permit.

With respect to refunds arising out of subparagraphs (a) or (b) hereof, any funds unclaimed within one (1) year after notice as required by law shall be transferred to the general 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 the current address of his residence and/or place of business.

SECTION 19. Effect of Impact Fee on Zoning, PRD 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, subdivision and PRD regulations of the Township, which shall 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 the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township's existing ordinances and regulations regarding on-site improvements. 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 Township ordinances, regulations or policies, for other public facilities in addition to the impact fee for transportation improvements as shown herein.

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, welfare and convenience.

SECTION 22. Repealer. All ordinance, code sections or parts thereof in conflict herewith shall be repealed 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 passage.

SECTION 25. Retroactive Application.

- A. Notwithstanding any section to the contrary hereof, impact fees may be imposed on those projects involving developments, subdivisions and PRD's for which an application has been filed on or after the first publication of notice of the Township's intent to adopt this ordinance; provided, however, that such retroactivity does not exceed eighteen (18) months after the adoption of the resolution that created the advisory committee in connection herewith.
- B. In retroactive applications, the per-trip fee may not exceed One Thousand Dollars (\$1,000.00) or the actual calculated fee, whichever is less.

ENACTED and **ORDAINED** this _____ day of _____, 2016, by the Board of Commissioners of Lower Pottsgrove Township, Montgomery County, Pennsylvania.

**LOWER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS**

BY: _____
Bruce L. Foltz, President

ATTEST: _____
Michele M. Cappelletti, Secretary