

**AMENDMENT TO THE 2002
IMPACT FEE STUDY
&
THE 2004 IMPACT FEE UPDATE
-
DECEMBER 2013**

**CITY OF FRANKLIN
MILWAUKEE COUNTY, WISCONSIN**

Prepared By:
Department of Administration,
City of Franklin, Wisconsin

INTRODUCTION

“In 2002, the City of Franklin hired Ruekert & Mielke, Inc. to prepare a public facilities needs assessment and impact fee study (2002 Impact Fee Study) for the construction of law enforcement and municipal court facilities and fire protection and emergency medical facilities, as well as library, park and recreation, transportation system and water system facilities. The needs assessment was prepared during February and March of 2002 in accordance with Wisconsin Statutes 66.0617, formerly Wisconsin Statutes 66.55, and was presented to the City on April 16, 2002. The City held a public hearing on the proposed impact fee ordinance on May 7, 2002. On May 7, 2002, the City adopted the impact fee ordinance imposing total impact fees in the amount of \$3,809. Since then a 2004 amendment updated the law enforcement/municipal court, and fire protection and EMS impact fees. Within the 2004 update most of the analyses remained unchanged with the exception of the development projections, land use projections, and a few of the estimated project costs for the police and fire facilities.” [Excerpt from the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, as prepared by Ruekert & Mielke, Inc.”]

Additionally, in 2013 Ruekert & Mielke, Inc. prepared an “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, which updated the original needs assessment to revise the land use, population, and development projections and which updated the park impact fee project lists, costs, and identified any new park projects or improvements that may be required due to new development. It then applied that revised information to an updated calculation of the parks, playgrounds, and other recreational facilities impact fee. The amendment was supplementary to and intended to be read in conjunction with the 2002 Impact Fee Study, and the 2004 amendment. The amendment acted as an updated public facility needs assessment for the Park and Recreation Facilities.

The purpose of this update is to address two items. First, addressed herein as Part 1, at the direction of the Common Council in accordance with Resolution 2013-6924, adopted November 5, 2013, the Common Council wishes to consider the exemption of public schools from application of each of the various impact fees. Second, addressed herein as Part 2, based upon the results of the 2013 amendment to the impact fee for parks, playgrounds, and other recreational facilities, it is reasonable to suspend for 2014 the annual increase in impact fee rates as provided for by §92-9 L of the Municipal Code of Franklin, Wisconsin. This amendment is supplementary to and intended to be read in conjunction with the 2002 Impact Fee Study and the 2004 and 2013 amendments. This amendment, in conjunction with the documents previously referenced, acts as an updated public facility needs assessment.

METHODOLOGY

“The public facilities needs assessment prepared in 2002 included the following, as required by Wisconsin Statutes 66.0617:

1. An inventory of existing public facilities including an identification of existing deficiencies in the quantity or quality of those public facilities, for which it was anticipated that an impact fee would be imposed.

2. An identification of new public facilities or improvements or expansions of existing public facilities that will be required because of new land development. The identification was based upon an explicitly identified level of service and standards.
3. A detailed estimate of the capital costs of providing the new public facilities or improvements or expansion previously mentioned.
4. A computation of the cost per capita of providing the new public facilities required because of new land development, and a recommended schedule of impact fees, including an estimate of the effect of imposing impact fees on the availability of affordable housing within the City.”

[Excerpt from the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013 as prepared by Ruckert & Mielke, Inc.”]

As noted in the introduction, the 2013 amendment updated such sections in relation to the parks, playgrounds, and other recreational facilities impact fee and calculated a new parks, playgrounds, and other recreational facilities impact fee. Specifically, the amendment noted that it “updated the original needs assessment to revise the land use, population and development projections and update the park impact fee project lists, costs and identify any new park projects or improvements that may be required due to new development.”

As such, this additional amendment to the 2002 Impact Fee Study and the 2004 Impact Fee Update, along with recommendations included in the September 2013 amendment, as adopted in October of 2013, incorporates all of the information required of a Public Facility Needs Assessment as identified in Wis. Stats 66.0617.

PART 1. EXEMPTION OF PUBLIC SCHOOLS FROM SUBJECTION TO IMPACT FEES.

As noted above, on November 5, 2013, the Common Council adopted Resolution No. 2013-6924, incorporated below, which directed that an ordinance be prepared for consideration to “provide for exemption of public school districts from application of impact fees applicable to institutional or non-residential development.”

STATE OF WISCONSIN CITY OF FRANKLIN MILWAUKEE COUNTY

RESOLUTION NO. 2013-6924

A RESOLUTION DIRECTING STAFF TO INVESTIGATE AND PREPARE AN ORDINANCE EXEMPTING PUBLIC SCHOOL DISTRICTS FROM SUBJECTION TO CITY-IMPOSED IMPACT FEES AS SET FORTH IN SECTION 92-9 OF THE MUNICIPAL CODE

WHEREAS, the City of Franklin previously adopted Impact Fees related to park, playground, and other recreational facilities; fire protection and emergency medical facilities; law enforcement facilities; transportation facilities; and the Southwest Sanitary Sewer Service Area extension facilities that require developers to pay for the capital costs that are necessary to accommodate land development; and

WHEREAS, public school districts function similar to units of local government having the ability to levy property taxes and requiring the election of resident citizens to serve on the School Board and other units of government, specifically the United States, the State of Wisconsin, Milwaukee County, and the City of Franklin are exempted by local definition from paying such impact fees as may apply to institutional development; and

WHEREAS, any impact fee charged to a public school district would effectively be passed through to all of the property tax payers of the district thereby diluting the intended application of such fees upon developers, and, similarly, those land developers which cause growth and development of the public school district are already subject to impact fees through application of residential development impact fee rates; and

WHEREAS, a public school district may appeal the imposition or amount of imposition of an impact fee but failure to appeal or differences in the conclusions of such appeals could lead to inconsistent application of impact fees upon development by public school districts, which development should all be treated in a similar manner.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Franklin does hereby direct the Director of Administration, with the advice and direction of the City Attorney, to prepare an ordinance revision to Section 92-9 "Impact Fees" to provide for exemption of public school districts from application of impact fees applicable to institutional or non-residential development.

BE IT FURTHER RESOLVED that, unless otherwise restricted by law, such ordinance shall be retroactive to January 1, 2013, and shall provide that or allow for any such applicable impact fees collected since that date from or on behalf of a public school district be refunded.

Introduced at a regular meeting of the Common Council of the City of Franklin this 5th day of November, 2013 by Alderman Skowronski

Passed and adopted at a regular meeting of the Common Council of the City of Franklin this 5th day of November, 2013.

APPROVED:



Thomas M. Taylor, Mayor

ATTEST:



Sandra L. Wesolowski, City Clerk

AYES 6 NOES 0 ABSENT 0

Based on communication from Ruckert & Mielke, the City's impact fees, as currently established and applicable on a non-residential or institutional development basis, would be applied to schools "expanding for growth of student population." They noted that "if they are performing a renovation project to improve an older school or replace an outdated school this school would not be subject to impact fee charges unless there is an enlargement in student population or staff."

Upon inquiry, however, Ruckert & Mielke did not indicate that they specifically anticipated impact fee revenue to be generated by new public school development. A review of the 2002 Impact Fee Study does show that the "Governmental and Institutional" land use category is considered relative to existing and planned land uses and construction of additional floor area. This category specifically notes that it "Includes Institutional District." This distinction is relevant because the Institutional District has a broad range of facilities that are considered permitted or special uses within the district.

Section 15-3.0312 I-1 of the Unified Development Ordinance indicates that the "Institutional District is intended to: 1. Eliminate the ambiguity of maintaining, in unrelated use districts, areas which are under public or public-related ownership and where the use for public, or quasi-public

purpose, is anticipated to be permanent.” As noted above, however, the district is not limited to such uses, the Institutional District has a broad range of facilities that are permitted or special uses including, but not limited to, the following: utilities, lumber yards, hardware stores, nurseries, gift shops, funeral services, dance studios, theatrical producers and services, various health care services and facilities, and convenience stores (Per Table 15-3.0603 of the Unified Development Ordinance). Additionally schools, governmental buildings, religious organizations, and libraries are included as permitted or special uses in this district. As a conclusion, it is easy to see that construction of additional square footage of floor space in the Institutional District, as contemplated in the Impact Fee Study, does not limit itself to governmental buildings, churches, schools, and the like. The additional square footage of floor space includes all of these potential other permitted and special uses that could occur with the Institutional District and which would logically be subject to impact fees.

That being the case, it is reasonable to conclude that the Impact Fee Study did not specifically consider and incorporate anticipated revenue from development of public schools.

There is also a logical consideration for the exemption of public schools from consideration of the application of impact fees. As noted by the Common Council in Resolution 2013-6924, “any impact fee charged to a public school district would effectively be passed through to all of the property taxpayers of the district thereby diluting the intended application of such fees upon developers, and, similarly, those land developers which cause growth...” Therefore, the intended cost of new development is passed directly to those causing new development under the ordinance if public school development is exempted, provided such revenue is not anticipated. In such an instance, the impact fee rates will be set at levels necessary to generate the necessary impact fee revenue from only those to whom the fee directly applies. They would not be set at a reduced level that incorporates impact fee revenue paid indirectly by non-new-growth property taxpayers of the school district. It is worth noting repeating, therefore, that the current fees as previously set were not set too low, if schools are now exempted, because there is no evidence that the anticipated revenue levels specifically anticipated or included a revenue stream from public school development.

In addition to the logical argument presented above, public school district’s share a similarity with other organizations already excluded from City of Franklin impact fees levied on institutional development. Chapter 92 provides in the definition of “Institutional Development” that “The construction or modification of improvements to real property by the United States, the State of Wisconsin, Milwaukee County and the City of Franklin are not institutional development for the purposes of this section.” The reasoning for this exemption is not identified, but each of these entities obtains a substantial portion of its operating revenues through taxation. A characteristic a public school district shares, whereas most developers are not taxing bodies.

Given the above discussion, there is no basis to conclude that exclusion of public schools from application of the impact fees would impact the conclusions reported in the Impact Fee Study or its subsequent update or amendment. Additionally, at the time of the preparation of this amendment, no clear statutory prohibition against an exemption of public schools from application of an impact fee was identified by the City Attorney.

PART 2. SUSPEND, FOR 2014, THE ANNUAL INCREASE IN IMPACT FEE RATES.

Section §92-9 L. of the Municipal Code of Franklin provides that “The impact fees imposed under this section shall be increased annually at the rate of 5%, with the adjustment effective January 1 of each year.” The ordinance does not specify the intent of this annual increase, but it is clearly understood from the historical record that this annual increase serves to ensure that the fee remains up-to-date with costs and inflationary factors that will impact the expenditure side of impact fee related projects.

As noted in the “Introduction” above, in 2013 Ruckert & Mielke, Inc. prepared an “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013. That study updated the original needs assessment to revise the land use, population and development projections. It also updated the park impact fee project lists, costs and identified any new park projects or improvements that may be required due to new development. It then applied both sets of revised information to an updated calculation of the parks, playgrounds, and other recreational facilities impact fee. The end result after amendment to the ordinance was a reduction in the parks, playgrounds, and other recreational facilities impact fee from \$3,799 to \$2,816 per dwelling unit for single-family or two-family residential development and from \$2,534 to \$1,942 per dwelling unit for multi-family residential development.

Both sets of adjustments impacted the final rates as determined in the review of the parks, playgrounds, and other recreational facilities impact fee. Obviously the final calculated fee was impacted by the park development specific data and plans. The land use, population and development projections, however, will have broader implications across all the impact fee types included in Section §92-9 of the municipal code. An amendment to each of these sections is currently contracted for and underway with Ruckert & Mielke, Inc. The parks-related fee was simply accelerated due to a specific project need; otherwise all impact fee areas would have been addressed within one amendment.

The updating of the population projections, for example, “are extremely important in the calculation of impact fees as future development is one of the driving factors in the impact fee calculation.” [Excerpt from the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013.] At the same time, the Common Council has an obligation to consider and determine that a proposed impact fee bears a rational relationship to the need for new, expanded and improved public facilities. Similarly, Section §92-9 L. of the Municipal Code anticipates that the Common Council needs to determine “that the amount of fees imposed continues to represent an equitable and reasonable apportionment of the cost of public improvements and requirements generated by land development.” To that end, it provides further that “Upon such considerations and for such purpose, the Common Council may make reasonable adjustments to the amount of such fees...”

Given the requirements of the statute and the expectation that the Common Council may make reasonable adjustments to the amount of such fees and in consideration of the results incorporated into the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, as prepared by Ruckert & Mielke, Inc., it is reasonable for the Common Council to conclude that the annual increase in the impact fee rates should be suspended for 2014.

The significant reduction in the park impact fee following the recent amendment suggests that it is possible that the remaining impact fee rates will experience a need for a reduction when the study is completed. The parks study, however, did not parse out the impact of each factor on the final rate adjustment. As such, one cannot conclude the degree to which the rate change was caused by adjustments to population, land use, and development rates; nor can one conclude exactly how other factors may influence the other impact fee rates. Even though a final determination cannot be reached until an amendment for the remaining impact fees is completed in early 2014, the parks impact fee amendment results are sufficient to warrant suspending the automatic annual increase in rates pending the final results of the outstanding study. In this regard it is more reasonable to err on the side of undercharging for a brief period than it is to increase the rate on January 1st only to, potentially, reduce it shortly thereafter.

In fact, in the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, Ruckert & Mielke notes that “the City and R/M came to an agreement that all future yearly fee escalations shall be based upon the Milwaukee CPI (Consumer Price Index).” Ruckert & Mielke suggested this course of action as a step in ensuring that “the most proper and justifiable impact fee is still in place” going forward. The park impact fee rate, therefore, was already set anticipating a lower annual rate increase than the 5% currently established in the municipal code.

In conclusion, pending completion of the impact fee review currently underway, the results of the park, playgrounds, and other recreational facilities impact fee amendment should be headed, and the annual increase in impact fee rates should be suspended for 2014.

IMPACT ON AFFORDABLE HOUSING

The exemption of public schools from application of impact fees will not impact housing affordability from that as discussed in the prior study, update, or amendment because, as discussed above, it should have no impact on the impact fee rates themselves.

The suspension of the annual, automatic 5% rate increase will not negatively impact housing affordability from that as discussed in the prior study, update, or amendment because, as discussed above and for the same reason as referenced in the “Amendment to the 2002 Impact Fee Study & The 2004 Impact Fee Update,” September 2013, proposing to eliminate the 2014 annual rate increase effectively decreases the 2014 fees and fee rates, and, as such, there should be no negative effect on housing affordability.