

PASSED 12-13-10 BY A VOTE OF 7-0

ORDINANCE NO. 35-2010

**AN ORDINANCE TO ESTABLISH AN EQUITABLE IMPACT FEE
FOR THE PURPOSE OF PLANNING AND FINANCING
PARK AND RECREATIONAL INFRASTRUCTURE
TO SERVE NEW DEVELOPMENTS IN THE
CITY OF VALPARAISO, INDIANA
PURSUANT TO INDIANA CODE CHAPTER 36-7-4-1300 ET. AL.**

WHEREAS, the Common Council of the City of Valparaiso, Indiana (City Council) determined that it is reasonable and necessary to promote and accommodate orderly growth and development and to promote the general public health, safety and general welfare of the citizens of the City of Valparaiso, Indiana (City) by providing for an equitable program to fund the capital costs of new park and recreational infrastructure necessary to serve newly developing areas of the City; and

WHEREAS, the City Council has further determined that it is reasonable and necessary to promote the orderly development of the City by establishing standards by which the City may require new developments to pay an impact fee representing the development's proportionate share of the capital costs of new park and recreational infrastructure necessary to serve the new development; and

WHEREAS, the City Council has further determined that new development should not be required to pay a fee for the capital costs of such new park and recreational infrastructure greater than the development's proportionate share of the capital costs of such infrastructure which is needed to serve such development; and

WHEREAS, the City of Valparaiso has engaged PROS Consulting, LLC and H. J. Umbaugh & Associates, LLP to prepare an Infrastructure Zone Improvement Plan for Parks and Recreation Facilities (the Plan), a supplement to the 2010 Parks and Recreation Master Plan, which Plan is attached hereto as Exhibit A to this Ordinance and made a part hereof; and

WHEREAS, the cost of implementing the park and recreational recommendations of the Plan in their entirety exceeds:

1. the income capacity of the City through its ad valorem property tax receipts of other tax distributions allocated to park and recreational improvements relative to the chronological needs of the City for said improvements; and
2. the general obligation bond capacity of the City based upon net assessed valuation; and

3. the revenue bond potential of the City based upon any existing means of acquiring revenue related to such improvements; and

WHEREAS, because of the size of the City, considering both its population and geographic area, as well as the distribution of public and private institutions, services and other facilities throughout the City, any park and recreational improvement benefits all citizens of the City equally; and

WHEREAS, it is the City's objective for the Plan to result in the determination of an impact fee which meets the rational nexus test as that test is understood by current applicable statutory law and case law; and

WHEREAS, the City of Valparaiso Advisory Plan Commission, having conducted a public hearing upon, and given due deliberation to, the Zone Improvement Plan encompassed by the Plan has forwarded a favorable recommendation of the Plan's adoption to the City Council by a vote of __ in favor and __opposed; and

WHEREAS, the City Council previously has appointed the City of Valparaiso Impact Fee Advisory Committee to advise the City Council pursuant to Indiana Code 36-7-4-1312; and

WHEREAS, the purpose of this Ordinance is not to deter growth, remedy existing infrastructure deficiencies or pay for maintenance or other non-capital costs.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Common Council of the City of Valparaiso, Indiana; that:

1. Limitation on Imposition of Impact Fee. This Ordinance shall expire and become void five (5) years after its effective date as required by Indiana Code 36-7-4-1340, unless action is undertaken to extend this Ordinance consistent with Indiana law.
2. Establishment of Impact Zone. There is hereby established one Infrastructure Impact Zone, the boundaries of which are co-terminus with the existing corporate boundaries of the City, as such boundaries may be extended from time to time through annexation, and over which boundaries the City exercises planning and zoning jurisdiction. In this regard, the City Council specifically finds that there is a functional relationship between the components of the Plan and that the Park and Recreational Plan provides a reasonable uniform benefit to all citizens throughout the Impact Zone as of the adoption of this Ordinance. The City Council further finds that all areas within the Impact Zone are contiguous as required by Indiana Code 36-7-4-1316. Except as provided herein, this Ordinance shall apply uniformly to all residential developments within the Building Permit and which creates a need for new and additional park and recreational infrastructure. This Ordinance shall not apply to:
 - a. development meeting the requirements set forth in Indiana Code 36-7-4-1322(g);

- b. improvements which do not require a Building Permit;
 - c. improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed;
 - d. the replacement of a destroyed or partially destroyed improvement provided that the replacement improvement does not create a need for new and additional infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof; and
 - e. non-residential development.
3. Zone Improvement Plan. As a precondition of the adoption of this Ordinance, the City Council engaged PROS Consulting and H. J. Umbaugh & Associates to prepare a comprehensive and detailed park and recreational impact analysis. The City Council now finds that the resulting study is sufficient and constitutes a Zone Improvement Plan as contemplated by Indiana Code 36-7-4-1318. The City Council does hereby adopt the Plan prepared by H.J. Umbaugh & Associates, LLP, dated October 26, 2010, as its Zone Improvement Plan and specifically finds that said Zone Improvement Plan contains the following elements:
- a. reasonable estimates relating to the nature and location of development that is expected within the Impact Zone a period of ten (10) years from the Effective Date of this Ordinance;
 - b. a reasonable determination of the community level of service for the Impact Zone;
 - c. a reasonable determination of the current level of service provided within the Impact Zone;
 - d. a reasonable estimate of the nature, location, sequencing, and timing of the park and recreational requirements and costs necessary to provide the community level of service for the developments contemplated in sub-paragraph (a) hereof;
 - e. a reasonable estimate of the share of the park and recreational costs identified in sub-paragraph (d) hereof that will be used to:
 - (1) raise the current level of service for existing development or provide service to existing development; or
 - (2) provide service to new development.

- f. a reasonable estimate of revenues that:
 - (1) are from sources other than impact fees; and
 - (2) will be used to finance the cost identified in sub-paragraph (e)(1) above;
- g. a description of the nature and location of existing infrastructure in the Impact Zone.
- h. a general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

Additionally, the City Council hereby adopts specifically the Zone Improvement Plan as part of the Comprehensive Plan for the City of Valparaiso, Indiana, pursuant to Indiana Code 36-7-4-500 et seq.

- 4. Establishment of Park and Recreation Impact Fee. Based on the Plan, the City Council determines that the cost per equivalent single-family dwelling unit is Nine Hundred Seventy-Four Dollars (\$974.00). Based on the equivalent dwelling unit calculations used by the City, the City Council hereby establishes the Park and Recreation Impact Fee in the following amounts for single-family units, duplexes, condominiums, townhomes, apartments and assisted living facilities:

Type of Unit Fee Per Dwelling Unit and Full Equivalent		
Unit Type	Fee Amount (Per Unit)	Equivalent %
Single-Family	\$974.00	100%
Duplex/Condominium/Townhome	\$828.00	85%
Apartment	\$614.00	63%
Assisted living	\$487.00	50%

The City Council hereby makes as part of the record of these proceedings, all of the data collected, the calculations made, and the conclusions reached by H. J. Umbaugh & Associates, LLP in the process of developing and drafting the Zone Improvement Plan, and specifically instructs the employees of the City to make such data and other information available to the public for review during regular business hours.

In the event that any parcel of real estate subject to the Zone Improvement Plan undergoes a change in use, redevelopment, or a modification, which change requires a Building Permit, and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on infrastructure.

- 5. Credit in Lieu of Payment: Exemptions. Any person obligated to pay a fee pursuant to the terms of this Ordinance may have the option of financing, constructing, and dedicating park and recreational infrastructure owned and operated by a neighborhood association for the public benefit, all as described and defined in the Plan, instead of making all or part of any impact fee payment to the City, and in

accordance with the park and recreational specifications for such park and recreational infrastructure to be improved in force within the City's jurisdiction at the time. The fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit for the actual costs of planning, financing, and constructing such park and recreational infrastructure for the City. A request for credit shall be present prior to the issuance of the Building Permit. In the event the actual cost of such planning, financing, and construction do not equal the amount of the impact fee pursuant to the calculation provided for in the schedule set forth in Section 4 hereof, the remaining balance shall be due in accordance with the provisions stated hereafter.

Credits against impact fees otherwise due shall be allowed pursuant to this Section for all infrastructure improvements constructed or furnished in accordance with Indiana Code 36-7-4-1313 and Indiana Code 36-7-4-1335. In addition, a fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided for above.

Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm or other casualty beyond his/her/its control, shall be exempt from said fee if he/she/it repairs or replaces the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed infrastructure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

6. Impact Fee Due Upon Issuance of a Building Permit. The impact fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a Building Permit by the City. It is understood that the building permit is synonymous with the term structural building permit: as that term is used in Indiana Code 36-7-4-1323, in that the issuance of a Building Permit authorizes the applicant to commence construction activities, structural or otherwise. The entire fee which is calculated pursuant to the terms of this Ordinance shall be due at said time unless the amount of the fee upon calculation is greater than Five Thousand Dollars (\$5,000.00), in which case an installment plan may be requested by the applicant in accordance with the terms set forth in Indiana Code 36-7-4-1324(a) through (d). The Valparaiso Impact Fee Review Board shall establish specific rules consistent with said code provisions for installment payments. The interest rate on any installment plan or deferred payment shall be established by Indiana Code, as from time to time amended.

If a fee payer requests, the amount of the impact fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the Building Permit, whichever is earlier. For purposes of this section, assessment means the act of calculating the amount of the impact fee which shall be due. The City shall make

such assessment within thirty (30) days of the date of such voluntary request or at the issuance of the Building Permit with or without the request.

7. Lien Rights Established. Pursuant to Indiana Code 36-7-4-1325, the City acquires a lien against the real estate which is the subject of the impact fee. Upon adoption, this Ordinance shall be recorded, and thereafter, it shall continue constructive notice of the lien rights of the City with respect to a parcel of real estate which is the subject of an installment payment of an impact fee. The City may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an installment payment of an impact fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

8. Form of Receipt. The Valparaiso Clerk/Treasurer shall issue a receipt for any and all impact fees collected and the form of such receipt shall be as follows:

Received of _____ fee payer _____, this _____ day of _____, the sum of \$_____ in (full) (partial) satisfaction of Park and Recreation Impact Fees due pursuant to Valparaiso City Council Ordinance No. _____ relating to improvements to be constructed on the real estate described on Exhibit A, attached hereto, made part hereof, and subject to lien rights in favor of the City of Valparaiso in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: \$_____. This impact fee is dedicated to the creation of the following infrastructure element in accordance with the Zone Improvement Plan: _____.

_____, Clerk-Treasurer
City of Valparaiso, Indiana

9. Appeals. Any fee payer who believes itself to be aggrieved by the calculation of the impact fee may appeal from such calculation to the Valparaiso Impact Fee Review Board and the Valparaiso Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

- a. A fact assumption used in determining the amount of the impact fee is incorrect; or
- b. The amount of the impact fee is greater than the amount allowed under Indiana Code 36-7-4-1320 and 1322.

Upon conclusion of the hearing at which the matter is first presented, or at the conclusion of the hearing if the matter is continued, the Valparaiso Impact Fee

Review Board shall make a determination based upon the facts presented and may reverse, affirm, modify, or make such adjustments in the impact fee, as it believes are appropriate under the circumstances, if any, including establishing the amount of an impact fee, a credit, a refund, or any combination of fees, credits, or refunds.

The Valparaiso Impact Fee Review Board shall provide a copy of its decision to the City and the fee payer involved in the appeal within five (5) days after making its decision, and shall make written findings of fact to support its decision.

An appeal under this Section must be filed not later than thirty (30) days after the issuance of the Building Permit. The appeal shall be initiated with the filing of a Petition for Review with the Valparaiso Clerk-Treasurer's Office together with a filing fee in the amount of One Hundred Dollars (\$100.00). The filing fee shall be refunded in full if (1) the Petition for Review is granted and the impact fee is eliminated, reduced or adjusted by the Valparaiso Impact Fee Review Board, by independent action of the City, or by a court having jurisdiction; and (2) the reviewing body determines that the amount of the fees, reductions, or credits were arbitrary or capricious.

The Petition for Review shall be in a form calculated to inform the Valparaiso Impact Fee Review Board of the nature of complaint, the parties to the action, and relief requested. In addition, the petition shall describe the new development on which the impact fee has been assessed, all facts related to the assessment of the impact fee, and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitation set forth in the enabling statute.

The City shall not deny the issuance of a Building Permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the impact fee. If the impact fee totals One Thousand Dollars (\$1,000.00) or less, the City may require the fee payer to pay the impact fee or initiate an appeal under this section before the Building Permit is issued.

10. Establishment of Valparaiso Impact Fee Review Board. The City Council hereby establishes an Impact Fee Review Board (Board), which shall consist of three (3) citizen members appointed by the Mayor and who shall qualify as follows:

- One (1) member shall be a real estate broker licensed in Indiana;
- One (1) member shall be an engineer licensed in Indiana;
- One (1) member shall be a certified public accountant.

A Board member shall not be a member of the Valparaiso Advisory Plan Commission.

- a. The term of office of the members of the Board shall commence from the date of their appointment and expire five (5) years from the date of appointment.
 - b. At the expiration of the respective terms of each of the Board members originally appointed, their respective successors shall be appointed in the same manner as the original appointee, and each such succeeding member shall serve for a term of five (5) years. Each member shall continue to serve until his/her successor is appointed and qualified.
 - c. In the event any person appointed as a Board member shall fail to qualify as provided within ten (10) days after the mailing to him/her of notice of his/her appointment, or if any member after qualifying shall die, resign, vacate office, or in the event a member is unable to hear a petition due to a conflict of interest, the City Council President shall fill such vacancy with a new or temporary (in the event of a conflict of interest) member meeting the qualifications of the member being replaced. A new member shall serve for the period necessary to dispose of the petition giving rise to the conflict.
 - d. The Board shall be governed by Indiana Code 36-7-4-1338(c) and all other applicable provisions of the Impact Fee Statute.
11. Establishment of Park and Recreation Impact Fee Fund. There is hereby established the Park and Recreation Impact Fee Fund (Fund) of the City. This Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this Ordinance to be utilized in connection with the purposes set forth herein. Said Fund shall consist initially of one account based upon the current existence of one Impact Zone. In the event, and only in the event, that an additional Impact Zone is created hereafter, a separate account shall be maintained for each separate Impact Zone established within the City. Interest earned on the Fund or on any account with the Fund, shall be deposited and maintained within the Fund or the separate account. The Valparaiso Clerk-Treasurer shall maintain records of the status of the Fund or any account which may be established therein, and shall make an annual report of said Fund and accounts which shall be available to the public in general and fee payers, upon request, in particular.

Pursuant to Indiana Code 36-7-4-1332(e), the Clerk-Treasurer is designated as the City official responsible for acting on refund requests. In order to facilitate refunds when they may be due, the Clerk-Treasurer is directed to identify the purpose of any impact fee paid in order that a refund, if any, may be paid from the Fund or the account into which the fee was originally deposited.

12. Use of Impact Fees Collected Pursuant to this Ordinance. Any and all fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the City, acting by and through its Board of Parks and Recreation,

which for the purposes of this Ordinance is identified as the infrastructure agency contemplated by Indiana Code 36-7-4-1317:

- a. Providing funds to be utilized by the City for the purpose of paying the capital costs of new park and recreational infrastructure that is needed to serve the new development within the corporate limits of the City as well as the expanded area of authority granted pursuant to Indiana Code 36-10-4-10 and that is identified in the Plan;
 - b. An amount not to exceed Five Percent (5%) of the annual collections of the fee to be utilized for expenses incurred by the City for the consulting services used to establish this Ordinance;
 - c. To pay an refund due pursuant to the terms of this Ordinance;
 - d. To pay the debt service cost of an obligation issued to provide new park and recreational infrastructure described in sub-paragraph (a) above.
13. House Enrolled Act 1467. The Valparaiso City Council specifically acknowledges the existence of a law adopted by the General Assembly of the State of Indiana which regulated the imposition of impact fee ordinances by municipal corporations within the State of Indiana. It is the intent of the City to comply with such legislation, and this Ordinance shall be construed in all respects to be consistent with the Act. The substantive and procedural requirements of Indiana Code 36-7-4-1300 et. seq. shall control in the event of conflicts, which are unintended by the City Council.
14. Amendment and Review. The impact fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the City has no control. The City Council, may not less than once each year, cause a review to be made by City staff or consultants as may be required, to determine the continuing validity of the impact fee, the Impact Fee Zone, and the Zone Improvement Plan. The City Council shall consider and adopt such amendments as are necessary to cause a substantive compliance with all constitutional and statutory requirements. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Zone Improvement Plan and the Comprehensive Plan.
15. Effective Date. This Ordinance shall be in full force and effect six (6) months after its adoption by the City Council in accordance with Indiana Code 36-7-4-1340.
16. Construction of Clause Headings. The clause headings appearing herein have been provided for convenience and reference and do not purport and shall not be deemed to define, limit or extend the scope or intent of the clause to which they appertain.

17. Repeal of Conflicting Ordinances. The provisions of all other City ordinances in conflict with the provisions hereof, if any, are of no further force or effect and are hereby repealed.
18. Severability. If any part of this Ordinance shall be held as invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

Introduced and filed on the ___ day of _____, 2010. A motion to consider on First Reading was sustained by a vote of ___ in favor and ___ opposed, pursuant to Indiana Code 36-5-2-9.8.

DULY PASSED AND ADOPTED this ___ day of _____, 2010, by the Common Council of the City of Valparaiso, Porter County, Indiana, having been passed by a vote of ___ in favor and ___ opposed.

COMMON COUNCIL OF THE
CITY OF VALPARAISO, INDIANA

ATTEST:

Valparaiso Clerk/Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana on this ___ day of _____, 20__
at _____ o'clock p.m.

_____, Clerk/Treasurer

This Ordinance approved and signed by me this ___ day of _____, 20__, at _____ o'clock p.m.

_____, Mayor

EXHIBIT A

**INFRASTRUCTURE ZONE IMPROVEMENT PLAN
FOR PARKS AND RECREATION FACILITIES**

By: H. J. Umbaugh & Associates, LLP