AN ORDINANCE introduced by Mayor James A. McClinton, creating the trafficway impact fees article, amending City of Topeka Code Chapter 130 by the addition of the following language.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code is hereby amended by the addition of the following article:

ARTICLE XIII. TRAFFICWAY IMPACT FEES

Section 2. Purpose and Intent.

This article is for the purpose of requiring that new development pays for its fair share of public trafficways through the imposition of trafficway impact fees which will be used to finance, defray or reimburse the City for all or a portion of the costs of public trafficways which serve such development. The amount of each impact fee shall be calculated based upon the gross square footage of nonresidential development, number of residential dwelling units, type or density or intensity of use, trip generation, or other appropriate methodology which insures that the fee is roughly proportional to the impacts of new development on public trafficways. The City assumes responsibility for and will pay for with general city revenues all public trafficway needs for existing development.

Section 3. Findings.

The City Council hereby finds that:
a. The City assumes the responsibility for and is committed to providing public trafficway at levels necessary to cure any existing deficiencies in already developed areas.

b. Trafficway impact fees collected pursuant to this article shall not be used to cure existing deficiencies in public trafficways.

c. New residential and nonresidential development imposes increased and excessive demands upon the City's public trafficways.

d. Planning, economic and demographic studies project that new development will continue and will place ever-increasing demands on the City to provide public trafficways to serve the new development.

e. The development potential and property values of properties in the designated trafficway benefit areas are strongly influenced by City policy as expressed in the comprehensive plan and as implemented by the city zoning ordinance and map.

f. To the extent that new development in designated trafficway benefit areas, places demands upon the public trafficways, those demands should be satisfied by shifting the responsibility for financing the provision of such trafficways from the public to creating a partnership between the development community and the city to provide trafficways funded by the development creating the demands.

g. Further, the city council recognizes the benefits of new development and wishes to encourage the orderly growth and harmonious development of the city. Consequently, the city council recognizes the benefits of partnering with the development community to improve and pay for trafficway infrastructure serving the new development.
h. The city council, after careful consideration, and the experience of other similarly situated cities, recognizes that new development requires and places demands on trafficway infrastructure. The city council finds that it is fair and equitable for new development to finance through trafficway impact fees, major trafficways that serve designated trafficway benefit areas.

gi. The City Council, after careful consideration and the experience of other similarly situated cities, finds that the imposition of trafficway impact fees to finance specified major public trafficways in designated trafficway benefit areas, the demand for which is created by new development, is in the best interests of the general welfare of the City and its residents, is equitable, and does not impose an unfair burden on new development.

Section 4. Applicability.

Unless expressly excepted or exempted, this article applies to all trafficway impact fees imposed by the City to finance public trafficways attributable to new development.

Section 5. Effect on other taxes, assessments or fees.

The payment of a trafficway impact fee under this article does not relieve a developer or other property owner from paying:

a. Taxes and special assessments;

b. Fees for permits or inspections;

c. Fees for connections to utilities;

d. Taxes, assessments or fees imposed, levied or collected by other governmental agencies including subdivisions of the state and federal government.
Section 6. Definitions.

As used in this article:

Capital Improvements Plan means the five (5) year plan for capital improvements, adopted annually by the city council, describing the approximate location, size, time of availability and estimated cost of capital improvement projects and identifies sources of funding for capital improvement projects.

Collection means the point at which the trafficway impact fee is actually paid over to the City.

Commitment means earmarking trafficway impact fees to fund or partially fund trafficway capital improvements serving new development projects.

Dwelling unit means one (1) or more rooms in a building or a portion of a room, designed, intended to be used, or actually used for occupancy by one (1) family for living and sleeping quarters, and containing one (1) kitchen only, and includes a mobile home, but not hotel or motel units.

Impose means to determine that a particular development project is subject to the collection of trafficway impact fees as a condition of development approval.

New development or development project means and includes any project undertaken for the purpose of development, including without limitation a project involving the issuance of a permit for construction, reconstruction, or change of use, but not a project involving the issuance of a permit to operate or to remodel, rehabilitate, or improve an existing structure, nor the rebuilding of a structure destroyed or damaged by an act of God.
Nonresidential development project means all development other than residential development projects.

Residential development project means any development undertaken to create a new dwelling unit or units.

Trafficway benefit area impact fee district means the geographic area within which trafficway impact fees are collected and expended for a public trafficway serving development projects within such area.

Trafficway capital improvement means land or facilities for the purposes of transportation and transit, including without limitation, streets, street lighting and traffic-control devices and supporting improvements, roads, overpasses, bridges, and related facilities. Trafficway capital improvement also includes design, engineering, inspection, testing, planning, legal land acquisition and all other costs associated with construction of a public trafficway. Provided however, trafficway capital improvement not include residential two (2) lane streets or roads which primarily serve residential development.

Trafficway impact fee means any monetary exaction imposed by the City as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the cost of or repayment of costs previously expended from other City funds for trafficway capital improvements relating to the project.

Section 7. Notice and hearing required for establishing or increasing a impact fee.

a. Prior to establishing or increasing of any trafficway impact fee, the city council shall hold a public hearing at which oral and written testimony may be given.
b. Notice of the time and place of the public hearing, including a general explanation of the matter to be considered, shall be given by not less than two (2) publications in the official city newspaper. The two (2) publications shall be a week apart and at least three (3) days shall elapse between the last publication and the hearing date.

c. At least ten (10) days prior to the public hearing, the City shall make available to the public data showing the amount, or the estimated amount of the impact fee, and a summary of the basis for the calculation of the impact fee amount.

d. Council action to establish or increase any trafficway impact fee shall be taken only by ordinance

e. Any costs incurred by the City in preparing for and conducting the public hearing may be recovered as a part of the trafficway impact fees which are the subject of the hearing.

**Section 8. Imposition, calculation and collection of trafficway impact fees.**

a. Except as provided in this article and any amendments thereto, the City shall impose trafficway impact fees as a condition of approval of all new development projects. No tentative or final subdivision map, parcel map, grading permit, building permit, final inspection, or certificate of occupancy, or other development permit, may be approved unless the provisions of this section have been fulfilled.

b. Trafficway impact fees shall be imposed by including the following language in any document of development approval:
Approval of this project is conditioned upon payment to the City of all applicable trafficway impact fees, as provided in this article.

c. Trafficway impact fees shall be collected by the public works director or his or her designee at the time, and as a condition of issuance of a building permit.

Section 9. Impact fee accounts.

a. The City shall establish a trafficway impact fee account for each benefit area, as designated by the city engineer, for each trafficway capital improvement for which a trafficway impact fee is imposed, and trafficway impact fees collected shall be deposited in each such account according to type of improvement and benefit area. The funds of the account shall not be commingled with other funds of the City.

b. Each trafficway impact fee account shall be interest bearing and the accumulated interest shall become a part of the account.

c. The funds of each account shall be expended within the benefit area exclusively for the trafficway capital improvements for which the trafficway impact fees were collected.

Section 10. Use of Impact Fee Proceeds.

Trafficway impact fees shall be expended only for the type of trafficway capital improvements for which they were imposed, calculated, and collected and according to the time limits and procedures established in this article. Trafficway impact fees may be used to pay the principal, interest and other costs of bonds, notes and other obligations issued or undertaken by or on behalf of the City to finance such trafficway capital improvements.
Section 11. Refunds.

a. Except as described in subsection b of this section, upon application of the property owner, the City shall refund that portion of any trafficway impact fee which has been on deposit over five (5) years and which is unexpended and uncommitted. The refund shall be made to the then current owner or owners of lots or units of the development project or projects.

b. If fees in any trafficway impact fee account are unexpended or uncommitted for four (4) or more years after deposit, the city council shall make findings by resolution, at least once each fiscal year while such condition prevails, to identify the purpose to which such fees shall be put and to show a roughly proportional and reasonable relationship between the fee and the purpose for which it was collected. If the city council makes such findings, the fees are exempt from the refund requirement.

Section 12. Protests.

No trafficway capital improvement shall be commenced if, within twenty (20) days after publication of the ordinance ordering the trafficway capital improvement, written protests signed by both fifty-one percent (51%) or more of the resident owners of record of property within the trafficway benefit area and the owners of record of more than one half (1/2) of the total area of such area are filed with the city clerk.

Section 13. Statute of Limitations

Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality, or validity of any impact fee must be filed and service of process effected within thirty (30) days following the date of imposition of the fee or the final determination of the City Council, whichever is later.
Section 14. Exceptions.

Exceptions to the application of this article shall be made only by resolution of the city council to promote an economic development project.

Section 15. Conflicts.

In the event of a conflict between the provisions of this article and the provisions of any other ordinance or resolution establishing or amending impact fees, the provisions of this article shall govern.

Section 16. Severability.

If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The city council declares that it would have adopted this article and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one (1) or more sections, subsections, phrases or portions be declared invalid or unconstitutional.

Section 17. That original City of Topeka Code Chapter 130 is hereby specifically repealed.

Section 18. This Ordinance shall take effect and be in force after its passage, approval and publication in the official City newspaper.
PASSED and APPROVED by the City Council June 22, 2004.

[Seal of Topeka]

James A. McClinton, Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 6/23/04 BY
TO BE CODIFIED
NOT TO BE CODIFIED