

ORDINANCE NO. 2024-____

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE TO ENACT TRANSPORTATION AND PUBLIC SAFETY IMPACT FEES; ADOPTING RULES AND REGULATIONS RELATED THERETO; AND DECLARING AN EMERGENCY

WHEREAS, the City of Tontitown operates transportation and public safety systems for the citizens of the City of Tontitown;

WHEREAS, the City of Tontitown is experiencing substantial growth in population, business and industry which has put a strain on existing transportation and public safety services and facilities and has created a need for the expansion of such transportation and public safety services and facilities;

WHEREAS, Ark. Code. Ann. § 14-56-103 allows a city to enact development impact fees upon or against a development in order to generate revenue for funding for recouping expenditures of the municipality that are reasonably attributable to the use and occupancy of the development;

WHEREAS, the City Council of the City of Tontitown finds that the cost of increasing the capacity of existing transportation and public safety systems within the City of Tontitown to accommodate the anticipated growth in the City of Tontitown should be borne by those developments that make such increases necessary; and

WHEREAS, the City Council of the City of Tontitown finds that such development impact fees are necessary for the health, safety and welfare of the citizens of the City of Tontitown as well as for other reasons set forth in this Ordinance.

NOW THEREFORE, BE IT ENACTED, by the City Council of the City of Tontitown, as follows:

Section 1. Legislative Findings.

The City Council of Tontitown, Arkansas, finds, determines and declares that:

a) System expansion required. The protection of the health, safety, and general welfare of the citizens of the City of Tontitown requires that the City's transportation and public safety facilities be expanded and improved to accommodate growth and development within the city.

b) System demand. New residential and nonresidential development imposes increased and excessive demands upon the existing transportation and public safety facilities and often overburdens the existing system facilities. Provided, further, new development is expected to continue, and will place ever-increasing demands on the city to provide these facilities to serve new development.

c) Revenues. Revenues generated from new development often does not generate sufficient funds to provide the necessary transportation and public safety facilities to accommodate new development; therefore, the creation of an equitable local transportation and public safety impact fee system would enable the city to impose a proportionate share of the costs of the needed improvements to capital facilities to accommodate new development.

d) Study conducted. In order to implement equitable local impact fees, the city caused to be a prepared Transportation and Public Safety Impact Fee Study with a Capital Plan contained therein, hereinafter termed "Technical Report." Said Technical Report is incorporated herein by reference and sets forth reasonable methodologies and analysis for determining the impacts of various types of development on the City's system capital facilities, and for determining the costs of acquiring the improvements necessary to meet the demands for such services created by new development.

e) Standards established. The City hereby establishes as City standards the assumptions and level of service standards in the Technical Report as part of its current plans for future expansions to the City's system capital facilities.

f) Impact fee use limited. The impact fees described in this ordinance are based on the Technical Report, and do not exceed the costs of improvements to serve new development that will pay the impact fees. This is intended to be a local improvement impact fee as to transportation and public safety.

g) Benefit. Those capital transportation and public safety facilities/improvements listed in the Technical Report will benefit all new development that depends on City Services, and it is therefore appropriate to treat the entire system as a single service area for purposes of calculating, collecting, and spending the local government impact fees as to transportation and public safety.

h) Impact fee relationship. There is both a rational nexus and rough proportionality between the development impacts created by each type of development covered by this ordinance and the impact fees that such development will be required to pay for transportation and public safety.

i) Impact fee purpose. This ordinance creates a system by which transportation and public safety impact fees paid by new development will be used to finance, defray or reimburse all or a portion of the costs incurred by the City to construct improvements for system's capital transportation and public safety facilities in ways that benefit the development that paid each fee within a reasonable period of time after the fee is paid.

Section 2. Intent.

a) Capital improvement plan. This ordinance is adopted to assist in the implementation of the Capital Improvement Plans for transportation and public safety as

set forth in the Technical Report, which plans were reviewed and approved by the City Council. To that end, the intent of this ordinance is to ensure that new development bears a proportionate share of the costs of improvements to capital public safety facilities; to ensure that such proportionate share does not exceed the costs of improvements for capital public safety facilities required to accommodate new development; and to ensure that funds collected from new development are actually used for improvements to the transportation and public safety system that benefit such new development.

b) Impact Fee purpose. It is further intent of this ordinance that new development pays for its fair share of the costs of local improvements for capital transportation and public safety facilities required to accommodate new development though imposition of impact fees that will be used to finance, defray, or reimburse all or a portion of the costs incurred by the City to construct Eligible Improvements to the City transportation and public safety systems that serve or benefit such new development. It is not the intent of this ordinance to collect any money from any new development in excess of the actual amount necessary to offset new demands for capital transportation and public safety facilities.

c) Funds restricted. It is not the intent of this ordinance that any monies collected from any local impact fee deposited in the transportation or public safety impact fee trust ever be commingled with monies from any other city trust funds or account, or be used to fund for a type of facility or equipment different from that for which the fees are paid, or be used to fund improvements that do not provide additional capacity to accommodate new development.

Section 3. Transportation and Public Safety Impact Fee Imposed.

Transportation and Public Safety Impact Fees are hereby adopted with such regulations as set forth in the attached Exhibit "A" and which shall be codified as a new § 155.04 Transportation and Public Safety Impact Fees section in the Tontitown Municipal Code.

Section 4. Appeals.

Any determination made by an official of the City charged with the administration of any part of this ordinance may be appealed to the City Council by filing with the Clerk within fifteen (15) days of the date of the determination being appealed: (1) a written notice of appeal on a form which may be provided by the City, (2) a written explanation of why the appellant feels that a determination was in error, and (3) an appeal fee established by the City, if any. The City Council shall promptly fix a time and place for hearing the appeal, and the City Clerk or designee shall mail notice of the hearing to the appellant at the address given in the notice of appeal by first-class mail postage prepaid. The hearing shall be conducted at the time and place stated in such notice given by the City Council. The determination of the City Council shall be the final administrative determination of the city.

Section 5. Penalty.

The penalty for violation of this ordinance shall, upon conviction in the Tontitown District Court, or any other court of competent jurisdiction, be such fines and penalties as established by the general penalty clause for the Tontitown Municipal Code as may now or hereafter be enacted by the City Council.

Section 6. Declaration of Emergency. It is hereby found and determined that there is an immediate need to institute development impact fees for the City of Tontitown transportation and public safety systems in accordance with Ark. Code Ann. § 14-56-103 as amended, in order to address and accommodate the substantial residential, commercial and industrial growth experienced by the City of Tontitown and in order to offset costs to the city's transportation and public safety systems which are attributable to the new development. Therefore, an emergency is declared to exist, and this Ordinance being immediately necessary for the above-stated purposes, shall become effective immediately from and after the date of its passage, to take effect as provided by the terms of this Ordinance.

PASSED AND APPROVED this ____ day of April 2024.

APPROVED:

Angela Russell, Mayor

ATTEST:

Rhonda Ardemagni, City Clerk-Treasurer
(SEAL)

EXHIBIT A

§ 155.04 TRANSPORTATION AND PUBLIC SAFETY IMPACT FEES.

The provisions of this section shall apply to all of the territory within the jurisdiction of the City of Tontitown.

(A) Definitions

When used in this section, the terms listed below shall have the following meanings unless the context requires otherwise. Singular terms shall include their plural.

“City” means the City of Tontitown, Arkansas or its authorized representative.

“City Council” means the governing body of the incorporated City of Tontitown.

“Eligible Improvements” means improvements that enhance the capacity of the transportation or public safety system, including planning, engineering, acquisition, and construction, and are included in the city’s current capital improvements plan, but does not include the operation, maintenance, repair, or replacement of existing improvements, provided that replacement of an existing improvement or facility with a new improvement or facility of greater capacity shall be partially eligible based on the increase in capacity. Turn lanes or other improvements at the entrance to a new development needed to accommodate the development shall be the responsibility of the developer and shall not be eligible for credit against the transportation impact fees.

“Industrial” means a facility primarily intended for the production or assembly of goods, processing of foods, mining of raw materials, or similar activities. Typical uses include factories, welding shops, wholesale bakeries, and water and wastewater treatment plants.

“Mini-Warehouse” means an enclosed storage facility containing independent, fully enclosed bays that are leased to persons for storage of their household goods or personal property.

“Multi-Family” means a building containing two or more dwelling units. It includes duplexes, apartments, residential condominiums, townhouses, and timeshares.

“Office” means a building exclusively containing establishments providing executive, management, administrative, financial, medical or professional services, and which may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper or candy stand, or childcare facilities. It may be the upper floors of a multi-story office building, excluding ground floor retail uses. Typical uses include offices for medical services, real estate, insurance, property management, investment, employment, travel, advertising, secretarial, data processing, telephone answering, telephone marketing, music, radio and television recording and broadcasting studios; professional or consulting services in the fields of law, architecture, design, engineering, accounting and similar professions; interior decorating consulting services; and business offices of private companies, utility companies, trade associations, unions and nonprofit organizations. This category does not include an administrative office that is ancillary to the primary use of the site.

“Public Safety System” means the set of eligible police and fire protection facilities, land, and capital equipment owned and operated by the City.

“Public/Institutional” means a governmental, quasi-public or institutional use, or a non-profit recreational use, not located in a shopping center or separately listed in the impact fee schedule. Typical uses include schools, colleges, day care centers, hospitals, nursing homes, churches, prisons, city halls, courthouses, post offices, jails, libraries, fire stations, museums, military bases, airports, bus stations, parks and playgrounds.

“Retail/Commercial” means an integrated group of commercial establishments planned, developed, owned or managed as a unit, or a free-standing retail or commercial use. A retail or commercial use shall mean the use of a building or structure primarily for the sale to the public of nonprofessional services, or goods or foods that have not been made, assembled or otherwise changed in ways generally associated with manufacturing or basic food processing in the same building or structure. This category includes but is not limited to all uses located in shopping centers and the following typical types of free-standing uses: amusement park, bank, camera shop, car wash, convenience store, department store, discount store, florist shop, health or fitness club, hobby/toy/game shop, hotel, laundromat, laundry or drycleaning, lawn and garden supply store, motel, movie theater, music store, newsstand, racetrack, recreation facility, restaurant, service station, spa, specialty retail shop, used merchandise store, variety store, or vehicle and equipment rental.

“Single-Family Detached” means a building containing only one dwelling unit, including a mobile or manufactured home.

“Technical Report” means the “City of Tontitown Transportation and Public Safety Impact Fee Study” prepared by Duncan Associates in March 2024, or a subsequent similar study, which serves as the basis for the calculation of the transportation and public safety impact fees and is hereby adopted and incorporated by reference.

“Transportation System” means the set of existing collector and arterial roadways owned and operated by the City, including but not limited to associated right-of-way, drainage structures, traffic signals, turn lanes, sidewalks, and multi-use paths.

“Warehouse” means an establishment primarily engaged in the display, storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment. Typical uses include wholesale distributors, storage warehouses, moving and storage firms, trucking and shipping operations and major mail processing centers.

(B) Fee Assessment and Collection

(1) No building permit shall be issued until the applicable transportation and public safety impact fees have been paid according to the following schedule. These represent 100 percent of the maximum fees calculated in the Technical Report. The fees will be adjusted annually to account for cost inflation, as provided in subsection (B)(2).

Land Use Type	Unit	Transportation	Public Safety	Total
Single-Family Detached	Dwelling	\$3,397	\$2,399	\$5,796
Multi-Family	Dwelling	\$2,432	\$1,933	\$4,365
Retail/Commercial	1,000 sq. ft.	\$4,455	\$3,115	\$7,570
Office	1,000 sq. ft.	\$3,677	\$1,772	\$5,449
Industrial	1,000 sq. ft.	\$1,331	\$376	\$1,707
Warehouse	1,000 sq. ft.	\$674	\$304	\$978
Mini-Warehouse	1,000 sq. ft.	\$570	\$161	\$731
Public/Institutional	1,000 sq. ft.	\$1,637	\$841	\$2,478

(2) To account for cost inflation, effective July 1 of each year following the year of adoption, the impact fees shall be multiplied by the ratio of the *Engineering News-Record's* Construction Cost Index for the most recent month for which it is available to the index for the same month from the previous year. If the cited index is no longer available, an equivalent index shall be used. The calculation and assessment of the inflation-adjusted fees shall be done administratively, and shall not require approval by the City Council.

(3) In the event of the replacement of a building or land use with a larger building or more intensive land use, the applicable impact fee shall be the difference between the fees for the existing and replacement building or land use.

(4) In the event that the proposed land use is not clear from the schedule set forth in subsection (B)(1) above and the associated definitions of the land use categories in section A, the City shall determine the most appropriate impact fee category.

(5) The amount of the fees due will be net of the value of available credits pursuant to subsection (E) requested at time of payment.

(6) Publicly-owned improvements shall be exempt from payment of transportation and public safety impact fees.

(C) Accounting and Expenditure of Funds

(1) For both transportation and public safety, special interest-bearing impact fee accounts that are distinct from the general fund of the City are created, and the impact fees received shall be deposited in the appropriate account, along with accrued interest. No other revenues or funds shall be deposited in the impact fee account.

(2) The funds in the transportation and public safety impact fee accounts shall be used only for the following purposes:

(a) to acquire or construct Eligible Improvements;

(b) to pay debt service on the portion of any current or future general obligation bond or loan used to finance Eligible Improvements and attributable to additional capacity available to serve new transportation or public safety demand.

(c) to pay fees to an independent qualified professional, who is not an employee of the City, for the preparation or updating of the Technical Report; or

(d) to make refunds pursuant to subsection (D).

(3) The City shall maintain accurate records of each impact fee paid, including the name of the person paying the fee, the tax parcel number and address for which the fee was paid, the date of payment, and the amount received in payment.

(D) Refunds

(1) Excess fees paid due to errors by the city, or fees not spent within seven (7) years after the date on which the fee was paid, shall be eligible for refund according to the following provisions. Money in each impact fee account shall be considered to be spent in the order collected on a first-in/first-out basis.

(2) A refund shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.

(3) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the present owners of the property no later than thirty (30) days after the date on which the error was determined by the city to have occurred, or a refund of fees not spent within seven years was determined to be due. The sending by regular mail of the notices to the present owners of record shall be sufficient to satisfy the requirement of notice.

(5) The notified party must apply for the refund not later than thirty (30) days after the date the notice was sent.

(6) The refund shall be paid in full not later than thirty (30) days after the date the application for the refund is received by the city.

(E) Credits

(1) An applicant may obtain credit for up to 100 percent of impact fees otherwise due or to become due by offering to dedicate land and/or construct Eligible Improvements. To receive a credit, applicants must file an impact fee credit application and provide required information and documentation as required by this section or as determined necessary by the City. Any claim to utilize credits must be made no later than the time of payment of the impact fee. Credits shall expire if not used within seven (7) years of the date of creation. Credits shall only be available for use against fees otherwise due for the development project for which the dedication or improvement is made, and shall not be transferrable to another development project, unless otherwise provided in the credit agreement.

(2) An offer to make capital improvements or dedicate land in lieu of paying impact fees shall be made in an application filed with the City identifying the capital improvements and/or land dedications for which credits are requested. The applicant shall specify the dollar amount of the credit requested. The credit claimed by the applicant as the basis for the credit requested

shall be no more than fair market value as determined by the City. It is the obligation of the applicant to submit documentation to the satisfaction of the City that supports the amount of the credit requested and indicates the basis on which the amount requested was calculated.

(3) If the City accepts such an offer, the credit shall be determined and provided in the following manner.

(a) The City shall determine credits for the dedication of land on the following values: 115 percent of the most recent assessed value for purposes of property taxation; or at the option of the applicant, by fair market value determined by the City, based on an appraisal accepted by the City.

(b) The City shall determine credits for the construction of a capital improvement from the engineering criteria and construction cost estimates as provided by the applicant and accepted by the City.

(4) Once the City has made a credit determination, a credit agreement shall be provided to the applicant. The applicant shall sign and date the agreement and return the document to the City, which shall be binding on the applicant as to the terms and conditions of the credit.

(5) Once the amount and terms of the credit are determined, credits for land dedication will be provided following delivery of a fully executed deed or other appropriate conveyance document, and acceptance of the dedication by the City Council. Credits for construction will be made upon completion in compliance with all applicable local state and federal design specifications, laws and regulations and acceptance by the City Council.

(6) Any person who offers land and/or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question and pay the full impact fees required by this section.