ORDINANCE 12-31

AN ORDINANCE ESTABLISHING AN EQUITABLE IMPACT FEE FOR THE PURPOSE OF PLANNING AND FINANCING PARK INFRASTRUCTURE NEEDED TO SERVE NEW DEVELOPMENT IN THE CITY OF WESTFIELD

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

WHEREAS, the Council finds that it is reasonable and necessary to promote the orderly development of the City by establishing standards by which the City may require that new development shall pay a park impact fee, in accordance with Ind. Code § 36-7-4-1300 *et seq.*, (the "Impact Fee") representing the development's proportionate share of the capital cost of new park infrastructure necessary to serve new development in the City; and

WHEREAS, the Council finds that new development should not be required to pay a fee for the capital costs of new park 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 has caused to be prepared the Westfield Park Impact Fee Zone Improvement Plan (the "Zone Improvement Plan") prepared by Kenneth Kingshill and adopted by the Council in its Resolution 12-113; 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 improvement benefits all citizens of the City equally; and

WHEREAS, it has been the stated objective of the City that the analysis contained in the Zone Improvement Plan supports and should result in the implementation of an Impact Fee which meets the requirements of Indiana law; and

WHEREAS, the Westfield Impact Fee Advisory Committee, at its meetings on July 26, 2012 and August 23, 2012, considered the analyses contained in the Zone Improvement Plan and this Ordinance in accordance with Ind. Code § 36-7-4-1312; and

WHEREAS, the Westfield Advisory Plan Commission properly noticed, advertised and conducted a public hearing on this Ordinance on October 15, 2012; and

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Mary L. Clark
HAMILTON County Recorder IN
Recorded as Presented

WHEREAS, having given due deliberation to the Zone Improvement Plan prepared by Kenneth Kingshill which provides the basis for this Ordinance, the Westfield Advisory Plan Commission has recommended adoption of this Ordinance to the Council; and

WHEREAS, the purpose of this Ordinance is declared as expressly 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 Westfield, Hamilton County, Indiana as follows:

Section 1. Conditional Repeal and Limitation on Imposition of Impact Fee. This Ordinance shall expire and become void five (5) years after its effective date, as required by Ind. Code § 36-7-4-1340, unless action is undertaken to replace it consistent with the provisions of Indiana law which contemplates a replacement impact fee ordinance.

Section 2. Establishment of Impact Zone.

a. There is hereby established for the City a park infrastructure Impact Zone (as defined in Ind. Code § 36-7-4-1307), the borders of which are co-terminus with the existing corporate boundary of the City of Westfield, Hamilton County, Indiana, as they may be extended from time to time through annexation, over all of which the City exercises planning and zoning jurisdiction. The Council specifically finds that there is a functional relationship between the components of the parks element of the Zone Improvement Plan and that such park improvement recommendations provide a reasonably uniform benefit to all of the citizens of the City throughout the Impact Zone as of the effective date of this Ordinance. The City further finds that all areas within the Impact Zone are contiguous, as required by Ind. Code § 36-7-4-1316.

b. Except as provided below, this Ordinance shall apply uniformly to all residential developments within the Impact Zone hereby established for which the City may require a structural building permit and which create a need for new or additional park infrastructure. This Ordinance shall not apply to:

i. developments meeting the requirements set forth in Ind. Code § 36-7-4-1322(g);

ii. improvements which do not require a structural building permit;

iii. improvements which do not create a need for new or additional park infrastructure, including the erection of a sign, structures or fences, or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed; and

iv. the replacement of a destroyed or partially destroyed improvement; provided, however, that the replacement improvement does not create a need for new and additional park infrastructure over and above the infrastructure needed for the original improvement prior to the destruction or partial destruction thereof.

Section 3. Establishment of Impact Fee.

a. Based upon the analyses contained in the Zone Improvement Plan, the City finds, determines, establishes and adopts that the cost per dwelling unit within the Impact Zone is in the amount of (See Exhibit A).

b. The City hereby makes as a part of the record of these proceedings all of the data collected, calculations made, and conclusions reached by Kenneth Kingshill in the process of developing the Zone Improvement Plan, and specifically instructs the employees of the City to make such data and all other information gathered and used in preparing the Zone Improvement Plan publicly available as a public record of the City for review during the City's regular business hours. The City further authorizes Kenneth Kingshill to sell or otherwise distribute copies of the Zone Improvement Plan and any of the other data collected upon which it relied, at a cost reasonably intended to compensate them for the cost of reproduction only. The City makes the specific finding that this Ordinance is the result of the advice it received from Kenneth Kingshill.

c. In the event that any parcel of real estate considered in the creation of the Zone Improvement Plan undergoes a change in use, redevelopment, or modification which requires an improvement location permit, and creates a need for new park and recreation infrastructure, an Impact Fee will only be assessed for the increase in the burden on infrastructure.

Section 4. Credit in Lieu of Payment; Exemptions.

a. Any person or entity obligated to pay a fee pursuant to the terms of this Ordinance shall have the option of financing, constructing and dedicating actual park infrastructure instead of paying all or part of the Impact Fee which may be due, so long as such financing, construction and dedication are accomplished pursuant to the City of Westfield Parks and Recreation Master Plan and in accordance with the park specifications for such park improvements within the City at that time. Such fee payer, or other person or entity providing the infrastructure or improvement, shall be given credit upon a verified certification from a registered engineer, architect or contractor of the actual costs of planning, financing, constructing and dedicating such park improvements or infrastructure to the City. Such certification shall be presented prior to the issuance of any structural building or improvement location permit. In the event the actual cost of such planning, financing, construction and dedication do not equal the amount of the Impact Fee due pursuant to the calculation provided for in the schedule set forth in Section 3 hereof, the remaining balance shall be due by such fee payer to the City in accordance with the provisions this Ordinance.

b. Credits against Impact Fees otherwise due shall be allowed pursuant to this Section 4 for all infrastructure and improvements constructed or furnished in accordance with Ind. Code §§ 36-7-4-1313 and 1335. 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 above.

c. 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 their control, shall be exempt from paying the Impact Fee if they repair or replace the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed structure. In the event it creates any additional burden, the Impact Fee shall be calculated based only on the increased burden created by the structure.

Section 5. Impact Fee Due Upon Issuance of Structural Building Permit. The Impact Fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a structural building permit by the City. It is understood that a structural building permit is synonymous with the term "structural building permit" as used in Ind. Code § 36-7-4-1323, in that the issuance of a structural building permit authorizes the applicant to commence construction activities, structural and otherwise. The entire Impact Fee which is calculated pursuant to the terms of this Ordinance shall be due at the time of permit issuance unless the amount of the fee upon calculation is greater than Five Thousand Dollars ($5,000), in which case an installment plan may be requested by the applicant in accordance with the terms of Ind. Code § 36-7-4-1324.

The Westfield Impact Fee Review Board (the "Review Board"), as identified in Section 11 herein, shall establish specific rules for installment payments consistent with Indiana law. The interest rate on any installment plan or deferred payment shall be the pre-judgment rate of interest set forth in the Indiana Code.

If a fee payer so requests, the amount of the Impact Fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the structural building permit, whichever is earlier. For purposes of this Section 5, "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 structural building permit with or without a request.

Section 6. Lien Rights Established. Pursuant to Ind. Code § 36-7-4-1325, the City acquires a lien against the real estate which is the subject of the Impact Fee on the date the structural building permit is issued. Upon final adoption, this Ordinance shall be recorded and, thereafter, it shall constitute constructive notice of the lien rights of the City. The City may, in its discretion, file a specific instrument setting forth its statutory 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.

Section 7. Form of Receipt. The Clerk-Treasurer of the City shall issue a receipt for any and all Impact Fees collected, and the form of such receipt shall be as follows:

RECEIPT
Office of Clerk-Treasurer

_____ Fund

Westfield, IN _____ 20_____

RECEIVED FROM _____ $_____
THE SUM OF _____
ON ACCOUNT OF _____
_____

_____
Clerk/Treasurer

Payment type & amount

Cash _____	Check _____	M.O. _____
E.F.T. _____	C.C./B.C. _____	Other _____

Section 8. Appeals.

a. Any fee payer who believes itself to be aggrieved by the calculation of the Impact Fee may appeal from such calculation to the Review Board and the Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of presenting either of the following propositions:

i. A fact assumption used in determining the amount of the Impact Fee is incorrect; or

ii. The amount of the Impact Fee is greater than the amount allowed under Ind. Code §§ 36-7-4-1320, 1321, and 1322.

Upon conclusion of the presentation of evidence, the Review Board shall make a determination within not more than thirty (30) days, upon the facts presented and may make such adjustments in the Impact Fee as they believe are appropriate under the circumstances, if any.

b. An appeal under this Section 8 must be filed not later than thirty (30) days after the issuance of the structural building permit. The appeal shall be initiated with the filing of a Petition for Review with the Clerk-Treasurer's office, together with a filing fee in the amount of One Hundred Dollars ($100). The filing fee shall be refunded in full (1) if the Petition for Review is granted and the Impact Fee is eliminated, reduced or adjusted by the Review Board, by independent action of the City, or by a court having jurisdiction, and (2) if the reviewing body determines that the amount of the fee, reductions, or credits was arbitrary or capricious. The Petition for Review shall be in a form calculated to inform the Review Board

of the nature of the complaint, the parties to the action, and the relief requested. In addition, the petition shall describe the new development on which the Impact Fee has been assessed, all facts relating to the assessment of the Impact Fee, and the reasons petitioner believes that the amount of the Impact Fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in the enabling statute.

c. The City shall not deny the issuance of a structural 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) or less, the City may require the fee payer to pay the Impact Fee or initiate an appeal under this Section 8 before the structural building permit is issued.

Section 9. Parks and Recreation Fund.

a. The City has established a Parks and Recreation Fund (the "Fund") in compliance with Ind. Code § 36-7-4-1329.

b. Pursuant to Ind. Code § 36-7-4-1332(e), the Clerk-Treasurer is designated as the City official responsible for acting upon 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 account into which the fee was originally deposited.

Section 10. 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 purposes identified in Ind. Code § 36-7-4-1330, only by the City, which, for purpose of this Ordinance, is identified as the "infrastructure agency" contemplated by Ind. Code § 36-7-4-1317.

Section 11. Westfield Impact Fee Review Board. The City has established an impact fee review board, the Westfield Impact Fee Review Board (the "Review Board"), in accordance with the Ind. Code § 36-7-4-1338.

Section 12. 1300 Series Impact Fees. The Council specifically acknowledges the existence of Ind. Code §§ 36-7-4-1300 through 36-7-4-1342 (the "1300 Series") which regulates the imposition of Impact Fee ordinances by municipal corporations within the State of Indiana. It is the intent of the Council and the City to comply with this law, and this Ordinance shall be construed in all respects to be consistent with it. The substantive and procedural requirements of the 1300 Series shall control in the event of any conflicts with this Ordinance.

Section 13. Effective Date. This Ordinance shall be effective on June 10, 2013, at least six (6) months following its adoption as required by Indiana law.

Section 14. Savings Clause. If any title, section, subsection, phrase, clause, sentence, or word of this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 15. Construction of Clause Headings. The clause headings appearing herein have been provided for convenience and reference and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clause to which they pertain.

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ALL OF WHICH IS ORDAINED THIS 29 DAY OF Oct 2012.

WESTFIELD COMMON COUNCIL

Voting For	**Voting Against**	**Abstain**
Jim Ake	Jim Ake	Jim Ake
John Dippel	John Dippel	John Dippel
Steven Hoover	Steven Hoover	Steven Hoover
Robert L. Horkay	Robert L. Horkay	Robert L. Horkay
Robert J. Smith	Robert J. Smith	Robert J. Smith
Cindy Spoljaric	Cindy Spoljaric	Cindy Spoljaric
Robert W. Stokes	Robert W. Stokes	Robert W. Stokes

ATTEST:

Cindy Gossard, Clerk Treasurer

"I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law."

Cindy Gossard

8

I hereby certify that ORDINANCE 12-31 was delivered to the Mayor of Westfield

on the 30 day of Oct, 2012, at 9:55 a m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 12-31

this 30 day of OCT, 2012.

J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 12-31

this _____ day of _____, 2012.

J. Andrew Cook, Mayor

ATTEST:

Cindy Gossard, Clerk Treasurer

Exhibit A

Park Impact Fee Schedule

	Per Dwelling Unit
June 10, 2013 to June 10, 2014 fee:	$1,120
June 11, 2014 to June 10, 2018 fee:	$1,309