

## ORDINANCE NO. 2009-07

### ORDINANCE CREATING CHAPTER 330 OF THE MUNICIPAL CODE IMPACT FEES

The Town Board of the Town of Buchanan does hereby ordain as follows:

Chapter 18, Section 18-71 is hereby repealed and Chapter 330 of the Municipal Code is hereby created to read:

The Town Board of the Town of Buchanan, Outagamie County, Wisconsin, does hereby ordain as follows:

- 1.01 AUTHORITY. Pursuant to the authority of Section 66.0617 of the Wisconsin Statutes, the local impact fees enabling legislation, the purpose of this ordinance is to establish the mechanism for the imposition of impact fees upon new development to finance the capital costs of acquiring, establishing, upgrading, expanding, and constructing public facilities which are necessary to accommodate land development. This chapter is intended to assure that new development bears an appropriate share of the cost of capital expenditures necessary to provide public facilities within the Town of Buchanan and its service areas, as they are required to serve the needs arising out of the land development.
- 1.02 DEFINITIONS. As used in this chapter, the following terms shall have the meanings indicated:
- 1) CAPITAL COST. Means the costs 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% of capital costs may consist of legal, engineering and design costs unless such costs relate directly to the public improvement for which the impact fees were imposed actually exceed 10% of the capital costs.
  - 2) DEVELOPMENT. Shall mean any man made change to improved or unimproved real property, the use of any principal structure or land or any other activity that requires issuance of a building permit.
  - 3) IMPACT FEE. Means cash contributions, contributions of land or interests in land, or any other items of value that are imposed on a developer by the Town under this chapter.
  - 4) LAND DEVELOPMENT. Means the construction or modification of improvements to real property that creates additional residential dwelling units within the Town or its service areas or, that results in nonresidential uses that create a need for new, expanded or improved public facilities within the Town or its service areas.
  - 5) PUBLIC FACILITIES. Highways as defined in s. 340.01 (22), and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface waters, facilities for

pumping, storing, and distributing water, parks, playgrounds, and land for athletic fields, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries. "Public facilities" does not include facilities owned by a school district.

- 6) SERVICE AREA. A geographic area delineated by the Town Board within which the Town provides public facilities and for the purpose of this ordinance includes the entire Town of Buchanan.
- 7) SERVICE STANDARD. A certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the Town Board.
- 8) TOWN. Means the Town of Buchanan.

1.03 PUBLIC FACILITIES NEEDS ASSESSMENT. New public facilities, or improvements or expansions of existing public facilities, that are required because of land development for which impact fees will be imposed are those which are identified in this chapter and in facilities needs assessment reports prepared prior to the adoption of this chapter and in conjunction with any amendments hereto. All facilities needs reports that form the basis of any impact fee imposed by the Town shall be kept on file in the office of the Town Clerk at least twenty (20) days prior to any public hearing to be held on the creation of this chapter and any amendments. A Class 1 notice is required prior to any required hearing. All facilities needs assessment reports shall remain on file in the office of the Town Clerk for the entire period during which impact fees arising out of a specific report and this chapter are collected prior to expenditure, and such report shall, after expenditure of all impact fees, be maintained as a public record for such time period as required by law.

1.04 TYPES OF IMPACT FEES

- 1) Park impact fees. The basis for the imposition of the park impact fees is the facilities needs assessment titled "Town of Buchanan Park & Recreation Facilities Need Assessment & Impact Fee Study" prepared by the Town in October, 2009, which is on file in the office of the Town Clerk of the Town of Buchanan. These impact fees shall be collected until the capital costs associated with the projects specified in the "Town of Buchanan Park & Recreation Facilities Need Assessment & Impact Fee Study" have been incurred and satisfied ("satisfied" includes the full repayment of any debt of the Town related to the projects).

1.05 IMPACT FEE REVENUE ADMINISTRATION.

- 1) Revenues from impact fees shall be placed in one or more segregated, interest bearing accounts and shall be accounted for separately from other Town funds. Impact fee revenues and interest earned on impact fee revenues may be expended only for capital costs for which the impact fees were imposed.

- 2) Impact fee revenues imposed and collected but not used within seven years after collection to pay the capital costs for which they were imposed shall be proportionally refunded along with any interest accumulated, as determined by the Town Board, to the current record owner or owners of the lot(s) or parcel(s) as their interests may appear, taking into account the time and amount of fees paid for such lot(s) or parcel(s).
- 3) The seven year time limit may be extended for three years if the Town adopts a resolution stating that, due to extenuating circumstances or hardship in meeting the seven year limit, the Town needs an additional three years to use the impact fees that were collected.

1.06 USE OF IMPACT FEES. Funds collected from impact fees shall be used solely for the purpose of paying the proportionate costs of providing public facilities that become necessary due to land development. These costs may include the costs of debt service on bonds or similar debt instruments when the debt incurred for the purpose of proceeding with designated public facilities projects prior to the collection of all anticipated impact fees for that project.

1.07 PAYMENT OF IMPACT FEES.

- 1) Impact fees shall be payable by the developer or the property owner to the Town Treasurer in full within 14 days of the issuance of a building permit. If any development affected by an impact fee imposed under this section is under construction or has received a building permit at the time this section takes effect, all required impact fees shall be paid to the Town Treasurer in full within 14 days of the issuance of a certificate of occupancy. Any building permit or certificate of occupancy issued prior to the full payment of all impact fees due is conditional and may be revoked for nonpayment of impact fees after 14 days have elapsed from the date of permit or certificate issuance. Impact fees shall be presumed to be payable by the owner of record at the time the building permit or certificate of occupancy is requested.
- 2) Multiple dwelling units. Where there are multiple dwelling units on a lot or parcel of land, the fees shall be imposed for each dwelling unit.

1.08 EXEMPTIONS. The lawful new construction of a single family dwelling structure razed or to be razed within one year of the date of the issuance of a building permit for the new construction as part of the new construction project shall be exempt from the fees imposed under this section. Any new construction of a single family dwelling structure upon a single parcel of land involving the demolition of a preexisting residential structure upon such single parcel of land, which project is similar to but not exactly as described above, may be found to be exempt upon application to the Town Board and a finding by the Town Board that such project does not bear a rational relationship to the need for new, expanded or improved facilities required to serve such development. Such application shall be made to the Town Board prior to the payment of any fees under this section.

1.09 APPEALS.

- 1) Any developer or property owner upon whom an impact fee is imposed by this section shall have the right to contest the amount, collection or use of the impact fee to the Town Board. Such appeals shall be filed in writing with the Town Administrator within thirty (30) days of receipt of request from the Town for payment of the impact fee.
- 2) The Town Administrator shall schedule the appeal for consideration by the Town Board at a regular meeting as soon as reasonably practical under the circumstances and shall notify the applicant of the time, date and place of such meeting in writing by regular mail, deposited in the mail no later than at least five (5) days before the date of such meeting. Upon review of such appeal, the Town Board may adjust the amount, collection or use of the impact fee upon just and reasonable cause shown. The Town Board shall decide all appeals within 30 days after the hearing and shall transmit a copy of its written decision to the applicant.

1.10 PROPORTIONATE PAYMENTS IN LIEU OF DEDICATION. The Town Board may, in its discretion, accept lands dedicated for public purposes in lieu of the impact fees assessed pursuant to this chapter, provided, however, that in no event shall the fair market value of the land or lands accepted by the Town be less than the amount of the assessment which would otherwise be levied in accordance with the provisions of this chapter.

1.11 IMPACT FEES SCHEDULE AND ANNUAL ADJUSTMENTS. The fees imposed pursuant to this section shall be listed in the Town Fees and Licenses Schedule. The amount of impact fee imposed shall be increased annually based upon the Engineering News Record Construction Cost Index effective January 1 of each year by a percentage equal to the annual percentage change as listed for the end of October of the previous year.

1.12 SEVERABILITY. If any section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

1.13 EFFECTIVE DATE. This Ordinance shall take effect on January 1, 2010.

Adopted this 15<sup>th</sup> day of December, 2009.

TOWN OF BUCHANAN:

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Mark McAndrews, Town Chairman

ATTEST:

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Angela Gorall, Town Administrator/Clerk