

ORDINANCE 2021-11

**ORDINANCE CREATING CHAPTER 13 OF THE TOWN OF LISBON
GENERAL CODE OF ORDINANCES**

SECTION 1: Chapter 13 of the Town of Lisbon General Code of Ordinances is created to read as follows:

IMPACT FEES

13.01 Title, Purpose and Authority.

13.02 Definitions.

13.03 Applicability of Impact Fee.

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13.01 Title, Purpose and Authority.

(1) Title. This Chapter shall be known and cited as the "Impact Fee Ordinance."

(2) The purpose of this Chapter is to impose impact fees in order to pay for capital costs or improvements that are necessary to accommodate new development or any improvements made to existing development in the Town as a whole or in designated subareas. The imposition of impact fees is intended to ensure that capital facilities are adequate to meet the health and safety needs of the Town and that new development pays a proportionate share of new or expanded capital facilities required by such development.

- (3) This Chapter is authorized under Wis. Stat. § 66.0617. The provisions of this Chapter shall not be construed to limit or substitute the power of the Town to adopt this Chapter pursuant to any other source of local authority or exercise any other power available to the Town to accomplish the purposes of this Chapter.

13.02 Definitions. As applied in this Chapter, the following words and terms shall be used:

- (1) **BUILDING PERMIT** means any permit required for new construction and additions pursuant to Chapter 30 of the Town Code. The term "building permit" does not include permits required for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged or destroyed structure, provided no increase in gross floor area or number of dwelling units results therefrom.
- (2) **CAPITAL BUDGET** means a plan for capital expenditures, including commitments, to be incurred during the budget year from funds subject to appropriation by the Town Board of the Town of Lisbon for projects scheduled in a given year of the capital program.
- (3) **CAPITAL COSTS** means the capital cost to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct, expand or improve public facilities, except that not more than 10 percent of capital costs may consist of legal, engineering and design costs unless the Town can demonstrate that its legal, engineering and design costs which relate directly to the public improvement for which the impact fees were imposed exceed 10 percent of capital costs. "Capital costs" does not include other noncapital costs to construct, expand or improve public facilities, vehicles, or the costs of equipment to construct, expand or improve public facilities.
- (4) **CAPITAL IMPROVEMENT PROJECT PLAN** means a plan for capital expenditures, including commitments, to be incurred each year over a fixed period of years to meet capital needs arising from the long-term work program. It thus sets forth each project or other contemplated expenditure in which the Town is to have a part, and it specifies the full resources estimated to be available to finance the projected expenditures.
- (5) **COMPREHENSIVE PLAN OR MASTER PLAN** means the Town of Lisbon Comprehensive Development Plan, including any subsequent changes or amendments thereto.

- (6) DEVELOPER means a person who constructs or creates a land development.
- (7) DEVELOPMENT means any manmade change to improved or unimproved real property, the use of any structure or land, or any other activity that requires issuance of a building permit.
- (8) GROSS FLOOR AREA means the sum of the total planned floor area of all floor levels of a building (in square feet), including cellars, basements, mezzanines, penthouses, corridors, lobbies, stores and offices that are within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all areas that have floor surfaces with clear standing head room (6 feet, 6 inches minimum) regardless of their use. Unroofed areas and unenclosed roofed-over areas, except those contained within the principle outside faces of exterior walls, and parking garages are not included.
- (9) GROWTH AREAS Growth Areas for Park Impact Fees are identified in the Public Facilities Needs Assessment and Impact Fee Study approved May 10, 2021. There are three Growth Areas identified in the Plan: Growth Areas A, B and C.
- (10) IMPACT FEE means cash contributions, contributions of land or interest in land, or any other items of value that are imposed on a developer by the Town under this Chapter. Impact fee shall mean a fee to be collected after a building permit is issued and calculated based upon the capital costs of facilities in proportion to development creating the need for such facilities.
- (11) MIXED USE DEVELOPMENT means use of land involving both residential and nonresidential development.
- (12) NONRESIDENTIAL DEVELOPMENT means any use of land for primarily industrial or commercial purposes, or which does not fall within the definition of residential development.
- (13) PUBLIC FACILITIES means any of the following that are necessary to support a development and are identified in the capital improvement project plan to be financed by the imposition of an impact fee:
 - (a) Parks, playgrounds and land for athletic fields;

- (b) Highways, as defined in Wis. Stat. § 340.01(22), and other transportation facilities identified in Wis. Stat. § 66.0617(1)(f)1.; and
 - (c) Any other necessary governmental facilities permitted under Wis. Stat. § 66.0617.
- (14) RESIDENTIAL DEVELOPMENT means local use of land for the primary purpose of housing accommodations.
 - (15) RESIDENTIAL EQUIVALENT means one residential dwelling unit.
 - (16) REDEVELOPMENT means any existing building or structure that undergoes a change of use, intensification of use, increase in size, etc.
 - (17) SERVICE AREA means a geographic area delineated by the Town within which there are public facilities.
 - (18) SITE means a parcel, lot, or contiguous group of lots in a single ownership or under single control, considered a unit for purposes of development.
 - (19) TOWN means the Town of Lisbon, Wisconsin, its representatives or officers.
 - (20) TOWN BOARD means the Town Board of the Town of Lisbon, Wisconsin.

13.03 Applicability of Impact Fee. This Chapter shall be uniformly applicable to development which occurs within the Town as a whole or a designated development subarea. Pursuant to Wis. Stat. § 66.0617(5), this Chapter may impose different impact fees on different types of land development, and may impose impact fees on land development in a particular subarea that differ from impact fees imposed on similar land development in other subareas within the Town.

13.04 Imposition of Impact Fee.

- (1) The impact fees set forth in Section 5.05(1) and (2) of this Chapter are hereby imposed on all residential developments and land divisions within the Town or any residential development subarea thereof.
- (2) No building permit shall be issued for a development unless the impact fees set forth in Section 5.05 are calculated and imposed pursuant to this Chapter. Fees shall be payable upon issuance of a building permit, except if the total amount of impact fees due for development will be more than

\$75,000, a developer may defer payment of the impact fees for a period of 4 years from the date of the issuance of the building permit or until 6 months before the Town incurs the costs to construct, expand or improve the public facilities related to the development for which the fee was imposed, whichever is earlier. If the developer elects to defer payment under this paragraph, the developer shall maintain in force a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the Town and in a form acceptable to the Town Attorney. A developer may not defer payment of impact fees for projects that have been previously approved.

13.05 Impact Fee Schedules/Calculation.

- (1) Highways and Other Transportation Facilities Impact Fee. For purposes of transportation facilities fees imposed under this Section, the area subject to the fee shall be all the land within the Town.
 - (a) Residential Development. The highways and other transportation facilities impact fee shall be \$114.43 per residential dwelling unit.
 - (b) Impact Fee Increase. The impact fee may be increased annually based upon the prior year's average interest rate for the Engineering News Record Construction Cost Index, 20 City Coverage.
- (2) Parks, Playgrounds, and Land for Athletic Fields Impact Fee. For purposes of the parks, playgrounds and land for athletic fields impact fee imposed under this Section, the area(s) subject to the fee shall be as identified in the Impact Fee Needs Assessment.
 - (a) Residential Development.
 - (i) The parks, playgrounds and land for athletic fields impact fee shall be per residential dwelling unit or per resident at maximum occupancy for an institutional residential development at the amount set forth below.
 - a. For lands within Growth Area A and Growth Area B, the amount of the impact fee per residential dwelling unit shall be \$1,042.49
 - b. For lands within Growth Area C, the amount of the impact fee per residential dwelling unit shall be \$468.49
 - c. For lands outside of Growth Areas A, B, and C, the amount of the impact fee per residential dwelling unit shall be \$154.39

- (b) **Impact Fee Increase.** The impact fee, and the amount of the reduction for dedication of land for public parks, may be increased annually based upon the prior year's average interest rate for the Engineering News Record Construction Cost Index, 20 City Coverage.
- (3) **Calculation of Impact Fee.** The Town shall calculate the impact fee as follows:
 - (a) **Highways and Other Transportation Facilities Impact Fee.**
 - (i) Residential Development and Mixed Use Development.
 1. Verify the number and type of residential dwelling units.
 2. Determine the applicable per unit impact fee.
 3. Multiply the applicable per unit impact fee by the number of residential dwelling units.
 - (ii) Redevelopment.
 1. Calculate the total amount of the impact fee that would be imposed on the property for the redeveloped use.
 2. Calculate the total amount of the impact fee that would be imposed on the property for its current (predevelopment) use.
 3. Subtract the amount of the impact fee that would be imposed for the current use from the amount that would be imposed for the redeveloped use.
 - (b) **Parks, Playgrounds and Land for Athletic Facilities Impact Fee.**
 - (i) Residential Development and Mixed Use Development.
 1. Verify the number and type of residential dwelling units.
 2. Determine the applicable per unit impact fee.
 3. Multiply the applicable per unit impact fee by the

appropriate number of residential dwelling units.

(ii) Redevelopment.

1. Calculate the total amount of the impact fee that would be imposed on the property for the redeveloped use.
2. Calculate the total amount of the impact fee that would be imposed on the property for its current (predevelopment) use.
3. Subtract the amount of the impact fee that would be imposed for the current use from the amount that would be imposed for the redeveloped use.

13.06 Administration of Impact Fee.

- (1) Collection of Impact Fee.
 - (a) For all residential or mixed use developments, or redevelopments, impact fees shall be payable as provided in Section 5.04(2).
 - (b) The effective date of a building permit is the date on which all impact fees imposed under this Chapter are paid in full unless the exception described in Subsection (c) applies.
 - (c) For any new development for which impact fees were paid prior to final plat or certified survey map approval, impact fees shall not be imposed as a condition of issuance of a building permit.
- (2) Establishment and Maintenance of Accounts. The Town shall establish separate interest-bearing accounts to deposit fees collected for the particular capital costs that such fee was imposed. Interest or income earned by each account shall be credited to that account and shall be used solely for the purposes specified for such account. The Town shall account for all moneys received and ensure that the disbursement of moneys from each account is used solely and exclusively for the provision of projects specified in the capital improvement project plan for the particular development subarea.
- (3) Maintenance of Records. The Town shall maintain and keep adequate financial records for each account, including the source and disbursement of all revenues.

- (4) Annual Review and Modification. The Town may periodically review the development potential of each subarea and the capital improvement project plans and make any necessary modifications based on any of the following:
 - (a) Development occurring in the prior year;
 - (b) Public facilities actually constructed;
 - (c) Changing facility needs;
 - (d) Inflation;
 - (e) Revised cost estimates for public facilities;
 - (f) Changes in the availability of other funding sources applicable to public facility projects; or
 - (g) Other relevant factors as determined by the Town.
- (6) Except for annual increases to account for inflation, any impact fee modifications resulting from changes in development potential or capital improvement project plans will require a public hearing as described in Section 5.12.

13.07 Bonding of Excess Facility Projects. Impact fees paid pursuant to this Chapter shall be restricted to use solely and exclusively for direct financing of public facilities, or as a pledge against bonds, revenue certificates, or other obligations of indebtedness for the cost of public facilities.

13.08 Refunds. The party who paid impact fees may apply for a refund of such fee, and any accrued interest, as described in Wis. Stat. § 66.0617(9) if:

- (1) Impact fees collected are not used within 8 years after they are collected to pay the capital costs for which they were imposed, except when a longer period for such use is allowed by Wis. Stat. § 66.0617(9).
- (2) The building permit for which the impact fee has been paid has lapsed for non-commencement of construction provided that the fee shall be re-paid in the then-current amount if a new building permit is issued and before the construction may commence; or
- (3) The project for which a building permit has been issued has been altered in a manner which has resulted in a decrease in the amount of the impact

fee due; or

- (4) As otherwise authorized in this Chapter.

13.09 Appeals.

- (1) Notice of Appeal. Any developer upon whom an impact fee has been imposed may contest the amount, collection or use of the impact fee by filing a Notice of Appeal to the Town Board. The Notice of Appeal shall be filed with the Town Clerk within 30 days of the date of the determination therein appealed. The Notice of Appeal shall state in detail the relief sought by the developer and any legal or factual basis for the relief requested; and shall include all supporting documentation upon which the developer relies in making the appeal.
- (2) Appeal Bond. If the Notice of Appeal is accompanied by a bond or other surety satisfactory to the Town Attorney in an amount equal to the impact fee due, as calculated by the Town Administrator or its designee, and all other requirements have been satisfied, the building permit may be issued. The filing of an appeal shall not stay the collection of the impact fee due unless a bond or other sufficient surety has been filed.
- (3) Review by Town Board.
 - (a) Within 10 business days of the date of filing of the Notice of Appeal, the Town Administrator shall forward a copy of the Notice of Appeal to the appropriate department head. Within 30 business days of receipt, the appropriate department head shall submit a written report and recommendation to the Town Administrator. The Town Administrator shall review this report and make a written recommendation to the Town Board.
 - (b) Within 45 days of the date of the Town Administrator's written recommendation, the Town Board shall adopt a resolution denying, approving, or approving in part the appeal.
- (4) Review by Circuit Court. If the developer wishes to appeal the decision of the Town Board, the developer may commence an action by certiorari in the Waukesha County Circuit Court seeking review of the Town Board's decision within 30 days after the date on which the Town Board adopted the resolution with respect to the developer's appeal.

13.10 Effect of Impact Fee on Subdivision Regulations. This Chapter shall not affect, in any manner, the permissible use of property, density of development, design,

and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the subdivision regulations or other regulations of the Town, which shall be operative and remain in full force and effect without limitation to all such development.

13.11 Impact Fee as Additional and Supplemental Requirement. Except as required by Wis. Stat. § 66.0617(6)(d), the impact fees imposed under this Chapter are a supplement to, and not in substitution of, any other requirements imposed by the Town on the development of land or the issuance of building permits.

13.12 Amendments.

- (1) Public Hearing. Before enacting an ordinance that amends this Chapter, the Town Board shall hold a public hearing on the proposed ordinance or amendment.
- (2) Notice. Pursuant to Wis. Stat. § 66.0617(3), notice of the public hearing referred to in the preceding Section shall be published as a Class 1 notice under Ch. 985, Wis. Stats., and shall specify where a copy of the proposed ordinance or amendment and the public needs assessment may be obtained.
- (3) Public Facilities Needs Assessment. Before enacting an ordinance that imposes impact fees or amending an ordinance that imposes impact fees by revising the amount of the fee or altering the public facilities for which impact fees may be imposed, a needs assessment shall be prepared and made available for public inspection and copying as required by Wis. Stat. § 66.0617(4).

13.13 Credits.

- (1) A developer may elect to construct a public facility listed in any capital improvement project plan for which an impact fee has been imposed. If the developer elects to construct such a public facility, the developer must enter into an agreement with the Town prior to issuance of any building permit. In any such agreement, the Town shall reasonably provide credits for other past or future monetary or nonmonetary contributions by the developer to the construction of the same public facility, as follows:
 - (a) Present value of amounts contributed within the last 3 years for any land dedications, physical improvements, or financial contributions made for the construction of the public facility;

- (b) Present land dedications and physical improvements made for the construction of the public facility; and
 - (c) Future land dedications and physical improvements made for the construction of the public facility for a period not to exceed 3 years.
- (2) In no event shall a credit provided under Subsection (1) be greater than the applicable fee imposed.
 - (3) No credits shall be given for the construction of local on-site facilities required by zoning, subdivision, other Town requirements, or are not included in the capital improvement project plan.

13.14 Penalty. In addition to any other remedy which the Town may have for any violation of this Chapter, any person who violates any provision of this Chapter shall be subject to a penalty as provided in Chapter 1 of the Town Code. Each violation, and each day a violation continues or occurs, shall constitute a separate offense. This Section shall not preclude the Town from maintaining any appropriate action to prevent or abate a violation of this Chapter, including but not limited to, injunctive relief.

SECTION 2: All ordinances or parts of this ordinance conflicting or contravening the provisions of this ordinance are hereby repealed.

SECTION 3: This Ordinance shall take effect upon passage and posting as provided by law.

[signatures to follow]

PASSED AND ADOPTED by the Town Board of the Town of Lisbon, Waukesha County, Wisconsin this 10th day of May, 2021.

TOWN BOARD, TOWN OF LISBON
WAUKESHA COUNTY, WISCONSIN

BY: [Signature]
JOSEPH OSTERMAN, Chairman

BY: [Signature]
DOUGLAS BRAHM, Supervisor

BY: [Signature]
MARC MOONEN, Supervisor

BY: [Signature]
LINDA BEAL, Supervisor

BY: [Signature]
REBECCA PLOTECHER, Supervisor

ATTEST:

BY: [Signature]
Elisa M Cappozzo, WCMC
Town Clerk

