

ORDINANCE NO. 2014- 835

***AN ORDINANCE AMENDING CHAPTER A173-2 (Miscellaneous Fees),
Section M OF THE CODE OF UPPER MERION TOWNSHIP
ESTABLISHING CRITERIA FOR THE COLLECTION OF
HIGHWAY/TRAFFIC CAPITAL IMPROVEMENT ASSESSMENT
(Ordinance 84-470) IN ACCORDANCE WITH THE PROVISIONS OF ACT
209 OF 1990 (53 P.S. §10501-A et. seq.)***

WHEREAS, Act 209 of 1990 (53 P.S. §10501-A et. seq.) together with all amendments thereto (collectively “**Act 209**”), authorizes qualifying municipalities to establish an impact fee for transportation capital improvements (the “**Transportation Impact Fee**”) and establishes a procedure for the adoption of a Transportation Impact Fee;

WHEREAS, pursuant to Act 209, Upper Merion Township (“**Township**”) by the affirmative vote of its Board of Supervisors (the “**Board**”) authorized the creation, imposition and collection of impact fees to fund transportation capital improvements;

WHEREAS, Upper Merion Township has experienced considerable growth in development in recent years causing congestion and potentially unsafe conditions on its roads;

WHEREAS, land use assumptions indicate that such development will continue and will place ever-increasing demands on the Township to provide transportation improvements which cannot be supported solely by the Township’s general funds;

WHEREAS, in accordance with the requirements of Act 209, the Board created a Traffic Impact Fee Advisory Committee (the “**Committee**”) for the purposes of developing land use assumptions, preparing a roadway sufficiency analysis study and making recommendations to the Board as to the development of roadway improvements, capital improvements and impact fees;

WHEREAS, the Committee caused the Upper Merion Township Planning Department to prepare a Land Use Assumptions Report dated June 27, 2012 (the “**LUAR**”). The LUAR was approved by the Committee, and accepted by the Board of Supervisors

WHEREAS, the Committee has caused Pennoni Associates, Inc. (“**Pennoni**”) to prepare a Roadway Sufficiency Analysis dated April 29, 2013 (the “**Roadway Sufficiency Analysis**”), which the Committee has recommended to the Board for adoption;

WHEREAS, the Committee has caused Pennoni to prepare a Transportation Capital Improvements Plan dated March 6, 2014, (the “**Capital Improvements Plan**,” collectively with the Roadway Sufficiency Analysis, the “**Analysis and Plan**”) which the Committee has recommended to the Board for adoption;

WHEREAS, the amount of the Transportation Impact Fee to be imposed shall be determined by the cost of additional transportation improvements needed to meet the minimum safety and capacity standards established by the Analysis and Plan for those public facilities as identified by the Analysis and Plan; and

WHEREAS, the Board hereby finds and declares that a Transportation Impact Fee imposed upon residential and non-residential development, in order to assist in the financing of specified transportation capital improvements in the designated service areas as identified in the Analysis and Plan, the demand for which is attributable to new development and new subdivision, is in the best interests of the Township and its residents, is equitable and does not impose an unfair burden on such development.

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED, by the Board of Supervisors as follows:

Section 1. Ordinance. This Ordinance shall be part of Chapter A173-2, Subdivision and Land Development, "Miscellaneous Fees" ("**Section M**") of the Code of Upper Merion Township. Accordingly, Section M is hereby amended by adding the following:

§173-2.M Transportation Impact Fee

A. **Title.** This Ordinance shall be known as the "Upper Merion Township Transportation Impact Fee Ordinance."

B. **Purpose.** The purpose of this Ordinance is to establish a Transportation Impact Fee to insure that the cost of needed capital improvements be applied to new developments in a manner that will allocate equitably the cost of those improvements among property owners such that the transportation system of the Township is available and adequate to support new growth and development. To advance this objective, there is hereby created a Transportation Impact Fee payable to the Upper Merion Township Transportation Authority (the "**Authority**") at the time of building permit(s) issuance.

C. **Findings and Conclusions.** The Board, pursuant to Act 209, hereby finds and declares:

1. The conditions and standards for the determination and imposition of a Transportation Impact Fee set forth herein are those set forth in Act 209 and consist of:

- a. The recitals set forth above;
- b. The analysis, advice and recommendations of the Committee;
- c. The Land Use Assumptions Report as prepared by the Committee and adopted by the Board;

d. The Roadway Sufficiency Analysis as prepared by the Committee and adopted by the Board;

e. The Transportation Capital Improvements Plan as prepared by the Committee and adopted by the Board;

f. Such other conditions and standards as the Board may by resolution from time to time identify as being relevant, material and necessary to the imposition of a Transportation Impact Fee and consistent with the provisions of Act 209 and any amendments thereto.

2. Pursuant to the authority established by Upper Merion Township Ordinance No. 84-470 the collection, disbursement and accounting of Transportation Impact Fees shall be administered by the Upper Merion Township Transportation Authority, subject to the review and oversight of the Board.

3. The amount of the per-peak-hour-trip transportation impact fees shall be set forth in Section M, "*Calculation of Per-Peak-Hour-Trip Fee for the Transportation Service Area*" of this Chapter.

4. The time, method and procedure for payment of Transportation Impact Fees shall be as set forth in *Section O, "Administration of Transportation Impact Fees"* of this Chapter.

5. The procedure for credits against Transportation Impact Fees shall be as set forth in *Section Q, "Credit"* of this Chapter.

6. The procedure for refunds of transportation impact fees shall be set forth in *Section R, "Refunds"* of this Chapter.

D. *Definitions.* The terms and definitions as set forth in 53 P.S. §10502-A, "Definitions" of Act 209 are hereby adopted, referenced and incorporated as if more fully set forth herein.

E. *Enactment and Imposition of Transportation Impact Fees.* There is hereby enacted a Transportation Impact Fee to be imposed upon new subdivision and new development, as defined in the Act, for the purpose of funding off-site public transportation improvements as authorized by Act 209 and as described in the Roadway Sufficiency Analysis adopted by the Board and the Capital Improvements Plan adopted by the Board. The Transportation Impact Fees shall apply to all new subdivisions or land developments within each of the transportation service areas as hereinafter defined and identified (the "**Transportation Service Area**") and shall be due and payable to the Authority at the time of issuance of a building permit(s), such payment being a condition precedent to the issuance and validity of such building permit(s).

F. *Uses.* Transportation Impact Fees collected pursuant to this Chapter may be expended for those costs incurred for improvements identified in the Analysis and Plan which are attributable to new subdivision or land development, including the acquisition of land and rights-of-way, engineering, legal and planning costs and all other costs which are directly related to road improvements within the Transportation Service Area, including debt service, and further including such proportionate amount of the preparation of the Land Use Assumptions, Roadway Sufficiency Analysis and Capital Improvements Plan as is permitted pursuant to Act 209.

G. *Incorporation and Adoption of Supporting Documentation.* The following documents, adopted by the Board, are hereby incorporated by reference in full in the ordinance, as if attached hereto:

1. The Land Use Assumptions Report as adopted by Resolution No. _____
2. The Roadway Sufficiency Analysis as adopted by Resolution No. _____
3. The Transportation Capital Improvements Plan as adopted by Resolution No. _____.
4. Transportation Service Areas Map as prepared by Pennoni, attached as Appendix A to the Transportation Capital Improvements Plan, and incorporated by reference in full herein, as if attached hereto.

H. *Special Transportation Studies.* Where intended to assist in the determination of the appropriate amount of the Transportation Impact Fee, the Township may require an Applicant to prepare a special transportation study (the “**Special Transportation Studies**”) to determine the traffic generation and circulation patterns in new non-residential land developments or subdivisions; provided however, that no studies may be required when the proposed development will not require a deviation from the Land Use Assumptions resulting in increased density, intensity or trip generation. The special transportation study shall be prepared by a qualified traffic or transportation engineer in accord with generally accepted transportation planning and engineering standards and shall be submitted prior to the imposition of a Transportation Impact Fee and shall be considered in determination of same. The Applicant shall be responsible for all costs associated with the Special Transportation Studies.

Where a new nonresidential development is proposed which deviates from the land use assumptions resulting in increased density, intensity or trip generation, the developer shall be required to prepare a special transportation study in order to assist the Township in determining traffic generation or circulation and to serve as

the basis for the determination of the amount of the transportation impact fee for such development or subdivision. Such transportation studies shall conform with the requirements of the Township's Subdivision and Land Development Ordinance. Any such studies shall be submitted prior to the imposition of the impact fee and shall be considered in the determination of the fee.

I. *Uniform Applicability of Transportation Impact Fees.* This Chapter shall be uniformly applicable to all subdivision and land developments that occur within the Transportation Service Area.

J. *Imposition and Payment of Transportation Impact Fee as Condition to Issuance of Building Permit.* No building permit shall be issued for a subdivision or land development within a Transportation Service Area, until such time as the Applicant thereof has paid to the Authority the Transportation Impact Fee imposed by and calculated pursuant to this Chapter.

K. *Method of Calculation of Transportation Impact Fees.*

1. The Transportation Impact Fee shall be based upon the total costs of road improvements or portions thereof included in the Analysis and Plan within a given Transportation Service Area that are attributable to and necessitated by new subdivision and/or land development within the Transportation Service Areas as calculated in accordance with the Act and herewith, divided by the number of anticipated peak hour trips generated by all new subdivision and/or land development consistent with a) the Land Use Assumptions, as adopted, and b) calculated in accordance with the *Trip Generation Manual* published by the Institute of Transportation Engineers, 9th or subsequent editions, as amended, which is hereby adopted by the Township, to equal the per-trip cost for transportation improvements within the Transportation Service Areas.

2. The Transportation Impact Fee for a specific new subdivision or land development within the Transportation Service Area for road improvements shall be determined as of the date of preliminary subdivision or land development approval by multiplying the per trip cost established for the Transportation Service Area by the estimated number of peak-hour trips to be generated by the new subdivision or land development using the *Trip Generation Manual* published by the Institute of Transportation Engineers, 9th or subsequent editions, as amended.

3. If the subdivision or land development contains a mix of uses, the Applicant must separately calculate the Transportation Impact Fee due for each type of use.

4. The Board may authorize or require the preparation of a special transportation study in order to determine the traffic generation or circulation

for a new non-residential development to assist in the determination of the amount of the transportation fee for such subdivision or land development.

L. Establishment of Transportation Service Areas.

1. Transportation Service Areas are established as shown on the map, entitled "Transportation Service Area," as included in the Analysis and Plan and as further attached hereto as *Exhibit "A"* and incorporated fully herein by reference.

2. Additional Transportation Service Areas may be designated by the Board from time to time consistent with the procedures set forth herein and in Act 209 and when designated in consideration of the following additional factors:

- a. The Township Comprehensive Plan;
- b. Any standards for adequate public facilities incorporated in the Capital Improvements Program;
- c. The projected build-out and timing of development areas; and
- d. Such other factors as the Board may deem relevant.

3. Transportation Impact Fees collected from development and subdivision in each Transportation Service Area shall be used exclusively to fund transportation improvements projects scheduled for that Transportation Service Area.

M. Calculation of Per-Peak-Hour-Trip Fee for the Transportation Service Area. The amount of the per-peak-hour-trip fee for the transportation service area shall be \$3,623.38, unless revised or amended in accordance with the provisions hereof and the Act, calculated in accordance with the Act as follows:

1. Total costs of road improvements in Transportation Service Area included in the adopted Analysis and Plan attributable to and necessitated by new development and subdivision within the Transportation Service Area, including 50% of the estimated costs of improvements to highways, roads and streets qualifying as a state highway or portion of the rural highway system as provided under the State Highway Law.

2. Total costs attributable to Transportation Service Area

N. Non-Binding Transportation Impact Fee Estimates. Prior to making an application for a building permit, an Applicant may request a non-binding impact fee estimate from the Township. Unless the Applicant specifies a lesser use or

development, any such estimate shall be based upon the maximum development potential of the site pursuant to existing zoning regulations.

O. Administration of Transportation Impact Fees.

1. **Collection.** Transportation Impact Fees due pursuant to this Chapter shall be collected by the Authority in the manner or manners prescribed herein prior to the issuance of a building permit.

2. **Establishment of Fund.** Upon the receipt of any Transportation Impact Fees, the Authority shall be responsible for the separate and proper accounting of such fees. All such fees shall be deposited into interest-bearing accounts in a bank authorized to receive deposits of the Authority's funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.

a. Except as otherwise provided for herein, funds collected in one Transportation Service Area must be accounted for and expended for transportation capital improvements identified by the Analysis and Plan within the same Transportation Service Area.

b. Notwithstanding any other provision of this Chapter, and in compliance with Act 209, the Township may expend Transportation Impact Fees paid by an Applicant for projects not contained in the Analysis and Plan, or may provide credit against Transportation Impact Fees for the value of any construction not contained in the Analysis and Plan, which are performed at the Applicant's expense if all of the following criteria are met:

i. The Applicant has provided written consent to use its collected Transportation Impact Fees or the provision of such credit against its Transportation Impact Fees for specific, alternative transportation projects which are not included in the Analysis and Plan;

ii. The alternative transportation projects, whether highway or multimodal, have as their purpose the reduction of traffic congestion or the removal of vehicle trips from the roadway network; and

iii. The Township amends its Analysis and Plan to provide replacement of the collected Transportation Impact Fees transferred to alternative transportation projects from sources other than impact fees or developer contributions within three (3) years of completion of the alternative projects to which the transferred Transportation Impact Fees were applied or for which credit was provided.

3. **Establishment and Maintenance of Accounts.** The Authority shall establish appropriate trust fund accounts and shall maintain records whereby

Transportation Impact Fees collected can be segregated for each Transportation Service Area.

4. Maintenance of Records. The Authority or the Township Finance Director shall be responsible for the separate and proper accounting of any Transportation Impact Fees received pursuant to this Chapter. The Authority or Finance Director shall maintain and keep adequate financial records for each account which shall show the source and disbursement of all revenues, which shall account for all monies received, and which shall ensure the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the Analysis and Plan for the particular Transportation Service Areas.

P. Time, Method and Procedure for Payment. The Transportation Impact Fee for a specific subdivision or land development shall be paid prior to the issuance of the building permit for the development. The Transportation Impact Fee shall be paid to the Authority in cash, bank cashier's check, certified check or electronic fund transfer approved by the Authority and shall be administered by the Authority in accordance with the provisions of Section O hereof.

Q. Credit. Any Applicant who shall perform off-site improvements, at its own expense and with the consent and agreement of the Board, shall be eligible for a credit from a Transportation Impact Fee otherwise due in the amount for the actual cost of such off-site improvements as approved by the Township Engineer. Such credit shall not exceed the amount of the Transportation Impact Fee that would have been charged if a credit was not due. The Board, at its sole discretion, may direct the Authority to provide the Applicant:

1. A credit against the Transportation Impact Fee otherwise due in the amount of the fair market value of any land dedicated by the Applicant to the Township for future right-of-way, realignment or widening of any existing roadways. The fair market value of the land dedicated by the Applicant shall be determined as of the date of the submission of the subdivision or land development application to the Township.

2. A credit against the Transportation Impact Fee otherwise due for the value of construction of road improvements contained in the Analysis and Plan which are performed at the Applicant's expense. The amount of such credit for any transportation capital improvement constructed shall be the amount allocated in the Analysis and Plan, including contingency factors, for such work.

3. Any Applicant who shall perform, at his own expense, and with the consent and agreement of the Board, off-site improvements, as herein defined, shall be eligible for a credit from the Transportation Impact Fee otherwise due in the

amount of the actual cost of such off-site improvements as approved by the Township Engineer, only if all of the following criteria are met:

a. The Applicant shall enter into an agreement (the "**Improvement Agreement**") with the Township prior to the issuance of a building permit. The Improvement Agreement shall establish the estimated cost of the off-site improvements, the schedule for initiation and completion of the off-site improvements, a requirement that the off-site improvements be completed to Township and Pennsylvania Department of Transportation standards and design criteria and other such terms and conditions as deemed necessary by the Board;

b. The Township shall review the Improvement Agreement, verify costs and time schedules, determine if the improvement is contained in the Analysis and Plan, and determine the amount of the applicable credit for such improvement to be applied against the otherwise due Transportation Impact Fee; and

c. Applicant shall be required to supply financial security sufficient, in the judgment of the Township, to cover the cost of any such improvement installed by the Applicant for which the credit is sought.

4. In no instance shall any credit authorized by the Board pursuant to this *Section Q "Credit,"* exceed the amount of the Transportation Impact Fee actually due.

R. Refunds. Transportation Impact Fees collected pursuant to this Chapter shall be refunded, together with earned accrued interest thereon from the date of payment, to the payor of the impact fees under any of the following circumstances:

1. In the event the Township terminates or completes the Analysis and Plan for a Transportation Service Area and there remains at the time of termination or completion undispersed funds in the account(s) established for that purpose, the respective payors shall be entitled to a share of the fund balance in the same portion as the payor's Transportation Impact Fee payment plus interest earned bears to the total Transportation Impact Fees collected plus interest. Any allocations of a refund shall be determined by generally accepted accounting practices. The Township shall provide written notice by certified mail to those persons who previously paid the Transportation Impact Fees which remain undispersed. Such notice shall advise of that person's proportionate share of the fund balance that is available for refund to such person. Such notice shall be provided to the last known address provided by the payor of the Transportation Impact Fee to the Township. In the event any of the funds remain unclaimed following one (1) year after notice, the Authority shall be authorized to transfer any funds remaining to any other fund in the Township

without further obligation to refund such funds. It shall be the responsibility of the payor to provide the Township at all times with a current address for such notice.

2. In the event the Township fails to commence construction of any Transportation Service Area road improvements (the “**Transportation Capital Improvement**”) within three (3) years of the scheduled construction date set forth in the Analysis and Plan, any person who paid any Transportation Impact Fees pursuant to that Analysis and Plan shall, upon written request to the Township, receive a refund of that portion of the Transportation Impact Fee attributable to the contribution for the uncommenced Transportation Capital Improvement, plus interest accumulated thereon from the date of payment. However, no refund shall be payable or paid with respect to any project actually commenced prior to the receipt of such refund request, and the failure of a payor to make such written request prior to the commencement of such project shall be deemed a waiver of any right to such refund.

3. In the event that, upon completion of any road improvements project, the actual expenditures for the project is less than ninety-five (95%) percent of the costs budgeted for such project, the Township shall refund the pro rata difference between the budgeted costs and the actual expenditures, including interest accumulated thereon from the date of payment, to the person(s) who paid the Transportation Impact Fees for such improvements.

4. If the new subdivision or land development for which the Transportation Impact Fees were paid is not commenced prior to the expiration of the building permits issued for the project within the time limits established by the applicable building codes within the Township, the Transportation Impact Fees paid with accumulated interest shall be refunded to the payor. Further, if the building permit as issued for the project is altered and the alteration results in a decrease in the amount of the Transportation Impact Fee due in accordance with the calculations set forth under *Section K, “Method of Calculation of Transportation Impact Fees”*, the difference between such amount and the amount actually paid shall be refunded. The payor, at its option, may roll over the transportation impact fees attributable to an expired building permit to cover fees incurred by a new permit.

S. Additional and Supplemental Requirement. The Transportation Impact Fee is additional and supplemental to, and not in substitution of, any other requirements by the Township on the subdivision or development of land or the issuance of building permits. Nothing herein contained shall be deemed to alter or affect the Township’s existing ordinances and regulations regarding on-site improvements. In no event shall a property owner be obligated to pay for Transportation Capital Improvements in an amount in excess of the amount calculated pursuant to this Chapter, provided however, that a property owner may be required to pay,

pursuant to Township ordinances, regulations or policies, for other public facilities in addition to the Transportation Impact Fee as provided herein.

T. *Retroactive Application.* Notwithstanding anything to the contrary contained herein, Transportation Impact Fees may be imposed on those projects involving subdivisions, land developments or planned residential developments for which an application has been filed on or after the first publication of notice of the Township's intent to adopt this Chapter; provided, however, that such retroactivity does not exceed eighteen (18) months after the adoption of the resolution that created the Committee in connection herewith.

Section 2. *Interpretation.* The words and phrases of this Ordinance are to be construed in accordance with the following rules:

A. *Definitions.*

1. First, words and phrases are to be interpreted as defined by this Ordinance;
2. Second, words and phrases that are not defined by this Ordinance are to be interpreted as defined in Sections 107 and 502-A of the Municipalities Planning Code (the "MPC"), 53 P.S. §§10107 and 10502-A, as amended;
3. Third, words and phrases that are not defined in this Ordinance or Sections 107 and 502-A of the MPC are to be interpreted as defined in the Township's Zoning, Subdivision and Land Development Ordinances;
4. Fourth, words and phrases that are not defined in this Ordinance, Sections 107 and 502-A of the MPC, or in the Townships Zoning, Subdivision and Land Development Ordinances are to be given their common, ordinary dictionary meaning within the context of the sentence in which they are used.

B. *Construction.* The words, phrases and provisions of this Ordinance are not to be interpreted in a way that results in an absurd construction of the meaning, or in a way that causes one provision to contradict another.

Section 3. *Liberal Construction.* The provisions of this Ordinance shall be liberally construed to effectively carry out the purposes that are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.

Section 4. *Affirmation.* Except as specifically hereby amended, Chapter 145, Subdivision and Land Development, of the Code of Upper Merion Township is hereby ratified and affirmed in its entirety.

Section 5. *Repealer.* All ordinances, code sections or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Severability. Should any sentence, section, clause, part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

Section 7. Effective Date. This amendment shall become effective five (5) days after date of adoption.


ORDAINED AND ENACTED by the Board of Supervisors for Upper Merion Township, Montgomery County, Pennsylvania, this 4th day of December, 2014.

ATTEST:

UPPER MERION TOWNSHIP
BOARD OF SUPERVISORS:



David Kraynik, Township Manager

By: 

Gregory Waks, Chairman

Proposed advertised Ordinance in Times Herald: November 18, 2014.
Proof of Publication: November 23, 2014
Hearing Held: December 4, 2014
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2014-835.
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